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Title 3—

The President

Executive Order 14141 of January 14, 2025

Advancing United States Leadership in Artificial Intelligence Infrastructure

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose*. Artificial intelligence (AI) is a defining technology of our era. Recent advancements in AI demonstrate its rapidly growing relevance to national security, including with respect to logistics, military capabilities, intelligence analysis, and cybersecurity. Building AI in the United States will help prevent adversaries from gaining access to, and using, powerful future systems to the detriment of our military and national security. It will also enable the United States Government to continue harnessing AI in service of national-security missions while preventing the United States from becoming dependent on other countries' infrastructure to develop and operate powerful AI tools.

Advances at the frontier of AI will also have significant implications for United States economic competitiveness. These imperatives require building AI infrastructure in the United States on the time frame needed to ensure United States leadership over competitors who, already, are racing to take the lead in AI development and adoption. Building AI in the United States requires enormous private-sector investments in infrastructure, especially for the advanced computing clusters needed to train AI models and the energy infrastructure needed to power this work. Already, AI's electricity and computational needs are vast, and they are set to surge in the years ahead. This work also requires secure, reliable supply chains for critical components needed to build AI infrastructure, from construction materials to advanced electronics.

This order sets our Nation on the path to ensure that future frontier AI can, and will, continue to be built here in the United States. In building domestic AI infrastructure, our Nation will also advance its leadership in the clean energy technologies needed to power the future economy, including geothermal, solar, wind, and nuclear energy; foster a vibrant, competitive, and open technology ecosystem in the United States, in which small companies can compete alongside large ones; maintain low consumer electricity prices; and help ensure that the development of AI infrastructure benefits the workers building it and communities near it.

With this order, I provide a plan for protecting national security, preserving our economic competitiveness, revitalizing our energy infrastructure, and ensuring United States leadership in AI.

Sec. 2. *Policy*. It is the policy of the United States to enable the development and operation of AI infrastructure, including data centers, in the United States in accordance with five guiding principles. When undertaking the actions set forth in this order, executive departments and agencies (agencies) shall adhere to these principles, as appropriate and consistent with applicable law:

(a) The development of AI infrastructure should advance United States national security and leadership in AI. Meeting this goal will require steps by the Federal Government, in collaboration with the private sector, to advance AI development and use AI for future national-security missions, including through the work described in National Security Memorandum 25 of October 24, 2024 (Advancing the United States' Leadership in Artificial

Intelligence; Harnessing Artificial Intelligence to Fulfill National Security Objectives; and Fostering the Safety, Security, and Trustworthiness of Artificial Intelligence) (NSM–25). It will also require the use of safeguards to improve the cyber, supply-chain, and physical security of the laboratories at which powerful AI is developed, stored, and used. Additionally, protecting United States national security will require further work to evaluate and manage risks related to the powerful capabilities that future frontier AI may possess.

(b) The development of AI infrastructure should advance United States economic competitiveness, including by fostering a vibrant technology ecosystem. Already, AI is creating new jobs and industries, and its effects are being felt in sectors across the economy. The Federal Government must ensure that the United States remains competitive in the global economy, including through harnessing the benefits of this technology for all Americans. It must also promote a fair, open, and competitive AI ecosystem so that small developers and entrepreneurs can continue to drive innovation—a priority highlighted in both Executive Order 14110 of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence), and NSM–25—as well as to support secure, reliable supply-chain infrastructure for AI activities.

(c) The United States can and should lead the world in operating the next generation of AI data centers with clean power. Meeting this goal will require building on recent successes to modernize our Nation's energy infrastructure; improve permitting processes; and support investments in, and expeditious development of, both currently available and emerging clean energy technologies, such as geothermal energy, nuclear energy, and long-duration energy storage used to store clean energy, as well as relevant supply chains. The United States must not be surpassed in its support for the development, commercialization, and operation of clean energy technologies at home and abroad, and the rapid buildout of AI infrastructure offers another vital opportunity to accelerate and deploy these energy technologies. To help ensure that new data center electricity demand does not take clean power away from other end users, result in resource adequacy issues, or increase grid emissions, the construction of AI infrastructure must be matched with new, clean electricity generation resources.

(d) The development of AI infrastructure should proceed without raising energy costs for American consumers and businesses, and it should have strong community support. The companies developing, commercializing, and deploying AI must finance the cost of building the infrastructure needed for AI operations, including the development of next-generation power infrastructure built for these operations.

(e) The development of AI infrastructure should benefit those working to build it. Meeting this goal will require high labor standards and safeguards for the buildout of AI infrastructure, consultation and close collaboration with communities affected by this infrastructure's development and operation, and continuous work to mitigate risks and potential harms. The American people more broadly must safely enjoy the gains and opportunities from technological innovation in the AI ecosystem.

Sec. 3. *Definitions*. For purposes of this order:

(a) The term ''agency'' means each agency described in 44 U.S.C. 3502(1), except for the independent regulatory agencies described in 44 U.S.C. 3502(5).

(b) The term ''AI data center'' means a data center used primarily with respect to developing or operating AI.

(c) The term ''AI infrastructure'' refers collectively to AI data centers, generation and storage resources procured to deliver electrical energy to data centers, and transmission facilities developed or upgraded for the same purpose.

(d) The term ''AI model'' means a component of an information system that implements AI technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

(e) The term ''clean energy'' or ''clean energy generation resources'' means generation resources that produce few or no emissions of carbon dioxide during operation, including when paired with clean storage technologies. This term includes geothermal, nuclear fission, nuclear fusion, solar, wind, hydroelectric, hydrokinetic (including tidal, wave, and current), and marine energy; and carbon capture, utilization, and storage technologies (for which the carbon capture equipment meets the definition set forth in 26 C.F.R. 1.45Q–2(c)) that operate with fossil fuel generation resources, that achieve carbon dioxide capture rates of 90 percent or higher on an annual basis, and that permanently sequester the captured carbon dioxide.

(f) The term ''clean power'' means electricity generated by the generation resources described in subsection (e) of this section.

(g) The term ''clean repowering'' means the practice of siting new clean generation sources at a site with an existing point of interconnection and generation sources operating with fossil fuels, such that some output or capacity from existing generation sources is replaced by the new clean generation sources.

(h) The term ''critical electric infrastructure information'' has the same meaning as set forth in 18 C.F.R. 388.113(c).

(i) The term ''data center'' means a facility used to store, manage, process, and disseminate electronic information for a computer network, and it includes any facility that is composed of one or more permanent or semi-permanent structures, or that is a dedicated space within such structure, and operates persistently in a fixed location; that is used for the housing of information technology equipment, including servers, mainframe computers, high-performance computing devices, or data-storage devices; and that is actively used for the hosting of information and information systems that are accessed by other systems or by users on other devices.

(j) The term ''distributed energy resource'' has the same meaning as set forth in 18 C.F.R. 35.28(b)(10).

(k) The term ''Federal Permitting Agencies'' refers to the agency members of the Federal Permitting Improvement Steering Council (Permitting Council) established under section 41002 of the Fixing America's Surface Transportation (FAST) Act, 42 U.S.C. 4370m–1, as well as any other agency with authority to issue a Federal permit or approval required for the development or operation of AI infrastructure.

(l) The term ''Federal Risk and Authorization Management Program'' refers to the program established to provide an approach for the adoption and use of cloud services by the Federal Government, as codified in 44 U.S.C. 3607–3616 (as enacted by the FedRAMP Authorization Act, section 5921 of Public Law 117–263).

(m) The term ''frontier AI data center'' means an AI data center capable of being used to develop, within a reasonable time frame, an AI model with characteristics related either to performance or to the computational resources used in its development that approximately match or surpass the state of the art at the time of the AI model's development.

(n) The term ''frontier AI infrastructure'' means AI infrastructure for which the relevant data center is a frontier AI data center.

(o) The term ''frontier AI training'' refers to the act of developing an AI model with characteristics related either to performance or to the computational resources used in its development that approximately match or surpass the state of the art at the time of the AI model's development.

(p) The term ''generation resource'' means a facility that produces electricity.

(q) The terms ''interconnection,'' ''interconnection facilities,'' and ''point of interconnection'' refer to facilities and equipment that physically and electrically connect generation resources or electrical load to the electric grid for the purpose of the delivery of electricity, for which grid operators have granted all appropriate approvals required for those facilities and equipment to operate.

(r) The term ''lab-security measures'' refers to steps to detect, prevent, or mitigate physical, cyber, or other threats to the operation of a data center, to the integrity of information or other assets stored within it, or of unauthorized access to such information or assets.

(s) The term ''leading-edge logic semiconductors'' refers to semiconductors produced at high volumes using extreme ultraviolet lithography tools as defined by the CHIPS Incentives Program Notice of Funding Opportunity, 2023–NIST–CHIPS–CFF–01.

(t) The term ''model weight'' means a numerical parameter within an AI model that helps determine the model's outputs in response to inputs.

(u) The term ''new source review'' refers to the permitting program with this name in 40 C.F.R. parts 51 or 52.

(v) The term ''non-Federal parties'' refers to private-sector entities that enter into a contract with the Department of Defense or the Department of Energy pursuant to section 4(g) of this order.

(w) The term ''priority geothermal zone'' refers to lands with high potential for the development of geothermal power generation resources, as designated by the Secretary of the Interior, including pursuant to section 4(c) of this order.

(x) The term ''project labor agreement'' means a pre-hire collective bargaining agreement that establishes the terms and conditions of a construction project.

(y) The term ''surplus interconnection service'' has the same meaning as set forth in Federal Energy Regulatory Commission Order No. 845.

(z) The terms ''transmission facilities'' and ''transmission infrastructure'' mean equipment or structures, including transmission lines and related facilities, used for the purpose of delivering electricity.

(aa) The term ''transmission organization'' refers to a Regional Transmission Organization or an Independent System Operator.

(bb) The term ''transmission provider'' means an entity that manages or operates transmission facilities for the delivery of electric energy used primarily by the public and that is not a transmission organization.

(cc) The term ''waters of the United States'' has the same meaning as set forth in 33 C.F.R. 328.3(a).

Sec. 4. *Establishing Federal Sites for AI Infrastructure*. (a) By February 28, 2025, the Secretary of Defense and the Secretary of Energy shall, if possible, each identify a minimum of 3 sites on Federal land managed by their respective agencies that may be suitable for the agencies to lease to non-Federal entities for the construction and operation of a frontier AI data center, as well as for the construction and operation of clean energy facilities to serve the data center, by the end of 2027. In identifying these sites, each Secretary shall, as feasible and appropriate, seek to prioritize sites that possess the following characteristics, as consistent with the objective of fully permitting and approving work to construct a frontier AI data center at each site by the end of 2025:

(i) inclusion of sufficient terrain with appropriate land gradients, soil durability, and other topographical characteristics for frontier AI data centers;

(ii) minimized adverse effects from AI infrastructure development or operation on local communities' health, wellbeing, and resource access; natural

or cultural resources; threatened or endangered species; and harbors or river improvements not associated with hydropower generation resources;

(iii) proximity to any communities seeking to host AI infrastructure, including for reasons related to local workers' access to jobs involved in designing, building, maintaining, and operating data centers;

(iv) ready access and proximity to high-voltage transmission infrastructure that minimizes the scale of, cost of, and timeline to develop any transmission upgrades or development needed to interconnect AI infrastructure, in consideration of access and proximity to:

(A) high-capacity transmission infrastructure with unused capacity, as identified by collection activities described in section 6 of this order;
(B) any planned generation facilities that can enable delivery of electricity to an AI data center on the site managed by each Secretary's respective agency, that possess an executed interconnection agreement with a transmission provider, that do not possess an executed power purchase agreement, and for which construction has not yet begun;
(C) any lands that the Secretary of the Interior identifies pursuant to subsection (c) of this section; and
(D) any power generation facilities with high clean repowering potential;

(v) location within geographic areas that are not at risk of persistently failing to attain National Ambient Air Quality Standards, and where the total cancer risk from air pollution is at or below the national average according to the Environmental Protection Agency's (EPA's) 2020 AirToxScreen;

(vi) lack of proximity to waters of the United States for purposes of permitting requirements;

(vii) lack of extensive restrictions on land uses associated with constructing and operating AI infrastructure or on access to necessary rights-of-way for such activities;

(viii) ready access to high-capacity telecommunications networks;

(ix) suitability for the development of access roads or other temporary infrastructure necessary for the construction of AI infrastructure; and

(x) absence of other characteristics that would, if the site was used or repurposed for AI infrastructure, compromise a competing national security concern as determined by the relevant Secretary in consultation with the Assistant to the President for National Security Affairs.

(b) By March 15, 2025, the Secretary of the Interior, acting through the Director of the Bureau of Land Management (BLM), in consultation with the Secretary of Defense, the Secretary of Energy, and the Chair of the Federal Energy Regulatory Commission, shall identify sites managed by BLM that the Secretary of the Interior, acting through the Director of BLM, deems may be suitable for granting or issuing rights of way to private-sector entities to construct and operate additional clean energy facilities that are being or may be built as components of frontier AI infrastructure developed pursuant to this section. In performing this work, the Secretary of the Interior, in consultation with the Secretary of Defense and the Secretary of Energy, shall take steps to ensure where feasible and appropriate that any such sites identified under this subsection include sufficient acreage for developing clean generation resources that can deliver sufficient electricity to each site identified under subsection (a) of this section for matching the capacity needs of frontier AI data centers on the latter sites. The sites identified under this subsection shall include any land managed by the Department of the Interior that is within a region designated by the Secretary of the Interior under subsection (c) of this section, or a region preliminarily identified as a candidate for such designation. In determining the suitability of sites, the Secretary of the Interior, acting through the Director of BLM, shall prioritize identification of sites that:

(i) contain completed, permitted, or planned clean generation projects that can enable delivery of electricity as described in this subsection and possess an executed interconnection agreement with a transmission provider;

(ii) have been allocated as available for solar applications in the *Final Programmatic Environmental Impact Statement and Proposed Resource Management Plan Amendments for Utility-Scale Solar Energy Development*, published by BLM, or that have otherwise been allocated as available for clean-energy applications in a BLM resource management plan;

(iii) have reasonable access to and are located nearby existing high-voltage transmission lines that have at least one gigawatt of additional capacity available, or for which such capacity can be reasonably developed through reconductoring, grid-enhancing technologies, or transmission upgrades;

(iv) possess the characteristics described in subsections (a)(i)–(x) of this section, in a manner that is consistent with the objective of fully permitting and approving work to construct utility-scale power facilities on a timeline that allows for the operation of those facilities by the end of 2027 or as soon as feasible thereafter; and

(v) possess other characteristics conducive to enabling new clean power development at such sites to contribute to lower regional electricity prices or to bring other community benefits.

(c) By March 15, 2025, the Secretary of the Interior, acting through the Director of BLM and in consultation with the Secretary of Energy, shall, if possible, designate at least five regions composed of lands or subsurface areas managed by the Department of the Interior as Priority Geothermal Zones (PGZs). The Secretary of the Interior shall designate those regions based on their potential for geothermal power generation resources, including hydrothermal and next-generation geothermal power and thermal storage; diversity of geological characteristics; and possession of the characteristics described in subsections (a)(i)–(x) and (b)(i)–(v) of this section.

(d) The Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior shall each make a legal determination as to whether each site identified pursuant to subsections (a) and (b) of this section is available for lease or for the issuance of a right of way, as appropriate, pursuant to the authority of the Secretary that made the identification, and as to whether the Secretary has the legal authority to lease or grant a right of way over or upon each site identified for the construction of frontier AI infrastructure. For purposes of this order, a site shall be considered ''cleared'' under this subsection if the relevant Secretary has determined that the site is available for lease and the Secretary concerned has the authority to lease it.

(e) By March 31, 2025, the Secretary of Defense and the Secretary of Energy, in coordination with the heads of any other agencies that either Secretary deems appropriate, shall coordinate to design, launch, and administer competitive public solicitations of proposals from non-Federal entities to lease Federal land to construct frontier AI infrastructure, including frontier AI data centers, on sites identified under subsection (a) of this section and cleared under subsection (d) of this section, if any. When issuing the solicitations, the Secretaries shall announce the sites identified under subsection (a) of this section and cleared under subsection (d) of this section, if any, and additional relevant information including the sites' geographic coordinates, technical characteristics, proximity to sites identified consistent with subsection (b) of this section and cleared under subsection (d) of this section, if any, and other relevant information. The solicitations shall, to the extent consistent with applicable law and to the extent the Secretaries agree that such requirements promote national defense, national security, or the public interest, as appropriate, require applicants to identify particular sites on which they propose to construct and operate frontier AI infrastructure; submit a detailed plan specifying proposed timelines, financing methods, and technical construction plans associated with such construction

work, including a contingency plan for decommissioning infrastructure on Federal sites; submit a plan that describes proposed frontier AI training work to occur at the site once operational; submit a plan for detailing the extent of the use of high labor and construction standards as described in subsection (g)(viii) of this section; and submit a plan with proposed lab-security measures, including personnel and material access requirements, that could be associated with the operation of frontier AI infrastructure. These requirements should be designed to ensure adequate collection of information from applicants regarding the criteria in subsections (g)(i)–(xvi) of this section. The solicitations shall close within 30 days of their issuance.

(f) By March 31, 2025, the Secretary of the Interior, in consultation with the Secretary of Defense and the Secretary of Energy, shall publicize the sites identified under subsection (b) of this section and cleared under subsection (d) of this section, if any, and additional relevant information including the sites' geographic coordinates, technical characteristics, proximity to sites identified consistent with subsection (a) of this section and cleared under subsection (d) of this section, if any, and other relevant information.

(g) By June 30, 2025, the Secretary of Defense and the Secretary of Energy shall announce any winning proposals identified through solicitations described in subsection (e) of this section. In selecting any winning proposals, the Secretary of Defense and the Secretary of Energy shall, in consultation with each other, assign winners the opportunity to apply for any Federal permits needed to build and operate frontier AI infrastructure pursuant to the frameworks described in subsection (h) of this section on any sites included in the solicitations issued under subsection (e) of this section, as the Secretaries deem appropriate. The Secretaries shall consult with the Attorney General on the implications of selections on the competition and market-structure characteristics of the broader AI ecosystem. The Chair of the Federal Trade Commission is encouraged to participate in these consultations. The Secretaries shall, to the extent consistent with applicable law and to the extent that the Secretaries assess that the requirement promotes national defense, national security, or the public interest, as appropriate, select at least one proposal developed and submitted jointly by a consortium of two or more small- or medium-sized organizations—as determined by those organizations' market capitalization, revenues, or similar characteristics—provided that the Secretaries receive at least one such proposal that meets the appropriate qualifications. The Secretaries shall provide technical assistance, as appropriate, to small- or medium-sized organizations seeking to submit proposals. The criteria for selecting winning proposals shall include, at a minimum, consideration of the following characteristics of the applicants and any identified partner organizations, to the extent consistent with applicable law and to the extent that the Secretaries agree that the listed characteristics promote national defense, national security, or the public interest, as appropriate:

(i) proposed financing mechanisms and sources of funds secured or likely to be secured for work to be performed at the site;

(ii) plans for ensuring high-quality AI training operations to be executed at the site by the applicant or third-party partners;

(iii) plans for maximizing energy, water, and other resource efficiency, including waste-heat utilization in constructing and operating the AI data center at the site, the strength of the proposed energy master plan for the site, and the quality of analysis of potential strains on local communities;

(iv) safety and security measures, including cybersecurity measures, proposed to be implemented at the site, and capabilities for such implementation;

(v) capabilities and acumen of applicable AI scientists, engineers, and other workforce essential to the operation of AI infrastructure;

(vi) plans for commercializing or otherwise deploying or advancing deployment of appropriate intellectual property, including AI model weights, developed at the site, as well as plans for commercializing or otherwise deploying or advancing deployment of innovations related to power generation and transmission infrastructure developed in the course of building or operating AI infrastructure;

(vii) plans to help ensure that the construction and operation of AI infrastructure does not increase electricity costs to other ratepayers or water costs to consumers, including, as appropriate, through appropriate proposed or recommended future engagement with any applicable regulatory authorities and State, Tribal, or local governments;

(viii) plans to use high labor standards that help ensure continuous and high-quality work performed on the site, such as paying prevailing wages; hiring registered apprentices; promoting positive labor-management relations through a project labor agreement; and otherwise adopting high job quality and labor standards for the construction and operations workforce as set forth in Executive Order 14126 of September 6, 2024 (Investing in America and Investing in American Workers), and a plan to address labor-related risks associated with the development and use of AI;

(ix) design features and operational controls and plans that mitigate potential environmental effects and implement strong community health, public safety, and environmental protection measures;

(x) other benefits to the community and electric grid infrastructure surrounding the site;

(xi) experience completing comparable construction projects;

(xii) experience in compliance with Federal, State, and local permits and environmental reviews relevant to construction and operation of AI infrastructure or, in the alternative, other evidence of an ability to obtain and comply with such permits or reviews in an efficient manner;

(xiii) the presence of organizational and management structures to help ensure sound governance of work performed at the site;

(xiv) the effect of the selection of an applicant on the emergence of an interoperable, competitive AI ecosystem;

(xv) whether an applicant has already been assigned an opportunity, or is being assigned another opportunity, to build a frontier AI data center on a Federal site through the solicitation process described in this section; and

(xvi) other considerations of national defense, national security, or the public interest, including economic security, as the Secretary of Defense and the Secretary of Energy deem appropriate.

(h) By June 30, 2025, the Secretary of Defense and the Secretary of Energy, in consultation with the Secretary of the Interior, shall each develop a framework through which any winning applicants selected under subsection (g) of this section may apply to lease sites respectively identified under subsection (a) of this section, and cleared under subsection (d) of this section, to construct and operate AI infrastructure, and by which the applicants may own the AI infrastructure facilities on those sites, subject to the conditions described in subsections (i)–(x) of this subsection. To the extent that the Secretaries assess that it is consistent with national defense, national security, or the public interest, as appropriate, these frameworks shall allow for winning applicants to cooperate with other appropriate private-sector entities on construction and operation activities, including through contracting and subcontracting relationships, and the frameworks shall not require that parties proposing to own AI infrastructure be identical to those proposing to operate the infrastructure or perform work at the sites on which the infrastructure is located. Actions taken by Federal entities pursuant to the frameworks shall conform to any applicable requirements of Appendix B of Office of Management and Budget (OMB) Circular A–

11 and any other appropriate budget-scoring practices; applicable in-kind consideration shall be taken into account in calculating the cost to lessees of any such leases. As part of the foregoing work, the Secretary of Defense and the Secretary of Energy shall, to the extent consistent with their respective authorities and with national defense, national security, or the public interest, as appropriate, require lease or contract terms that accomplish the following:

(i) establish a target of the applicant's beginning construction of a frontier AI data center by January 1, 2026, and commencing full-capacity operation of the AI infrastructure by December 31, 2027, subject to fulfillment of relevant statutory and regulatory requirements, and in a manner consistent with opportunities to operate the infrastructure at or below full capacity at an earlier date;

(ii) require that, concurrent with operating a frontier AI data center on a Federal site, non-Federal parties constructing, owning, or operating AI infrastructure have procured sufficient new clean power generation resources with capacity value to meet the frontier AI data center's planned electricity needs, including by providing power that matches the data center's timing of electricity use on an hourly basis and is deliverable to the data center;

(iii) clarify that non-Federal parties bear all responsibility for paying any costs that parties to the frameworks described in subsection (h) of this section, as well as transmission providers or transmission organizations or other entities not party to the contract, incur from work pursuant to it, including costs of work performed by agencies to complete necessary environmental reviews, any costs related to the procurement of clean power generation resources and capacity in accordance with subsection (g)(ii) of this section, any costs of decommissioning AI infrastructure on Federal sites, any costs of developing transmission infrastructure needed to serve a frontier AI data center on a Federal site, and the fair market value of leasing and using applicable Federal lands;

(iv) require adherence to technical standards and guidelines for cyber, supply-chain, and physical security for protecting and controlling any facilities, equipment, devices, systems, data, and other property, including AI model weights, that are developed, acquired, modified, used, or stored at the site or in the course of work performed on the site. The Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST) and the Director of the AI Safety Institute (AISI) at NIST, in consultation with the Secretary of Defense, the Secretary of Energy, and the Director of National Intelligence, shall identify available standards and guidelines to which adherence shall be required under this subsection. The identified standards should reflect and incorporate guidelines and best practices developed by the Secretary of Commerce, acting through the Director of NIST, pursuant to Executive Order 14028 of May 12, 2021 (Enhancing United States Cybersecurity), and Executive Order 14110 of November 1, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence). The Secretary of Commerce, acting through the Director of AISI at NIST, shall support the ongoing improvement of the framework described in this subsection by developing security guidelines for frontier AI training and operation and, as part of this work, shall comprehensively evaluate the security implications of publicly available AI models that the Secretary of Commerce, acting through the Director of AISI at NIST, deems globally significant;

(v) require that non-Federal parties owning or operating frontier AI data centers sign a memorandum of understanding with the Secretary of Commerce, acting through the Director of AISI at NIST, to facilitate collaborative research and evaluations on AI models developed, acquired, modified, run, or stored at the site or in the course of work performed on the site, for the purpose of assessing the national-security or other significant risks of those models;

(vi) require non-Federal parties to report information about investments or financial capital from any person used or involved in the development (including construction), ownership, or operation of AI infrastructure on the site and in the development, operation, or use of AI models operating in such AI infrastructure, as appropriate to evaluate risks to national security; and require non-Federal parties to limit the involvement in any such activities of, or the use or involvement in any such activities of investments or financial capital from, any person whom the Secretaries of Defense or Energy deem appropriate on national security grounds;

(vii) require non-Federal parties owning or operating AI data centers on Federal sites to take appropriate steps to advance the objective of harnessing AI, with appropriate safeguards, for purposes of national security, military preparedness, and intelligence operations, including with respect to the objectives and work outlined in NSM–25. Such steps shall, as consistent with applicable legal authorities, include collaborating with the Federal Government on regularly recurring assessments of the national-security implications of AI models developed on Federal sites, as appropriate. In addition, as appropriate and consistent with any relevant Federal procurement laws and regulations, the non-Federal parties shall be required to commit to providing access to such models, and critical resources derivative of such models, to the Federal Government for national-security applications at terms at least no less favorable than current market rates, consistent with NSM–25 and the associated Framework to Advance AI Governance and Risk Management in National Security. To the extent feasible, AI models and resources derived from them shall be developed and provided to the Federal Government in a manner that prevents vendor lock-in and supports interoperability, including as consistent with the measures in section 5 of OMB Memorandum M–24–18;

(viii) require that non-Federal parties owning or operating frontier AI data centers on Federal sites develop plans to make available computational resources that are not dedicated to supporting frontier AI training, or otherwise allocated under another provision, for commercial use by startups and small firms on nondiscriminatory terms and in a manner that minimizes barriers to interoperability, entry, or exit for users;

(ix) require non-Federal parties owning or operating AI infrastructure on Federal sites to explore the availability of clean energy resources—such as geothermal power generation resources and thermal storage, long-duration storage paired with clean energy, and carbon capture and sequestration as described in section 3(e) of this order, as well as beneficial uses of waste heat—at any appropriate sites that those parties lease for purposes of constructing frontier AI data centers on Federal sites or procuring power generation capacity to serve these data centers; and

(x) require AI developers owning and operating frontier AI data centers on Federal sites either to procure, for use in the development of their data centers, an appropriate share (as measured by monetary value) of leading-edge logic semiconductors fabricated in the United States to the maximum extent practicable; or to develop and implement a plan, subject to the respective approval of the Secretary of Defense or the Secretary of Energy, to qualify leading-edge logic semiconductors fabricated in the United States for use in the developer's data centers as soon as practicable. The Secretary of Defense and the Secretary of Energy shall develop any such requirements—including any determinations about amounts of leading-edge logic semiconductors that may be considered ''appropriate''—in consultation with the Secretary of Commerce.

(i) Within 1 year of the date of this order and consistent with applicable law, the Secretary of Defense, in consultation with the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence, and the Assistant to the President for National Security Affairs, shall issue regulations that prescribe heightened safeguards to protect computing hardware acquired, developed, stored, or

used on any sites on which frontier AI infrastructure is located and that are managed by the Department of Defense, as needed to implement or build upon the objectives of, or the requirements established pursuant to, subsection 4(g)(iv). The regulations shall include requirements to conform with appropriate high-impact level standards identified through the Federal Risk and Authorization Management Program, and they shall further provide for appropriate penalties consistent with applicable authorities. No less than annually the Secretary of Defense, in consultation with the aforementioned individuals, shall review the need for updates to the regulations, and promulgate any necessary revisions. The Secretary of Energy shall impose substantively the same requirements with respect to frontier AI infrastructure on sites managed by the Department of Energy, to the extent authorized by law.

(j) To enable the use—for advancing geothermal power development, including the development of thermal storage—of Federal lands already subject to leases:

(i) Within 180 days of the date of this order, the Secretary of the Interior shall establish a program with personnel dedicated to providing technical assistance for, streamlining, and otherwise advancing direct-use leasing of geothermal projects on BLM lands, including as consistent with the policies set forth in 43 C.F.R. subpart 3205, and leases of geothermal projects on lands subject to mining claims or under an oil and gas lease.

(ii) When issuing leases and related authorizations for geothermal projects, the Secretary of the Interior shall consider the extent to which the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and other appropriate statutes have been satisfied by prior analyses of the lease area.

(k) In performing the work described in section 4 of this order, including as related to the selection and management of sites, the head of each respective Federal agency shall:

(i) consult, as appropriate and consistent with applicable law, Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments), and the Presidential Memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation), with Tribal Nations for which such work may have implications or who otherwise request such consultation;

(ii) seek input from, as appropriate and consistent with applicable law and Administration policies, with State and local governments and other stakeholders and communities for which such work may have implications; and

(iii) consider taking actions that present the greatest opportunities to support the goals described in *Safely and Responsibly Expanding U.S. Nuclear Energy: Deployment Targets and A Framework for Action* (November 2024).

Sec. 5. *Protecting American Consumers and Communities*. (a) Within 180 days of the date of this order, the Secretary of Energy, in consultation with the Chair of the Council of Economic Advisors and the heads of other agencies that the Secretary deems appropriate, shall submit a report to the President on the potential effects of AI data centers on electricity prices for consumers and businesses. This report shall include electricity-rate-structure best practices for appropriate Federal agencies, State regulators, and transmission providers and transmission organizations to promote procurement of clean energy generation resources as components of AI infrastructure without increasing costs for other customers through cost-allocation processes or other mechanisms—particularly in regions that have or are expected to have high concentrations of AI infrastructure—as well as regional analyses of key data center hubs. The report shall further account for any existing approaches developed by Federal agencies to engage transmission providers and State regulators regarding electricity prices. After submitting the report, the Secretary of Energy shall engage appropriate private-sector

entities, to include the winning applicants selected under subsection 4(g) of this order, on the report's findings and recommendations.

(b) The Secretary of Energy shall provide technical assistance to State public utility commissions to consider rate structures, including clean transition tariffs and any other appropriate structures identified under subsection (a) of this section, to enable new AI infrastructure to use clean energy without causing unnecessary increases in electricity or water prices.

(c) The Secretary of Energy and the heads of other appropriate agencies as the Secretary of Energy deems appropriate, shall coordinate to expand research-and-development efforts related to AI data center efficiency. Supported research and development shall cover, as appropriate, efficiency considerations associated with data center buildings, including the data center shell; electrical systems; heating, ventilation, and cooling infrastructure; software; and beneficial use cases for wastewater heat from data center operations. As part of this work, the Secretary of Commerce and the Secretary of Energy shall submit a report to the President identifying appropriate ways that agencies can advance industry-wide data center energy efficiency through research and development, including server consolidation; hardware efficiency; virtualization; optimized cooling and airflow management; and power management, monitoring, and capacity planning.

(d) In implementing this order with respect to AI infrastructure on Federal sites, the heads of relevant agencies shall prioritize taking appropriate measures to keep electricity costs low for households, consumers, and businesses.

(e) Within 180 days of the date of this order, the Director of OMB, in consultation with the Chair of the Council on Environmental Quality (CEQ), shall evaluate best practices for public participation and governmental engagement in the development of potential siting and energy-related infrastructure for data centers, to include practices for seeking input on potential health, safety, and environmental impacts and mitigation measures for nearby communities. The Director shall present recommendations to the Secretary of Defense and the Secretary of Energy, who shall—as feasible and appropriate, and to advance the goals of assuring effective governmental engagement and meaningful public participation—implement and incorporate these recommendations into their siting and related decision-making processes regarding AI infrastructure.

Sec. 6. *Facilitating Electric Grid Interconnections for Federal Sites*. (a) Within 60 days of the date of this order, for the purpose of supporting any winning applicants of the solicitations described in subsection 4(e) of this order, the Secretary of Energy shall establish requirements for transmission providers and transmission organizations to report to the Secretary information regarding surplus interconnection service; available transmission capacity for interconnecting generators; opportunities for clean repowering; and proposed, planned, or initiated projects to build clean power generation capacity for which construction is not complete, but which have executed generation interconnection agreements. Information requested regarding these proposed, planned, or initiated projects shall include the size, location, and generation technology for each such clean power generation project, as well as the status and estimated cost of any transmission upgrades necessary to enable that project's interconnection consistent with the interconnection agreement. The Secretary shall facilitate communication, as appropriate, among the owners of such surplus interconnection service, facilities with opportunities for clean repowering, or clean power generator projects and winning applicants to the solicitations described in subsection 4(e) of this order. The Secretary shall further establish appropriate requirements for transmission providers and transmission organizations to continue reporting information described in this subsection on an ongoing basis, and in any event no less than annually.

(b) Within 120 days of the date of this order, the Secretary of Energy shall identify and communicate, as appropriate, a prioritized list of underutilized points of interconnection that are relevant to AI infrastructure on Federal sites and that demonstrate the highest potential for uses associated

with AI infrastructure. In developing this list, the Secretary shall direct transmission providers and transmission organizations to identify areas of the transmission network best suited to serve as points of interconnection for either data centers or other AI infrastructure that will use electricity from the transmission system—and locations best suited for interconnection of clean generators to serve such data centers—considering criteria such as minimizing the need for transmission upgrades necessary to accommodate such interconnection and access to clean energy generation resources.

(c) By June 30, 2025, the Secretary of Energy, in coordination with the Secretary of Defense and in consultation, as appropriate, with the Secretary of the Interior and the Secretary of Agriculture, shall engage with transmission providers and transmission organizations owning, operating, or maintaining transmission infrastructure located near Federal sites selected for AI infrastructure to identify any grid upgrades, deployment of advanced transmission technologies such as high-performance conductors or grid-enhancing technologies, operational changes, or other steps expected to be required for extending interconnection services to AI infrastructure by the end of 2027. Such engagements shall continue as the parties deem appropriate, and they shall prioritize, as appropriate, efforts to enable use of surplus interconnection services, clean repowering, and other methods of accelerated shifts toward clean power and beneficial use of waste heat. The engagements shall also include consideration of ways that the performance of such work as described in this subsection can most contribute to lower regional electricity prices.

(d) The Secretary of Energy shall conduct an analysis of currently available transmission infrastructure serving potential sites, and the likely cost and feasibility of, and timeline for, developing additional such infrastructure needed for constructing and operating a frontier AI data center on sites identified under subsection 4(a) of this order, and cleared under subsection 4(d) of this order, including by providing the frontier AI data center with clean energy and capacity. The Secretary shall identify and collect from transmission providers and transmission organizations information that the Secretary deems necessary for the analysis required under this subsection. The Secretary shall, as appropriate, treat such information as critical electric infrastructure information.

Sec. 7. *Expeditiously Processing Permits for Federal Sites*. (a) The heads of Federal Permitting Agencies shall prioritize work and exercise all applicable authorities, as appropriate, to expedite the processing of permits and approvals required for the construction and operation of AI infrastructure on Federal sites, with the goal of issuing all permits and approvals required for construction by the end of 2025 or as soon as they can be completed consistent with applicable law. As part of this work, the Permitting Council may provide coordination of permitting for AI infrastructure on Federal sites, as appropriate and to the extent that the relevant developers of AI infrastructure submit a notice of the initiation of a proposed covered project under 42 U.S.C. 4370m–2 and the project is determined to be such a covered project by the Permitting Council.

(b) To facilitate expeditious implementation of the requirements under NEPA with respect to Federal sites:

(i) The Secretary of Defense, the Secretary of the Interior, and the Secretary of Energy shall identify, within their respective agencies, personnel dedicated to performing NEPA reviews of projects to construct and operate AI infrastructure on Federal sites.

(ii) The Secretary of Defense, in consultation with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Energy, shall undertake a programmatic environmental review, on a thematic basis, of the environmental effects—and opportunities to mitigate those effects—involved with the construction and operation of AI data centers, as well as of other components of AI infrastructure as the Secretary of Defense deems appropriate. The review shall conclude, with all appropriate documents published, on the date of the close of

the solicitations described in subsection 4(e) of this order, or as soon thereafter as possible. The review shall, as applicable, incorporate by reference previously developed environmental studies, surveys, and impact analyses, including the analysis described in subsection 4(b)(ii) of this order.

(iii) After the conclusion of the programmatic review described in subsection (b)(ii) of this section, the Secretary of Defense, the Secretary of the Interior, the Secretary of Energy, and the heads of other relevant agencies, as appropriate, shall commence any further environmental reviews that are required under NEPA for the construction and operation of AI infrastructure on Federal sites, including by applying any available categorical exclusions. Such reviews shall, as appropriate, build on or incorporate by reference the programmatic environmental review conducted under subsection (b)(ii) of this section, as well as any other studies, surveys, and impact analyses that the Secretaries deem appropriate.

(c) To advance expeditious preconstruction permitting and ensure full compliance with air-quality permit requirements for AI infrastructure, the Administrator of the EPA, in consultation with the Secretary of Defense and the Secretary of Energy, shall:

(i) within 30 days of the selection of winning applications under subsection 4(g) of this order, engage State and local permitting authorities with jurisdiction over sites selected for AI infrastructure, as appropriate, to enhance relevant authorities' understanding of the technical characteristics of AI infrastructure projects as relevant to new source reviews under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and to enhance the public's understanding of the same, as well as to facilitate the acquisition of information by AI developers operating on Federal sites regarding best practices for expeditiously obtaining air-quality permits;

(ii) continue engagements with State and local permitting authorities, and provide technical assistance to AI developers operating on Federal sites, on an ongoing basis and as appropriate, to help advance expeditious conclusion of, and compliance with, new source reviews; and

(iii) following the acquisition of all preconstruction air-quality permits by developers, take steps to ensure, on an ongoing basis and as appropriate, that AI developers operating on Federal sites adhere to all requirements of operational air-quality permits applicable to their respective projects; that information needed to demonstrate compliance, possibly including air-monitoring data, is made publicly available and regularly updated; and that best practices are identified for air-emissions reduction and air-quality monitoring regarding AI infrastructure on Federal sites.

(d) To help ensure expeditious permitting or permission processes related to waters of the United States and harbor and river improvements, the Secretary of Defense shall prioritize work, as appropriate, to process applications for permits administered by the United States Army Corps of Engineers (USACE) under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and to process applications for permission for appropriate projects under section 14 of the Act of March 3, 1899 (33 U.S.C. 408), as consistent with the statutes' requirements, in order to render determinations on any such permits or permissions associated with AI infrastructure on Federal sites by the end of 2025, or as soon as feasible consistent with statutory requirements. The Secretary shall, consistent with applicable law, prioritize allocation of resources toward USACE district offices, and direct the allocation of resources within such offices, as needed to comply with this directive. The Secretary shall further apply all general permits applicable to AI infrastructure where appropriate to promote expeditious permitting on such Federal sites.

(e) Within 30 days of the selection of any winning applications under subsection 4(g) of this order, the Secretary of Defense and the Secretary of Energy shall initiate Tribal consultations as applicable and appropriate based on the sites selected. Upon receipt of sufficient project information, the Secretary of Defense and the Secretary of Energy shall further initiate

consultations with the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service (USFWS), to ensure that the construction and operation of AI infrastructure on each site that is identified under subsection 4(a) of this order, cleared under subsection 4(d) of this order, and subsequently chosen as the location for the construction and operation of AI infrastructure pursuant to a winning application under subsection 4(g) of this order are not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of a critical habitat of such species. The Secretary of Defense and the Secretary of Energy shall conclude such consultations with USFWS, to the maximum extent practicable, within 90 days of the initiation of such consultations when feasible and consistent with statutory requirements.

(f) To advance the development of geothermal energy production and thermal storage, including in support of AI infrastructure on Federal sites:

(i) Within 60 days of the date of this order, the Secretary of the Interior shall undertake a programmatic environmental review, on a thematic basis, of the environmental impacts and associated mitigations involved with the construction and operation of a geothermal power plant.

(ii) By the date on which the review described in subsection (f)(i) of this section is completed, the Secretary of the Interior shall establish a target cumulative capacity of permitted or operational geothermal projects by a year that the Secretary shall designate.

(iii) Within 60 days of the date of this order, the Secretary of the Interior shall assess existing categorical exclusions that are listed in the NEPA procedures of other agencies and could apply to actions taken in connection with geothermal energy development. The Secretary shall propose adopting such categorical exclusions as the Secretary, after consultation with the heads of agencies whose NEPA procedures list the categorical exclusions, deems appropriate, and, after considering all comments received through applicable public comment processes, take any actions to adopt categorical exclusions that are appropriate given the received comments, as consistent with the requirements of NEPA and 40 C.F.R. parts 1500–1508. The Secretary shall prioritize the expeditious permitting of geothermal projects, including the application of any appropriate categorical exclusions adopted under this subsection, on PGZs. The Secretary shall prioritize work to expeditiously permit geothermal projects on PGZs above the work described in subsection (f)(i) of this section.

(iv) When issuing leases and related authorizations for geothermal projects on PGZs, the Secretary of the Interior shall fulfill the requirements of NEPA and the Endangered Species Act in a manner that allows for the earliest possible operation of geothermal power plants consistent with applicable law.

(v) The Secretary of Defense, the Secretary of the Interior, and the Secretary of Energy shall, as appropriate, coordinate to determine and clarify appropriate procedures for the execution of leases or subleases for developing or expanding clean energy generation resources, including geothermal energy generation resources, on withdrawn lands subject to the jurisdiction of the Department of Defense or the Department of Energy.

Sec. 8. *Ensuring Adequate Transmission Infrastructure for Federal Sites*. (a) The Secretary of Energy, in consultation with the Secretary of Defense and the Secretary of the Interior, shall take steps to enable AI infrastructure on Federal sites to have reliable access to transmission facilities adequate for the operation of frontier AI data centers by the end of 2027.

(b) To promote any needed upgrades and development of transmission infrastructure that is located on or that is necessary to support Federal sites with AI infrastructure, the Secretary of Energy, in consultation with the Secretary of the Interior, acting through the Director of BLM and the Director of USFWS, shall:

(i) by September 30, 2025, identify and initiate use of all appropriate authorities to construct, finance, facilitate, and plan such upgrades and development, including through the Transmission Infrastructure Program administered by the Western Area Power Administration; and

(ii) prioritize the allocation of staff and resources for developing transmission infrastructure needed to support AI infrastructure on Federal sites—and in doing so, as appropriate, allocate relevant staff and resources from any component within the Department of Energy for this purpose—consistent with the requirements and objectives of this order and applicable law.

(c) Because of the importance of frontier AI infrastructure, including transmission capacity, to the defense industrial base, critical infrastructure, and military preparedness:

(i) The Secretary of Energy shall consider expected use of frontier AI data centers on Federal sites as part of the Secretary's triennial study of electric transmission capacity constraints and congestion under section 216(a)(1) of the Federal Power Act (16 U.S.C. 824p(a)(1)).

(ii) Consistent with the requirements of section 216(a)(2) of the Federal Power Act (16 U.S.C. 824p(a)(2)), and based on any findings made in future studies of electric transmission capacity constraints and congestion as described in subsection (c)(i) of this section, the Secretary shall consider whether to designate geographic areas around frontier AI infrastructure on Federal sites as national interest electric transmission corridors.

(d) The Secretary of Energy shall, as appropriate, help ensure that transmission facilities upgraded or developed to support AI data centers on Federal sites:

(i) are designed to support all reasonably foreseeable electric loads, including through the deployment of grid-enhancing technologies, high-performance conductors, and other advanced transmission technologies, including those described in the Department of Energy's *Innovative Grid Deployment* Liftoff report, that will increase the capabilities of the transmission facilities on a timely and cost-effective basis; and

(ii) conform to conductor efficiency standards or other technical standards or criteria that the Secretary determines will optimize facilities' performance and cost-effectiveness.

(e) To improve the timely availability of critical grid equipment for frontier AI infrastructure, such as electrical transformers, circuit breakers, switchgears, and cables, and to protect electricity consumers from exposure to rising equipment prices:

(i) Within 90 days of the date of this order, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Energy shall jointly consult with domestic suppliers of such technologies on the expected needs of AI infrastructure on Federal sites, suppliers' current production plans, and opportunities for Government support in helping suppliers meet market demands.

(ii) Within 180 days of the date of this order, the Secretary of Energy shall facilitate industry-led convenings on transformers and other critical grid components, which shall include appropriate representatives from agencies, transmission providers and transmission organizations, domestic suppliers of transformers, data center developers, and other private-sector organizations. On an ongoing basis, the Secretary, after consulting with participants in the industry-led convenings, shall:

(A) on at least an annual basis, develop and publish supply and demand forecasts for transformers, including forecasts for different transformer variants and analyses of supply and demand trends under different future scenarios, which shall include scenarios for growth in electricity demand from AI infrastructure and other sources of demand; and

(B) consider and, as appropriate, execute purchases of transformers and other critical grid components in order to provide demand certainty for domestic manufacturers to invest in capacity for meeting the needs of AI infrastructure. Any decision to execute such purchases shall be based on economic or other industry data, including the capacity utilization of domestic suppliers of transformers or other components, that the Secretary deems relevant to evaluating the status of the domestic industry. The Secretary shall subsequently execute sales of any purchased transformers or other critical grid components at times that the Secretary deems appropriate based on such data.

(f) Within 180 days of the date of this order, the Secretary of Energy shall establish requirements for transmission providers and transmission organizations to report to the Secretary transmission-related information to assist in siting and accelerating the interconnection of generation resources to serve frontier AI data centers on sites identified under section 4(a) of this order and cleared under subsection 4(d) of this order. Such information may include data on transmission congestion to help identify where additional transmission investments could enable the development of additional transmission capacity to serve such AI data centers.

(g) Within 180 days of the date of this order, the heads of agencies that possess loan or loan-guarantee authorities shall evaluate whether any such authorities could be used to support the development of AI infrastructure on Federal sites—including the production of critical grid equipment as described in subsection (e) of this section, or other actions to strengthen the AI infrastructure supply chain. In cases in which any authorities are available and appropriate for this purpose, the heads of relevant agencies shall provide that information to developers of AI infrastructure on Federal sites or other appropriate private-sector entities.

Sec. 9. *Additional Efforts to Improve Permitting and Power Procurement Nationwide*. (a) The heads of Federal Permitting Agencies shall designate, with respect to each of their component agencies, dedicated staff to handle all matters related to permits and approvals for AI infrastructure. Such designations shall include personnel dedicated to coordinating with and addressing the needs of applicants for permits under the respective agency's purview. In designating such personnel, the heads of Federal Permitting Agencies shall, as appropriate, implement staffing arrangements and other mechanisms that accelerate permitting for AI infrastructure to the maximum extent possible.

(b) To improve review practices pursuant to NEPA:

(i) Within 60 days of the date of this order, the heads of Federal Permitting Agencies, in coordination with the Chair of CEQ, shall assess existing categorical exclusions and identify opportunities to establish new categorical exclusions to support AI infrastructure on Federal sites, consistent with the requirements of NEPA and 40 C.F.R. parts 1500–1508. The heads of agencies whose NEPA regulations include categorical exclusions related to fiber-optic cables are encouraged, in undertaking these assessments, to evaluate whether such categorical exclusions may be applied to the development of fiber-optic cables as used for AI infrastructure.

(ii) Within 120 days of the date of this order, the heads of Federal Permitting Agencies shall, as appropriate and consistent with applicable law, propose any new categorical exclusions and, after considering all comments received through applicable public comment processes, take any actions to establish categorical exclusions that are appropriate given the received comments.

(iii) Within 120 days of the date of this order, and consistent with the directives described in section 7 of this order, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Energy shall identify any existing categorical exclusions that are listed in the NEPA procedures of other agencies and that are relevant to the development of clean energy, electric transmission, or AI data centers

and take any appropriate steps to adopt such categorical exclusions where appropriate and consistent with the requirements of NEPA and 40 C.F.R. parts 1500–1508. The Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Energy shall take any appropriate steps to adopt and apply such categorical exclusions to AI infrastructure on Federal sites where consistent with the requirements of NEPA and 40 C.F.R. parts 1500–1508.

(c) Within 180 days of the date of this order, the Secretary of Energy shall issue a request for information on opportunities for accelerated interconnection at existing power plants, including as related to surplus interconnection service and clean repowering. The request shall seek details on the ownership of such plants with surplus interconnection service and the plants' suitability for colocation of new clean power generation resources with shared grid access.

(d) Within 90 days of the date of this order, the Secretary of Energy shall issue a request for information from private-sector entities including transmission providers, transmission organizations, and clean energy developers regarding load interconnection processes. The Secretary shall subsequently engage with transmission providers and transmission organizations regarding best practices to improve the transparency and efficiency of such processes, including through adopting new technologies, software, and procedures. The Secretary shall provide technical assistance and financial assistance to facilitate such adoption, as appropriate. The Secretary shall publish a report describing the results of this work within 1 year of the date of this order.

(e) To promote the expeditious, responsible development of nuclear power generation resources, the Secretary of Defense and the Secretary of Energy shall:

(i) seek to facilitate the deployment of additional nuclear power and, as relevant, supply-chain services on lands owned by, respectively, the Department of Defense and the Department of Energy—including Department of Defense installations and sites owned or managed by the Department of Energy National Laboratories—by, as appropriate and consistent with applicable law, identifying opportunities for such deployment on specific lands to the extent such opportunities exist and, in the case of the Secretary of Energy only, by evaluating whether financial support for such deployment is appropriate;

(ii) within 180 days of the date of this order, coordinate to publish a joint list of ten high-priority sites—or, if fewer than ten appropriate sites exist, as many sites as possible—which may overlap with sites identified and cleared under section 4 of this order, that are most conducive to expeditious, safe, and responsible deployment of additional nuclear power capacity readily available to serve AI data center electricity demand by December 31, 2035, taking into account factors including Federal, State, Tribal, and local ordinances; permitting and other regulatory requirements; water access; climate resilience and natural-hazard risks; and transmission and interconnection dynamics; and

(iii) within 1 year of the date of this order, publish either a joint plan or their own respective plans describing how each Secretary will facilitate deployment of additional nuclear power capacity as described in this subsection on any such sites. Any such plan shall address selection of appropriate nuclear reactor technologies; the licensing and permitting of relevant technologies or facilities; the approach that each Secretary would take to ensure the safe and responsible transportation of uranium and any other radioactive material to the site; the approach that each Secretary would take to ensure the safe and responsible storage or disposal of any spent nuclear fuel; remediation of the site after the plant ceases operation as needed; and any other steps necessary to ensure the deployment will protect public health, safety, and the environment, consistent with all applicable legal requirements and the principles of the document

entitled *Safely and Responsibly Expanding U.S. Nuclear Energy: Deployment Targets and a Framework for Action* (November 2024); and

(iv) when carrying out actions under this subsection, comply with the directives of section 4(k) of this order.

(f) Within 180 days of the date of this order, the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of Energy, and the White House Council on Supply Chain Resilience, shall submit a report to the President on supply chain risks applicable to the United States data center industry. The report shall include analysis of supply chain risks associated with the materials used to construct and maintain data centers, the electronics necessary to operate a data center, and emerging data center technologies, as well as recommended steps for the Federal Government to take to address identified risks. The report shall also include analysis on supply chain risks applicable to the generation and transmission infrastructure needed to power AI data centers. On an ongoing basis, as appropriate, the Secretary of Commerce shall engage with the private sector to identify emerging supply chain risks that have the potential to undermine the success of the United States AI infrastructure industry—with such success defined to include the industry's commercialization of emerging technologies—and to recommend policy solutions to address identified risks.

(g) Within 180 days of the date of this order, to promote the expeditious, responsible development and deployment of distributed energy solutions that support the development and operation of AI infrastructure, the Secretary of Energy shall develop model contracts for using distributed energy resources (DERs) to increase the local grid's capacity to support AI infrastructure. In developing such contracts, the Secretary shall consider options for cost-effective uses of DERs, including distribution-sited generation resources, energy storage assets, and opportunities for flexible management of electricity demand. The model contracts shall, as appropriate, include clauses providing for the owners of data centers to finance costs incurred by other entities in developing, installing, and operating DERs, consistent with the objective of utilities accounting for these financing activities when processing data center owners' interconnection applications.

(h) By July 31, 2025, the Permitting Council shall engage with developers of AI infrastructure to advance their understanding of resources available under title 41 of the Fixing America's Surface Transportation Act (Public Law 114–94) to accelerate permitting processes and reviews for clean energy projects that are part of AI infrastructure on Federal sites. As part of this work, the Permitting Council, in consultation with the White House Task Force on AI Datacenter Infrastructure announced on October 29, 2024, shall endeavor to engage small developers of AI infrastructure.

(i) Within 180 days of the date of this order, the Secretary of the Army, acting through the Chief of Engineers and Commanding General of the USACE, shall, consistent with applicable law, assess existing nationwide permits (NWPs) to determine how they may be applied to facilitate the construction of AI data centers and develop and publish a list of NWPs that could facilitate such construction. The Secretary of the Army, acting through the Chief of Engineers and Commanding General of the USACE, shall, as appropriate and consistent with applicable law, subsequently establish such new NWPs as expediently as possible.

(j) Within 60 days of the date of this order, the Secretary of Energy shall release for public comment draft reporting requirements for AI data centers covering all phases of AI data centers' development and operation—including material extraction, component fabrication, transportation, construction, operation, recycling, and retirement —regarding embodied greenhouse gas emissions, water usage, and excess heat or energy expenditures, as distinct from operational intensity of greenhouse gas emissions.

(k) Within 60 days of the date of this order, the Secretary of Energy, in coordination with the Administrator of the EPA and the Chair of CEQ,

shall establish a grand challenge, serving as a call to voluntary action for appropriate private-sector and other stakeholders, for the purpose of:

(i) setting targets for minimizing the power usage effectiveness ratio and water usage effectiveness ratio of AI data centers, with a goal of bringing the power usage effectiveness ratio of AI data centers on Federal sites below 1.1;

(ii) promoting best practices for the beneficial use of waste heat and other efforts to maximize efficiency;

(iii) promoting best practices for data center energy management and sustainable design and operational practices for data centers that avoid or reduce adverse effects on natural and cultural resources and communities, and that protect public health and the environment;

(iv) raising AI developer and user awareness regarding the comparative energy intensities of different computational tasks; and

(v) developing best practices and standards for software and algorithmic efficiency.

Sec. 10. *Engagement Abroad*. (a) Within 90 days of the date of this order, the Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Administrator of the United States Agency for International Development, the Assistant to the President for National Security Affairs, and the heads of other relevant agencies as the Secretary of State may deem appropriate, shall develop a plan for engaging allies and partners on accelerating the buildout of trusted AI infrastructure around the world. Such a plan shall include measures to advance collaboration on the global buildout of trusted AI infrastructure; mitigate and prevent harms to local and affected communities; engage the private sector and investor community to identify and mitigate barriers to AI infrastructure investments; support the deployment of commercially available reliable clean power sources and the development and commercialization of emerging clean energy technologies, such as small modular nuclear reactors; exchange best practices for permitting, power procurement, and cultivating talent to build, operate, and maintain trusted AI infrastructure; and strengthen cyber, physical, and supply chain security safeguards related to AI infrastructure. Within 1 year of the date of this order, the Secretary of State shall submit to the Assistant to the President for National Security Affairs a report on actions taken pursuant to this plan.

(b) Within 120 days of the date of this order, the Assistant to the President for National Security Affairs shall convene heads of appropriate agencies, to include the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Energy, the Chief Executive Officer of the United States International Development Finance Corporation, and the President of the Export-Import Bank of the United States, to identify and implement actions to facilitate United States exports and engagements abroad related to advanced nuclear technologies and relevant supply-chain services.

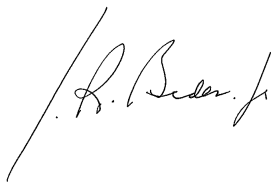
Sec. 11. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 14, 2025.

[FR Doc. 2025–01395
Filed 1–16–25; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 90, No. 11
Friday, January 17, 2025

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

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

49 CFR Chapter XII

Ratification of Security Directives

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

ACTION: Notice of ratification of security directives.

SUMMARY: The Department of Homeland Security (DHS) is publishing official notice that the Transportation Security Oversight Board (TSOB) ratified Transportation Security Administration (TSA) Security Directive Pipeline-2021–01D and Security Directive Pipeline-2021–02E, applicable to owners and operators of critical hazardous liquid and natural gas pipeline infrastructure (owner/operators). Security Directive Pipeline-2021–01D, issued on May 29, 2024, extended the requirements of the Security Directive Pipeline-2021–01 series for an additional year, with minor revisions. Security Directive Pipeline-2021–02E, issued on July 26, 2024, extended the requirements of the Security Directive Pipeline-2021–02 series for an additional year, with amendments to strengthen their effectiveness and provide additional clarity.

DATES: The TSOB ratified Security Directive Pipeline-2021–01D on June 28, 2024 and Security Directive Pipeline-2021–02E on August 23, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas McDermott, Deputy Assistant Secretary for Cyber, Infrastructure, Risk and Resilience Policy, at 202–834–5803 or *thomas.mcdermott@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Cybersecurity Threat

The cyber threat to the country's critical infrastructure has only increased in the time since TSA issued its initial cybersecurity-related security directives to pipeline entities in 2021 in response to the Colonial Pipeline incident. Cyber threats to surface transportation systems, including hazardous liquid and natural gas pipelines and facilities, continue to proliferate, as both nation-states and criminal cyber groups target critical infrastructure in order to cause operational disruption and economic harm.[1] In addition to the Colonial Pipeline incident, cyber attackers have maliciously targeted surface transportation modes in the United States, including freight railroads, passenger railroads, and rail transit systems, with multiple cyberattack and cyber espionage campaigns.[2] Cyber incidents, particularly ransomware attacks, are likely to increase in the near and long term, due in part to vulnerabilities identified by threat actors in U.S. networks.[3] Especially in light of the ongoing Russia-Ukraine conflict,[4] these threats remain elevated and pose a risk to the national and economic security of the United States.

In its 2023 annual assessment, the Intelligence Community noted that ''China almost certainly is capable of launching cyber attacks that could disrupt critical infrastructure services within the United States, including against oil and gas pipelines, and rail systems.'' [5] And the 2024 annual assessment notes that, ''[i]f Beijing believed that a major conflict with the United States were imminent, it would consider aggressive cyber operations against U.S. critical infrastructure and military assets. Such a strike would be designed to deter U.S. military action by impeding U.S. decision-making, inducing societal panic, and interfering with the deployment of U.S. forces.'' [6] In addition, ''Russia maintains its ability to target critical infrastructure . . . in the United States as well as in allied and partner countries'' and ''Tehran's opportunistic approach to cyber-attacks puts U.S. infrastructure at risk for being targeted.'' [7] Furthermore, ''malicious cyber actors have begun testing the capabilities of AI-developed malware and AI-assisted software development—technologies that have the potential to enable larger scale, faster, efficient, and more evasive cyber-attacks—against targets, including pipelines, railways, and other U.S. critical infrastructure.'' [8]

B. Regulatory History

Following the Colonial Pipeline incident in May 2021, TSA issued two security directives requiring owners and operators of critical hazardous liquid and natural gas pipelines or liquefied natural gas facilities (owner/operators) to implement cybersecurity measures necessary to prevent disruption and degradation to their critical infrastructure. On May 27, 2021, TSA issued the first directive (Security Directive Pipeline-2021–01), which required covered owner/operators to: (1) report cybersecurity incidents to CISA; (2) designate a cybersecurity coordinator to be available 24/7 to coordinate with TSA and CISA; and (3) conduct a vulnerability assessment of cybersecurity practices, identify any

[1] Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence (2024 Intelligence Community Assessment), 11, 16 (dated Feb. 5, 2024) (last accessed July 23, 2024, at *https://www.dni.gov/files/ODNI/documents/assessments/ATA-2024-Unclassified-Report.pdf*).

[2] These activities include the January 2023 breach of the Washington Metropolitan Area Transit Authority; the January 2023 breach of San Francisco's Bay Area Rapid Transit System; and the April 2021 breach of New York City's Metropolitan Transportation Authority (the nation's largest mass transit agency) by hackers linked to the Chinese government. This threat is ongoing: on February 7, 2024, CISA published an advisory warning of the threat posed by PRC state-sponsored actors. *See* Cybersecurity Advisory (AA24–038A), *PRC State-Sponsored Actors Compromise and Maintain Persistent Access to U.S. Critical Infrastructure.*

[3] Alert (AA22–040A), *2021 Trends Show Increased Globalized Threat of Ransomware,* released by CISA on February 10, 2022 (as revised).

[4] Joint Cybersecurity Alert—Alert (AA22–110A), *Russian State-Sponsored and Criminal Cyber Threats to Critical Infrastructure,* released cybersecurity authorities of the United States, Australia, Canada, New Zealand, and the United Kingdom on April 20, 2022 (as revised).

[5] Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence (2023) (2023 Intelligence Community Assessment), 10 (dated February 6, 2023) (last accessed July 23 2024, at *https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf.*

[6] 2024 Intelligence Community Assessment at 11.

[7] 2024 Intelligence Community Assessment at 16, 20.

[8] DHS Intelligence and Analysis (I&A), Homeland Threat Assessment (2024) at 18 (last accessed July 23, 2024, at *https://www.dhs.gov/sites/default/files/2023-09/23_0913_ia_23-333-ia_u_homeland-threat-assessment-2024_508C_V6_13Sep23.pdf*).

gaps, and develop a plan and timeline for remediation. TSA issued the second directive (Security Directive Pipeline-2021–02) on July 19, 2021, which required owner/operators to implement additional specific cybersecurity measures to prevent disruption and degradation to their infrastructure.

Due to the continuing cyber threat to pipeline infrastructure, the requirements of both Security Directive Pipeline-2021–01 and Security Directive Pipeline-2021–02 have been renewed and extended beyond their original expiration dates by subsequent directives, creating two security directive ''series'' (the Security Directive Pipeline-2021–01 series and the Security Directive Pipeline-2021–02 series). In several instances, as TSA renewed each of these security directive series, TSA also amended their requirements to strengthen their effectiveness and address emerging cyber threats. Most significantly, TSA transitioned the requirements of the Security Directive Pipeline-2021–02 series to be more performance-based and less prescriptive. The performance-based approach enhances security by mandating that critical security outcomes are achieved while allowing owner/operators to choose the most appropriate security measures for their specific systems and operations. Under the performance-based framework of the Security Directive Pipeline-2021–02 series, TSA identified critical security outcomes that covered parties must achieve. To ensure that these outcomes are met, the directives in this series now require owner/operators to:

- Establish and implement a TSA-approved Cybersecurity Implementation Plan (CIP) that describes the specific cybersecurity measures employed and the schedule for achieving the security outcomes identified;
- Develop and maintain an up-to-date Cybersecurity Incident Response Plan (CIRP) to reduce the risk of operational disruption, or the risk of other significant impacts on business critical functions, as defined in the directive, should the Information and/or Operational Technology systems of a gas or liquid pipeline be affected by a cybersecurity incident; and
- Establish a Cybersecurity Assessment Program (CAP) and submit an annual plan that describes how the owner/operator will proactively and regularly assess the effectiveness of cybersecurity measures and identify and resolve device, network, and/or system vulnerabilities.

The table below provides a list of each the security directives issued within the Security Directive Pipeline-2021–01 and Security Directive Pipeline-2021–02 series. All of the security directives in both series are available online in TSA's Surface Transportation Cybersecurity Toolkit.[9]

TABLE 1—TSA SECURITY DIRECTIVES APPLICABLE TO CRITICAL PIPELINE SYSTEMS

Security directive	Date issued	Effective date	Date ratified by TSOB	Set expiration date	**Federal Register** citation of ratification
Pipeline-2021–01	May 27, 2021	May 28, 2021	July 3, 2021	May 28, 2022	86 FR 38209.
Pipeline-2021–01A	Dec. 2, 2021	Dec. 2, 2021	Dec. 29, 2021	May 28, 2022	87 FR 31093.
Pipeline-2021–01B	May 27, 2022	May 29, 2022	June 24, 2021	May 29, 2023.	88 FR 36919.[10]
Pipeline-2021–01C	May 22, 2023	May 29, 2023	June 21, 2023	May 29, 2024	89 FR 28570.
Pipeline-2021–01D	May 29, 2024	May 29, 2024	June 28, 2024	May 29, 2025	*Current.
Pipeline-2021–02	Jul. 19, 2021	Jul. 26, 2021	Aug. 17, 2021	Jul. 26, 2022	86 FR 52953.
Pipeline-2021–02B	Dec. 17, 2021	Dec. 17, 2021	Jan. 13, 2022	Jul. 26, 2022	87 FR 31093.
Pipeline-2021–02C	Jul. 21, 2022	Jul. 27, 2022	Aug. 19, 2022	Jul. 27, 2023	88 FR 36919.
Pipeline-2021–02D	Jul. 26, 2023	Jul. 27, 2023	Aug. 24, 2023	Jul. 27, 2024	89 FR 28570.
Pipeline-2021–02E	Jul. 26, 2024	Jul. 27, 2024	Aug. 23, 2024	Jul. 27, 2025	*Current.

C. Security Directive Pipeline-2021–01D

In light of the continuing threat, TSA determined that the cybersecurity measures required by the Security Directive Pipeline-2021–01 series, as amended and extended, remain necessary to protect the Nation's critical pipeline infrastructure beyond Security Directive Pipeline-2021–01C's expiration date of May 29, 2024. On May 29, 2024, TSA issued Security Directive Pipeline-2021–01D to extend the requirements of Security Directive Pipeline-2021–01 series for an additional year. Security Directive Pipeline-2021–01D became effective May 29, 2024, and expires on May 29, 2025. Security Directive Pipeline-2021–01D contains minor revisions refining existing requirements to clarify applicability, compliance timelines, and reporting requirements, as well as updated definitions to ensure standardization across TSA's cybersecurity requirements applicable to different transportation modes.

D. Security Directive Pipeline-2021–02E

Considering the continuing threat, TSA also determined that the measures required by the Security Directive Pipeline-2021–02 series, as amended and extended, remain necessary to protect the Nation's critical pipeline infrastructure beyond Security Directive Pipeline-2021–02D's expiration date of July 27, 2024. On July 26, 2024, TSA issued Security Directive Pipeline-2021–02E to extend the requirements of Security Directive Pipeline-2021–02 series for an additional year. Security Directive Pipeline-2021–02E became effective July 27, 2024, and expires on July 27, 2025.

In addition to extending the existing requirements, Security Directive Pipeline-2022–02E contains several amendments to strengthen the effectiveness of certain requirements and provide further clarity. The revisions include new and modified definitions clarifying certain terms and harmonizing terminology across TSA's cybersecurity requirements applicable to different transportation modes; clarifying when responsibility for compliance with the directive's requirements is shared between an owner/operator and a third party; and clarifying requirements regarding submission of CAP and related annual reports.

II. TSOB Ratification

TSA has broad statutory responsibility and authority to safeguard

[9] TSA Surface Transportation Cybersecurity Toolkit, *available at https://www.tsa.gov/for-industry/surface-transportation-cybersecurity-toolkit.*

[10] Security Directive Pipeline-2021–01B also extended the deadline by which cybersecurity incidents must be reported to CISA from 12 hours to 24 hours after an incident is identified. This change aligned the reporting timeline for critical pipeline entities to mirror the reporting requirements applicable to other surface transportation entities and aviation entities.

the nation's transportation system.[11] The TSOB—a body consisting of the Secretary of Homeland Security, the Secretary of Transportation, the Attorney General, the Secretary of Defense, the Secretary of the Treasury, the Director of National Intelligence, or their designees, and a representative of the National Security Council—reviews certain TSA regulations and security directives as consistent with law.[12] TSA issued Security Directive Pipeline-2021–01D and Security Directive Pipeline-2021–02E under 49 U.S.C. 114(*l*)(2)(A), which authorizes TSA to issue emergency regulations or security directives without providing notice or the opportunity for public comment where ''the Administrator determines that a regulation or security directive must be issued immediately in order to protect transportation security . . . .'' Security directives issued pursuant to the procedures in 49 U.S.C. 114(*l*)(2) ''shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Administrator.'' [13]

Following the issuance of Security Directive Pipeline-2021–01D on May 29, 2024, and Security Directive Pipeline-2021–02E on July 26, 2024, the chair of the TSOB convened the board to review the directives.[14] In reviewing each Security Directive, the TSOB reviewed the required measures extended and amended by the directives and the continuing need for TSA to maintain these requirements pursuant to its emergency authority under 49 U.S.C. 114(*l*)(2) to prevent the disruption and degradation of the country's critical transportation infrastructure. The TSOB also considered whether to authorize TSA to extend each security directive beyond their current expiration dates subject to certain conditions, should the TSA Administrator believe such an extension is necessary to address the evolving threat that may continue beyond the original expiration date.

Following its review, the TSOB ratified Security Directive Pipeline-2021–01D on June 28, 2024, and Security Directive Pipeline-2021–02E on August 23, 2024. The TSOB also authorized TSA to extend each of the security directives beyond their current expiration dates, should the TSA Administrator determine such an extension is necessary to address the evolving threat that may continue beyond the original expiration date. Such an extension is subject to the following conditions: (1) there are no changes to the security directive other than an extended expiration date; (2) the TSA Administrator makes an affirmative determination that conditions warrant the extension of the directive's requirements; and (3) the TSA Administrator documents such a determination and notifies the TSOB.

Kristie Canegallo,

Senior Official Performing the Duties of the Deputy Secretary of Homeland Security & Chairman of the Transportation Security Oversight Board.

[FR Doc. 2025–01243 Filed 1–15–25; 11:15 am]

BILLING CODE 9110–9M–P

[11] *See, e.g.,* 49 U.S.C. 114(d), (f), (*l*), (m).

[12] *See, e.g.,* 49 U.S.C. 115; 49 U.S.C. 114(*l*)(2)(B).

[13] 49 U.S.C. 114(*l*)(2)(B).

[14] The Secretary of Homeland Security serves as the TSOB Chairperson, 49 U.S.C. 115(b)(2), and has further delegated that responsibility to the Deputy Secretary of Homeland Secretary. DHS Delegation No. 7071.1.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1416

[Docket ID: CCC–2024–0003]

RIN 0560–AI68

Supplemental Agricultural Assistance Programs

AGENCY: Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule makes discretionary changes to simplify and streamline deadlines for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), the Livestock Forage Disaster Program (LFP), and the Livestock Indemnity Program (LIP). It also makes changes to clarify ELAP provisions for assistance for transportation of livestock feed.

DATES: *Effective* January 17, 2025.

FOR FURTHER INFORMATION CONTACT: For ELAP: Seth Cross; telephone: (402) 309–3338; email: *seth.cross@usda.gov.* For LFP and LIP: Kelly Breinig; telephone: (202) 720–1603; email: *kelly.breinig@usda.gov.* Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

ELAP, LFP, and LIP use CCC funds to provide emergency relief to eligible producers (7 U.S.C. 9081). FSA administers ELAP, LFP and LIP on behalf of CCC. ELAP provides assistance to producers of livestock, honeybees, and farm-raised fish to aid in the reduction of losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary, that are not covered by LIP or LFP.[1] LFP provides assistance to livestock producers who suffer eligible grazing losses on land physically located in a county experiencing a qualifying drought during the normal grazing period for the county or are prohibited by a Federal agency from grazing the normal permitted livestock on managed rangeland due to a qualifying fire.[2] LIP provides assistance for livestock deaths in excess of normal mortality caused by adverse weather or by attacks by animals reintroduced into the wild by the Federal Government.[3]

This rule makes discretionary changes to simplify and streamline the deadlines for ELAP, LFP, and LIP. It also makes discretionary changes to the ELAP regulations for assistance for transportation of livestock feed.

Deadlines for ELAP, LFP, and LIP

This rule amends the regulations for ELAP, LFP, and LIP to have a single deadline across all three programs for filing a notice of loss (required for ELAP [4] and LIP [5]), an application for payment, and other required documentation. Previously, each of the three programs had multiple deadlines and time frames for submitting required forms and documentation, and those deadlines also varied among the three programs. These changes are intended to improve efficiencies for producers and FSA staff, provide clarity regarding program timelines, and give FSA staff sufficient time to deliver support to producers who have suffered eligible losses due to disaster events.

This rule changes the deadlines in §§ 1416.107, 1416.202, and 1416.305 to specify that the deadline to file a notice of loss, an application for payment, and required documentation for each program is March 1 following the end of the applicable program year, which is based on the calendar year for the three

[1] More information on ELAP is available at *https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/emergency-assist-for-livestock-honey-bees-fish/index.*

[2] More information on LFP is available at *https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-forage/index.*

[3] More information about LIP is available at *https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-indemnity/index.*

[4] See 7 CFR 1416.107(a).

[5] See 7 CFR 1416.305(b).

programs. The deadline changes are effective beginning with the 2024 program year, which began on January 1, 2024. Producers who suffered eligible losses for the 2024 program year prior to the publication of this rule may submit documents or make changes to previously filed documents for these programs by the new deadline of March 1, 2025, even if the previous deadline had passed.

ELAP Assistance for Feed Transportation

Under ELAP, in addition to the purposes described in 7 U.S.C. 9081(d)(1), the CCC funds are authorized to be used to reduce losses caused by feed or water shortages, disease, or other factors as determined by the Secretary, including inspections of cattle tick fever (7 U.S.C. 9081(d)(2)). Feed transportation was added as an eligible loss for ELAP in a final rule published on April 6, 2022 (87 FR 19783–19786), to provide assistance to livestock producers in areas suffering from eligible adverse weather, an eligible loss condition, or eligible drought, who incur additional hauling costs because they are forced to transport feed from unaffected areas. To be eligible for ELAP assistance for feed transportation, producers must have a loss resulting from the additional cost to transport livestock feed to eligible livestock for additional mileage above normal, due to eligible adverse weather, an eligible loss condition, or eligible drought.[6] Payments are calculated by multiplying a national payment rate by the national average price per mile to transport a truckload of livestock feed, multiplied by the actual number of additional miles the feed was transported by the producer in excess of 25 miles per truckload of livestock feed and for no more than 1,000 miles per truckload of feed during the program year.[7] This rule makes several changes to the ELAP regulations to clarify the feed transportation eligibility and documentation requirements and ensure that ELAP assistance for feed transportation is provided only for eligible losses as authorized and described in the April 2022 final rule.

The first of those changes adds provisions to the ELAP regulations in § 1416.103(d)(6) to specify that an eligible loss from the additional cost to transport livestock feed is limited to the cost to transport feed to meet the feed needs for eligible livestock during the program year in which the eligible adverse weather, eligible loss condition, or eligible drought occurred. The provisions also clarify that the cost to transport livestock feed is not an eligible loss if the feed is purchased or obtained:

- in excess of the amount needed for the program year in which the eligible adverse weather, eligible loss condition, or eligible drought occurred, which will be determined as described below in the changes to § 1416.110(q);
- to sell to another producer;
- for another producer's livestock; or
- for ineligible livestock.

This rule also amends provisions in § 1416.106(c)(5) regarding documentation to specify that a participant must provide verifiable or reliable records, as defined in § 1416.102, that show the additional livestock feed was only purchased or obtained to sustain eligible livestock during an eligible adverse weather or loss condition. The provisions also specify that handwritten receipts are not considered eligible documentation for feed transportation without accompanying truck logs or other documentation to verify the cost of transportation, and payments in cash must have a verifiable record to verify that the transaction was made between two parties. These changes allow FSA to confirm that losses claimed for feed transportation are eligible losses as described above.

To prevent payments for ineligible feed transportation costs, this rule also adds provisions in § 1416.110(q) that limit the amount of an ELAP payment for feed transportation based on the expected feed need of a producer's eligible animals.

First, FSA will convert the number of eligible livestock identified on the application to an animal unit basis, using the same methodology used for ELAP assistance for water transportation and grazing losses.[8] As provided in 7 CFR 1416.110(i)(1), FSA determined that the corn need for an adult cow, which is equal to 1 animal unit, is 15.7 pounds per day. Forage or hay requirements for an adult beef cow are approximately 24 pounds of dry hay matter per day, or approximately 26 pounds of hay with 8 percent moisture.[9] To allow for a reasonable variation in the amount of feed consumed by eligible livestock, FSA will multiply the number of animal units by 24 pounds of corn or corn equivalent (equal to 15.7 pounds multiplied by 150 percent, rounded up to the nearest pound) or 39 pounds of hay or forage (equal to 26 pounds of hay multiplied by 150 percent). FSA will multiply the result of that calculation by the number of calendar days in the time period from the beginning date of the eligible drought or other eligible loss condition until the end of the program year to determine the maximum amount of feed for which transportation assistance will be provided. Any loads hauled in excess of that amount during the program year are not eligible for assistance.

Notice and Comment, Effective Date, and Exemptions

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves a matter relating to agency management or personnel, or to public property, loans, grants, benefits, or contracts. This rule involves programs for payments to certain agricultural commodity producers and thus falls within the exemption for rules related to benefits. Further, as specified in 7 U.S.C. 9091(c)(2), the regulations to implement ELAP, LFP, and LIP are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553; and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

In addition, 7 U.S.C. 9091(c)(3) directs the Secretary to use the authority provided in 5 U.S.C. 808 (part of the Congressional Review Act), which provides that when an agency finds there is good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule may take effect at such time as the agency determines. The beneficiaries of this rule have been impacted by eligible disaster events, which have resulted in economic losses, and the changes made by this rule simplify and streamline the delivery of assistance and ensure assistance is directed to eligible losses. FSA finds that a delay in the effective date of the rule is contrary to the public interest and therefore this rule is effective upon publication in the **Federal Register**.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) requires a delay in the effective date for 60 days from the date

[6] See 7 CFR 1416.103(d)(6).

[7] See 7 CFR 1416.110(n).

[8] One animal unit is equal to one adult beef, buffalo, or beefalo adult cow or bull. FSA has determined animal unit equivalents for other eligible livestock types. For example, FSA has determined that one adult dairy cow is equal to 2.6 animal units.

[9] See *https://u.osu.edu/beef/2015/11/18/how-much-hay-will-a-cow-consume.*

of publication to allow for Congressional review of rules that meet the criteria specified in 5 U.S.C. 804(2). The Office of Information and Regulatory Affairs has determined that this rule meets the criteria in 5 U.S.C. 804(2). As discussed above, FSA finds that a delay in the effective date of the rule is contrary to the public interest and therefore this rule is effective upon publication in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Executive Order 12866, ''Regulatory Planning and Review,'' was amended by Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and Executive Order 14094, ''Modernizing Regulatory Review.'' Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The assessment should include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

Executive Order 14094 requires Federal agencies to increase and improve public participation in the regulatory process. The Executive order's objective is to improve public trust in the regulatory process by reducing the risk or appearance of unequal or unfair influence in regulatory development.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, and therefore, OMB has not reviewed this rule and an analysis of costs and benefits is not required under either Executive Order 12866 or 13563.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), the USDA regulation for compliance with NEPA (7 CFR part 1b), and because FSA will be making the payments to producers, the FSA regulation for compliance with NEPA (7 CFR part 799).

This rule makes discretionary, administrative changes to ELAP, LFP, and LIP. The discretionary aspects are to improve administration of these programs and clarify existing program requirements. FSA is providing the disaster assistance under ELAP, LFP, and LIP to eligible producers. The discretionary, administrative provisions would not alter any environmental impacts resulting from implementing the mandatory changes to ELAP, LFP, and LIP. Accordingly, these discretionary, administrative aspects are covered by the following Categorical Exclusion in 7 CFR 799.31(b)(6)(vi) safety net programs administrated by FSA.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances (§ 799.33) exist. This rule presents only discretionary amendments that will not have an impact on the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this rule. This rule serves as documentation of the environmental compliance decision for this Federal action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The changes made by this rule will be effective retroactively for the 2024 program year, as discussed above. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FSA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have significant Tribal implications that require ongoing adherence to Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance

The title and number of the Federal assistance programs, as found in the Assistance Listing [10] to which this rule applies are:

10.088—Livestock Indemnity Program;

10.089—Livestock Forage Disaster Program; and

10.091—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a

[10] See *https://sam.gov/content/assistance-listings.*

public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

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List of Subjects in 7 CFR Part 1416

Administrative practice and procedure, Agriculture, Bees, Dairy products, Disaster assistance, Fruits, Livestock, Nursery stock, Reporting and recordkeeping requirements, Seafood.

For the reasons discussed above, Commodity Credit Corporation amends 7 CFR part 1416 as follows:

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

■ 1. The authority citation for part 1416 continues to read as follows:

Authority: Title I, Pub. L. 113–79, 128 Stat. 649; Title I, Pub. L. 115–123; Title VII, Pub. L. 115–141; and Title I, Pub. L. 116–20.

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

■ 2. In § 1416.103, revise paragraph (d)(6) to read as follows.

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

* * * * *

(d) * * *

(6) A loss resulting from the additional cost incurred on or after January 1, 2021, to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. The cost of the feed is not eligible for payment. Negligence, mismanagement, or wrongdoing by the producer is not considered an eligible loss condition for livestock or feed transportation costs. To be eligible for a loss under this paragraph (d)(6), the livestock must be livestock that would normally have been on eligible grazing lands physically located in the county where the eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, occurred. The eligible loss from the additional cost to transport livestock feed is limited to the cost to transport feed to meet the feed needs of eligible livestock for the program year in which the eligible adverse weather, eligible loss condition, or eligible drought occurred. The cost to transport livestock feed is not an eligible loss if the feed is purchased or obtained:

(i) In excess of the amount needed for the program year in which eligible adverse weather, eligible loss condition, or eligible drought occurred, as determined according to § 1416.110(q);

(ii) To sell to another producer;

(iii) For another producer's livestock; or

(iv) For ineligible livestock.

* * * * *

■ 3. In § 1416.106, revise paragraph (c)(5) to read as follows.

§ 1416.106 Notice of loss and application process.

* * * * *

(c) * * *

(5) Additional cost incurred to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to an eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records, and invoices. Handwritten receipts are not acceptable without accompanying truck logs or other documentation to verify the cost of transportation. Cash payments must be supported by a verifiable record indicating that the transaction was made between two parties. Records must clearly indicate the dates on which livestock or feed was transported and the total mileage transported. A participant must provide verifiable records or reliable records that show additional livestock feed was only purchased or obtained to sustain eligible livestock during eligible adverse weather, an eligible loss condition, or eligible drought.

* * * * *

■ 4. Revise § 1416.107 to read as follows.

§ 1416.107 Notice of loss and application period.

(a) To receive an ELAP payment, the participant must submit the following to the FSA county office by March 1 after the end of the applicable program year:

(1) A notice of loss;

(2) A complete application for payment; and

(3) Any other documentation required by this subpart.

(b) [Reserved]

■ 5. In § 1416.110:

■ a. Redesignate paragraph (q) as paragraph (r); and

■ b. Add new paragraph (q).

The addition reads as follows.

§ 1416.110 Livestock payment calculations.

* * * * *

(q) For the purpose of payments under paragraph (n) of this section, losses resulting from the additional cost of transporting livestock feed to eligible livestock are limited to the additional cost of transportation of feed to satisfy the feed needs of the eligible livestock identified on the application during the program year in which the eligible drought or other eligible loss condition occurred. Therefore, FSA will:

(1) Convert the number of eligible livestock identified on the application to an animal unit basis;

(2) Multiply the animal units determined in paragraph (q)(1) of this section by 24 pounds of corn or corn equivalent or 39 pounds of hay or forage;

(3) Multiply the result of paragraph (q)(2) of this section by the number of calendar days in the time period from the beginning date of the eligible drought or other eligible loss condition until the end of the program year; and

(4) Limit the truckloads used in the calculation to the total pounds calculated in paragraph (q)(3) of this

section. Any loads hauled in excess of that amount during the program year are not eligible for assistance.

* * * * *

Subpart C—Livestock Forage Disaster Program

§ 1416.206 [Amended]

■ 6. In § 1416.206, in paragraph (a), remove the words ''30 calendar days'' and add ''March 1'' in their place.

Subpart D—Livestock Indemnity Program

■ 7. In § 1416.305:
■ a. Revise paragraph (b)(1);
■ b. In paragraph (c), remove the year ''2019'' and add ''2024'' in its place, and remove the words ''60 calendar days'' and add ''March 1'' in its place; and
■ c. In paragraph (i)(1), remove the words ''60 calendar days'' and add ''March 1'' in their place.

The revision reads as follows.

§ 1416.305 Application process.

* * * * *

(b) * * *

(1) Provide a notice of loss, by livestock unit, to FSA by March 1 after the end of the calendar year in which the eligible loss occurred.

* * * * *

Steven Peterson,

Acting Executive Vice President, Commodity Credit Corporation, and Acting Administrator, Farm Service Agency.

[FR Doc. 2025–01104 Filed 1–16–25; 8:45 am]

BILLING CODE 3411–EB–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 2100

RIN 0503–AA82

[Docket No. USDA–2024–0003]

Technical Guidelines for Climate-Smart Agriculture Crops Used as Biofuel Feedstocks

AGENCY: Office of the Chief Economist (OCE), U.S. Department of Agriculture (USDA).

ACTION: Interim rule.

SUMMARY: This interim rule with request for comment establishes technical guidelines for quantifying, reporting, and verifying the greenhouse gas (GHG) emissions associated with agricultural production of biofuel feedstock commodity crops grown in the United States in the context of environmental service markets. Specifically, the rule establishes guidelines for the reporting and verification of practices and technologies used in the production of certain commodity crops that result in lower greenhouse gas emissions or increases in carbon storage. These practices are referred to in the context of this rule as climate-smart agriculture (CSA) practices. The guidelines established through this rule articulate an approach for farm producers to quantify the GHG emissions associated with crops produced using one or more CSA practices. The guidelines also articulate a framework for how information regarding GHG emissions, resulting from the production of biofuel feedstock commodity crops, could be reported and tracked throughout the supply chain.

DATES:

Effective: January 17, 2025.

Comment Date: We will consider comments that we receive by March 18, 2025.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments through the:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID USDA–2024–0003. Follow the online instructions for submitting comments.

Comments will be available for viewing online at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Hohenstein, Director of the Office of Energy and Environmental Policy, (202) 720–0450, *william.hohenstein@usda.gov.* Individuals who require alternative means for communication should contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

This rule establishes new technical guidelines for crop commodities that are used as biofuel feedstocks. USDA is issuing this rule to establish guidelines for the quantification, reporting, and verification of GHG reduction benefits resulting from implementation of CSA practices in the production of commodities that are used as biofuel feedstocks in the context of environmental services markets. CSA practices are agricultural management practices, systems, and technologies that have been demonstrated to generally reduce GHG emissions or increase soil carbon sequestration. Greater adoption of CSA practices could lower overall GHG emissions associated with biofuel production and provide other environmental benefits, such as improved water quality and soil health.

These technical guidelines are intended for the purpose of biofuels production. USDA's authority allows for the establishment of guidelines related to emerging environmental services markets. At this time, the biofuel market represents a clear market opportunity for climate-smart feedstocks. Producing a carbon offset is a different policy context that would require a different set of standards. These guidelines do not constitute a carbon offset protocol.

The net GHG emissions associated with a defined set of CSA practices will be quantified as explained below in the Methodology for Calculating Carbon Intensities used in USDA Feedstock Carbon Intensity Calculator (USDA FD–CIC) section, once USDA FD–CIC is finalized. USDA will shortly publish USDA FD–CIC on its website at *https://www.usda.gov/usda-fdcic* for peer-review purposes, beta testing, and to obtain public feedback.

Crop production generates GHG emissions, including from soil carbon released during tillage and nitrous oxide emissions resulting from fertilizer use, among other sources. When such crops are used as feedstocks to produce biofuels, the GHG emissions associated with their production contribute a significant percentage of the overall GHG emissions associated with crop-based biofuel production. For instance, feedstock emissions account for approximately 56 percent and 55 percent of the direct emissions from producing corn ethanol and soybean biodiesel, respectively. The GHG emissions associated with feedstock crop production can be reduced through CSA practices, in turn reducing the lifecycle GHG emissions of a biofuel. To date, most existing programs have relied on assumptions about average or typical farming practices to estimate emissions associated with biofuel feedstock production. To improve the empirical basis and verifiability of the effects of CSA practices on net GHG emissions, and to quantify net GHG emissions reductions specifically attributed to those feedstocks grown with climate-smart practices, USDA developed this rule to establish technical guidelines for CSA crops used as biofuel feedstocks. This interim rule allows for the differentiation and quantification of carbon intensities associated with the production of CSA crops used as biofuel feedstocks, through USDA FD–CIC, upon its finalization.

This interim rule is authorized by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill (Pub. L. 110–246)),

§ 2709, (16 U.S.C. 3845), which authorizes the Secretary of Agriculture to establish technical guidelines that outline science-based methods to measure the environmental services benefits from conservation and land management activities in order to facilitate the participation of farm producers, ranchers, and forest landowners in emerging environmental services markets and to give priority to the establishment of guidelines related to farmer, rancher, and forest landowner participation in carbon markets. It further directs the Secretary to establish verification guidelines, including the role of third parties in conducting independent verification of benefits produced for environmental services markets and other functions.

Regulations to implement the programs of Chapter 58 of Title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs are to be made as an interim rule effective on publication, with an opportunity for notice and comment. Here, the guidelines relate to the administration of a program for participation in environmental markets. Accordingly, USDA is issuing this interim rule effective on publication with request for comment. This interim rule will facilitate farm producers' ability to participate in environmental service markets associated with biofuel production by establishing guidelines for quantification, reporting, and verification of GHG emissions resulting from the production of agricultural crops grown using CSA practices. It also establishes verification guidelines to increase certainty that the practices claimed are implemented according to the standards established by this rule. While USDA is not creating an environmental service market through this rule, USDA is making these guidelines available for consideration in international, national, or state clean transportation fuel policies in accordance with 16 U.S.C. 3845, as described above.

Currently, very few U.S.-based clean transportation fuel programs or policies (including private and government programs) have standards or guidelines for climate-smart agricultural practices, such as those described in this rule, to account for the emissions reductions they generate.

Those policies or programs that contain some or all of the elements of the standards in this rule (including CSA practice standards, recordkeeping, quantification, reporting and verification of emissions reductions of such practices) are smaller in scale or were only recently developed and at the pilot stage. For example, the U.S. Department of the Treasury (Treasury) 40B Sustainable Aviation Fuel (SAF) tax credit provides one example of a biofuel policy that incorporated emissions reductions for crops produced using CSA practices. This tax credit provided per gallon credits for the sale or use of SAF defined as achieving a life cycle GHG emissions reduction of at least 50 percent as compared to petroleum-based jet fuel. Treasury and Internal Revenue Service (IRS) guidance for the tax credit included a safe harbor for the USDA CSA Pilot Program, making SAF produced using soybeans or corn employing a bundle of CSA practices eligible for a higher tax credit than SAF produced using crops produced without the bundle of CSA practices. For the purpose of the SAF tax credit, the CSA practice standards, quantification, reporting and verification requirements only pertained to the one bundle of CSA practices eligible under the guidance so are not broadly applicable. As the guidance stated, Treasury and IRS established the CSA safe harbor on a pilot basis to advance the development of CSA verification mechanisms, recognizing the potential emissions reduction benefits of CSA and also the limitations of currently available verification mechanisms, empirical data, and modeling.

California's Low Carbon Fuel Standard (LCFS) and the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) incentivize transportation fuels that have lower GHG emissions, but they do not have standards for the production of biofuel feedstocks or standards that would credit farm producers for the use of CSA practices. The American Ethanol Council through a USDA Regional Conservation Partnership Program grant is working with state partners in several Midwestern states to increase adoption of CSA practices and quantify emissions reductions associated with the use of these practices by paying farmers a premium for adoption of conservation practices that have demonstrated emission benefits including no-till/strip till, cover crops, and nutrient management practices. However, while the program has practice adoption standards it does not provide a whole system for the quantification, recordkeeping, and verification of emissions benefits through the biofuel supply chain.

Given that no comprehensive standards for CSA practice adoption, quantification of emissions benefits, recordkeeping, verification and reporting of emissions benefits currently exist in the U.S. for biofuels markets, USDA is issuing this rule to establish guidelines for the quantification, reporting, and verification of GHG reduction benefits resulting from implementation of CSA practices in the production of commodities that are used as biofuel feedstocks.

This rule specifies technical guidelines to establish a method of calculating the climate benefits of certain agricultural practices. However, other programs, including federal programs such as tax credits, may require additional or different verification or other procedures in order to effectively administer the requirements of their statutes. Accordingly, while these guidelines may inform the subsequent development of requirements for other programs, such requirements will be established through rulemaking or guidance by the relevant agencies or organizations, taking into account specific statutory requirements, program features, and/or administrative feasibility and constraints.

Should any provision of this rule be deemed invalid, USDA intends that the remaining provisions continue with full effect in order to effectuate the purposes of the statute.

Methodology for Calculating Carbon Intensities Used in USDA FD–CIC

This section explains the methodology that was used to calculate values included in USDA FD–CIC. Over the past year, USDA has worked with academic institutions and experts to develop USDA FD–CIC, which, once finalized, would provide users with a crop-specific, per-bushel carbon intensity associated with biofuel feedstock crops using one or more CSA practices. Net emissions are expressed as a carbon intensity (CI), which is a measure of the total carbon dioxide equivalent (CO2-eq) emissions per unit of crop produced (that is, per bushel).

In general, USDA FD–CIC quantifies the CI (in GHG emissions per bushel) of three domestic feedstock crops (field corn, soybeans, and sorghum) produced using one or more specified CSA practices. The USDA FD–CIC model is separate and distinct from models specific to other programs or incentives, for example, 40BSAF–GREET, and the values calculated by USDA FD–CIC may not be representative of values generated by or applicable to other program or incentive-specific models. The USDA FD–CIC feedstock CI estimates reflect the use of specified CSA practices. CSA practices may lead to changes in:

- soil organic carbon (SOC) storage,

• direct and indirect nitrous oxide emissions (N_2O),
• upstream emissions from fertilizer production, and
• carbon dioxide (CO_2) emissions from on-farm energy consumption.

The effectiveness of CSA practices in reducing the CI of feedstocks varies by region. The USDA FD–CIC model contains feedstock CI estimates for each CSA practice and combination of practices for each county.

The underlying models used to generate values in USDA FD–CIC have undergone extensive peer-review. Further, under USDA's authorities in section 2709 of the 2008 Farm Bill, in April 2024, USDA published Quantifying Greenhouse Gas Fluxes in Agriculture and Forestry: Methods for Entity Scale Inventory.[1] The publication of these methods adhered to the U.S. Office of Management and Budget (OMB) guidelines ''Final Information Quality bulletin for Peer Review,'' which was published on January 14, 2005 (70 FR 2664–2677), and this document has been designated by OMB as a highly influential scientific assessment. The method recommended for quantifying changes in soil carbon stocks and nitrous oxide emissions from agricultural soils refers to the DAYCENT ecosystem model, which is used as described in the USDA FD–CIC documentation.

USDA will shortly publish USDA FD–CIC on its website at *https://www.usda.gov/usda-fdcic* for peer-review purposes, beta testing, and to obtain public feedback. As part of this process of testing and feedback prior to finalization, the public will have the opportunity to examine and download USDA FD–CIC to experience how it would operate. Additional details documenting USDA FD–CIC will be available at *https://www.usda.gov/usda-fdcic.* USDA will evaluate and respond to the public feedback and peer-review provided on USDA FD–CIC, after which USDA will take final action to establish an operative version. Before such final action is taken, users should consider values from USDA FD–CIC as preliminary and should not rely upon them.

Definitions

This rule establishes definitions in 7 CFR 2100.002 for terms that are relevant to biofuel feedstock production; agricultural practices; the biofuels supply chain; processing crops in the biofuel supply chain; and recordkeeping and verification.

The rule defines the following terms relevant to biofuel feedstock production: ''farm producer,'' ''biofuel,'' ''biomass,'' ''feedstock,'' ''biofuel feedstock crop,'' ''carbon intensity,'' ''conventional crop,'' ''climate-smart agriculture (CSA) crop,'' and ''reduced-carbon intensity (reduced-CI) crop.'' In the context of this rule, ''carbon intensity (CI),'' ''climate-smart agriculture (CSA) crop,'' and ''reduced carbon intensity (reduced-CI) crop'' are relevant to biofuel feedstock production in that the rule contains guidance for on-farm CSA practices that can lead to reduced-CI biofuel feedstocks. The definitions of ''agricultural expert,'' ''farm,'' ''farm producer,'' ''biofuel,'' ''biomass,'' ''feedstock,'' and ''biofuel feedstock crop'' align with existing USDA definitions. The definition for ''carbon intensity'' also aligns with language used by California's LCFS.

The rule defines the following terms relevant to agricultural practices: ''climate-smart agriculture (CSA) practices,'' ''cover crop,'' ''intensive tillage,'' ''leguminous cover crop,'' ''no-till,'' ''crop interval,'' ''nutrient management,'' ''planting green,'' ''reduced till,'' and ''soil tillage intensity rating (STIR).'' This rule defines these terms based on existing USDA definitions, relying heavily on USDA's Natural Resource Conservation Service (NRCS) practice definitions used in existing conservation programs. These definitions provide the necessary context for subpart F of 7 CFR part 2100, which lays out the parameters for CSA practices that farm producers can implement to produce CSA crops.

The rule defines the following terms relevant to the biofuels supply chain: ''farm,'' ''first point of aggregation,'' ''intermediary entity,'' and ''biofuel refiner.'' These terms distinguish the various entities in the biofuels supply chain referred to in this rule. As outlined in subparts D and E of 7 CFR part 2100, recordkeeping and verification standards differ among farms, first points of aggregation, intermediary entities, and refiners. This approach was informed by the International Sustainability and Carbon Certification (ISCC) standards for verifying entities within the SAF production supply chain for the Carbon Offsetting Reduction Scheme for International Aviation (CORSIA).

The rule defines the following terms relevant to processing crops in the biofuel supply chain: ''process,'' ''crushing yield,'' ''input product,'' ''processed product,'' and ''reduced-CI processed product.'' These terms are defined for the purpose of this rule to clarify how reduced-CI biofuel feedstocks pass through the supply chain and are processed into new material forms, including ''reduced-CI processed products.'' The ''crushing yield'' is referenced in subpart D of 7 CFR part 2100 as both a recordkeeping requirement and a component of the mass balance equation. Similarly, the terms ''process,'' ''input product,'' and ''processed product'' are used to describe the activities of various entities in the supply chain and the recordkeeping standards for the inputs and outputs they handle. As noted in subpart D in § 2100.033, there are additional recordkeeping standards for entities that process, sell, or purchase reduced-CI processed products.

This rule defines the following terms relevant to recordkeeping and verification: ''accreditation,'' ''audit,'' ''biofuel feedstock report,'' ''farm producer attestation,'' ''mass balance system,'' ''operational control,'' ''third party verifier,'' ''field,'' and ''management unit.'' These terms are used primarily in subpart D of 7 CFR part 2100, which describes the chain of custody standards for 7 CFR part 2100, and Subpart E, which describes the auditing and verification process. The ''mass balance system'' definition aligns with ISO 22095:2020, which establishes international standards for chain of custody systems used in certification and compliance schemes. The terms ''field,'' ''management unit,'' ''operational control,'' ''biofuel feedstock report,'' and ''farm producer attestation'' are used in describing the practice and recordkeeping standards for farm producers for 7 CFR part 2100. These terms reflect definitions used in the implementation of USDA farm-level programs. Broadly, definitions in this section reflect industry standards around auditing and verification within chain of custody systems.

Applicability

Under authorities in section 2709 of the 2008 Farm Bill, this rule establishes 7 CFR 2100.001 through 2100.053 to define and explain technical guidelines for quantifying, reporting, and verifying the GHG emissions associated with production of biofuel feedstock commodity crops using CSA practices and grown in the United States. The primary purpose of this rule is to establish a system for tracking information relevant to environmental service markets, namely the CI of crops grown with CSA practices that are ultimately used as biofuel feedstock.

[1] See *https://www.usda.gov/about-usda/general-information/staff-offices/office-chief-economist/office-energy-and-environmental-policy/climate-change/greenhouse-gas-inventory-and-assessment-program/quantifying-greenhouse-gas-fluxes-methods-entity-scale-inventory.*

This rule specifies domestic biofuel feedstock crops, which include field corn, soybeans, and sorghum, as defined in subpart B in § 2100.011 for which a reduced-CI could be quantified using USDA FD–CIC, upon finalization. These domestic crops were included because they account for the majority of biomass feedstock crops used to produce transportation biofuels in the United States. Furthermore, there is modeling and data available to support the quantification of carbon intensity for these feedstock crops. Grain from field corn or sorghum is used to produce ethanol, while vegetable oils, predominately from soybeans, are used for the production of biodiesel, renewable diesel, and SAF. Intermediate oilseeds (for example, camelina, carinata and pennycress) and canola were excluded from this rule given their current limited use in domestic biofuel production and because there is insufficient data on how CSA practices affect the GHG emissions associated with their production.

Crops produced using certain CSA practices are referred to as CSA crops and are defined in § 2100.011. Crops produced without the use of CSA practices are referred to as conventional crops. CSA crops generally have a reduced CI compared to a conventional crop of the same type and produced in the same location. Depending on the specific crop being produced, CSA crops defined in this rule are grown using one or more of the following practices: no-till, reduced till, cover crops, nitrification inhibitors, split in-season nitrogen application, and no fall nitrogen application. These practices were chosen because they can be used in the production of field corn, soybeans, or sorghum and because scientific evidence demonstrates their effectiveness at reducing GHG emissions or sequestering additional carbon. This rule only includes practices which are used on-field and excludes those practices that occur on field edges or farm borders, in order to associate emissions reductions with the production of commodities on a per acre or per output (for example, bushels) basis.

CSA crops and conventional crops may be physically commingled beginning at the farm if both are being produced. This rule allows for mixing of CSA and conventional crops because segregating crops after harvest and throughout the supply chain is infeasible at farms and entities receiving the crops, especially where farms or other entities lack facilities to physically separate and store crops. Commingling of crops produced using different management techniques is standard practice. Crops that are sold with an associated reduced-CI are referred to as reduced-CI crops and may be composed of solely CSA crops or a combination of CSA crops and conventional crops. If CSA crops and conventional crops are produced at the same farm, the commingled reduced-CI crops must have an associated CI calculated using a weighted average approach, as specified in § 2100.020, Quantification of CI.

This rule can be applied to entities involved in the supply chain for biofuel feedstocks, which spans from the farm to the biofuel refiner. This includes entities that may be producing, storing, processing, or more generally, taking ownership of reduced-CI crops or reduced-CI processed products (that is, a product derived from reduced-CI crops, such as soybean oil) in the supply chain. These entities may include grain elevators or other intermediary storage facilities, processing facilities, and biofuel refiners. Entities that produce or take ownership of reduced-CI crops or reduced-CI processed products are subject to recordkeeping and verification standards.

The scope of this rule extends to the purchase of reduced-CI crops or reduced-CI processed products up to the point of a biofuel refiner. The production and carbon intensity of biofuels, such as ethanol or biodiesel made with reduced-CI crops or processed products, is not covered under this rule.

Quantification of Farm-Level Crop-Specific Carbon Intensities

Under USDA's authorities in the 2008 Farm Bill in section 2709, this rule establishes technical guidelines for use in developing a procedure to measure environmental services benefits. Environmental service benefits are estimated as a reduction in net GHG emissions resulting from crop production with CSA practices compared to a national average baseline. Net emissions are expressed as CI, which is a measure of the total CO_2-eq emissions per unit of crop produced (that is, per bushel). Generally, the use of CSA practices lowers the CI per bushel and results in environmental service benefits relative to a national average baseline CI.

In Subpart C, this rule establishes voluntary technical guidelines for the quantification of CI. CIs are quantified for a specific crop at the farm-level (that is, they account for a farm's total volume of production of a specific crop) on an annual basis, derived from field or management unit-level CIs that depend on the CSA practices used on those fields. For example, a farm that produces field corn in 2025 and both field corn and soybeans in 2026 would have a 2025 field corn CI, a 2026 corn CI, and a 2026 soybean CI.

Consider a farm that uses different production practices for soybeans on different fields or management units: a portion of the fields or management units use conventional production methods (typically highest CI), a portion use cover crops (typically lower CI), and a portion use both cover crops and no-till (typically lowest CI). The farm-level CI for soybeans is a weighted average of the three CI values. The weighted average CI accounts for the relative production of soybeans under conventional, cover crop, and cover crop plus no-till management.

This rule outlines the steps to quantify a farm-level crop-specific CI. CI would be quantified using the USDA FD–CIC, upon its finalization. To quantify CI under this rule, a farm producer would input field-level management information into USDA FD–CIC. Input information would include farm location (county and state), crop type produced, total field or management unit acres, and use of CSA practices, such as no-till or reduced till; use of a cover crop; timing of nitrogen fertilizer application; and nitrification inhibitor usage. USDA FD–CIC output would include a field-level CI for the crop produced using the specified practices at the farm location. This step would be repeated for all fields or management units within a farm on which the crop is grown. In addition to CI for each field or management unit, USDA FD–CIC could also calculate a weighted farm-level average across fields growing the same crop. Farm producers would also need to input information on the fields and management units growing crops without CSA practices. USDA FD–CIC would assign crops on these fields the default national average CI. These calculations would generate a farm-level, crop-specific CI. Further information on USDA FD–CIC, information requirements and how it is used can be found here: *https://www.usda.gov/usda-fdcic.*

Chain of Custody and Verification

As described in subpart D, every entity in the supply chain producing or taking ownership of reduced-CI crops or reduced-CI processed products covered by this rule must have a system for maintaining records. All first points of aggregation, intermediary entities, and biofuel refiners must also be audited annually by an accredited third-party

verifier. Crucially, accredited third-party verifiers ensure the veracity of the underlying crop production practices and estimated emissions reduction benefits associated with the production of CSA crops by auditing a sample of the farms supplying reduced-CI crops to first points of aggregation, as described in subpart E of this rule. This review is necessary for establishing effective environmental service markets, as described in section 2709 of the 2008 Farm Bill. In the case of markets for transportation biofuel feedstocks, this traceability and verification system could allow for entities such as farm producers, elevators, other intermediary storage facilities, and biorefineries to sell products with environmental attributes such as reduced emissions. In some cases, selling a product with an environmental attribute could enable these entities to earn a premium price for growing, handling, and otherwise helping to move reduced-CI biofuel feedstock through the supply chain.

Recordkeeping and Reporting Standards

As described above, the supply chain for agricultural feedstocks used in biofuel production begins at a farm and ends at a biofuel refiner. The first entity to take ownership of reduced-CI feedstock after the farm is referred to as the first point of aggregation and may include, but is not limited to, elevators; processors (for example, crushers); and biofuel refiners. Intermediary entities take ownership of reduced-CI feedstock or reduced-CI processed product between the first point of aggregation and biofuel refiner. The biofuel refiner is the last entity in the supply chain covered by this rule. If a biofuel refiner sources any reduced-CI crop directly from farms, it is the first point of aggregation for the quantity of crop coming directly from farms and is subject to recordkeeping and audit standards applicable to the first point of aggregation. This rule reflects that biofuel feedstock supply chains can include different numbers and types of entities. A biofuel refiner sourcing feedstocks directly from farms represents a simple supply chain. A more complex supply chain may involve crop that is purchased by an elevator, subsequently purchased by crusher for processing, and finally purchased as processed product by a biofuel refiner.

USDA's authorities in section 2709 of the 2008 Farm Bill direct the Secretary to establish technical guidelines for use in developing a protocol to report environmental services benefits and a registry to collect, record and maintain the benefits measured. The recordkeeping standards in this rule establish voluntary guidelines for documenting CI information associated with reduced-CI crops and reduced-CI processed products at individual entities. Additionally, this rule establishes voluntary guidelines for reporting CI information between entities in the supply chain. The recordkeeping standards further require entities to use a mass balance accounting system, which constitutes an internal registry system for each entity to record and maintain the CI associated with reduced-CI crops and the volumes of those crops used in reduced-CI processed products.

This rule specifies general recordkeeping standards applicable to all entities as well as specific standards for farms, first points of aggregation, intermediary entities, and biofuel refiners. All records must be maintained for 5 years. Recordkeeping standards enable third-party verification to ensure that entities follow the applicable standards in this rule.

Recordkeeping and Reporting Standards for Farms

The primary purpose of recordkeeping standards at the farm is to provide evidence of CSA practices and sale of reduced-CI crops. Farm producers are required to keep records demonstrating the following:

- implementation of CSA practices in accordance with the standards in this rule (described further in the CSA Practice Standards: Recordkeeping section below);
- evidence of sales of reduced-CI feedstocks; and
- documentation of CI calculations completed in USDA FD–CIC, once finalized.

For reporting purposes, farm producers are required to prepare a Biofuel Feedstock Report for each crop sold as a reduced-CI crop. The Biofuel Feedstock Report includes a Farm Producer Attestation and documentation showing quantification of the farm-level crop-specific CI. The Farm Producer Attestation is a document attesting that the crop was produced in accordance with practice standards specified in this rule and that the farm producer had operational control of fields or management units where CSA practices were used. The Farm Producer Attestation also states the total number of bushels of crop produced and the associated farm-level CI. The Biofuel Feedstock Report also includes the USDA FD–CIC inputs (that is, CSA practices used) and output (that is, CI) for each field or management unit on which the crop was produced, as well as the calculation of the field-level and farm-level crop-specific CI. When reduced-CI crop is sold, the farm producer must provide a copy of the Biofuel Feedstock Report to the first point of aggregation.

Recordkeeping and Reporting Standards for First Points of Aggregation and Intermediary Entities

First points of aggregation and intermediary entities purchase and sell reduced-CI crops. They may also process reduced-CI crops, and purchase or sell reduced-CI processed products. The primary purpose of recordkeeping standards at these entities is to track the amount of reduced-CI crops and reduced-CI processed products that are purchased or sold. Additionally, the rule specifies that first points of aggregation and intermediary entities must report the volume sold, associated CI, and provide evidence of third-party verification to the purchasing entity.

To track the amount of incoming and outgoing reduced-CI crops or reduced-CI processed products, first points of aggregation and intermediary entities must operate a mass balance system. Mass balance is a method of accounting used to track the weight or volume of products moving through an entity without product segregation. The weight or volume of reduced-CI crops that is sold should not exceed the amount purchased. Similarly, the weight or volume of reduced-CI processed product sold should not exceed the weight or volume purchased or processed on site from reduced-CI crops. This system allows for reduced-CI crops to be physically mixed with conventional crops, and for reduced-CI processed products to be physically mixed with processed products derived from conventional crops.

This rule requires entities to maintain records that demonstrate the amounts of reduced-CI crops and reduced-CI processed products, and associated CIs, moving into and out of the entity. These records constitute mass balance accounting, in that they can be used to demonstrate that the amount of reduced-CI crops or processed products sold from an entity does not exceed the amount that was produced or purchased. These records also enable a third-party verifier to audit an entity's mass balance system.

The mass balance can be represented by an equation, which requires that incoming and outgoing feedstocks must be equivalent over a pre-defined mass balance time period, for which the outgoing reduced-CI crops or processed products, with specific CIs, must be

balanced with the incoming crop or processed product with respective CIs. Mass balance time periods are continuous so that no gaps between mass balance periods occur, and each time period may not exceed three months. Each entity should document the mass balance time period, complete mass balance calculations for each mass balance time period, and document results. If reduced-CI crops or processed product is remaining at the end of a mass balance time period, it is accounted for as ''ending stored feedstock.'' This product is included as ''beginning stored feedstock'' in the calculation for the next mass balance time period. Documentation of the mass balance calculation for each time period must be provided to the entity's third-party verifier during the audit. The third-party verifier may request additional records to verify mass balance calculations during the audit. The following equation illustrates the mass balance calculation:

$$\text{incoming feedstock}_{i,c,m} + \text{beginning stored feedstock}_{i,c,m} = \text{outgoing feedstock}_{i,c,m} + \text{ending stored feedstock}_{i,c,m}$$

Feedstocks (incoming, stored, and outgoing) for entity *i* are identified by their carbon intensity, *c,* and the pre-defined mass balance time period, *m.* Incoming feedstocks include those purchased by entity *i* in time period *m.* Outgoing feedstocks must include both sold and discarded or wasted feedstocks in time period *m.* Stores of feedstocks are those maintained by the entity during time period *m* and must be accounted for in the mass balance. Entities should record and account for the quantity of stored feedstock at the start and end of time period *m.*

First points of aggregation and intermediary entities that process, sell, or purchase reduced-CI processed product are subject to additional recordkeeping standards. In some instances, reduced-CI crop may be processed before being sold to a biofuel refiner (for example, soybeans processed into soybean oil). Entities that process reduced-CI crop are required to track the amount of reduced-CI crop used in processing, the corresponding amount of reduced-CI processed product, and the crushing yield. These values must align such that reduced-CI processed product amount equals the crushing yield multiplied by the reduced-CI crop amount. These recordkeeping standards provide a mechanism to continue tracking the original reduced-CI crop amount and associated CI throughout the supply chain.

Incoming, stored, or outgoing feedstock can include reduced-CI crops or reduced-CI processed products. To ensure that the mass balance accounting for entity *i* appropriately accounts for different forms of reduced-CI processed products (that is, oils), the entity's crushing yield must be used to convert reduced-CI processed products back to their crop volume or weight equivalents using the following equation:

$$\text{processed feedstock crop equivalent} = (\text{processed feedstock})/(\text{crushing yield})$$

Recordkeeping Standards for Biofuel Refiners

Biofuel refiners are the last entity in the supply chain covered by the recordkeeping standards of this rule. The primary purpose of recordkeeping standards at biofuel refiners is to track the incoming amount of reduced-CI crops or reduced-CI processed products. Biofuel refiners must establish a system to track incoming reduced-CI crops or reduced-CI processed products and associated CIs. If a biofuel refiner purchases any reduced-CI crop directly from farm producers, it is also subject to the recordkeeping standards for a first point of aggregation.

Verification

Third-party verification by accredited verifiers provides assurances that entities follow the standards specified in this rule. All entities from the first point of aggregation to the biofuel refiner must hire a third-party verifier to conduct an audit annually. Evidence of verification is passed throughout the supply chain. Beginning with the first point of aggregation, each entity must provide proof of third-party verification to all subsequent entities to whom they sell reduced-CI feedstock or reduced-CI processed products.

Farms receive audits as suppliers of the first point of aggregation, and a sample of farms supplying reduced-CI crops must be audited by a third-party verifier each year. Per the recordkeeping and reporting standards in this rule, farm producers must provide the first point of aggregation with a copy of the Biofuel Feedstock Report which provides attestation of CSA practices and documents the quantification of farm-level crop-specific CI. This document can be used by the first point of aggregation's third-party verifier to collect farm information and aide in selecting the farm audit sample.

Audits at the first point of aggregation include two parts: an audit of the first point of aggregation's processes, and audits at a sample of farms supplying the first point of aggregation with reduced-CI crop.

In auditing the first point of aggregation's processes, a third-party verifier must verify that the first point of aggregation is operating a mass balance system in accordance with the standards in this rule and has correctly recorded the CI associated with reduced-CI crops delivered from each farm.

The first point of aggregation must provide its third-party verifier with information enabling the third-party verifier to select a random sample of farms to audit. The sample of farms must be selected by the third-party verifier and the sample size must be at least the square root of the total number of farms supplying the first point of aggregation with reduced-CI crop. For example, if a first point of aggregation purchases reduced-CI crop from 51 farms, the farm audit sample must include at least 8 farms (the square root of 51 is 7.14 which is rounded up to 8). Taking a square root of suppliers to determine the minimum sample size aligns with industry accepted standards in current use, such as the ISCC CORSIA certification program for SAF. The sample must be selected in a way that is representative of the supplying farms' characteristics, including types of supplied feedstock, size of farm, geographic location, and risk of non-conformity or fraud. Additionally, third-party verifiers should vary the farms included in a first point of aggregation's audit sample from year to year.

For farms that are selected for an audit by the first point of aggregation, the third-party verifier must verify that the CSA practices and recordkeeping are conducted as specified in this rule. Additionally, the third-party verifier must verify that the weighted average calculation of the farm-level crop-specific CI is done correctly.

If a farm is selected as part of the audit sample for the first point of aggregation, the farm may be considered exempt from an additional audit if a third-party verifier previously audited the farm according to the standards established in this rule for the applicable year. Farm producers can elect to proactively retain a third-party verifier, accredited to ISO 14065, to complete an audit at their farm. This approach allows flexibility for farm producers who may wish to hire their own third-party verifier, while also maintaining integrity and upholding standards for third-party verifiers established by this rule. Farm producers may choose this option to coordinate with already scheduled audits, or for other reasons. To be considered exempt

from an additional audit, the farm producer must provide results of the completed audit to the first point of aggregation's third-party verifier. It is up to the discretion of the third-party verifier to determine whether the farm is exempt from an additional audit, or whether a full or partial audit is necessary.

As defined by this rule, an intermediary entity does not source reduced-CI crops directly from farm producers. The audit standards for intermediary entities include third-party verification of the mass balance system and recordkeeping related to reduced-CI crops or reduced-CI processed product purchased or sold.

The audit standards for biofuel refiners include verification that the biofuel refiner operated a system to correctly record the CI associated with reduced-CI feedstock or reduced-CI processed product. Additionally, biofuel refiners that are acting as a first point of aggregation must also follow the audit standards for first points of aggregation.

Any entity that processes reduced-CI feedstock must comply with additional audit standards to ensure that the amount of reduced-CI processed product is calculated correctly, using the facility-level crushing yield, and that records support mass balance of the product.

All third-party verifiers hired to conduct audits as specified in this rule must be accredited to ISO 14065: General principles and standards for bodies validating and verifying environmental information by a member of the International Accreditation Forum.

CSA Practice Standards: Implementation

This rule establishes implementation standards for specific CSA practices: reduced till, no-till, cover crops, and specified nutrient management practices, such as nitrification inhibitors, no fall application of nitrogen, and split in-season application of nitrogen. These practices are identified by NRCS as CSA and Forestry (CSAF) Mitigation Activities and represent a subset of existing NRCS-approved conservation practices for working lands.[2] Practices included in this rule do not include all NRCS CSAF practices. This rule only includes practices that are relevant to the production of field corn, soybeans, or sorghum and have appropriate data and quantification methodologies needed to estimate the associated net emissions. Additionally, some NRCS CSAF practices were excluded because they only generate net emissions benefits on land that is not growing crops, such as field edges or borders. Emissions benefits from such off-field practices cannot directly be tied to the production of a biofuel feedstock, making it difficult to assign emissions benefits to the biofuel feedstock crop and subsequently produced biofuels.

The practices included in this rule have demonstrated emissions benefits that are directly associated with in-field crop production, as indicated in the NRCS CSAF Mitigation Activity List documentation and based on the latest data and quantification methodologies available to USDA.

Reduced Till

The practice of reduced till manages the amount, orientation, and distribution of crop and other plant residue on the soil surface year-round while reducing the frequency and intensity of soil disturbing activities used to grow and harvest crops in systems where the field surface is tilled prior to planting. The practice of reduced till increases soil organic carbon (SOC) as a result of decreased soil disturbance and decreases N_2O emissions due to changes in the soil environment, when compared to intensive till.[3]

To qualify as reduced tillage under this rule, field(s) or management unit(s) are permitted to use tillage methods where the entire soil surface is disturbed by tillage operations such as chisel plowing, field cultivating, tandem disking, vertical tillage, or ridge tillage, provided that the STIR value is no greater than 80. STIR[4] is a numerical value that measures the severity and type of soil disturbance caused by tillage operations. STIR values range from 0 to 200, with higher values indicating more soil disturbance. The STIR rating applies to the entire tillage system used in producing a crop. The components of the rating include tillage type, recommended equipment operating speed, recommended tillage depth, and surface area disturbed. The STIR value must include all field operations that are performed during the crop interval (that is, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, including fallow periods). Permitted methods are also commonly referred to as mulch tillage, conservation tillage, or ridge till. Primary inversion tillage implements (for example, moldboard plow) must not be used, and residues may not be burned. However, removing residue from the crop planting row area prior to or as part of the planting operation is allowed.

No-Till

The residue and tillage management practice of no-till limits soil disturbance to manage the amount, orientation and distribution of crop and plant residue on the soil surface year-round. The practice of no-till increases SOC as a result of decreased soil disturbance and decreases N_2O emissions due to changes in the soil environment when compared to both reduced till and conventional till.[5]

To be considered as no-till under this rule, full-width soil disturbance must not be performed, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, regardless of the depth of the tillage operation. Strip tillage and fertilizer injection are permitted, provided that the STIR value is no greater than 20. Residues may not be burned. However, removing residue from directly within the seeding, planting, or transplanting area prior to or as part of the planting operation is allowed.

Cover Crops

A cover crop may include one or more species of grasses, legumes, or forbs planted for seasonal protection and soil improvement. Increased above and below-ground biomass from cover crops can increase SOC, while N_2O may, in

[2] See USDA NRCS, Climate-Smart Agriculture and Forestry (CSAF) Mitigation Activities List for FY2025, August 2024, *https://www.nrcs.usda.gov/sites/default/files/2023-10/NRCS-CSAF-Mitigation-Activities-List.pdf.*

[3] See USDA NRCS, *Conservation Practice Standard Residue and Tillage Management, Reduced Till,* September 2016, *https://www.nrcs.usda.gov/sites/default/files/2022-09/Residue_And_Tillage_Management_Reduced_Till_345_CPS.pdf.*

See also: NRCS, *Conservation Practices and Greenhouse Gas Mitigation Information dashboard, https://publicdashboards.dl.usda.gov/t/FPAC_PUB/views/NRCSConservationPracticesandGreenhouseGasMitigation/MitigationSummaries?%3Aembed=y&%3AisGuestRedirectFromVizportal=y#3.*

[4] See USDA NRCS, *Soil Intensity Tillage Rating STIR,* 2020, *https://www.nrcs.usda.gov/sites/default/files/2023-01/Soil-Tillage-Intensity-Rating-Fact-Sheet3-27-2020.pdf.*

[5] See USDA NRCS, *Conservation Practice Standard Residue and Tillage Management, No Till,* September 2016, *https://www.nrcs.usda.gov/sites/default/files/2022-09/Residue_And_Tillage_Management_No_Till_329_CPS_0.pdf.*

See also *NRCS Conservation Practices and Greenhouse Gas Mitigation Information dashboard. https://publicdashboards.dl.usda.gov/t/FPAC_PUB/views/NRCSConservationPracticesandGreenhouseGasMitigation/MitigationSummaries?%3Aembed=y&%3AisGuestRedirectFromVizportal=y#3.*

certain contexts, increase slightly from plant decomposition.[6] Under this rule, if legumes are used alone or within a cover crop mix, the producer should account for nitrogen supplied by the cover crop when determining nitrogen application rates for the following crop in order to minimize the risk of increasing direct and indirect N_2O emissions that may result from excess nitrogen. Cover crops that can be considered under this rule must be seeded in the fall, and interseeding into a commodity crop is allowed. Cover crops should be seeded as early as possible and terminated as late as practical (late vegetative growth stage or later) with termination timing established to minimize the risk of yield loss and soil moisture depletion.[7] To qualify under this rule, cover crops cannot be fertilized.

Cover crop biomass must not be mechanically harvested or grazed. Residues must remain on the surface following termination and may not be burned. Cover crops may be terminated via winter kill, using herbicide, or by non-soil disturbing mechanical methods (for example, roller crimper, mowing) in the spring. Planting green, where the commodity crop is seeded directly into the standing cover crop in the spring, is allowed.

Nutrient Management

Nutrient management practices included in this rule are:

(1) use of nitrification inhibitors;
(2) no fall application of nitrogen; and
(3) in-season split application of nitrogen.

These practices help to reduce direct and indirect N_2O emissions from biofuel feedstock production, thereby reducing GHG emissions. To implement any of these nutrient management practices, the farm producer must develop and document a planned nutrient budget, yield goal, and applications of, at a minimum, nitrogen, phosphorus, and potassium (N–P–K) in pounds per acre prior to implementation. The nutrient budget must account for all known measurable sources and removals of N–P–K. The farm producer must base the nutrient budget on current soil test results or the professional opinion of an agricultural expert who is employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by the Federal Crop Insurance Corporation (FCIC), whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Nitrification Inhibitor Practice Standards

A nitrification inhibitor is a chemical compound that slows down the conversion of ammonia to nitrate in soil, a process called nitrification. Nitrification inhibitors are added to fertilizers and can help reduce N_2O emissions.[8] To qualify for the nitrification inhibitor practice under this rule, the producer must apply a nitrification inhibitor with all synthetic nitrogen (synthetic N) applications, including any pre-emergent applications, to the field(s) or management unit(s). Nitrification inhibitors must be defined by the Association of American Plant Food Control Officers (AAPFCO) and be accepted for use by the State fertilizer control official, or similar authority, with responsibility for verification of product guarantees, ingredients (by AAPFCO definition) and label claims.

No Fall Application Practice Standards

Applying fertilizer in the spring at the time of planting results in improved nutrient availability and can reduce overall fertilizer needs compared to fall application, also reducing N_2O losses.[9] To qualify for the no fall application practice under this rule, field(s) or management unit(s) must be managed according to a nutrient budget, the first nitrogen application must occur within 30 days prior to or at the time of planting and no nitrogen fertilizer may be applied in the fall of the previous year.

Split In-Season Application Standards

Split in-season fertilizer application refers to fertilizer that is applied with a minimum of two applications—an initial application at the time of planting with the remainder applied in one or more applications during the growing season. Split in-season application increases nitrogen use efficiency by applying fertilizer according to plant needs, and can also reduce overall fertilizer needs, which also reduces N_2O losses.[10] To qualify for the split in-season application practice under this rule, field(s) or management unit(s) must be managed according to a nutrient budget. At least 75 percent of total crop nitrogen needs, as defined by the state LGU, must be applied after crop emergence. Post emergent nitrogen may be reduced based on crop scouting, in-season soil sampling or analysis, or plant tissue sampling or analysis. Nutrient availability should be timed to crop uptake.

CSA Practice Standards: Recordkeeping

In addition to specifying the implementation standards for each CSA practice, as described above, this rule also establishes recordkeeping standards for each CSA practice. Required records are necessary to provide evidence that farm producers implemented CSA practices according to the rule. Records must be retained for 5 years and made available to third-party verifiers to conduct audits. The rule does not specify the type or origin of required records; instead, the rule lists examples of record types such as physical documentation (for example, paper forms, invoices, receipts, seed tags), digital files (including from farm management software), data generated by farm equipment (for example, precision agriculture equipment), remote sensing data, georeferenced and timestamped photographs, and data and records used for participation in USDA government programs. The range of allowable record options is designed to increase flexibility and minimize burden for farm producers, who may already maintain various types of records depending on their preferences, participation in government or private programs, or previous CSA practice implementation. However, the records must be sufficient for the third-party verifier to verify compliance with the

[6] See NRCS, *Conservation Practices and Greenhouse Gas Mitigation Information dashboard, https://publicdashboards.dl.usda.gov/t/FPAC_PUB/views/NRCSConservationPracticesandGreenhouseGasMitigation/MitigationSummaries?%3Aembed=y&%3AisGuestRedirectFromVizportal=y#3.*

See also Minnesota Pollution Control Agency. *Greenhouse gas reduction potential of agricultural best management practices.* October 2019. *https://www.pca.state.mn.us/sites/default/files/p-gen4-19.pdf.*

[7] See USDA NRCS, *Conservation Practice Standard, Cover Crop,* 2024, *https://www.nrcs.usda.gov/sites/default/files/2024-06/340-nhcp-cps-cover-crop-2024.pdf.*

[8] See Li T, Zhang W et al., *Enhanced-efficiency fertilizers are not a panacea for resolving the nitrogen problem,* Glob Chang Biol, Feb 2018 Feb, 24(2):e511–e521, doi: 10.1111/gcb.13918. Epub 2017 Nov 2. PMID: 28973790. See also: ICF International. *Greenhouse Gas Mitigation Options and Costs for Agricultural Land and Animal Production within the United States.* Prepared for USDA Climate Change Program Office, February 2013. *https://www.usda.gov/sites/default/files/documents/GHG_Mitigation_Options.pdf.*

[9] See ICF International, *Greenhouse Gas Mitigation Options and Costs for Agricultural Land and Animal Production within the United States,* Prepared for USDA Climate Change Program Office, February 2013, *https://www.usda.gov/sites/default/files/documents/GHG_Mitigation_Options.pdf.*

[10] See Chan Guo, Xufei Liu, and Xuefei He, *A global meta-analysis of crop yield and agricultural greenhouse gas emissions under nitrogen fertilizer application,* Science of The Total Environment, Volume 831, 2022, 154982, ISSN 0048–9697, *https://doi.org/10.1016/j.scitotenv.2022.154982.*

relevant practice standard for the specified time period.

Across all CSA practices, farm producers must maintain records demonstrating the location and acreage of any field or management unit where the CSA practice was implemented, as well as the total bushels of crop harvested from those fields or management units. These are basic parameters required for calculating the carbon intensity of the resulting crop. Farm producers with multiple fields or management units must keep their records separately for each of these fields or management units to ensure accurate accounting.

For farm producers implementing no-till or reduced till, the following practice-specific records must be maintained:

- a list of all field operations that may cause surface disturbance, including tillage, fertilizing, planting, controlling pests, seeding, and harvesting;
- data on these operations, including the depth and width of disturbance and average speed of operation;
- equipment used; and
- dates that each operation occurred.

These records are necessary for calculating and verifying the STIR value, a quantitative measure of soil disturbance. Calculation of the STIR value on each field or unit provides a consistent way for farm producers and third-party verifiers to evaluate whether a soil management system qualifies as no-till or reduced till.

For farm producers implementing cover crops, the following practice-specific records must be maintained:

- documentation that cover crop seeds were purchased and received in sufficient quantities for the designated field(s) or unit(s);
- the date, method, and rate of seeding;
- the total acreage seeded across each field or unit; and
- time-stamped and georeferenced photographic evidence of establishment.

Records of cover crop purchase and seeding alone is not sufficient to verify that a GHG benefit occurred, because the GHG benefits of cover crops result from biomass accumulation due to plant growth. Time-stamped and georeferenced photographic evidence of establishment is also necessary to ensure that the CSA practice, and associated GHG benefits, can be verified.

For farm producers implementing nutrient management practices, the following practice-specific records must be maintained:

- details on the source and type of nutrients applied;
- date, method, and location of nutrient applications;
- planting-seeding date for the field or unit where the practice was implemented; and
- the total acreage within each field or unit where the nutrient management practice was applied.

Additionally, the producer must provide a nutrient budget that demonstrates all crop nutrient needs for N–P–K, as well as a soil test dated within 2 years of the development of the nutrient budget. Because nutrient needs vary greatly across crops, fields, and management units, a tailored nutrient budget is necessary to assess the nutrient needs of each crop. Evaluation of the nutrient budget can inform the crop-specific and geography-specific rates and types of nutrient management that may result in a GHG benefit.

USDA Request for Information and Public Consultation Sessions

On June 27, 2024, USDA published a Request for Information (RFI) requesting public input on Procedures for Quantification, Reporting, and Verification of Greenhouse Gas Emissions Associated with the Production of Domestic Agricultural Commodities Used as Biofuel Feedstocks (89 FR 53585–53587). The RFI indicated that USDA was considering a rule to establish voluntary standards for quantifying, reporting, and verifying GHG outcomes for domestic agricultural commodities used as biofuel feedstocks and grown with practices that mitigate GHG emissions or sequester soil carbon. USDA requested public input on several topics that are addressed in this rule. Specifically, the RFI asked for input on qualifying practices, quantification approaches for CSA practices, soil carbon, verification and recordkeeping, and verifier qualifications and accreditation requirements. A total of 256 unique comments were posted to *regulations.gov* in response to the RFI. The top sources of comments were from individuals (45 comments), industry trade groups (33), biofuel groups (29), agriculture industry and technology groups (28), and crop commodity groups (26). Other groups submitting comments included environmental advocacy groups, organizations involved in carbon markets, farm groups, state and local government agencies, and farm bureaus.

Approximately 52 comments were supportive of USDA's efforts to facilitate quantifying, reporting, and verifying emissions benefits associated with CSA practices for biofuel feedstocks. Broadly, these commenters recognized the potential benefits and opportunities associated with using CSA practices in biofuel feedstock production, including market opportunities and the enhanced sustainability of agricultural systems. These commenters agreed with the need for more accurate accounting of emissions benefits associated with using CSA practices and supported the establishment of guidance in this area. In addition, supportive comments from farm producers, agricultural groups, and industry representatives emphasized the opportunity to establish a simple and inclusive program which facilitates the participation of many different types of farm producers in CSA markets.

Approximately 11 comments were generally opposed to the production of biofuels as a means to reduce GHG emissions and were therefore opposed to any potential USDA rule efforts on this topic. Some opposing comments argued that expanding crop-based biofuel production will lead to greater GHG emissions and additional environmental harms such as air and water pollution. Commenters argued that alternatives such as electrification would be more effective for reducing GHG emissions from the transportation sector. Some opposing comments also expressed concerns with the validity of GHG reductions from CSA practices, pointing out that there is a risk of double-counting benefits from these practices and that incentives for CSA practices may fail to meet ''additionality'' requirements.

Approximately 193 comments maintained neutral or mixed positions on a rule. Comments spanned many perspectives on the purpose, scope, and ideal execution of a rule. Flexibility and inclusivity were widely shared themes, with commenters asking for inclusion of a wide range of crops, a wide range of CSA practices, and the inclusion of early CSA practice adopters. However, commenters differed on a number of issues, including verification requirements, chain of custody models, and specific crops and practices that should be considered. Commenter perspectives on these topics are described in the sections below.

In addition to publishing the June 2024 RFI, in October 2024, USDA hosted three stakeholder consultation sessions over Zoom in accordance with requirements in 16 U.S.C. 3845, which directs the Secretary of Agriculture to consult with the public when establishing technical guidelines for measuring environmental services benefits from conservation and land management activities. Specifically, section 3845 requires consultation with the following groups:

(1) Federal and State government agencies;
(2) Nongovernmental interests, including:
(A) farm, ranch, and forestry producers,
(B) financial institutions involved in environmental services trading,
(C) institutions of higher education with relevant expertise or experience,
(D) nongovernmental organizations with relevant expertise or experience, and
(E) private sector representatives with relevant expertise or experience; and
(3) Other interested persons, as determined by the Secretary.

USDA invited groups from each of these specified categories and posted public information and registration links for the consultation sessions to the Office of Energy and Environmental Policy website. A total of 203 individuals registered for the Zoom calls, with 201 individuals joining at least one of the three consultation sessions. Attendees included private citizens such as farmers, industry representatives, and representatives from farm and environmental groups. A total of 74 individuals elected to speak during the calls to offer their perspectives.

Insights shared in the public consultation sessions echoed comments received in response to the RFI. Some speakers directly echoed portions of their RFI comments, while others shared personal experiences with CSA and biofuels production. Multiple speakers asked for the inclusion of intermediate cover crops and oilseed crops. Parallel to a request for more flexibility was an opposition to ''bundling,'' rules that would require farm producers to simultaneously implement a specified group of CSA practices. Many speakers emphasized that a bundling approach limits farmer participation; instead, they favored the use of a more flexible approach to CSA practices, as well as a quantification system that reflects the impact of individual CSA practices.

Speakers also frequently highlighted their perspectives on traceability systems throughout the consultation calls. Many speakers expressed support for either book and claim or mass balance systems. Supporters of book and claim underscored the benefits of decoupling carbon intensities from bushels of feedstock, giving farmers greater market flexibility and increasing farmer participation and eligibility across a broader geography. Others were in favor of a mass balance system which would align with ISCC traceability programs, simplify the chain of custody, and maintain the participation of grain elevators.

USDA completed an analysis of comments submitted through the RFI and documented viewpoints shared during the public consultation sessions. Both the RFI and the consultation sessions provided valuable insights into the preferences, perspectives, and concerns of groups potentially impacted by the USDA rule. Insights gained from these public engagements were informative to the drafting of the rule.

RFI Comments Regarding Biofuel Crops

In response to which crops should be considered for inclusion in a USDA policy on biofuel feedstock crop production, RFI commenters primarily and widely supported the inclusion of traditional row crops. Field corn was the most frequently mentioned, as it currently represents 98 percent of U.S. ethanol industry feedstock production. Soybeans, sorghum, and spring canola were also frequently endorsed as major biofuel feedstocks, reflecting their established role in current U.S. biofuel production. These mainstream feedstocks were often recommended due to their existing infrastructure, and well-understood production practices. Many commenters emphasized the importance of maintaining these established feedstocks while gradually expanding options to ensure market stability and reliable supply chains.

Many commenters also recommended including winter oilseed crops, with particular emphasis on brassica carinata, camelina, pennycress, and winter canola. These crops were highlighted for their potential to provide soil health benefits, offer crop diversification advantages, and generate additional farm income through double-cropping systems. Notably, commenters pointed out that winter canola has 20 to 30 percent greater yield potential than spring canola, and several organizations detailed their ongoing research and development efforts with these winter oilseed varieties, particularly in regions like the Northern Great Plains.

Commenters also recommended a diverse array of alternative feedstocks for consideration, ranging from perennial grasses like switchgrass and miscanthus to woody crops such as hybrid poplar and shrub willow. Agricultural residues and byproducts, including corn stover, wheat straw, and sugar beet processing remnants, were frequently mentioned as potential feedstock sources. Several commenters advocated for the inclusion of emerging options like Kernza (an intermediate wheatgrass), various biowaste streams, and crop residues, emphasizing the importance of maintaining flexibility to incorporate new feedstock sources as technology and research advance. Many stressed the value of a diverse feedstock portfolio to mitigate risks associated with market fluctuations, crop failures, and regional variations.

RFI Comments Regarding CSA Practices

RFI commenters overwhelmingly emphasized the importance of soil management practices, particularly conservation tillage and no-till operations, as foundational CSA practices. These practices received strong support due to their well-documented benefits in reducing soil disturbance and enhancing carbon sequestration, though several commenters noted the need for regional flexibility in implementation. To support the argument for including these practices, some commenters referenced extensive research demonstrating their effectiveness, though some stakeholders raised important considerations about the permanence of carbon sequestration benefits and suggested the need for monitoring practice duration and potential reversals. Many recommended using existing NRCS standards to define specific parameters for these practices, ensuring consistent implementation and reliable GHG emissions quantification.

Many commenters advocated for the inclusion of nitrogen management practices and presented evidence for including a range of approaches from enhanced efficiency fertilizers to precise application timing and placement. Arguments for these practices emphasized their direct impact on reducing N_2O emissions, a potent GHG. Many commenters emphasized the importance of the ''4R'' approach (right source, right rate, right time, and right place) and provided specific examples of how technologies like variable rate application and nitrogen stabilizers can significantly reduce emissions while maintaining crop yields. The recommended inclusion of these practices was further supported by their potential to reduce both direct field emissions and indirect emissions associated with fertilizer production and transport.

Integrated systems practices, including cover cropping, buffer strips, and crop rotations, were strongly recommended based on their multiple environmental benefits and GHG reduction potential. Stakeholders presented evidence that these practices could sequester carbon and also improve soil health, reduce erosion, enhance biodiversity, and create more resilient agricultural systems. However, commenters emphasized the need for flexible implementation frameworks that allow farmers to adapt practices to their specific contexts while

maintaining measurable GHG benefits. Many suggested using established NRCS conservation practice standards as a foundation while incorporating new technologies and emerging practices as they are validated.

Some commenters also recommended the inclusion of water conservation practices, based on evidence of both direct and indirect GHG reduction benefits. Stakeholders detailed how improved irrigation efficiency, precision irrigation systems, and soil moisture monitoring can significantly reduce energy usage associated with water transportation and irrigation operations. Several commenters provided specific examples of technologies, such as subsurface drip irrigation-effluent systems, that demonstrate measurable GHG reductions while delivering co-benefits like improved nutrient management and water quality. Proponents of including water conservation practices also pointed to regional variations in water availability and the increasing importance of water efficiency in agricultural sustainability.

RFI Comments Regarding Quantification Approaches: Data and Modeling

RFI commenters strongly emphasized the critical importance of utilizing robust scientific data and empirical evidence to accurately quantify GHG emissions and carbon sequestration from agricultural practices. Many commenters advocated for a multi-model ensemble approach that would combine outputs from different models and compare them with empirical data, suggesting the use of the lower bound of the 95 percent confidence interval for crediting purposes. A fundamental tension emerged between the scientific rigor of complex biogeochemical modeling and the practical needs of implementation, with some stakeholders favoring a more straightforward practice-based approach using lookup tables and simple regressions. Many commenters supported regional and county-level modeling as a means to account for variations in soil types, weather conditions, and management practices. Several commenters highlighted specific models and tools for consideration, including DAYCENT, COMET, and Field to Market's Sustainability Metrics, while emphasizing the importance of regular updates to incorporate new data and technologies.

RFI commenters identified an extensive array of existing data sources and tools that could be leveraged for quantifying GHG emissions from agricultural practices. Frameworks including the R&D GREET model, CORSIA protocol, and Intergovernmental Panel on Climate Change guidelines were frequently cited as established frameworks that could inform a policy approach. Federal programs and databases, including the Agricultural Resource Management Survey, the USDA the Agricultural Resource Management Survey, and the USDA Greenhouse gas Reduction through Agricultural Carbon Enhancement network, were highlighted as valuable resources that already contain relevant data for emissions quantification. Private sector contributions, including data from carbon markets and third-party verification entities, were identified as important complementary sources to public datasets. The integration of academic research, particularly from LGUs and research institutions, was consistently emphasized as crucial for building a comprehensive understanding of agricultural GHG emissions and mitigation potential.

RFI commenters proposed a range of quantification approaches, reflecting the complexity of measuring agricultural GHG emissions. Process-based models like the Soil and Water Assessment Tool+ model, DAYCENT, and DeNitrification-DeComposition model were suggested alongside empirical approaches using emission factors and direct measurements. A key debate emerged between supporters of regional-scale quantification using standardized factors and advocates for more granular field-level measurements. Stakeholders emphasized the importance of standardized protocols and verification processes to ensure consistency and comparability across different approaches. The need to consider full life cycle impacts, including upstream emissions and indirect land-use changes, was highlighted as crucial for comprehensive emissions accounting. Many commenters recommended aligning with established international standards while maintaining flexibility to accommodate regional variations in agricultural practices.

Data gaps in current empirical research emerged as a significant concern among some commenters, particularly regarding the quantification of GHG emissions from various agricultural practices. Commenters expressed concerns about limitations in data availability for specific practices such as cover crops, nutrient management, and residue management, with commenters noting that most agricultural research has only recently begun focusing on climate mitigation potential. Geographic and regional data limitations were highlighted, with stakeholders cautioning against over-reliance on broad-scale data that might miss important local variations. The lack of consistent historical baseline data was identified as a key challenge, especially for early adopters of climate-smart practices.

RFI Comments Regarding Quantification Approaches: Geographic Scale

RFI commenters emphasized that geographic variability significantly influences the effectiveness and outcomes of CSA practices, necessitating careful consideration in any quantification framework. Many commenters advocated for a regional approach that could effectively balance accuracy with scalability, with several specifically recommending USDA's Farm Resource Regions as an appropriate foundation for regional quantification. The complexity of geographic considerations was highlighted by concerns about potentially creating ''winners and losers'' based on regional differences, which could inadvertently shift production patterns and impact farm incomes in certain areas. Some stakeholders suggested that while geographic variability must be acknowledged, the quantification system should strive to maintain relative parity in potential benefits across regions to ensure equitable program implementation.

The debate over appropriate geographic scale for GHG emissions quantification revealed a tension between precision and practicality. While many commenters supported farm or field-level quantification for its accuracy and ability to capture site-specific variations, others advocated for district, county, or state-level approaches that could better balance precision with administrative feasibility. Several commenters argued that county-level quantification aligns well with existing USDA survey capabilities and the R&D GREET Feedstock Calculator methodology. A notable suggestion emerged for a hybrid approach that would use field-level data where available while maintaining broader-scale defaults as a ''safety valve'' to ensure program inclusivity and account for unique circumstances.

The importance of addressing local and regional conditions in GHG emissions quantification was consistently emphasized across stakeholder comments. Variations in soil types, climate, topography, precipitation, and growing season length were identified as critical factors

affecting practice effectiveness and GHG benefits. Several commenters recommended leveraging existing resources such as LGUs and extension services to better understand and account for local variations. Some stakeholders specifically suggested using established regional classifications like NRCS MLRAs or crop reporting districts to group areas with similar conditions, while others advocated for investment in enhanced monitoring technologies like Eddy flux towers to better quantify regional differences in GHG emissions and sequestration potential.

RFI Comments Regarding Verification and Recordkeeping

RFI commenters emphasized the importance of balancing robust verification standards with the need to minimize administrative burdens on farm producers. Many suggested that existing USDA conservation program data and third-party tools could effectively streamline documentation processes. Some commenters were concerned about the potential for CSA opportunities to become a vehicle for collecting excessive farm data, with several commenters noting that only 3 percent of eligible producers currently participate in carbon markets due to high transaction costs and administrative burdens. While accurate documentation was broadly acknowledged as crucial for transparency and long-term impact assessment, stakeholders emphasized that standards should remain practical and cost-effective.

RFI commenters provided extensive recommendations for specific recordkeeping approaches, emphasizing the need for practical documentation that builds upon existing farm management practices. Key recommended records included field boundary maps, crop types, planting and harvest dates, fertilizer and chemical application records, waste-management practices, tillage documentation, cover crop information, yield data, and equipment usage metrics, with many commenters noting these records are typically already maintained for USDA programs. Integration with established frameworks like USDA organic certification processes, the USDA CSA pilot program referenced in Treasury and IRS's guidance on the Section 40B SAF credit, and USDA's Conservation Evaluation and Monitoring Activity was recommended to avoid creating entirely new documentation systems. The importance of allowing flexibility in record formats was emphasized to accommodate diverse farming operations and technological capabilities, with particular consideration for smaller farms and operations with limited resources. Commenters also stressed the value of accepting attestations from farmers and third-party service providers like agricultural retailers, cooperatives, and independent crop consultants, particularly during the initial implementation phase.

Remote sensing and emerging technologies received significant attention from commenters as potential tools for streamlining verification processes while maintaining program integrity. Many commenters highlighted how satellite imagery, drone technology, and precision agriculture data could effectively verify practices like cover crops, tillage patterns, and buffer strip implementation, with some noting that technologies like Sentinel-2 imagery can identify buffer strips with over 80 percent accuracy. However, several stakeholders cautioned that remote sensing technologies have limitations, particularly in measuring three-dimensional stored carbon or verifying practices not visible from above, suggesting these tools should complement rather than replace traditional verification methods. The integration of these technologies with farm management software, Internet of Things devices, and blockchain was recommended to enhance data collection and verification efficiency, though commenters emphasized the need for standardized processes and algorithms to ensure consistency and reliability across different regions and farming operations.

Most RFI commenters advocated for limited on-site audits to maintain cost-effectiveness and practicality. They recommended following established verification frameworks like those used by the California LCFS and the ISCC Program, which typically require annual verification through a combination of on-site visits and remote monitoring. Commenters suggested giving farmers a presumption of compliance, with auditing practices kept to a reasonable minimum while still deterring non-compliance. Recommendations for audit frequency ranged from annual reviews for high-risk operations to every 2 to 3 years for compliant operations.

RFI commenters recommended sampling methodologies as a means to balance verification rigor with practical implementation. Commenters recommended approaches like stratified random sampling based on geography, crop type, and farm size, following protocols like the square root method used by ISCC CORSIA. Risk-based sampling was a preferred approach, prioritizing farms with higher non-compliance risk based on factors like operation size, practice complexity, and past audit performance. Commenters consistently highlighted the need for sampling approaches tailored to regional and operational differences while maintaining statistical validity and cost-effectiveness.

RFI Comments Regarding a Chain of Custody Approach

Commenters expressed diverse views on the use of mass balance and book-and-claim systems for tracing CSA feedstocks through supply chains. Many commenters supported the use of a book-and-claim system, arguing that it provides flexibility, reduces compliance costs, and aligns better with the intended outcomes compared to mass balance or identity preservation systems. These commenters emphasized the need for minimal and flexible data collection requirements for farmers, suggesting the use of digital solutions, farm equipment data, satellite imagery, and remote sensing to reduce administrative burdens and align with existing programs like NRCS and ISCC.

On the other hand, some commenters supported the current traceability definition used in the USDA CSA Pilot Program in the Treasury and IRS guidance on the section 40B SAF tax credit which relies on a mass balance approach. They argued that mass balance is an indispensable tool for incentivizing the development of renewable natural gas (RNG) production and that programs should be modified to allow RNG to be used as a feedstock for SAF and renewable diesel without limitations like region or first use criteria. One commenter noted that a mass balance approach would make it more difficult to track actual bushels leaving the field where the CI-lowering practices were completed; however, another stated that mass balance could reduce the risk of fraudulent claims regarding production practices and chain of custody claims.

A few commenters proposed the use of blockchain technology, token-based systems, or digital ledger platforms for tracing and verifying CSA attributes and feedstock movements, providing transparency, auditability, and reduced risk of double-counting or over-allocating attributes. One commenter described a pilot program using blockchain for tracking sustainable soybean oil attributes.

In summary, commenters were split between supporting mass balance and book-and-claim systems for tracing CSA

feedstocks. While book and claim was recommended for its flexibility and reduced compliance costs, mass balance was seen as the best approach for aligning with existing traceability systems.

USDA Response and Request for Additional Public Comment

USDA considered public comments when preparing this interim rule. USDA considered multiple crops for inclusion in this rule, including canola and intermediate oilseeds. The crops included in this rule were selected based on their prevalence of use as a biofuel feedstock, as well as the availability of data to quantify the impact of CSA practices on their production. When assessing different chain of custody approaches, USDA considered both mass balance and book and claim. While USDA recognizes the potential merits of a book and claim system, as outlined by commenters, the infrastructure needed to support a book and claim system does not exist at scale at this time. As detailed by other commenters, mass balance systems are already in use for tracking commodity crops and associated environmental attributes throughout supply chains.

USDA is requesting public comment on this interim rule and welcomes feedback on any aspect of this rule. In particular, USDA is considering the inclusion of additional crops and CSA practices in the final rule and is seeking input on the following questions.

1. USDA is considering the inclusion of spring canola in the final rule. What data and research exist on the current adoption rates and GHG impacts of CSA practices, defined in this rule, on spring canola production?

2. USDA is considering the inclusion of winter canola in the final rule. What CSA practice(s) are applicable to winter canola? What data and research exist on the GHG impacts of the practices used in winter canola production?

3. What records or information could be used to verify that a crop is winter canola or spring canola?

4. USDA is considering the inclusion of intermediate oilseed crops in the final rule. What CSA practices are applicable to intermediate oilseeds? What data and research exist on the GHG impacts of these CSA practices used in intermediate oilseed production?

5. USDA is considering including ''conservation crop rotation'' as a CSA practice in the final rule. Conservation crop rotation is the practice of growing a planned sequence of crops on the same ground over a period of time. Conservation crop rotation is similar to the cover crop practice in that living crops provide cover year-round; however, unlike cover crops, all crops in a conservation crop rotation may be harvested.

a. What data and research exist on the GHG impacts of conservation crop rotation?

b. If conservation crop rotation is included as a CSA practice, how should USDA proportion the GHG impacts when multiple biofuel feedstock crops are grown in the rotation? For example, if an intermediate oilseed crop and corn are grown in the rotation, which crop should receive a GHG reduction for the conservation crop rotation practice?

6. USDA is considering the inclusion of additional Enhanced Efficiency Fertilizer (EEF) products, such as controlled release fertilizers, in the final rule. What data and research exist on the GHG impacts of EEF products when used on the crops defined in this rule?

7. USDA is considering the inclusion of plant biostimulant products in the final rule. There is no universally accepted definition of plant biostimulants in the United States. However, the 2018 Farm Bill directed USDA to submit a report on plant biostimulants to the President and Congress.[11] For the purposes of the report, the 2018 Farm Bill considered a plant biostimulant to be ''a substance or micro-organism that, when applied to seeds, plants, or the rhizosphere, stimulates natural processes to enhance or benefit nutrient uptake, nutrient efficiency, tolerance to abiotic stress, or crop quality and yield'' and allowed USDA to modify the definition, as appropriate.

a. What definition(s) of plant biostimulant products should USDA consider for the purpose of this rule?

b. Which biostimulant product categories should be considered for inclusion in the final rule?

c. What data and research exist on the GHG impacts of biostimulant products?

d. What implementation standards would be necessary to ensure a net GHG reduction from plant biostimulant products?

e. How can the appropriate use of plant biostimulant products be verified?

8. USDA is considering including ''reduced nitrogen application rate'' as a CSA practice in the final rule.

a. What implementation standards would be necessary to ensure a net GHG reduction from a ''reduced nitrogen application rate'' practice?

b. What records and information would be necessary to verify a ''reduced nitrogen application rate'' practice?

9. USDA recognizes that the practice implementation standards in this interim rule are different than requirements for some USDA programs (for example, the cover crop termination methods and timing in this rule are more specific than practices allowed under crop insurance). How might the guidelines included in this interim rule impact farmers' ability to participate in USDA policies and programs (for example, crop insurance)?

10. What refinements to the USDA FD–CIC tool should USDA consider?

11. Should USDA consider transitioning to a book-and-claim traceability approach? If so, how could USDA facilitate that transition?

12. USDA is requesting comment on potential improvements to the verification, recordkeeping, and reporting standards and whether the standards appropriately balance verification rigor with burden of implementation.

13. The Regulatory Impact Analysis (RIA) for this rule estimates the expected costs associated with this rule which are primarily attributable to costs to conform with recordkeeping and verification standards necessary to trace reduced-CI biofuel feedstock through the biofuel supply chain. These costs are estimated on a per entity basis (farm producer, first point aggregator, other intermediary entities, and biofuel refiner). The rule's primary benefits, which are described qualitatively in the RIA, are due to the efficiencies achieved through more standardized guidelines for quantification, recordkeeping, and verification of reduced-CI biofuel feedstocks through the supply chain this rule provides. USDA requests public comment, including any data or information, that will lead to a better understanding of this rule's costs and benefits.

Notice and Comment, Effective Date, and Exemptions

The promulgation of regulations to implement the programs of Chapter 58 of Title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs, are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment,
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35), and

[11] See USDA, *Report to the President of the United States and United States Congress on Plant Biostimulants Submitted by the United States Department of Agriculture (USDA) in Consultation with the Environmental Protection Agency (EPA) on December 20, 2019,* December 2019, *https://agriculture.house.gov/uploadedfiles/usda_report_on_plant_biostimulants_12.20.2019.pdf.*

• To use the authority in 5 U.S.C. 808 related to Congressional review and any potential delay in the effective date.

Per Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801—808), the Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria specified in 5 U.S.C. 804(2), so the Congressional Review Act's 60-day effective date delay requirement for rules does not apply. Even if this rule did meet the criteria specified in 5 U.S.C. 804(2), the 2018 Farm Bill directs the Secretary to use the authority in 5 U.S.C. 808 to specify this rule's effective date. Therefore, this rule is effective on the date of publication in the **Federal Register**.

In addition, this rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The Regulatory Flexibility Act generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because OCE is not required by the Administrative Procedure Act or any law to publish a proposed rule for this rule.

Executive Orders 12866, 13563, and 14904

Executive Order 12866 (as amended by Executive Order 14904), ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The analysis of costs and benefits of this rule is summarized below.

Regulatory Impact Analysis Summary

Section 2709 of the 2008 Farm Bill (16 U.S.C. 3845) directs the Secretary to establish technical guidelines that outline science-based methods to measure the environmental services benefits from conservation and land management activities to facilitate the participation of farmers, ranchers, and forest landowners in emerging environmental services markets. It also directs the Secretary to give priority to the establishment of guidelines related to farmer, rancher, and forest landowner participation in carbon markets. It further directs the Secretary to establish verification guidelines, including the role of third parties in conducting independent verification of benefits produced for environmental services markets and other functions.

Under these authorities, this rule facilitates recognition of crops grown with CSA practices in biofuel markets and provides farm producers with opportunities to market biofuel crops based on their lower net GHG emissions. It also provides standardized guidelines for entities in the biofuel supply chain (including first point aggregators, intermediary entities, and biofuel refiners) to quantify, verify, and trace reduced-CI feedstocks (that is, those crops grown with CSA practices) through the biofuel supply chain, from farm to biofuel refiner. The rule achieves these outcomes by providing quantification, recordkeeping, chain of custody, and verification standards that:

(1) decrease information asymmetries between biofuel supply chain entities with respect to the carbon intensity of biofuel feedstocks, and

(2) reduce transaction costs and increase efficiencies in existing systems that quantify, trace, and verify emissions benefits associated with biofuel feedstocks produced with CSA practices.

The Regulatory Impact Analysis estimates the expected costs of this rule quantitatively and discusses the expected benefits qualitatively.

To estimate the expected costs of the rule, USDA created a model that quantifies the total per entity annual costs (in hours and dollars) of quantification, recordkeeping, and verification processes conforming to the rule standards for each entity type in the biofuel supply chain including farm producers, first point aggregators, intermediary entities, and biofuel refiners. Model inputs were derived from multiple sources, including:

• USDA program office data on the hours required of producers to record and verify information about the adoption of conservation practices (including CSA practices in this rule) for existing USDA programs, such as the Environmental Quality Incentives Program;

• internal USDA data on the time costs (hours) associated with third party verification of reduced-CI feedstocks;

• Bureau of Labor Statistics wage rates applicable to labor used by each entity type to conduct quantification, recordkeeping or verification;

• latest USDA data on estimated acres and bushels of biofuel feedstock production with CSA practices; and

• annual volume throughput of biofuel feedstocks for each entity type in the biofuel supply chain calculated using internal USDA data and data from the U.S. Energy Information Agency.

Aggregate costs of the rule for all entities in the biofuel supply chain are not estimated in the RIA because they depend on the level of participation among biofuel supply entities in policies or programs that adopt the rule's standards. Additional details about the RIA assumptions, model inputs, methodology, and limitations are described in the RIA.

Summary of Costs and Benefits

Costs

The costs of this rule include costs associated with collection of information, the maintenance of such information in records, and the exchange of these records between entities in the biofuel supply chain. Under this rule's standards, information collection and the maintenance and exchange of records occurs between private entities. The federal government does not collect, maintain, or exchange any information or records as part of the rule standards. The regulatory impact analysis calculates the costs of this rule in burden hours and dollars on a per entity basis (for each entity type including farm producers, first point aggregators, intermediary entities, and biofuel refiners) and on a per bushel basis for each entity type.

USDA estimates of the per entity level of effort (LOE) per entity type (farm producers, first point aggregators, intermediary entities, and biofuel refiners) are summarized in Tables 1 and 2 below.

LOEs for farm producers are estimated to be between 5 to 7 hours per year and were scaled based on the number of CSA practices adopted which assumes that additional practices require additional recordkeeping time. The LOE estimates for producers are inclusive of quantification of carbon intensity of the crop and recordkeeping time costs. LOE

for farm producer audits is estimated separately because not all farm producers in a given year will be selected for auditing by a third-party verifier.

LOE for first point aggregators are estimated to be between 48 and 286 hours per entity per year, depending on the size (measured in throughout of biofuel feedstock) of the entity. The LOE estimates for First Point Aggregator verification does not include verification fees; these fees however are included in the per entity costs estimated, as summarized in Table 2.

LOE for intermediary entities is estimated to be 143 hours per entity per year. These LOE estimates also do not include any verification fees (see Table 2).

LOE for biofuel refiners is estimated to be 673 hours per entity per year. These LOE estimates also do not include any verification fees (those are included in Table 2).

TABLE 1—ESTIMATED LEVEL OF EFFORT (LOE) PER ENTITY PER YEAR

Category	LOE (hours per year)
Producers (1 CSA practice)	5
Producers (2 CSA practices)	6
Producers (3 CSA practices)	7
Producers (Audits only, if selected)*	8
First Point Aggregators (small)**	48
First Point Aggregators (medium)**	143
First Point Aggregators (large)**	286
Intermediary Entities**	143
Biofuel Refiners**	673

Notes:

**Farms selected for audits will have 8 extra hours of LOE. Not all farms are selected for audits in a given year.*

***LOE hours do not include verification fees.*

Table 2 summarizes the annual per entity costs (in 2023 dollars) per entity type. For farm producers, depending on the number of CSA practices adopted, the annual costs range from $380 to $490, which include costs associated with quantification of the carbon intensity of the crop and recordkeeping time costs and a lawyer fee for completing the farm attestation, with an addition $470 annually per entity in the event that a farm producer is audited. The verification and recordkeeping costs for First Point Aggregators is estimated to be between $3,400 to $19,400 per year per entity, depending on the size of the aggregator. These costs include any verification fees incurred for their audits and the audits of the farm producers. The verification and recordkeeping cost for intermediary entities are estimated to be $9,400 per entity per year. Finally, recordkeeping and verification costs for biofuel refiners are estimated to be $72,500 per entity per year.

TABLE 2—ESTIMATED COST PER ENTITY TYPE PER YEAR

[in 2023 dollars]

Category	Cost
Producer (1 practice)	$380
Producer (2 practices)	440
Producer (3 practices)	490
Producer Audits	470
First Point Aggregators (small)	3,400
First Point Aggregators (medium)	9,900
First Point Aggregators (large)	19,400
Intermediary Entities	9,400
Biofuel Refiners	72,500

Additional details about these estimates are described in the RIA.

While this RIA quantifies the paperwork burden associated with the rule, this rule's information collection requirements and associated burden hours (that is, level of effort estimates) are exempt from Paperwork Reduction Act of 1995 review and approval by the Office of Information Affairs within the Office of Management and Budget, as indicated by 16 U.S.C. 3846, as noted above.

Benefits

The benefits of this rule include the reduction in transaction costs and efficiency gains associated with the rule's framework for the quantification, reporting, and verification of reduced-CI biofuel feedstocks grown with CSA practices. USDA believes the framework specified in this rule provides a more standardized set of guidelines for the quantification, reporting, and verification of reduced-CI biofuel feedstocks grown with CSA practices. With this more standardized framework, USDA expects that the transaction costs incurred by entities for the quantification, reporting, and verification of reduced-CI feedstocks will be reduced. This standardization is expected to improve the efficiency of quantifying, reporting, tracing, and verifying reduced-CI feedstocks. USDA expects these improvements could facilitate participation in clean fuels policies and programs, should these policies and programs incorporate a reduced-CI for crops produced using CSA practices. Increased adoption of CSA practices in the production of biofuel feedstock crops will also generate environmental co-benefits such as improved water and air quality. Because insufficient data is available to quantify these benefits, the cost benefit analysis only qualitatively discusses them.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. Executive Order 14094 requires Federal agencies to increase and improve public participation in the regulatory process. The Executive Order's objective is to improve public trust in the regulatory process by reducing the risk or appearance of unequal or unfair influence in regulatory development. Under Executive Order 14904, agencies must, to the extent they can under law, seek out, assist with, and include public input in the regulatory process. We welcome comments from public (State, local, Tribal, and territorial) and private sector regulated entities; members of underserved communities; consumers; workers and labor organizations; businesses; and program beneficiaries, among others. In addition to substantive comments on this rule, we invite comments on how to make the rule easier to understand. For example:

- Are the standards in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

This rule qualifies as an activity under USDA categorical exclusion 7 CFR 1b.3(a)(6): ''Activities which are advisory and consultative to other agencies and public and private entities, such as legal counselling and representation.'' As such, it is excluded from the requirements of an environmental assessment or environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321–4347) and its implementing procedures. The rule contains voluntary technical guidance in the form of quantification, reporting, and verification standards that may or may not be adopted in future policies at various levels of government to incentivize the adoption of CSA practices for biofuel feedstock

production, or may or may not be adopted by proponents of potential future actions that require measurement of GHG emissions. Making voluntary technical guidance available to a variety of users is advisory and consultative in nature. The rule also qualifies as ''Educational and informational programs and activities'' under 7 CFR 1b.3(a)(4) because technical guidance is educational and informative in nature. The rule does not authorize or fund any policy or action. If the standard is used in any future federal actions, a project specific analysis may be warranted at that time.

The Office of Energy and Environmental Policy has found that there are no extraordinary circumstances indicating that further NEPA analysis would be necessary or informative in promulgating this technical assistance; nor has it found any extraordinary circumstances indicating that providing this voluntary technical guidance may have significant effects on the quality of the human environment, individually or cumulatively. The Office of Energy and Environmental Policy has determined, therefore, that the rule does not constitute a major Federal action that would significantly affect the quality of the human environment. This notice serves as the documentation of this determination.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This rule does not provide Federal financial assistance to State and local governments. Therefore, consultation is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR part 11 and 2100 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The agency has determined that the rule may have Tribal implications. Tribal consultation will occur simultaneously with the public comment period. Notice for Tribal consultation will be sent on January 17, 2025. Consultation will be held virtually and written comments will be received until 60 days from the publication of this interim rule.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

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List of Subjects in 7 CFR Part 2100

Alternative fuels, Agriculture, Environmental protection, Fuel economy, Greenhouse gases, Natural resources, Reporting and recordkeeping requirements.

■ For the reasons discussed above, and under the authority of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill (Pub. L. 110–246)), section 2709, (16 U.S.C. 3845), OCE amends title 7 of the CFR by adding Chapter XXI consisting of part 2100 to read as follows:

CHAPTER XXI—OFFICE OF ENERGY AND ENVIRONMENTAL POLICY, DEPARTMENT OF AGRICULTURE

PART 2100—Technical Guidelines for Climate-Smart Agriculture Crops Used as Biofuel Feedstocks

Subpart A—General Provisions

Sec.

2100.001 Purpose.
2100.002 Definitions.

Subpart B—Applicability

2100.010 Entities in the biofuel supply chain.
2100.011 Biofuel feedstock crops.
2100.012 CSA practices to produce CSA crops.

Subpart C—Quantification of Farm-level Crop-specific Carbon Intensity

2100.020 Quantification of CI.

Subpart D—Chain of Custody Standards

2100.030 General recordkeeping and reporting standards.
2100.031 Farm recordkeeping and reporting standards.
2100.032 First point of aggregation and intermediary entity recordkeeping and reporting standards.
2100.033 Additional recordkeeping standards for entities that process, sell, or purchase processed product derived from reduced-CI crops.
2100.034 Mass balance recordkeeping standards.
2100.035 Biofuel refiner recordkeeping standards.

Subpart E—Audits and Verification

2100.040 Third-party audits.
2100.041 Accreditation of third-party verifiers.

Subpart F—Climate-Smart Agriculture (CSA) Practice Standards

2100.050 General.
2100.051 Tillage management.
2100.052 Cover crop management.
2100.053 Nutrient management.

Authority: 16 U.S.C. 3845–3846.

Subpart A—General Provisions

§ 2100.001 Purpose.

The purpose of this rule is to establish technical guidelines for quantifying, reporting, and verifying the greenhouse gas (GHG) emissions associated with agricultural production of biofuel feedstock commodity crops grown in the United States.

§ 2100.002 Definitions.

Accreditation means a formal recognition by an authorized body that a third-party verifier operates according to a set of standards.

Agricultural expert means persons who are employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by Federal Crop Insurance Corporation, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Audit means a process for obtaining relevant information about an entity's practices or processes, recordkeeping, and management and evaluating it objectively.

Biofuel means a liquid or gaseous fuels and fuel blending components produced from biomass feedstock.

Biofuel feedstock crop means a crop that can be used as raw material for biofuel production.

Biofuel Feedstock Report means a report generated by a farm producer that includes documentation of carbon intensity calculations and the Farm Producer Attestation.

Biofuel refiner means an entity that refines biomass feedstocks into a biofuel.

Biomass means any organic material other than oil and natural gas (or any product thereof), and coal (including lignite) or any product thereof.

Carbon intensity (CI) means a measure of GHG performance reflecting the estimated quantity of GHG emissions associated with one unit of production. For biofuel feedstock crops, carbon intensity is expressed as grams of carbon dioxide equivalent (CO_2-eq) per bushel of produced crop (g CO_2-eq/bushel).

Climate-smart agriculture (CSA) crop means a crop that is produced with CSA practices according to subparts A through F of this part.

Climate-smart agriculture (CSA) practices means agricultural management, practices, systems, and technologies that have been demonstrated to generally reduce GHG emissions or increase soil carbon sequestration.

Conventional crop means a crop that is produced without the use of CSA practices according to this part.

Cover crop means grasses, legumes, and forbs planted for seasonal vegetative cover, and not intended for harvest, between harvested production crops in rotation.

Crop interval means the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, including fallow periods.

Crushing yield means a number representing the amount of oilseed produced from crushing one bushel of seed oil crop. Crushing yield is usually expressed in pounds per bushel (lbs/bu).

Farm means a business entity that produces (that is, grows and harvests) biofuel feedstock crops.

Farm producer means a person who is involved in making decisions for the farm operation. These decisions may include planting, harvesting, management, and marketing. The farm producer may be the owner, a member of the owner's household, a hired manager, a tenant, a renter, or a sharecropper. If a person rents land to others or has land worked on shares, they are considered the farm producer only for the land retained for their own operation.

Farm Producer Attestation means a document generated by the farm producer, who has operational control, that provides assurance that the farm producer followed standards in this part. The Farm Producer Attestation is included in the Biofuel Feedstock Report.

Feedstock means raw material that is converted into fuels and coproducts during the fuel production process.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries, such as fences, permanent waterways, woodlands, roads, croplines, or other similar features. In addition to a permanent, contiguous boundary, a field has common land cover and management.

First point of aggregation means the entity that purchases crops directly from the farm. Entities serving as the first point of aggregation distribute, trade, or further process these feedstocks.

Intensive tillage means a tillage operation that involves full width soil disturbance and multiple operations with implements such as moldboard, disk, or chisel plow. Intensive tillage does not meet the standards of reduced till or no-till in this part.

Intermediary entity means any entity in the biofuel supply chain that falls between the first point of aggregation and the biofuel refiner. Intermediary entities may include crushers, processors, storage facilities, or other entities.

Leguminous cover crop means a cover crop that fixes atmospheric nitrogen and are planted for seasonal vegetative cover, and not intended for harvest, between harvested production crops in rotation.

Management unit means field, group of fields, or other land units of the same land use and having similar treatment needs and planned management.

Mass balance system means a system in which materials or products with specified characteristics are mixed with materials or products without some or all of these characteristics, resulting in a claim on a part of the output, proportional to the input.

No-till means a practice that limits soil disturbance to manage the amount, orientation, and distribution of crop and plant residue on the soil surface year-round.

Nutrient management means the practice of managing the rate, source, placement, and timing of plant nutrients

and soil amendments to optimize their economic benefits while minimizing environmental impacts.

Operational control means authority possessed by the person who runs the farm, making day-to-day management decisions. A person with operational control could be an owner, hired manager, cash tenant, share tenant, or a partner. If land is rented or worked on shares, the tenant or renter has operational control.

Planting green means a system where a cover crop is left in place and a production crop is planted into the cover crop without prior termination.

Process means any mechanical operation that transforms the physical properties of a product. Processing includes extracting oil from seed oil crops (for example, soybeans).

Reduced-carbon intensity (reduced-CI) crop means a crop that is produced by a farm that employs CSA practices on some or all of the fields or management units used for that crop's production. A farm that does not employ any CSA practices does not have crop that is considered reduced-CI crop.

Reduced-carbon intensity processed product (Reduced-CI processed product means a product derived from reduced-CI crops.

Reduced till means the practice of managing the amount, orientation, and distribution of crop and other plant residue on the soil surface year-round while limiting soil-disturbing activities used to grow and harvest crops in systems where the field surface is tilled prior to planting.

Soil Tillage Intensity Rating (STIR) means a numerical value that measures the severity and type of soil disturbance caused by tillage operations. STIR values range from 0 to 200, with higher values indicating more soil disturbance. The STIR rating applies to the entire tillage system used in producing a crop. The components of the rating include tillage type, recommended equipment operating speed, recommended tillage depth, and surface area disturbed.

Third-party verifier means an accredited person or organization independent of the verified entity that performs a verification activity or audit.

Subpart B—Applicability

§ 2100.010 Entities in the biofuel supply chain.

The supply chain for feedstock crops used in biofuel production begins at a farm and ends at a biofuel refiner. Any entity within this supply chain that produces, processes, or takes ownership of reduced-CI crop or reduced-CI processed product must meet all applicable standards of this part. These entities include farms, first points of aggregation, intermediary entities, and biofuel refiners. If a biofuel refiner sources directly from a farm, the biofuel refiner is the first point of aggregation.

§ 2100.011 Biofuel feedstock crops.

Crops produced using one or more CSA practices, in accordance with subpart F of this part, are referred to as CSA crops. Crops produced without the use of CSA practices are referred to as conventional crops. A farm producer may produce both CSA crops and conventional crops. CSA crops and conventional crops can be physically mixed. Crops that are sold with an associated reduced-CI, as compared to the national average CI, are referred to as reduced-CI crops. Reduced-CI crops may be composed of solely CSA crops or a combination of CSA crops and conventional crops. If CSA crops and conventional crops are produced at the same farm, the commingled crop must have an associated CI that reflects the proportion of CSA crops, quantified in accordance with subpart C of this part. Crops for which a reduced-CI may be quantified include:

(a) Field corn;

(b) Soybeans; and

(c) Sorghum.

§ 2100.012 CSA practices to produce CSA crops.

CSA crops must be produced using one or more CSA practices:

(a) Field corn produced using no-till, reduced till, cover crops, nitrification inhibitors, split in-season nitrogen application, or no fall nitrogen application;

(b) Soybeans produced using no-till, reduced till, cover crops, or nitrification inhibitors; or

(c) Sorghum produced using no-till, reduced till, cover crops, nitrificiation inhibitors, or split in-season nitrogen application.

Subpart C—Quantification of Farm-level Crop-specific Carbon Intensity

§ 2100.020 Quantification of CI.

Any farm producing and selling reduced-CI crops must calculate a farm-level CI for each crop type (field corn, soybeans, or sorghum). The farm-level crop-specific CI represents the carbon emissions resulting from production of one bushel of that crop. The farm-level crop-specific CI applies to the year in which the crop was harvested, and the total amount of a crop harvested in a given year must be included in the calculation. Once a farm-level CI is calculated for a specific crop, the total amount of that crop is assigned the farm-level crop-specific CI and may be sold as reduced-CI crop. To calculate the farm-level CI for each crop:

(a) Farm producers must calculate the CI for each field or management unit on which CSA practice(s) were implemented, in accordance with subpart F of this part, using the U.S. Department of Agriculture (USDA) Feedstock Carbon Intensity Calculator (FD–CIC). This step must be repeated for every field or management unit producing CSA crops. To calculate a field or management unit-level CI in USDA FD–CIC, farm producers must input data on:

(1) farm location (county and state);

(2) crop type produced;

(3) crop yield;

(4) field or management unit acres;

(5) use of no-till or reduced till;

(6) use of a cover crop;

(7) timing of nitrogen fertilizer application; and

(8) nitrification inhibitor usage.

(b) For any conventional crop, farm producers must input crop and yield (excluding yield of crop produced using CSA practices) into USDA FD–CIC. USDA FD–CIC will assign these crops the default national value CI.

(c) USDA FD–CIC will use the farm producer inputs from paragraphs (a) and (b) of this section to calculate a weighted average, which is the farm-level crop-specific CI.

(d) Farm producers must repeat paragraphs (a) through (c) of this section for each crop type that is sold as reduced-CI.

Subpart D—Chain of Custody standards

§ 2100.030 General recordkeeping and reporting standards.

(a) The total amount of reduced-CI crop and associated CI must be maintained and tracked from the farm to the biofuel refiner using records and mass balance accounting.

(b) Crops with different CIs can be physically mixed at any entity along the supply-chain.

(c) Processed products derived from crops (for example, seed oils) can be produced using crops with different CIs.

(d) All entities specified in § 2100.010 must maintain required documentation for 5 years from when reduced-CI crops or processed products are sold, including documentation of previous verification activities and audits conducted as required by this part. Documentation must be readily available to accredited third-party verifiers and provided upon request during an audit.

§ 2100.031 Farm recordkeeping and reporting standards.

(a) Farm producers must keep records demonstrating implementation of the CSA practices used in calculation of a CI.

(1) For reduced till or no-till, see § 2100.051(c), titled Tillage management recordkeeping standards.

(2) For cover crops, see § 2100.052(b), titled Cover crop recordkeeping standards.

(3) For nutrient management, see § 2100.053(g), titled Nutrient management recordkeeping standards.

(b) Farm producers must keep records demonstrating all sales of crop as a reduced-CI crop. These records must indicate the total amount sold, the purchasing entity, and the date of the transaction.

(c) For each crop that is sold as a reduced-CI crop, farm producers must prepare and maintain a Biofuel Feedstock Report. Farm producers must provide the Biofuel Feedstock Report to any entity purchasing reduced-CI crop. The Biofuel Feedstock Report must:

(1) State the farm name, farm producer name, and farm location (county and state);

(2) Demonstrate the quantification of the farm-level crop-specific CI, including:

(i) Documentation of USDA FD–CIC calculation for each field or management unit (for example, screenshots or printouts from the USDA FD–CIC excel tool, or similar documentation showing USDA FD–CIC inputs and outputs including CI for each field or management unit) including a unique identifier for each field or management unit; and

(ii) Calculation of the farm-level crop-specific CI for each crop; and

(3) Include a Farm Producer Attestation declaring that the farm producer:

(i) Has operational control over all fields using CSA practices and has decision-making authority to manage fields as specified for practice standards in subpart F of this part;

(ii) Implemented CSA practice(s) that were used in calculation of the CI according to the implementation standards in subpart F of this part;

(iii) Calculated the farm-level CI as specified in subpart C of this part;

(iv) Will retain required records for 5 years and make records available upon request to accredited third-party verifier;

(v) Will not double sell greenhouse gas benefits resulting from CSA practice(s) that are used in calculation of the CI (that is, will not sell the CI information, attributes, or greenhouse gas benefits associated with CSA crops in more than one market);

(vi) When implementing no-till, will continue no-till for a minimum of four out of every five years; and

(vii) Did not convert the land used to produce CSA biofuel feedstock crops into crop production after the date that this rule was published.

§ 2100.032 First point of aggregation and intermediary entity recordkeeping and reporting standards.

(a) The first point of aggregation and intermediary entities must establish and maintain a reporting system to ensure a clear link between reduced-CI crops and documentation at all times. The first point of aggregation and intermediary entities must have a documented system in place to prevent the double sale of crops associated with a CI. At minimum, the entity must keep:

(1) Records of incoming and outgoing reduced-CI crop, including:

(i) the total amount of reduced-CI crop purchased, sold, or both;

(ii) the entity from and to which the crop was purchased, sold, or both;

(iii) the associated CI; and

(iv) the date of the transaction;

(2) List of and contracts with all suppliers and recipients of reduced-CI crop; and

(3) List of and contracts with subcontractors and service providers who have a direct role in data management, accounting, processing, or other activities that involve the receipt, storage, sale, or tracking of reduced-CI crop.

(b) In addition to the standards in paragraph (a) of this chapter, the first point of aggregation and intermediary entities must maintain some documentation from the previous entity in the supply chain:

(1) The first point of aggregation must maintain the Biofuel Feedstock Report from each farm supplying reduced-CI crops; and

(2) Intermediary entities must maintain documentation showing that entities supplying reduced-CI crops or reduced-CI processed products received accredited third-party verification under this part.

(c) When a first point of aggregation or intermediary entity sells reduced-CI crops or reduced-CI processed products, the entity must provide the following documentation to the purchasing entity:

(1) documentation that the selling entity received third-party verification in accordance with this part;

(2) total amount of reduced-CI crop or reduced-CI processed product sold; and

(3) CI(s) associated with the amount of reduced-CI crop or reduced-CI processed product sold.

§ 2100.033 Additional recordkeeping standards for entities that process reduced-CI crops, or sell or purchase reduced-CI processed product.

(a) Any entity that processes product using reduced-CI crops is subject to additional recordkeeping standards. Processing includes extracting oil from seed oil crops (for example, soybeans). Entities that process reduced-CI crops must:

(1) Keep records on processing of reduced-CI crops, including the entity's crushing yield, the amount of reduced-CI crop used in processing, and the corresponding amount of reduced-CI processed product; and

(2) Demonstrate calculation of the amount of reduced-CI processed product corresponding to the amount of reduced-CI crop, using the entity specific crushing yield and the following equation:

$$\text{reduced CI processed product} = \text{crushing yield} \times \text{reduced CI crop}$$

(b) Any entity that sells or purchases reduced-CI processed product must keep records demonstrating:

(1) The amount of reduced-CI crop used as an input for reduced-CI processed product sold or purchased;

(2) The CI associated with reduced-CI crop used as an input for reduced-CI processed product sold or purchased; and

(3) The amount of reduced-CI processed product sold or purchased.

§ 2100.034 Mass balance recordkeeping standards.

(a) First points of aggregation and intermediary entities must calculate and record the mass balance of incoming and outgoing reduced-CI crops, such that the incoming and outcoming amounts of reduced-CI crops with a specific CI are equal over a defined period of time. If an entity processes, purchases, or sells reduced-CI processed product, the mass balance accounting must document the amount of reduced-CI crop that was used in the reduced-CI processed product.

(b) To complete mass balance calculations, entities must define mass balance time periods such that mass balance time periods are continuous (that is, no gaps between mass balance periods occur). Each mass balance time period may not exceed three months. Entities must document the mass balance time period used for the mass balance calculation.

(c) Entities must provide documentation of the mass balance calculation for each time period to the third-party verifier during audits.

(d) For any given CI, records must indicate that incoming and outgoing

crops and processed products are balanced according to the equation:

incoming feedstock$_{i,c,m}$ + beginning stored feedstock $_{i,c,m}$ = outgoing feedstock$_{i,c,m}$ + ending stored feedstock $_{i,c,m}$

(1) Where feedstocks (incoming, stored, and outgoing) for entity *i* are identified by their carbon intensity, *c,* and the pre-defined mass balance accounting time period, *m.*

(i) Incoming feedstocks include those purchased by entity *i* in time period *m.*

(ii) Outgoing feedstocks must include both sold and discarded or wasted feedstocks in time period *m.*

(iii) Stored feedstocks are those maintained by the entity during time period *m* and must be accounted for in the mass balance accounting.

(iv) If reduced-CI crops or processed product is remaining at the end of a mass balance time period *m,* it is accounted for as ending stored feedstock for that time period and as beginning stored feedstock for the subsequent time period.

(2) To ensure that the mass balance accounting for entity *i* appropriately accounts for different forms of reduced-CI processed products (that is, oils), the entity's crushing yield must be used to convert reduced-CI processed products back to their crop volume or weight equivalents using the following equation:

processed feedstock crop equivalent = (processed feedstock)/(crushing yield)

§ 2100.035 Biofuel refiner recordkeeping standards.

(a) For reduced-CI crop that a biofuel refiner sources directly from a farm, the biofuel refiner is acting as a first point of aggregation and must follow the standards in § 2100.032.

(b) For reduced-CI crops and reduced-CI processed products that are sourced from a first point of aggregation or intermediary entity, a biofuel refiner must keep:

(1) Records of incoming reduced-CI crops or reduced-CI processed products, which, at a minimum this includes records of incoming reduced-CI crop or reduced-CI processed products, including the total amount of reduced-CI crop or reduced-CI processed product purchased, the entity from which the crop or processed product was purchased, the associated CI, and the date of the transaction; and

(2) Documentation that the entity supplying reduced-CI crop or reduced-CI processed product has undergone third-party verification by an accredited third-party verifier and met the standards of this part.

(c) For all reduced-CI crops, a biofuel refiner must establish a system to track all incoming reduced-CI crops and the associated CI.

Subpart E—Audits and Verification

§ 2100.040 Third-party audits.

(a) *Audit standards for first point of aggregation.* Each audit for a first point of aggregation must meet the following standards.

(1) First points of aggregation must hire a third-party verifier to conduct an audit annually;

(2) An audit, conducted by a third-party verifier, must verify that the first point of aggregation:

(i) Operates a mass balance system as specified in § 2100.034; and

(ii) Correctly recorded the CI associated with reduced-CI crops delivered from each farm; and

(3) The first point of aggregation must include supplying farms in its audit scope. The first point of aggregation and third-party verifier must adhere to the following standards when selecting the audit sample.

(i) The first point of aggregation must provide farm producer information to enable the third-party verifier to select a sample of supplying farms for verification. Farm producer information must include the total number of farms supplying reduced-CI crops, geographic location of each farm, type and amount of crop supplied by each farm, and CI associated with the crop from each farm;

(ii) The third-party verifier will determine the total number of farms to be included in the audit sample. The third-party verifier must determine the minimum size of the farm audit sample by taking the square root, rounded up to the nearest whole number, of the total number of farms supplying the first aggregation point with reduced-CI crops; and

(iii) The third-party verifier must select the individual farms to be included in the sample for verification. The third-party verifier should select the sample in a way that is representative of supplying farms' characteristics including types of supplied reduced-CI crop, size of farm, geographic location, and risk of non-conformity or fraud. If an audit occurs at the same first aggregation point in subsequent years, the sample of farms should avoid selecting those audited in prior years.

(b) *Audit standards for farms.* Each audit for a farm must meet the following standards.

(1) Farms that supply reduced-CI crops to a first point of aggregation may be selected for an audit by the first point of aggregation's third-party verifier;

(2) If the farm is selected as part of the audit sample as the first point of aggregation, the farm may be considered for exemption from an additional audit when an audit was previously completed for the applicable year. Farm producers can elect to proactively retain an accredited third-party verifier to complete an audit at their farm per the standards of paragraph (b)(3) of this section. To be considered for exemption from an additional audit, the farm producer must provide results of the completed audit. It is up to the discretion of the third-party verifier to determine whether the farm is exempt from an additional audit or if a full or partial audit is necessary; and

(3) For farms that are audited individually or included in an audit sample:

(i) The third-party verifier must verify that CSA practices and practice recordkeeping is in accordance with the standards in subpart F of this part;

(ii) The third-party verifier must verify that the weighted average CI for each crop is calculated correctly in accordance with subpart C; and

(iii) Records from relevant sub-contractors or service providers must be made available during the farm audit at the request of the third-party verifier if necessary to audit practice standards.

(c) *Audit standards for intermediary entities.* Each audit for an intermediary entity must meet the following standards.

(1) Intermediary entities must hire a third-party verifier to conduct an audit annually; and

(2) An audit, conducted by a third-party verifier, must verify that the intermediary entity:

(i) Operates a mass balance system as specified in § 2100.034; and

(ii) Correctly recorded the CI associated with reduced-CI crops or reduced-CI processed product delivered to the intermediary entity.

(d) *Additional audit standards for entities that process, sell, or purchase reduced-CI processed product.* Each audit for a first point of aggregation or intermediary entity that processes, sells, or purchases reduced-CI processed products must meet the following standards.

(1) For entities that process, sell, or purchase reduced-CI processed products, an audit, conducted by a third-party verifier, must verify that the entity implemented recordkeeping standards specified in § 2100.033.

(2) [Reserved]

(e) *Additional audit standards for entities that process reduced-CI crop.* Each audit for a first point of aggregation or intermediary entity that

processes reduced-CI processed products must meet the following standards.

(1) For entities that process reduced-CI crop, the third-party verifier must verify that internal records support the calculation and application of the entity's crushing yield used to:

(i) Determine the amount of reduced-CI processed product derived from the amount of inputs; and

(ii) Perform the mass balance calculation.

(2) [Reserved]

(f) *Audit standards for biofuel refiners.* Each audit for a biofuel refiner must meet the following standards.

(1) Biofuel refiners must hire a third-party verifier to conduct an audit annually; and

(2) An audit, conducted by a third-party verifier, must verify that the biofuel refiner:

(i) Operates a system to correctly record the CI associated with reduced-CI crop or reduced-CI processed product as specified in § 2100.035(c); and

(ii) Followed the standards in paragraph (a) of this section, if the biofuel refiner acted as a first point of aggregation for any reduced-CI crop.

§ 2100.041 Accreditation of third-party verifiers.

Third-party verifiers that conduct audits in accordance with this part must be accredited to ISO 14065: General principles and requirements for bodies validating and verifying environmental information by a member of the International Accreditation Forum.

Subpart F—Climate-Smart Agriculture (CSA) Practice Standards

§ 2100.050 General.

CSA practices may be implemented individually or in combination on a field or management unit.

§ 2100.051 Tillage management.

(a) *Reduced till standards.* To qualify as reduced till under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Tillage methods where the entire soil surface is disturbed by tillage operations such as chisel plowing, field cultivating, tandem disking, vertical tillage, or ridge tillage are permitted, provided that the STIR value is no greater than 80. The STIR value must include all field operations that are performed during the crop interval (that is, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, including fallow periods). Permitted methods are also commonly referred to as mulch tillage, conservation tillage, or ridge till;

(2) Primary inversion tillage implements (for example, moldboard plow) must not be used;

(3) Residue must not be burned; and

(4) Removing residue from the crop planting row area prior to or as part of the planting operation is allowed.

(b) *No-till standards.* To qualify as no-till under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Full-width soil disturbance must not be performed, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, regardless of the depth of the tillage operation. Strip tillage and fertilizer injection are permitted, provided that the STIR value is no greater than 20. The STIR value must include all field operations that are performed during the crop interval (that is, from the time immediately following harvest or termination of one cash crop through harvest or termination of the next cash crop in the rotation, including fallow periods);

(2) Residue must not be burned; and

(3) Removing residue from directly within the seeding, planting, or transplanting area prior to or as part of the planting operation is allowed.

(c) *Tillage management recordkeeping standards.* Farm producers must maintain records for 5 years demonstrating required implementation of the reduced till or no-till practice. Records must contain sufficient detail to be readily understood and auditable. Records may be of varying types and origins including, but not limited to, physical documentation (for example, paper forms, invoices, receipts, seed tags), digital files (including from farm management software), data generated by farm equipment (for example, precision agriculture equipment), remotely sensed data, georeferenced and timestamped photographs, or data and records used for participation in USDA programs. Records must demonstrate:

(1) Field(s) or management unit(s) where the practice is implemented, including location and acreage;

(2) All field operations including tillage and all other operations (including fertilizing, planting, controlling pests, seeding, harvesting) that may cause surface disturbance;

(3) Type of field operation including depth and width of disturbance and average speed of operation;

(4) Equipment used;

(5) Date(s) that each operation occurred; and

(6) Total bushels of the harvested production crop harvested from field(s) or management unit(s) where the practice was implemented. If the farm producer uses both reduced till and no-till on different fields, records must indicate the total bushels produced using each CSA practice.

(d) *Tillage management verification.* When auditing the reduced till or no-till practice, third-party verifiers must review documentation demonstrating all field operations including the type of operation, equipment used, and timing of operation. Using these records, third-party verifiers must verify the correct calculation (or perform the calculation) of a crop interval STIR value and verify that the value meets the standards of the reduced till or no-till practice.

§ 2100.052 Cover crop management.

(a) *Cover crop standards.* To qualify for the cover crop practice under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Cover crop species selection, seedbed preparation, seeding rate(s), seeding date, seeding depth, and seeding method must be consistent with applicable soil and site conditions;

(2) When a leguminous cover crop is used individually or as part of a mix, the farm producer must develop a nutrient budget which demonstrates:

(i) The available nitrogen resulting from the cover crop; and

(ii) An adjustment in total planned nitrogen application to the harvested production crop following the cover crop;

(3) Cover crops must be seeded in the fall. Cover crop may be interseeded into an existing or established crop. Cover crop species and seeding dates should not adversely affect crop yield or interfere with the maintenance and harvest process;

(4) Cover crops should be seeded as early as possible and terminated as late as practical (late vegetative stage or later), with termination timing established to minimize the risk of yield loss and soil moisture depletion;

(5) Cover crops must be terminated via winter kill or using herbicide or non-soil disturbing mechanical methods (that is, roller crimper, mowing) in the spring;

(6) Planting green is permitted;

(7) Cover crop biomass must not be mechanically harvested or grazed. Residues must remain on the surface following termination and may not be burned; and

(8) Cover crops may not be fertilized.

(b) *Cover crop recordkeeping standards.* Farm producers must

maintain records for 5 years demonstrating required implementation of the cover crop practice. Records must contain sufficient detail to be readily understood and auditable. Records may be of varying types and origins including, but not limited to, physical documentation (for example, paper forms, invoices, receipts, seed tags), digital files (including from farm management software), data generated by farm equipment (for example, precision agriculture equipment), remotely sensed data, georeferenced and timestamped photographs, or data and records used for participation in USDA programs. Records must demonstrate:

(1) Purchase and receipt of cover crop seed in sufficient quantities to cover the area seeded;

(2) Field(s) or management unit(s) where cover crop practice is implemented, including location and acreage;

(3) Cover crop seeding date, method, and seeding rate;

(4) Total acreage seeded in cover crop across the operation;

(5) Photographic evidence of cover crop establishment;

(6) Cover crop termination date and method; and

(7) Total bushels of the crop harvested from field(s) or management unit(s) where the cover crop practice was implemented immediately prior to seeding or planting the harvested production crop.

(c) *Cover crop verification.* When auditing the cover crop practice, third-party verifiers must review documentation demonstrating cover crop species selection, seeding date, seeding method, seeding rate, total seeded acreage, termination date, and termination method. Through an on-site visit, remote video conferencing, remote sensing data, or georeferenced and timestamped photographs, third-party verifiers must verify the establishment of cover crops.

§ 2100.053 Nutrient management.

(a) *Nutrient management standards.* To qualify for any nutrient management practice (nitrification inhibitors, controlled release fertilizers, no fall application, split in-season application) under this part, field(s) or management unit(s) must be managed according to the following standards:

(1) Prior to implementation, the farm producer must develop and document a planned nutrient budget, yield goal, and applications of at a minimum, nitrogen, phosphorous, and potassium (N–P–K) in pounds per acre. The nutrient budget must account for all known measurable nutrient sources and removals. Sources of nitrogen may include, but are not limited to, commercial fertilizers (including starter and in-furrow starter or pop-up fertilizer), animal manures, legume crops, green manures, plant or crop residues, compost, organic by-products, municipal and industrial biosolids, wastewater, organic materials, estimated plant available soil nutrients, and irrigation water; and

(2) The farm producer must base the nutrient budget on current soil test results or the professional opinion of an agricultural expert who is employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by the Federal Crop Insurance Corporation (FCIC), whose research or occupation is related to the specific crop or practice for which such expertise is sought. Soil test must be no older than 2 years. Tissue testing may be used for monitoring or adjusting the nutrient management plan in accordance with the state LGU guidance, or industry practice recognized by the state LGU.

(b) *Nitrification inhibitor standards.* To qualify for the practice under this part, field(s) or management unit(s) must be managed in accordance with paragraph (a) of this section and with the following standards:

(1) The farm producer must apply an inhibitor with all synthetic nitrogen (synthetic N) applications, including any pre-emergent applications. Inhibitors must be defined by the Association of American Plant Food Control Officers (AAPFCO) and be accepted for use by the State fertilizer control official, or similar authority, with responsibility for verification of product guarantees, ingredients (by AAPFCO definition), and label claims.

(2) [Reserved]

(c) *No fall application standards.* To qualify for the no fall application practice under this part, field(s) or management unit(s) must be managed as specified in paragraph (a) of this section and with the following standards:

(1) The first synthetic N application must occur within 30 days prior to or at the time of planting; and

(2) The farm producer must not apply synthetic N in the fall on fallow fields or fields in cover crop. This includes any synthetic N included in phosphorus fertilizers.

(d) *Split in-season application standards.* To qualify for the split in-season application practice under this part, field(s) or management unit(s) must be managed accordingly in accordance with paragraph (a) of this section and with the following standards:

(1) Farm Producer must apply at least 75 percent of total crop synthetic N needs after crop emergence. Post emergent synthetic N may be reduced based on crop scouting, in-season soil sampling or analysis, or plant tissue sampling or analysis. Nutrient availability should be timed to crop uptake.

(2) [Reserved]

(e) *Nutrient management recordkeeping standards.* Farm producers must maintain records demonstrating correct implementation of the nutrient management practice(s) for 5 years. Records must contain sufficient detail to be readily understood and auditable. Records may be of varying types and origins, including, but not limited to, physical documentation (for example, paper forms, invoices, receipts, seed tags), digital files (including from farm management software), data generated by farm equipment (for example, precision agriculture equipment), remotely sensed data, georeferenced and timestamped photographs, or data and records used for participation in USDA programs. Records must demonstrate:

(1) Development of a nutrient budget that accounts for realistic yield goal and all known and measurable sources of N–P–K;

(2) Soil test results, soil test methods, laboratory where soil test was conducted, and date of the soil test within 2 years of the development of the nutrient budget. In-season soil samples or tissue samples results for N analysis should be provided along with methods, laboratory, and date sampled;

(3) Date(s), method(s), location(s) of all nutrient applications in pounds per acre for N–P–K;

(4) The source and type of nutrients supplied, including nutrient content;

(5) Field(s) or management unit(s) where nutrient management practice(s) is implemented, including location and acreage;

(6) Planting or seeding date for field(s) and management unit(s) where nutrient management practice(s) is implemented;

(7) Total acreage using each nutrient management practice across the operation; and

(8) Total bushels of the crop harvested from field(s) or management unit(s) where each nutrient management practice was implemented.

(f) *Nutrient management verification.* When auditing nutrient management practice(s), the third-party verifier must verify development of a nutrient management budget that accounts for all known and measurable sources of nutrients (that is, N–P–K). For nitrification inhibitors, the third-party

verifier must verify that inhibitors were used with 100 percent of synthetic N application on all field(s) or management unit(s) where the practice was implemented. For timing practices (no fall application or split in-season application), the third-party verifier must verify application timing through management records.

William Hohenstein,

Director, Office of Energy and Environmental Policy, Office of the Chief Economist.

[FR Doc. 2025–00975 Filed 1–16–25; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 106

[CIS No. 2801–25; DHS Docket No. USCIS 2021–0010]

RIN 1615–AC68

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Second Correction

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Correcting amendment.

SUMMARY: On January 31, 2024, the Department of Homeland Security (DHS) published a final rule to adjust certain immigration and naturalization benefit request fees charged by USCIS, add fee exemptions, and make changes to certain other immigration benefit request requirements. The rule took effect on April 1, 2024. In this notice, we are correcting a technical error made in that rule.

DATES: This correcting amendment is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Carol Cribbs, Deputy Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Dr., Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2024, the Department of Homeland Security (DHS) published a final rule in the **Federal Register** at 89 FR 6194 changing immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS), fee exemptions and fee waiver requirements, premium processing time limits, and intercountry adoption processing. DHS published a correction to the final rule at 89 FR 20101 on March 24, 2024. DHS has identified an error in the regulatory text.

Need for Correction

As codified by DHS in the final rule, 8 CFR 106.3(a)(3)(ii)(A) erroneously associates the E–2C classification with Form I–129CW. Petitioners for E–2C classification do not submit Form I–129CW. Form I–129CW petitioners may request a fee waiver when petitioning for a CW–1, CNMI-only transitional worker (see 8 CFR 214.2(w)), but the fee waiver provision as codified does not include a CW–1, CNMI-only transitional worker. Therefore, this notice corrects that error by removing ''E–2 CNMI investor'' and replacing it with ''CW–1, CNMI-only transitional worker'' in the first sentence of 8 CFR 106.3(a)(3)(ii)(A) to include the correct nonimmigrant classification. DHS is correcting the second sentence of 8 CFR 106.3(a)(3)(ii)(A) by removing ''a E–2 CNMI investor'' and replacing it with ''an employer petitioning for a CW–1, CNMI-only transitional worker,'' to clarify that the employer petitioning for a CW–1, CNMI-only transitional worker must pay any fees in 8 CFR 106.2(c) that may apply, not an E–2 CNMI investor.

List of Subjects in 8 CFR Part 106

Citizenship and naturalization, Fees, Immigration.

Correction

Accordingly, for the reasons set out in the preamble, chapter I of title 8 of the Code of Federal Regulations is corrected by making the following correcting amendment:

PART 106—USCIS FEE SCHEDULE

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; Pub. L. 107–609; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 note); Pub. L. 115–218, 132 Stat. 1547; Pub. L. 116–159, 134 Stat. 709.

■ 2. Section 106.3 is amended by revising paragraph (a)(3)(ii)(A) to read as follows:

§ 106.3 Fee waivers and exemptions.

(a) * * *

(3) * * *

(ii) * * *

(A) Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I–129CW) for a CW–1, CNMI-only transitional worker. Waiver of the fee for Form I–129CW does not waive the requirement for an employer petitioning for a CW–1, CNMI-only transitional worker to pay any fees in § 106.2(c) that may apply.

* * * * *

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

[FR Doc. 2025–01386 Filed 1–16–25; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2024–BT–TP–0009]

RIN 1904–AF68

Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers and Consumer Clothes Dryers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Department of Energy (''DOE'') is amending the test procedures for residential and commercial clothes washers and consumer clothes dryers to update the test cloth specifications. DOE is also reorganizing the test procedures for improved readability. DOE is conducting this rulemaking to address specific issues and to make minor corrections to the current test procedures. This rulemaking does not satisfy the statutory requirement that, at least once every 7 years, DOE review the test procedures for clothes washers and consumer clothes dryers.

DATES: The effective date of this rule is February 18, 2025. The amendments will be mandatory for product testing starting July 16, 2025. The incorporation by reference of certain material listed in the rule was approved by the Director of the Federal Register as of July 1, 2022.

ADDRESSES: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2024-BT-TP-0009*. The docket web page contains instructions on how

to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Uchechukwu ''Emeka'' Eze, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–4798. Email: *uchechukwu.eze@hq.doe.gov.*

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I. Authority and Background

Consumer (residential) clothes washers (''RCWs''), commercial clothes washers (''CCWs''), and consumer clothes dryers are included in the list of ''covered products/equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(7)–(8); 42 U.S.C. 6311(1)(H)) DOE's test procedures for RCWs are currently prescribed in the Code of Federal Regulations (''CFR'') at 10 CFR 430.23(j) and at 10 CFR part 430, subpart B, appendices J (''appendix J'') and J2 (''appendix J2''). The test procedures for CCWs must be the same as those established for RCWs. (42 U.S.C. 6314(a)(8)) DOE's test procedures for consumer clothes dryers are currently prescribed at 10 CFR 430.23(d) and at 10 CFR part 430, subpart B, appendices D1 (''appendix D1'') and D2 (''appendix D2''). DOE also prescribes specifications for the test cloth to be used for testing clothes washers at appendix J3 to subpart B (''appendix J3''). The following sections discuss DOE's authority to establish and amend test procedures for RCWs, CCWs, and consumer clothes dryers and relevant background information regarding DOE's consideration of test procedures for these products.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include RCWs and consumer clothes dryers. (42 U.S.C. 6292(a)(7)–(8)) Title III, Part C of EPCA,[3] added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CCWs. (42 U.S.C. 6311(1)(H)) RCWs, CCWs, and consumer clothes dryers are the subject of this document.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291; 42 U.S.C. 6311), test procedures (42 U.S.C. 6293; 42 U.S.C. 6314), labeling provisions (42 U.S.C. 6294; 42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6295; 42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6296; 42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered products/equipment must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s); 42 U.S.C. 6316(a)), and (2) making other representations about the efficiency of those products/equipment (42 U.S.C. 6293(c); 42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a)).

Federal energy efficiency requirements for covered products and equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297; 42 U.S.C. 6316(a) and (b)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d); 42 U.S.C. 6316(a)).

Under 42 U.S.C. 6293 and 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products/equipment. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)).

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product and equipment, including RCWs, CCWs and consumer clothes dryers, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A); 6314(a)(1)).

If the Secretary determines, on his or her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)).[4] If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)(i)–(ii)) [5] If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (IEC) Standard 62301 [6] and IEC Standard 62087 [7] as applicable. (42 U.S.C. 6295(gg)(2)(A)).

EPCA requires the test procedures for CCWs to be the same as the test procedures established for RCWs. (42 U.S.C. 6314(a)(8)) As with the test procedures for RCWs, EPCA requires that DOE evaluate, at least once every 7 years, the test procedures for CCWs to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)).

DOE is publishing this final rule to address specific issues and to make minor corrections to the current test procedures that are required for certification of compliance with applicable energy conservation standards. As DOE has not conducted a comprehensive review of the current test procedures, this rulemaking does not satisfy the EPCA requirement that, at least once every 7 years, DOE review the test procedures for RCWs, CCWs, and consumer clothes dryers. (42 U.S.C. 6293(b)(1)(A); 6314(a)(1)(A)).

B. Background

As discussed, DOE's existing test procedures for clothes washers are prescribed at appendix J and appendix J2,[8] and DOE's existing test procedures for consumer clothes dryers are prescribed at appendix D1 and appendix D2.[9]

Additionally, DOE's existing test procedure at appendix J3 provides specifications for the test cloth to be used for testing clothes washers; procedures for pre-conditioning new test cloth; procedures for verifying that new lots [10] of test cloth meet the defined material specifications; and procedures for developing a set of correction coefficients that correlate the measured remaining moisture content (''RMC'') values of each new test cloth lot with a set of standard RMC values established as a historical reference point. These correction coefficients are applied to the RMC measurements performed during testing according to appendix J or appendix J2, ensuring consistency in the final corrected RMC measurement across different test cloth lots used for testing.

Although the test cloth specifications and qualification procedures in appendix J3 are nominally applicable to clothes washer testing, DOE understands that manufacturers and test laboratories use the same test cloth for testing clothes dryers as well. As discussed further in section III.B of this document, the test cloth specifications for clothes washer testing and clothes dryer testing have historically been aligned. Furthermore, as discussed further in section III.D.3 of this document, test cloth that satisfies the requirements of appendix J3 for clothes washer testing also satisfies the requirements codified in appendices D1 and D2 for clothes dryer testing.

The Association of Home Appliance Manufacturers (''AHAM'') has established a Test Cloth Task Force (''AHAM task force'') that, among other responsibilities, reviews and recommends new lots of test cloth for industry use; identifies and secures suppliers for manufacturing test cloth; conducts research and investigations to recommend continuous improvements to the test cloth specifications and qualification procedures; and addresses any industry-wide concerns that may arise regarding the test cloth. DOE representatives participate in the AHAM task force.

On May 31, 2024, DOE received a letter from AHAM (''May 2024 AHAM Letter'') urging DOE to allow the use of alternate test cloth material for clothes washer and clothes dryer testing.[11] The May 2024 AHAM Letter also made further requests for DOE to amend certain test cloth specifications based on

[4] For commercial equipment, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)).

[5] EPCA does not contain an analogous provision for commercial equipment.

[6] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[7] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

[8] Manufacturers must use the results of testing under appendix J2 to determine compliance with the current relevant standards for RCWs at 10 CFR 430.32(g)(1) and for CCWs at 10 CFR 431.156(b). Manufacturers must use the results of testing under appendix J to determine compliance with the relevant standards for RCWs manufactured on or after March 1, 2028, specified at 10 CFR 430.32(g)(2) and with any amended standards for CCWs provided in 10 CFR 431.156 that are published after January 1, 2022.

[9] The test procedures in appendix D1 or appendix D2 must be used to determine compliance with the current relevant standards for consumer clothes dryers at 10 CFR 430.32(h)(3). Manufacturers must use the test procedure in appendix D2 to determine compliance with the relevant standards for consumer clothes dryers manufactured on or after March 1, 2028, specified at 10 CFR 430.32(h)(4).

[10] The term ''lot'' refers to a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process. Section 2 of appendix J3.

[11] Document available at *www.regulations.gov/document/EERE-2024-BT-TP-0009-0001*.

the results of recent investigations by the AHAM task force. (*Id.*)

DOE published a notice of proposed rulemaking (''NOPR'') on November 5, 2024 (''November 2024 NOPR''), presenting DOE's proposals to amend the test procedures for residential and commercial clothes washers and consumer clothes dryers to update the test cloth specifications. 89 FR 87803.

DOE received comments in response to the November 2024 NOPR from the interested parties listed in Table I.1.[12]

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE NOVEMBER 2024 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Michael Ravnitzky	Ravnitzky	5	Individual.
Anonymous	Anonymous	6	Individual.
Northwest Energy Efficiency Alliance	NEEA	8	Advocacy Organization.
Association of Home Appliance Manufacturers	AHAM	10	Trade Organization.

Ravnitzky, NEEA, and AHAM submitted comments generally supportive of DOE's proposals in the November 2024 NOPR. (Ravnitzky, No. 5 at p. 1; NEEA, No. 8 at pp. 1–2; AHAM, No. 10 at p. 1) An anonymous commenter expressed support for test cloth specifications in order to achieve results that identify the most efficient clothes washers. (Anonymous, No 6 at p. 1) Comments from these stakeholders regarding specific topics addressed in the November 2024 NOPR are discussed in the relevant sections of this document.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[13]

C. Deviation From Process Rule

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''Process Rule''), DOE noted in the November 2024 NOPR that it was deviating from section 8(b)(2) of the Process Rule, which states that there will be not less than 60 days for public comment on the NOPR, with at least one public hearing or workshop. As stated in the November 2024 NOPR, DOE found it appropriate to forgo a public hearing given the limited scope of issues addressed in the proposal, but also stated that DOE would hold a public meeting on the November 2024 NOPR if one was requested. DOE did not receive any comments requesting a public meeting. DOE also determined in the November 2024 NOPR that 30 days was an appropriate period for providing comments, given the limited scope of issues addressed in the proposal. 89 FR 87803, 87806.

II. Synopsis of the Final Rule

In this final rule, DOE amends its test cloth specifications as follows:

(1) Specify that fabric weight and thread count must be measured on finished goods prior to pre-conditioning,

(2) Clarify that the test cloth be made with a ''granite,'' ''momie,'' or ''crepe'' weave,

(3) Allow the use of an alternate test cloth,

(4) Amend the statistical criteria for a new test cloth lot to be considered acceptable for use,

(5) Restructure and renumber certain sections of appendix J3 for clarity, and

(6) Harmonize the test cloth specifications for clothes washers and clothes dryers.

The adopted amendments are summarized in Table II.1 compared to the test procedure provisions prior to the amendments, as well as the reason for the adopted changes.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
Does not specify at which stage of the process the fabric weight and thread count of test cloth are applicable.	Specifies that fabric weight and thread count must be measured on finished goods prior to pre-conditioning.	Industry request; improve reproducibility of test results.
Specifies the use of ''granite or momie'' weave.	Specifies the use of ''granite, momie, or crepe'' weave	Industry request; clarification of existing requirement.
Specifies one type of allowable test cloth.	Specifies two types of allowable test cloth	Industry request; reduce test burden while maintaining reproducibility and representativeness.
Specifies that the coefficient of variation across nine RMC values must be less than or equal to 1 percent.	Specifies that the coefficient of variation across nine RMC values must be less than or equal to 1.5 percent.	Reduce test burden while maintaining reproducibility and representativeness.
Specifies that the P-value of the RMC correction curve must be greater than or equal to 0.1.	Specifies that the root-mean-square error of the RMC correction curve must be less than or equal to 0.012.	Reduce test burden while maintaining reproducibility and representativeness.
Appendix J3 test cloth specifications currently apply only to clothes washers.	Harmonizes test cloth requirements across both clothes washers and clothes dryers and extends applicability of appendix J3 test cloth specifications to both clothes washers and clothes dryers.	Industry request; clarify existing requirements consistent with industry practice.

[12] Table I.1 excludes one comment not applicable to this rulemaking.

[13] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for insert product. (Docket No. EERE–2024–BT–TP–0009, which is maintained at: *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number at page of that document).

DOE has determined that the amendments described in section III and adopted in this document will not alter the measured efficiency of RCWs, CCWs, or consumer clothes dryers, or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

In the following sections, DOE discusses certain amendments to its test procedures for RCWs, CCWs, and consumer clothes dryers. For each amendment, DOE provides relevant background information, explains why the amendment merits consideration, discusses relevant public comments, and its final approach.

A. Scope of Applicability

This rulemaking applies to clothes washers (both RCWs and CCWs, which use the same test procedures) [14] and consumer clothes dryers.

DOE has defined a clothes washer as a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, that must be one of the following classes: automatic clothes washers,[15] semi-automatic clothes washers,[16] and other clothes washers.[17] 10 CFR 430.2.

DOE regulations also define ''electric clothes dryer'' and ''gas clothes dryer'' similarly as a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced air circulation, with blower(s) driven by an electric motor(s) and either electricity or gas, respectively, as the heat source. *See,* 10 CFR 430.2. DOE's clothes dryer test procedures are applicable to both electric and gas clothes dryers.

A commercial clothes washer is defined as a soft-mount front-loading or soft-mount top-loading clothes washer that—

(A) Has a clothes container compartment that–

(i) For horizontal-axis clothes washers, is not more than 3.5 cubic feet; and

(ii) For vertical-axis clothes washers, is not more than 4.0 cubic feet; and

(B) Is designed for use in–

(i) Applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or

(ii) Other commercial applications.

(42 U.S.C. 6311(21); 10 CFR 431.452)

DOE is not changing the scope of the RCW, CCW, or consumer clothes dryer test procedures, or the relevant definitions, in this final rule.

B. Relevant Historical Background

This section summarizes the historical background of test cloth specifications in DOE's clothes washer and clothes dryer test procedures that is relevant to topics discussed in this final rule.

DOE first introduced the use of test cloth into the original clothes dryer test procedure established by the final rule published September 14, 1977 (''September 1977 Clothes Dryer Final Rule''). 42 FR 46145. The test cloth specifications were a 50-percent cotton and 50-percent polyester blended material, representative of the range of fabrics comprising consumer wash loads. *Id.* at 42 FR 46146. The September 1977 Clothes Dryer Final Rule also established a maximum use of 25 clothes dryer test cycles for each piece of test cloth to reduce potential variability in the test results that may occur from any change in the composition of the test cloth due to continued drying of the same test cloth. *Id.*

DOE introduced the use of test cloth into the original clothes washer test procedure established by the final rule published September 28, 1977 (''September 1977 Clothes Washer Final Rule''). 42 FR 49802. As discussed in the September 1977 Clothes Washer Final Rule, the size and composition of the test load was chosen to be identical to the test load that had been specified for clothes dryers in the September 1977 Clothes Dryer Final Rule. *Id.* at 49 FR 49805. The number of test runs for each piece of test cloth was limited to no more than 25 clothes washer test cycles. *Id.* at 49 FR 49808.

Since introducing the use of test cloth into the originally established clothes dryer and clothes washer test procedures, DOE has periodically updated the test cloth specifications and requirements. The following paragraphs summarize some of these changes to test cloth specifications and requirements that are relevant to the amendments in this document.

In a final rule published May 19, 1981 (''May 1981 Final Rule''), DOE amended the clothes dryer test procedure to, among other changes, establish test cloth pre-conditioning requirements to improve test repeatability by ensuring that the test cloth not contain any water-soluble sizing or finishing agents that could affect the moisture performance of test cloth. 46 FR 27324. The May 1981 Final Rule also established a weight tolerance on the test cloth. *Id.*

In a final rule published August 27, 1997, DOE amended its test cloth requirements in the clothes washer test procedure by adding a new requirement to prewash (*i.e.,* pre-condition) new test cloth prior to first use for energy consumption testing. 62 FR 45484.

DOE published a final rule on January 12, 2001 (''January 2001 Final Rule'') that, among other changes to the clothes washer test procedure, introduced the modified energy factor descriptor, which incorporated an estimate of clothes drying energy into the clothes washer efficiency descriptor through consideration of the RMC of the clothes leaving the clothes washer. 66 FR 3314. As discussed in the January 2001 Final Rule, it had been discovered that the test cloth to be used for determining the RMC was giving inconsistent results. *Id.* at 66 FR 3317. DOE investigated possible causes for the inconsistent test results and summarized the results in a report published in May 2000 titled *Development of a Standardized Energy Test Cloth for Measuring Remaining Moisture Content in a Residential Clothes Washer* (''May 2000 Test Cloth Report'').[18]

In particular, relevant to topics discussed in this final rule, the May 2000 Test Cloth Report documented the difficulty of relating specifiable test

[14] The test procedures for CCWs must be the same as those established for RCWs. (42 U.S.C. 6314(a)(8)).

[15] An ''automatic clothes washer'' is a class of clothes washer that has a control system that is capable of scheduling a preselected combination of operations, such as regulation of water temperature, regulation of the water fill level, and performance of wash, rinse, drain, and spin functions without the need for user intervention subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves. 10 CFR 430.2

[16] A ''semi-automatic clothes washer'' is a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves. *Id.*

[17] ''Other clothes washer'' means a class of clothes washer that is not an automatic or semi-automatic clothes washer. *Id.*

[18] The May 2000 Test Cloth Report is available at *www.regulations.gov/document/EERE-2006-STD-0064-0277.*

cloth characteristics—fiber content, weight, *etc.*—to RMC measurements. (*See* section 4 of May 2000 Test Cloth Report). On this basis, DOE concluded that tighter test cloth specifications alone would not necessarily lead to comparably consistent RMC measurements. To provide more consistent RMC measurements from lot to lot, the May 2000 Test Cloth Report proposed a new method for developing a ''correction factor'' for each new lot of test cloth. The correction factor would be applied to the RMC measurement to normalize the RMC results to match the RMC performance of a designated ''standard lot.''

The May 2000 Test Cloth Report also concluded that a viable approach to minimize the effects of test cloth variation on RMC would be to consistently specify a single type of fabric that is produced frequently by one mill to a consistent set of specifications. The report recommended the use of a 50-percent cotton/50-percent polyester momie weave fabric from one particular mill as a suitable choice, noting that this cloth (at the time) was produced in high volume, had been produced to a consistent specification for many years, and was likely to continue to be produced on this basis for the foreseeable future. (*See* section 6 of May 2000 Test Cloth Report).

The May 2000 Test Cloth Report recommended a set of test cloth specifications and an RMC correction factor approach that could be adopted into the DOE test procedure. The January 2001 Final Rule incorporated into the clothes washer test procedures many of the recommendations of the May 2000 Test Cloth Report, including the recommended updates to the test cloth specifications and the RMC correction factor procedure. The January 2001 Final Rule also increased the number of allowable test runs for each piece of test cloth to no more than 60 clothes washer test cycles (from 25 previously). 66 FR 3314, 3320.

DOE published a direct final rule on October 31, 2003 (''October 2003 Final Rule'') that, among other changes to the clothes washer test procedure, added as a testing requirement the use of a statistical analysis approach to qualify any interactive effect between different lots of test cloth and spin speeds to further improve consistency of the RMC measurement. 68 FR 62198.

On March 7, 2012, DOE published a final rule (''March 2012 Final Rule'') that, among other changes, updated certain test cloth specifications for clothes washer testing based on recommendations provided by AHAM. 77 FR 13888, 13920–13921. Specifically, the March 2012 Final Rule adopted definitions for cloth ''lot'' and ''roll'' and established test cloth weight tolerances. *Id.* at 77 FR 13921–13922. The March 2012 Final Rule also updated pre-conditioning wash requirements and incorporated American Association of Textile Chemists and Colorists (''AATCC'') test methods for verifying the absence of water-repellent finishes on the test cloth. *Id.* at 77 FR 13922.

In a final rule published on August 5, 2015 (''August 2015 Final Rule''), DOE moved the standard extractor RMC procedure for developing the correction factors for each new test cloth lot from appendix J2 to the newly created appendix J3. 80 FR 46730.

In a final rule published on June 1, 2022 (''June 2022 Final Rule''), among other changes, DOE further consolidated clothes washer test cloth-related provisions into appendix J3 (from appendix J2) to improve the overall logical flow of both test procedures. *Id.* at 87 FR 33367. DOE additionally codified in appendix J3 a test cloth material verification procedure that had historically been used by the AHAM task force when evaluating new lots of test cloth. *Id.* at 87 FR 33368.

C. Test Cloth Specifications and Requirements

In this final rule, DOE is updating its test cloth specifications and requirements to (1) further improve consistency in test results across different lots of test cloth, (2) clarify certain requirements consistent with textile industry nomenclature, (3) allow the use of an alternate type of test cloth that has been shown to exhibit performance consistent with the current test cloth, and (4) re-define appropriate thresholds for certain statistical requirements specified for new lots of test cloth.

Each of the changes are in line with DOE's historical practice of regularly updating its test cloth specifications to improve the consistency of test results and adapt to changes in material specifications and availability of commercially available textiles.

In this section, DOE addresses clothes washer specifications in appendix J3 specifically. As discussed in section III.C.3 of this document, DOE is harmonizing the clothes washer and clothes dryer test cloth specifications such that the edits in this section apply to both product types.

1. Cut Orientation

Section 3.1 of appendix J3 specifies that the test cloth material should come from a roll of material with a width of approximately 63 inches, although other sizes may be used if the test cloth material meets the specifications listed in sections 3.2 through 3.6 of appendix J3. Section 3.7.1 of appendix J3 specifies the dimensions of the individual energy test cloths—nominally 24 inches by 36 inches prior to hemming.[19] Furthermore, section 5 of appendix J3 specifies that the maximum shrinkage requirements for the energy test cloth after pre-conditioning[20] must not be more than 5 percent of the length and width.

Appendix J3 does not specify the orientation of the rectangular dimensions (*i.e.,* lengthwise versus widthwise) for cutting individual energy test cloths from the roll of fabric. As such, the cut orientation of the rectangular energy test cloths can be optimized to minimize wasted fabric (*e.g.,* a lengthwise cut of 36 inches adjacent to a widthwise cut of 24 inches could be patterned on a 63-inch width roll of material with minimal waste).

The May 2024 AHAM Letter recommended that appendix J3 specify that the energy test cloth be cut in a specific orientation relative to the fabric roll. Specifically, the May 2024 AHAM Letter suggested that the 24-inch dimension be cut from the lengthwise (*i.e.,* ''warp'') direction of the roll and the 36-inch dimension be cut from the widthwise (*i.e.,* ''weft'') direction of the roll, as depicted in Figure III.1.

[19] Section 3.7.2 of appendix J3 specifies dimensions of smaller energy ''stuffer'' cloths, which are nominally 12 inches by 12 inches prior to hemming. Since the energy stuffer cloths are square, the consideration of cut orientation in this section of the document pertains only to the rectangular energy test cloths.

[20] The pre-conditioning process is specified in section 5 of appendix J3 and consists of five wash-rinse-spin cycles, with the load bone-dried between each of the five cycles.

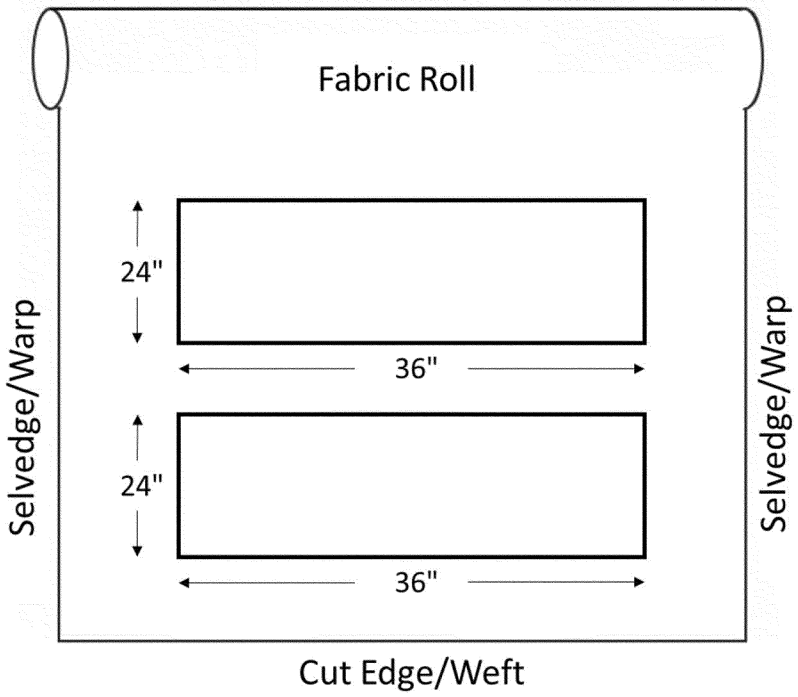

Figure III.1 Energy Test Cloth Cut Orientation Diagram Adapted from the May 2024 AHAM Letter

In the November 2024 NOPR, DOE discussed that differences in cut orientation can impact the relative shrinking of cloth in each direction after repeated wash and dry cycles, which could potentially affect its water absorption and retention properties—characteristics that are particularly relevant to the RMC measurement.[21] 89 FR 87803, 87809. The May 2024 AHAM Letter did not, however, provide any data or quantitative evaluation of whether, or to what extent, the direction of cut orientation could affect the shrinkage of the energy test cloth, or the RMC measurement in the clothes washer test procedure. In the November 2024 NOPR, DOE noted that even if the cut orientation could impact the relative shrinkage of the length and width of the energy test cloth, section 5 of appendix J3 already specifies a maximum allowable shrinkage of 5 percent in each direction. *Id.* DOE added that it had no information to suggest that any variation in shrinkage within this 5 percent tolerance would have a substantive impact on the resulting RMC measurement in the clothes washer test procedure. *Id.*

In the November 2024 NOPR, DOE further raised concerns about potential unintended consequences of requiring a specific cut orientation for each energy test cloth. *Id.* DOE noted that depending on the width of the fabric roll, specifying a cut orientation as suggested in the May 2024 AHAM Letter could prevent the optimization of cut patterns as described previously (*i.e.,* a 36-inch lengthwise cut adjacent to a 24-inch widthwise cut on a 63-inch width roll of material), resulting in increased fabric waste and a corresponding increase in material cost. *Id.* For instance, a 63-inch-wide roll as specified by section 3.1 of appendix J3 would be able to accommodate only a single 36-inch wide cut as suggested by AHAM, resulting in nearly 40 percent of the roll material being wasted. And although section 3.1 of appendix J3 permits the use of other size rolls, DOE noted that textiles are typically woven in standardized widths and expressed concern that fabricating rolls with a custom width for DOE test cloth could increase the material cost. *Id.*

In summary, in the November 2024 NOPR, DOE expressed uncertainty as to whether, or to what extent, the energy test cloth cut orientation could impact the RMC measurement in the clothes washer test procedure, and whether specifying a particular cut orientation could result in fabric waste that would lead to an increase in material cost. *Id.*

Irrespective of its determination regarding the specification of a cut orientation requirement, in the November 2024 NOPR, DOE tentatively determined that section 3.1 of appendix J3 is superfluous,[22] given that the suggested parameters regarding the width and length dimensions of the roll (*i.e.,* a roll width of approximately 63 inches and approximately 500 yards per roll) are rendered moot by the accompanying provision allowing for rolls of other sizes to be used. *Id.* at 89 FR 87810. As such, in the November 2024 NOPR, DOE proposed removing section 3.1 of appendix J3 and renumbering the subsequent sections accordingly. *Id.*

In the November 2024 NOPR, DOE requested comment on the roll dimensions and cut orientations that are currently used to fabricate DOE test cloth. *Id.* DOE also requested comment as to whether, or to what extent, the energy test cloth cut orientation could impact the RMC measurement in the clothes washer test procedure. *Id.*

[21] As discussed, RMC is a measure of the remaining water content of the clothes washer load at the end of the wash cycle and is used to incorporate an estimate of clothes drying energy into the clothes washer efficiency descriptor.

[22] Section 3.1 of appendix J3 specifies that the test cloth material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll. However, other sizes may be used if the test cloth material meets the specifications listed in sections 3.2 through 3.6 of appendix J3.

DOE further requested comment on its concern that establishing a cut orientation requirement could lead to fabric waste, depending on the dimensions of the fabric roll. *Id.* DOE also requested comment on its tentative determination not to specify a cut orientation requirement, and whether it should adopt the cut orientation requirement specified by AHAM or any other cut orientation requirement. *Id.* DOE requested comment on its tentative determination that section 3.1 of appendix J3 is superfluous and its proposal to remove the requirements in section 3.1 of appendix J3. *Id.*

AHAM commented that it specifically supports the roll dimension and cut orientation amendments to appendix J3 proposed in the November 2024 NOPR. (AHAM, No. 10 at p. 1)

Ravnitzky commented that allowing flexibility in test cloth specifications, such as adjustments in cut orientations and fabric dimensions, would help reduce fabric waste and lower material costs without compromising test integrity. Ravnitzky added that this practical approach would benefit both the industry and sustainability efforts. (Ravnitzky, No. 5 at p. 1)

For the reasons discussed in this final rule and in the November 2024 NOPR, DOE is finalizing its proposal, consistent with the November 2024 NOPR, to not specify a cut orientation requirement and to remove the requirements in section 3.1 of appendix J3.

2. Fabric Weight and Thread Count

Section 3.3 of appendix J3 specifies that the fabric weight of the test cloth must be 5.60 ± 0.25 ounces per square yard, but it does not currently specify at what point in the fabrication process this specification applies. Similarly, section 3.4 of appendix J3 specifies that the thread count of the test cloth must be 65 x 57 threads per inch ± 2 percent, but it does not currently specify at what point in the fabrication process this specification applies. The May 2024 AHAM Letter requested that DOE amend these specifications to clarify that fabric weight and thread count specifications apply to ''finished goods'' test cloth prior to pre-conditioning. In the November 2024 NOPR, DOE noted the term ''finished goods'' means after the cloth has been hemmed into energy test cloth and energy stuffer cloths, but prior to any pre-conditioning. 89 FR 87803, 87810.

In the November 2024 NOPR, DOE further noted that specifying that these requirements apply to finished goods (as opposed to prior to the cloth having been processed, de-starched, and hemmed), but prior to any pre-conditioning, is the most appropriate point in the cloth fabrication process because these dimensional properties can change during certain stages of the cloth fabrication process. *Id.* In the November 2024 NOPR, DOE stated that applying these specifications to finished goods therefore ensures the consistency of each test cloth lot at the state in which the test cloth is purchased by a manufacturer or test laboratory. *Id.*

In the November 2024 NOPR, DOE proposed to specify within section 3 of appendix J3 that fabric weight and thread count specifications apply to finished goods prior to pre-conditioning, and requested feedback on this proposal. *Id.*

NEEA commented that it supports specifying a point in the manufacturing and preconditioning process at which the fabric weight and thread count are measured. (NEEA, No. 8 at p. 2)

For the reasons discussed in this final rule and in the November 2024 NOPR, DOE is finalizing its proposal, consistent with the November 2024 NOPR, to specify in section 3 of appendix J3 that fabric weight and thread count specifications apply to finished goods prior to pre-conditioning.

3. Granite Weave

Section 3.2 of appendix J3 currently states that the test cloth used for clothes washer testing must be a pure finished bleached cloth, made with a momie or granite weave. As discussed in the May 2024 AHAM Letter, recent lots 25A and 25B [23] were woven with a different type of granite weave—a ''crepe'' weave—than the ''momie'' type of granite weave that has historically been used for DOE test cloth.

To evaluate whether using a crepe weave would impact test results compared to the historical momie weave, DOE conducted comparative testing of RCWs and consumer clothes dryers using Lot 25A (made with a crepe weave) and previous test cloth Lot 23 (made with a momie weave). 89 FR 87803, 87810. The results of DOE's testing are presented in a Technical Appendix published in the docket for this rulemaking.[24] The testing presented in the November 2024 NOPR showed no substantive variation in RMC, integrated modified energy factor (''IMEF''), or integrated water factor—the reported metrics for RCWs—or in combined energy factor—the reported metric for consumer clothes dryers—between the different granite weave types (*i.e.,* traditional momie versus crepe weave). *Id.* Although DOE's test sample in the November 2024 NOPR did not include any CCWs, DOE noted that it expects that the trends in RMC values, energy use, and water use that it observed in RCWs would apply to CCWs, given that RCWs and CCWs are designed and operate similarly and are tested using the same test procedure. *Id.*

In the November 2024 NOPR, DOE noted that through its participation in discussions with the AHAM task force it understands that very few textile mills maintain the capability to fabricate cloth using the type of momie weave that has traditionally been used to produce DOE test cloth. *Id.* DOE noted that, instead, the type of crepe weave used for Lot 25A is expected to be more readily available going forward. *Id.*

Appendix J3 currently does not define the terms ''momie'' or ''granite'' weave. In the May 2024 AHAM Letter, AHAM suggested that DOE establish definitions for these terms in appendix J3.[25] In the November 2024 NOPR, DOE noted that momie, granite, and crepe weave types are generally understood terms of art within the textile industry, but there is not a definitive source for definitions of these terms. *Id.* In the November 2024 NOPR, DOE expressed concerns that creating its own definitions for these terms could inadvertently conflict with the range of weave styles that are generally understood by the textile industry to be granite weaves. *Id.* Therefore, in the November 2024 NOPR, DOE tentatively determined not to establish a definition for these terms within the appendix J3 test procedure. *Id.*

In the November 2024 NOPR, DOE requested feedback on its proposal to add the term ''crepe'' to the list of allowable weaves in appendix J3. *Id.* DOE further requested feedback on its tentative determination not to establish definitions for ''crepe,'' ''granite,'' or ''momie'' weave in appendix J3. *Id.*

Aside from the generally supportive comments discussed previously, DOE received no comments in response to

[23] The AHAM task force designated the two most recent lots of test cloth ''25A'' and ''25B'' to reflect that these two lots were manufactured at the same time using the same continuous weaving process, although they were finished in separate batch processes.

[24] The Technical Appendix can be found at *https://www.regulations.gov/document/EERE-2024-BT-TP-0009-0003.*

[25] AHAM suggested defining ''granite weave'' as a broad classification of weave producing a small, irregular, pebbled surface similar to crepe fabrics; fabrics made with a granite weave are generally interlaced tightly, and warp and filling yarns appear on the face. AHAM suggested defining ''momie/granite weave fabric'' as test cloth made with granite weave fabric as specified in the suggested definition of granite weave.

the November 2024 NOPR specifically regarding its proposal to add the term ''crepe'' to the list of allowable weaves in appendix J3, or its tentative determination not to establish definitions for ''crepe,'' ''granite,'' or ''momie'' weave in appendix J3.

For the reasons discussed in this final rule and in the November 2024 NOPR, DOE is finalizing its proposal, consistent with the November 2024 NOPR, to add the term ''crepe'' to the list of allowable weaves in appendix J3, and to not establish definitions for ''crepe,'' ''granite,'' or ''momie'' weave in appendix J3.

4. Alternate Test Cloth

DOE is required to ensure that the test procedure is reasonably designed to produce test results that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product/equipment during a representative average use cycle or period of use and is not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) In establishing the current test cloth specifications, DOE considered the representativeness of the range of fabrics comprising consumer wash loads, the manufacturability of the fabric, the consistency in test cloth production, and the consistency in test results from the fabric. 66 FR 3314, 3318 (Jan. 12, 2001).

As discussed, the current test cloth specifications were recommended by the May 2000 Test Cloth Report, which noted that this cloth (at the time) was produced in high volume, had been produced to a consistent specification for many years, and was likely to continue to be produced on this basis for the foreseeable future. (*See* section 6 of May 2000 Test Cloth Report.) The May 2000 Test Cloth Report also highlighted the benefits of specifying a single type of fabric that is produced frequently by one mill to a consistent set of specifications.

However, while the test cloth specified in appendix J3 continues to be produced by a single supplier, DOE noted in the November 2024 NOPR that it now understands through its participation in the AHAM task force that this cloth is produced exclusively for use in conducting the DOE test procedure (*i.e.,* this specific cloth is not used to any significant extent by any other industry bodies or for any other regulatory or research and development purposes). 89 FR 87803, 87811. As such, it is no longer the case that this cloth is produced in high volume (beyond the volume needed for DOE testing purposes), leading to uncertainty as to whether this cloth is likely to remain readily available on a consistent basis for the foreseeable future. *Id.*

As discussed in the November 2024 NOPR, during the COVID–19 pandemic, the laundry industry experienced shortages in DOE test cloth supply.[26] *Id.* The specialized nature of the DOE test cloth (*i.e.,* the fact the cloth is unique to DOE testing needs and produced in relatively low volumes) inhibited the ability to identify alternate sources of supply for the test cloth. *Id.* To mitigate this shortage, AHAM requested that DOE use its enforcement discretion to allow extended use of test cloth beyond the currently defined cycle limits.[27] On September 28, 2023, DOE issued a statement [28] that it would exercise its enforcement discretion and not impose civil penalties on a clothes washer, commercial clothes washer, or clothes dryer manufacturer for certifying compliance with DOE's energy conservation standards based on testing that exceeds the maximum test cloth run provision set forth in the DOE test procedures. Instead, DOE allowed for usage of test cloth for twice the number of runs allowed in the relevant test procedures.

In an effort to further alleviate any test cloth supply constraints that could limit energy testing activities for clothes washers and clothes dryers, the AHAM task force evaluated the potential merits of specifying an alternate test cloth that could be used for DOE testing, as discussed in the May 2024 AHAM Letter.

In the November 2024 NOPR, DOE noted that the AHAM task force identified a commercially available standardized fabric as a possible alternative to the current test cloth specification. *Id.* This fabric is used as ''ballast'' for testing specific material attributes (such as colorfastness) of textiles and, according to the May 2024 AHAM Letter, has been used by the textile industry for over 80 years. Specifically, the fabric meets the specifications of Laundering Ballast Type 3 cloth specified by industry standard AATCC LP1–2021, *Laboratory Procedure for Home Laundering: Machine Washing.*[29] The specifications for Laundering Ballast Type 3 cloth are provided in Table III.1.

TABLE III.1—SPECIFICATIONS FOR LAUNDERING BALLAST TYPE 3 CLOTH FROM AATCC LP1–2021

Characteristic	Specification
Fiber Content	50% cotton/50% polyester ± 3%.
Greige Fabric Yarns	16/1 or 30/2 ring spun.
Greige Fabric Construction	52 × 48 ± 5 yarns per inch, plain weave.
Finished Fabric Weight	155 ± 10 grams per square meter (4.57 ± 0.29 ounces per square yard).
Edges	All edges hemmed or over-edged.
Finished Piece Size	920 × 920 ± 30 millimeters (36.0 × 36.0 ± 1 inch).
Finished Piece Weight	130 ± 10 grams (4.59 ± 0.35 ounces).

As part of an AHAM task force investigation, DOE and AHAM members conducted comparative testing of Laundering Ballast Type 3 cloth [30] to evaluate whether this cloth could be used to conduct the DOE test procedures and whether doing so would produce test results comparable to the currently specified test cloth. *Id.* The

[26] AHAM informed DOE on March 3, 2022 that there were significant issues with the quality and availability of the required test cloth material for the applicable energy tests for clothes washers and clothes dryers.

[27] On August 7, 2023, AHAM informed DOE that test cloth shortages were persisting and that this supply shortage could also eventually impact DOE's ability to conduct assessment, enforcement, or other testing.

[28] Available at *www.energy.gov/sites/default/files/2023–09/Test%20Cloth%20Policy%20for%20Clothes%20Washers%20and%20Clothes%20Dryers%20Enforcement%20Policy.pdf.*

[29] Table VII of AATCC LP1–2021 provides specifications for various types of cloth, one of which is designated as Laundering Ballast Type 3.

[30] The tested cloth used 16/1 fabric yarns and was sized to match the DOE energy test cloth and energy stuffer cloth dimensions and hemming instructions (as currently specified in section 3.7.1 and 3.7.2 of appendix J3, respectively) instead of the finished piece dimensions specified in Table VII of AATCC LP1–2021.

results of DOE's testing are presented in the Technical Appendix published in the docket for this rulemaking.[31]

Specifically, as discussed in the November 2024 NOPR, DOE tested six RCWs and eight consumer clothes dryers, representing eight manufacturers and all major product classes; AHAM members additionally conducted testing of eight RCWs and six consumer clothes dryers, representing all major product classes. *Id.* These products were tested to their rated appendix (D1, D2, or J2) using both the current DOE test cloth and the Laundering Ballast Type 3 cloth. *Id.*

As discussed in the November 2024 NOPR, DOE's testing demonstrated no substantive difference in measured efficiency compared with historical lots used for RCW and consumer clothes dryer testing. *Id.* In particular for clothes washers, the Laundering Ballast Type 3 produced RMC results comparable to existing DOE test cloth using the currently specified correction factor approach. *Id.* In the November 2024 NOPR, DOE discussed that although its test sample did not include any CCWs, DOE expects that the trends in RMC values, energy use, and water use that it observed in RCWs would apply to CCWs, given that RCWs and CCWs are designed and operate similarly and are tested using the same test procedure. *Id.* at 89 FR 87811–87812.

In addition, AHAM presented the results of its members' testing in appendix A to the May 2024 AHAM Letter. As discussed in the November 2024 NOPR, this testing also demonstrated no substantive difference in measured efficiency compared with historical lots used for RCW and consumer clothes dryer testing. *Id.* at 89 FR 87812.

Based on these data, DOE tentatively determined in the November 2024 NOPR that the AATCC Laundering Ballast Type 3 cloth provides results that are equally as representative as results obtained using the currently specified test cloth. *Id.* On this basis, in the November 2024 NOPR, DOE proposed, consistent with the recommendations from the May 2024 AHAM Letter, to amend appendix J3 to allow for the use of AATCC Laundering Ballast Type 3 cloth, with a specific yarn size, and cut and hemmed to the DOE energy test cloth dimensions. *Id.*

Specifically, DOE proposed in the November 2024 NOPR to incorporate by reference AATCC LP1–2021 into appendix J3 and to allow the use of test cloth meeting the specifications of Laundering Ballast Type 3, as specified in Table VII of AATCC LP1–2021, with the following additional specifications and substitutions:

- Greige Fabric Yarns: Type 16/1 only[32]
- Edges: All edges hemmed only[33]
- Finished Piece Size: Dimensions in accordance with sections 3.7.1 and 3.7.2 of appendix J3 for energy test cloths and energy stuffer cloths, respectively.[34]
- Finished Piece Weight: Disregard.[35]

Id.

Furthermore, and consistent with the discussion in section III.C.3 of this document, DOE considered in the November 2024 NOPR whether to propose a definition for ''plain weave'' as specified in Table VII of AATCC LP1–2021. *Id.* In the November 2024 NOPR, DOE noted the term ''plain weave'' to be a well-understood term of art and therefore tentatively determined that adding a definition of ''plain weave'' to appendix J3 was not warranted. *Id.*

In the November 2024 NOPR, DOE requested comment on its proposal to allow the use of Laundering Ballast Type 3 cloth specified in AATCC LP1–2021 (with certain additional specifications) as an alternate test cloth for conducting clothes washer and clothes dryer testing. *Id.* DOE also requested feedback on its tentative determination not to establish a definition for ''plain weave'' in appendix J3. *Id.*

NEEA commented that it specifically supports allowing the use of the Laundering Ballast Type 3 cloth specified in AATCC LP1–2021 (with certain additional specifications) as an alternate test cloth for conducting clothes washer and clothes dryer testing. (NEEA, No. 8 at p. 2)

Ravnitzky commented in support of the alternate test cloth proposed in the November 2024 NOPR to address potential supply shortages and ensure consistent and reliable results, based on thorough testing. (Ravnitzky, No. 5 at p. 1)

AHAM commented that it supports DOE's proposal in the November 2024 NOPR to not establish a definition for ''plain weave'' in appendix J3. (AHAM, No. 10 at p. 1)

For the reasons discussed in this final rule and in the November 2024 NOPR, DOE is finalizing its proposal, consistent with the November 2024 NOPR, to allow the use of test cloth corresponding to the Laundering Ballast Type 3 cloth specified in AATCC LP1–2021 (with certain additional specifications) as an alternate test cloth for conducting clothes washer and clothes dryer testing, and to not establish a definition for ''plain weave'' in appendix J3. In this final rule, DOE is implementing this in appendix J3 by directly codifying each of the cloth specifications within appendix J3, rather than incorporating by reference Table VII of AATCC LP1–2021 with modifications (as was proposed in the November 2024 NOPR). As discussed in section III.D.3 of this document, as a result of the amendments in this final rule, the specifications in appendix J3 apply to both clothes washers and clothes dryers.

In response to the November 2024 NOPR, AHAM commented that section 3.1.2.3 of appendix J3 as proposed in the November 2024 NOPR[36] should reference section 3.3 instead of section 3.7.1 and 3.7.2. (AHAM, No. 10 at p. 5)

DOE agrees with AHAM's assessment of the incorrect cross-references in the proposed amendments to section 3.1.2.3 of appendix J3. However, these proposed cross-references are rendered moot by the approach taken in this final rule to directly codify each of the test cloth specifications within appendix J3.

5. Uniformity Criteria

In the June 2022 Final Rule, DOE codified a prequalification procedure to be performed on each new lot of test cloth to verify the uniformity of the test cloth throughout the beginning, middle, and end of the lot. 87 FR 33316. As discussed in the June 2022 Final Rule,

[31] The Technical Appendix can be found at *https://www.regulations.gov/document/EERE-2024-BT-TP-0009-0003.*

[32] As discussed previously, comparative testing was conducted only on fabric with 16/1 yarn type, which is a single-string yarn similar in thickness to the 15/1 yarn type currently specified in section 3.5 of appendix J3. No testing was conducted on fabric with 30/2 yarn type—the other fabric yarn option specified in Table VII of AATCC LP1–2021—which is a two-string version of yarn with each string roughly half the diameter of the single-string version.

[33] As discussed previously, comparative testing was conducted only on fabric matching the hemming instructions currently specified in sections 3.7.1 and 3.7.2 of appendix J3. No testing was conducted on over-edged pieces of test cloth (*i.e.,* the other edging option specified in Table VII of AATCC LP1–2021).

[34] As discussed previously, comparative testing was conducted only on fabric matching the dimensions currently specified in sections 3.7.1 and 3.7.2 of appendix J3. No testing was conducted on fabric pieces matching the dimensions as specified in Table VII of AATCC LP1–2021.

[35] The Finished Piece Weight specified in Table VII of AATCC LP1–2021 corresponds to the Finished Piece Size specified in the same table; as such, this specification does not apply to fabric pieces matching the proposed finished piece dimensions.

[36] Section 3.1.2.3 of the proposed regulatory text in the November 2024 NOPR specified the following: *Finished piece size.* Dimensions in accordance with sections 3.7.1 and 3.7.2 of [appendix J3] for energy test cloths and energy stuffer cloths, respectively.

DOE had received a request from members of the AHAM task force to add to appendix J3 additional steps to the qualification procedure that have historically been performed on each new lot of test cloth to ensure uniformity of RMC test results on test cloths from the beginning, middle, and end of each new lot. *Id.* at 87 FR 33368. Industry practice has been to perform this ''uniformity check'' before conducting the procedure to develop the RMC correction factors currently specified in appendix J3. *Id.* Specifically, the uniformity check involves performing an RMC measurement on nine bundles of sample test cloth representing the beginning, middle, and end locations of the first, middle, and last rolls of test cloth in a new lot. *Id.* In the historical procedure provided by the AHAM task force, the coefficient of variation (''CV'') across the nine RMC values must be less than or equal to 1 percent for the test cloth lot to be considered acceptable for use. *Id.* The amendments codified by the June 2022 Final Rule included the suggested requirement for the CV of the ''uniformity check'' procedure to be less than or equal to 1 percent. *Id.* at 87 FR 33369.

Shortly after the publication of the June 2022 Final Rule establishing the requirement for the CV to be less than or equal to 1 percent—but prior to its effective date—Lot 24D was produced by the test cloth supplier and was measured to have a CV of 1.6 percent. As discussed in the November 2024 NOPR, AHAM developed correction factors for this lot of test cloth despite its CV over 1 percent, on the basis that the new CV requirement had not yet become effective, and that the industry was facing a test cloth shortage. 89 FR 87803, 87812.

Since the effective date of the CV requirement, the AHAM task force has developed correction factors for test cloth lots 25A and 25B [37]—both with CV values of 1.1 percent. AHAM stated in letters to DOE that it based its recommendations to proceed with these test cloth lots on the ongoing test cloth shortages, DOE's historical acceptance of lots with CVs exceeding 1 percent, and the extensive testing that DOE performed of Lot 25A, as described in section III.C.3 of this document.

In the November 2024 NOPR, DOE noted that the 1-percent threshold was originally recommended by AHAM during a previous test procedure rulemaking. *Id.* citing 87 FR 33316, 33368 (Jun. 1, 2022). DOE further noted that prior to the codification of the pre-qualification procedure, the AHAM task force used its discretion to evaluate the uniformity of each new test cloth lot. 89 FR 87803, 87812. DOE noted that it understood the repeatable performance of test cloth lots with a CV slightly higher than 1 percent—as shown by the testing of Lot 25A described in section III.C.3 of this document—to be an indication that the 1-percent threshold may be unnecessarily stringent (*i.e.,* too low). *Id.* In the November 2024 NOPR, DOE proposed to amend appendix J3 by increasing the allowable CV threshold to 2 percent. *Id.*

In the November 2024 NOPR, DOE requested feedback on its proposal to amend the CV threshold requirement in appendix J3 from 1 percent to 2 percent. Specifically, DOE requested comment on whether another threshold would be more appropriate. *Id.*

NEEA commented that it supports increasing the CV of the ''uniformity check'' from 1 percent to 2 percent. (NEEA, No. 8 at p. 2) NEEA noted that it has extensive experience testing laundry products with common and emerging technologies using a variety of textiles. (*Id.* at p. 1)

AHAM commented that it agrees with DOE's statement in the November 2024 NOPR that repeatable performance of test cloth lots with a CV slightly higher than 1 percent is an indication that the threshold may be unnecessarily stringent. However, AHAM expressed reluctance with a 2-percent threshold, stating that a CV threshold of 2 percent would result in a within-lot variation of up to 1 RMC percentage point, and instead suggested a CV limit of 1.5 percent. AHAM commented that this threshold would exclude lots 19, 24B, and 24D, which AHAM characterized as highly variable and problematic lots. (AHAM, No. 10 at pp. 3–4)

As discussed, EPCA requires that any test procedures be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) DOE tentatively determined in the November 2024 NOPR that increasing the allowable CV threshold to 2 percent would reduce test burden while maintaining reproducibility and representativeness [38] of test results. DOE understands that the cost of the test cloth factors in the cost of pre-qualification testing as specified in appendix J3. If the pre-qualification test must be repeated, either on subdivided portions of the test cloth lot or on a different test cloth lot, in order to achieve an allowable CV value, the cost of the qualified test cloth and thus test burden for clothes washer and clothes dryer manufacturers may increase.

Based on the comments received from NEEA and AHAM, both of which have extensive experience testing clothes washers and clothes dryers, DOE understands that there is general support to increase the threshold to 1.5 percent, but only mixed support to increase the threshold to 2 percent. DOE understands AHAM's comment as indicating that, despite historical test cloth lots with CV values greater than 1.5 percent having been qualified for use, manufacturers would currently find an allowable CV threshold of 1.5 percent to reflect the appropriate balance between representativeness and test burden. DOE recognizes that manufacturers (as represented by AHAM) have extensive experience in dealing with differences between test cloth lots, and likewise recognizes manufacturers' interest in ensuring repeatable and reproducible test results—as the basis for producing *representative* test results—for the purposes of certifying compliance with the applicable standards. In consideration of the above, in this final rule, DOE is amending the CV threshold requirement in section 7.2.5 of appendix J3 from 1 percent to 1.5 percent. DOE further specifies that this requirement applies to test cloth lots qualified after February 18, 2025.

6. Variance P-Value Threshold and Root-Mean-Square Error

In the October 2003 Final Rule, DOE adopted a statistical procedure, called ''analysis of variance'' (or ''ANOVA''), as the lot-to-lot interactive-effect statistical test for screening out lots of test cloth whose RMC behavior is inconsistent with the baseline lot. 68 FR 62198, 62201. The ANOVA statistical test measures the extent of the deviation of the shape of the RMC compared to the g-curve for a given lot of the test cloth from the shape of the RMC compared to the g-curve for the baseline lot. *Id.* In the October 2003 Final Rule, DOE explained that it believed that the test would catch any unanticipated deviation in RMC in future lots. *Id.*

Section 8.8 of appendix J3 specifies performing the analysis of variance with replication test using two factors, spin speed and lot, to determine whether the interaction of speed and lot is

[37] *See* letters received by DOE on December 13, 2023 and May 24, 2024.

[38] *See* Table II.1—Summary of Changes in Proposed Test Procedures Relative to Current Test Procedures in the November 2024 NOPR.

significant. If the interaction is not significant (as calculated by the ''P-value'' of the F-statistic being greater than 0.1), then the lot is considered acceptable. If the P-value is less than 0.1, the test cloth is deemed unacceptable. The P-value provides an indication of any interactive effect between lots and spin speeds. The lower the P-value, the stronger the evidence of such an interaction.

On March 29, 2010, AHAM sent DOE a letter (''March 2010 AHAM Letter'') noting that Lot 17 was measured to have a P-value that was less than 0.1.[39] AHAM requested that DOE approve Lot 17 for use on the basis that the root-mean-square error (''RMSE'') was less than 2 percent, the P-value of the test cloth excluding the 100g test condition was greater than 0.1, and test cloth supply shortage issues.

The more recent lot of AATCC test cloth evaluated by DOE and AHAM, as described in section III.C.4 of this document, had a P-value of 0.072, which would not meet the requirements of section 8.8 of appendix J3. However, the testing conducted by DOE and AHAM[40] suggests that, despite the low P-value, the application of the test cloth correction factors produces corrected RMC values that are comparable (*i.e.,* less than 1 RMC percentage point difference on average) to the standard RMC values for each tested extractor condition. For this reason, in the November 2024 NOPR, DOE tentatively determined that a low P-value is not necessarily indicative of a test cloth lot not being acceptable for use in the clothes washer test procedures. 89 FR 87803, 87813. DOE further tentatively determined that a different statistical measure can provide a better measure of the acceptability of a new test cloth lot. *Id.*

Specifically, in the November 2024 NOPR, DOE evaluated the usefulness of the RMSE between the corrected RMC values and the standard RMC values for the same test conditions as a potentially more relevant statistical measure to evaluate a new test cloth lot. *Id.* Conceptually, this RMSE value represents the closeness of fit of the corrected RMC values to the standard RMC values. A smaller RMSE value indicates a better closeness of fit. Recognizing that the *corrected* RMC value is used to calculate IMEF, DOE tentatively determined in the November 2024 NOPR that RMSE—which evaluates corrected RMC values—would provide a better measure of acceptability than P-value, which evaluates uncorrected RMC values. *Id.*

In the November 2024 NOPR DOE presented RMSE values of the historical test cloth lots posted to DOE's website[41] that fell within a range of 0.004 to 0.014. *Id.* Additionally, DOE stated that the AATCC lot of test cloth evaluated by DOE and AHAM, as described in section III.C.4 of this document, has an RMSE of 0.009. *Id.*

Based on the historical record and its testing, DOE tentatively determined in the November 2024 NOPR that an RMSE-based threshold for new test cloth lots would provide a better measure of the acceptability of a new test cloth lot, and therefore proposed to replace the P-value evaluation in section 8.8 of appendix J3 with a calculation of RMSE and a requirement that the RMSE be below 0.015, which represents a threshold slightly higher than the maximum RMSE value of 0.014 observed among historical test cloth lots. *Id.*

In the November 2024 NOPR, DOE requested comment on its proposal to replace the P-value test in appendix J3 with a root-mean-square error test, and on its proposal to specify 0.015 as an acceptability threshold for the RMSE value. *Id.*

Ravnitzky commented in support of the proposed shift from the P-value test to the RMSE threshold, stating that the proposed RMSE threshold of 0.015, based on historical data, provides a more accurate measure of test cloth performance and ensures that new test cloth lots produce consistent RMC measurements, improving the robustness of the testing protocol. (Ravnitzky, No. 5 at p. 1)

AHAM commented that it does not necessarily oppose DOE's tentative determination that an RMSE-based threshold for new test cloth lots would provide a better measure of acceptability than the P-value evaluation, but suggested certain improvements to the approach. (AHAM, No. 10 at p. 4)

Specifically, AHAM recommended that the RMSE calculation reflect the ''N–2'' approach[42] that has historically been used in the test cloth evaluations and is used in the appendix J3 test report template today.[43] AHAM commented that this would change the denominator in equation proposed in section 8.9 of draft appendix J3 from 20 to 18. (*Id.* at p. 5)

DOE notes that in addition to being used in the appendix J3 test report (as described by AHAM), the ''N–2'' approach was also used in the RMSE calculation previously specified in appendices J1 and J2 as codified by the January 2001 Final Rule. *See* 66 FR 3314, 3332. DOE did not intend to change its approach to calculating RMSE compared to the approach used in the appendix J3 test report and previously specified in appendices J1 and J2.[44] For this final rule, DOE re-calculated the historical test cloth lot RMSE values that were presented in the November 2024 NOPR using the ''N–2'' approach.[45]

AHAM further noted that as presented in the November 2024 NOPR, the highest RMSE value of 0.014 is for Lot 6, which included testing at the 50g force instead of the 100g force testing that has been required since the introduction of Lot 7.[46] AHAM suggested that Lot 6 be excluded from the evaluation. (AHAM, No. 10 at p. 4)

DOE notes that Lot 5 was also tested using the 50g test point instead of the 100g test point. Due to the lack of repeatability and consistency of the previous 50g data point, DOE agrees with AHAM's suggestion to exclude Lot 6—as well as Lot 5—from consideration in determining an appropriate RMSE threshold.

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[39] The March 2010 AHAM Letter is available at *www.regulations.gov/document/EERE–2024–BT–TP–0009–0002*.

[40] *See* the Technical Appendix available at *www.regulations.gov/document/EERE–2024–BT–TP–0009–0003*.

[41] DOE maintains a historical record of the standard extractor test data and final correction curve coefficients for each approved lot of energy test cloth at *www.energy.gov/eere/buildings/articles/clothes-washer-test-cloth-correction-factor-information*.

[42] The RMSE, as proposed in the November 2024 NOPR, is equal to the square root of the ratio of the sum of the squared errors across the test sample divided by the number of values in the test sample (N). The ''N–2'' approach refers to a different formula for RMSE wherein the denominator of the equation is N–2 instead of N, as proposed in the November 2024 NOPR.

[43] The appendix J3 test report referenced by AHAM is available at *www.energy.gov/eere/buildings/standardized-templates-reporting-test-results*. DOE develops standardized data templates for reporting the results of tests conducted in accordance with current DOE test procedures. Templates may be used by third-party laboratories under contract with DOE that conduct testing in support of ENERGY STAR verification, DOE rulemakings, and enforcement of the federal energy conservation standards.

[44] The appendix J3 test report uses the STEYX() function in Microsoft Excel to calculate RMSE. This function uses N–2 as the denominator. In its analysis conducted for the November 2024 NOPR, DOE inadvertently used a different formula for calculating RMSE that uses N as the denominator.

[45] The RMSE values presented in this final rule were calculated using the N–2 approach consistent with the formula in section 8.9 of appendix J3, as amended in this final rule, using all available tested runs. For lots of test cloth prior to Lot 16, where the 500g and 650g tests were not performed, the N–2=18 value in the denominator of the RMSE formula was updated to N–2=10 to correspond to the number of tested runs for these lots of test cloth.

[46] In the October 2003 Final Rule, the 50g test point resulted in inconsistent corrected RMC results. DOE acknowledged a basic lack of repeatability of the 50g spin tests and replaced these test points with 100g test points. 68 FR 62198, 62200–62201.

The updated RMSE values used for this final rule analysis are presented in Table III.2 of this document. These values reflect use of the ''N–2'' approach and exclude Lot 5 and Lot 6.

TABLE III.2—HISTORICAL TEST CLOTH LOT RMSE VALUES FOR LOT 7 THROUGH LOT 25B

[Calculated using ''N–2'' approach]

Lot	RMSE
7	0.007
8	0.006
9	0.006
10	0.008
11	0.009
12	0.010
13	0.010
14	0.008
15	0.005
16	0.010
17	0.011
18	0.010
19	0.010
20	0.009
21	0.010
22	0.010
23	0.010
24A	0.010
24B	0.008
24D	0.011
25A	0.008
25B	0.010

The updated RMSE values fall within a range of 0.004 to 0.011, compared to a range of 0.004 to 0.014 as presented in the November 2024 NOPR. Additionally, the AATCC lot of test cloth evaluated by DOE and AHAM, as described in section III.C.4 of this document, has an updated RMSE value of 0.010, compared to a value of 0.009 as presented in the November 2024 NOPR. Accordingly, DOE determines that a threshold RMSE value of 0.012, as suggested by AHAM, is appropriate.

Lastly, AHAM requested that the P-value calculation remain in the test cloth test report (without an acceptability threshold) so that the metric can be monitored and ensure that the change does not have unintended consequences. (AHAM, No. 10 at p. 4)

DOE recognizes the benefits to maintaining the P-value calculation in the appendix J3 test report, even if no longer used as acceptability criteria, and will consider AHAM's suggestion at such time DOE updates its appendix J3 test report.

In summary, in this final rule, DOE is finalizing its proposal to replace the P-value test in appendix J3 with an RMSE test. DOE is establishing the RMSE threshold requirement in section 8.9 of appendix J3 at 0.012, as calculated using the ''N–2'' approach. DOE further specifies that this requirement applies to test cloth lots qualified after February 18, 2025.

D. Other Clarifying and Restructuring Edits

1. Introductory Paragraph

Appendix J3 includes test cloth specifications, procedures for pre-conditioning test cloth, procedures for verifying that new lots of test cloth meet the defined material specifications, and procedures for developing RMC correction factors. Appendix J3 contains an introductory section titled ''Objective'' that summarizes the key objectives of the procedure. This paragraph currently does not reference the pre-conditioning of test cloth as one of the key objectives.

In the November 2024 NOPR, DOE proposed to update the heading to appendix J3 and its objective paragraph to explicitly include pre-conditioning of test cloth as one of the key objectives. 89 FR 87803, 87813.In the November 2024 NOPR, DOE requested feedback on its proposal to update appendix J3 to explicitly mention pre-conditioning of test cloth. *Id.*

DOE did not receive any specific comments on this topic and is finalizing its proposal, consistent with the November 2024 NOPR, to update appendix J3 to explicitly include pre-conditioning of test cloth as one of the key objectives.

2. Pre-Conditioning Instructions

Section 5 of appendix J3 provides the test cloth pre-conditioning instructions. Currently, this section is organized as a single paragraph detailing the entire procedure, whereas other sections of appendix J3 are organized with subsections that provide a clearer step-by-step sequence of instructions.

In the November 2024 NOPR, DOE proposed to restructure section 5 of appendix J3 to read as a sequence of instructions rather than a single paragraph, for greater clarity and ease of use. 89 FR 87803, 87813.

DOE did not receive any specific comments on this topic and is finalizing its proposal, consistent with the November 2024 NOPR, to restructure section 5 of appendix J3 to read as a sequence of instructions rather than a single paragraph, for greater clarity and ease of use.

3. Harmonizing Clothes Washer and Clothes Dryer Test Procedures

As previously discussed, in the August 2015 Final Rule, DOE moved the test cloth qualification procedures from appendix J2 to a newly created appendix J3. Appendix J3 is currently referenced by only the clothes washer test procedure. Section 2.7 of appendices J and J2 reference appendix J3 generally for test cloth specifications and section 5 of appendix J3 for test cloth pre-conditioning instructions. Whereas, for clothes dryers, section 2.6 of appendices D1 and D2 list each of the test cloth specifications and detail the test cloth pre-conditioning requirements.

As discussed in the November 2024 NOPR, historically, manufacturers and test laboratories have used the same test cloth for both clothes washers and clothes dryers. 89 FR 87803, 87813. The May 2024 AHAM Letter requested that DOE harmonize specifically the pre-conditioning procedure for clothes washers and clothes dryers. *Id.* In line with this recommendation, in the November 2024 NOPR, DOE tentatively determined that all aspects of the test cloth specifications can be harmonized between clothes washers and clothes dryers (*i.e.,* not just the pre-conditioning requirements). *Id.* at 89 FR 87814.

In the November 2024 NOPR, DOE proposed to harmonize test cloth specifications between appendices J, J2, D1, and D2 by replacing existing test cloth specifications in appendices D1 and D2 with references to the analogous specifications in appendix J3. *Id.*

Specifically, DOE proposed to replace the entirety of section 2.6 in both appendices D1 and D2 with a paragraph specifically referencing sections 3 (Test Cloth Specifications) and 7 (Test Cloth Material Verification Procedure) of appendix J3. DOE also proposed to update section 2.7 of appendices J and J2 to specifically reference sections 3 (Test Cloth Specifications), 7 (Test Cloth Material Verification Procedure), and 8 (RMC Correction Curve Procedure) of appendix J3. *Id.*

DOE further proposed to remove section 3.8 of appendix J3, which currently specifies that the test cloth must be clean, may not be used for more than 60 clothes washer runs, must be permanently marked, and may not be used in mixed lots. *Id.* DOE proposed that these specifications—which are specific to clothes washers and do not apply to clothes dryers—be included in section 2.7 of appendices J and J2. *Id.* DOE also proposed that appendices D1 and D2 retain the existing requirement that for clothes dryers the test cloth must not be used for more than 25 runs, although this requirement will be relocated to section 2.6 (from 2.6.1(c) currently). *Id.*

Finally, DOE proposed to update the objective statement and section 5 of appendix J3 to explicitly reference

clothes dryers alongside clothes washers. *Id.*

In the November 2024 NOPR, DOE requested comment on its proposal to harmonize test cloth specifications for clothes washers and clothes dryers. *Id.*

AHAM commented that it supports DOE's proposal in the November 2024 NOPR to harmonize test cloth specifications for clothes washers and clothes dryers. (AHAM, No. 10 at p. 1)

Ravnitzky commented in support of harmonizing the test cloth specifications between clothes washers and clothes dryers to simplify compliance, enhance the consistency of test results, reduce complexity for manufacturers, and support standardized testing practices. (Ravnitzky, No. 5 at p. 1)

For the reasons discussed in this final rule and in the November 2024 NOPR, DOE is finalizing its proposal, consistent with the November 2024 NOPR, to harmonize test cloth specifications for clothes washers and clothes dryers.

4. Restructuring Appendix J3

Section 3.2 of appendix J3 specifies the ''nominal fabric type'' for the test cloth as pure finished bleached cloth made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester. Section 3.5 of appendix J3 contains a duplicative (although more specific) requirement specifying a fiber content of 50 percent ± 4 percent cotton, with the balance being polyester. In the November 2024 NOPR, DOE proposed to remove the less-specific nominal fiber content specification from section 3.2 of appendix J3. 89 FR 87803, 87814. Accordingly, DOE further proposed to update the name of section 3.2 of appendix J3 from ''nominal fabric type'' to ''fabric type.'' *Id.*

Within section 3 of appendix J3, which lists the specifications for the test cloth, subsections 3.2 through 3.5 are currently organized as follows: section 3.2 specifies the nominal fabric type, section 3.3 specifies the fabric weight, section 3.4 specifies the thread count, and section 3.5 specifies the fiber content of the yarn. This order does not match the order in which these material properties are considered throughout the test cloth fabrication process. Specifically, the weaving process starts with spinning yarn of a specific fiber content, then a specific number of yarn strands (corresponding to thread count) are woven into a roll of fabric, resulting in a specific material density (*i.e.,* fabric weight). To better match the order in which these material properties are considered throughout the test cloth fabrication process, DOE proposed in the November 2024 NOPR to reorder these subsections to provide the fiber content specification first, followed by thread count specification, followed by the fabric weight specification. *Id.*

Section 3.7 of appendix J3 currently includes dimensions for the energy test cloth and energy stuffer cloth [47] and specifies that the dimensions apply ''before washing.'' DOE is aware that this terminology may lead to confusion, as it is inconsistent with other parts of the test procedure that use the term ''pre-conditioning'' rather than ''washing'' to refer to the process by which test cloth is washed before its first use. In the November 2024 NOPR, DOE proposed, consistent with the recommendations in the May 2023 AHAM Letter, to clarify this wording and to specify that the dimensions listed in section 3.7 apply before pre-conditioning of the test cloth. *Id.*

Appendices D1, D2, J, J2, and J3 currently use inconsistent hyphenation of the word pre-conditioning, using ''pre-conditioning'' in some cases and ''preconditioning'' in others. The May 2024 AHAM Letter requested that DOE standardize the hyphenation of ''pre-conditioning'' throughout the appendix. *Id.* In the November 2024 NOPR, DOE proposed to standardize the hyphenation of ''pre-conditioning'' across all five appendices. *Id.*

The June 2022 Final Rule re-numbered certain sections of appendix J3 and implemented in section 8.5 of appendix J3 references to ''sections 8.3.3 and 8.3.4 of this appendix.'' 87 FR 33316, 33405. These cross-references should instead reference sections 8.3 and 8.4 of appendix J3. In the November 2024 NOPR, DOE proposed to correct this typographical error by updating section 8.5 of appendix J3 to correctly reference sections 8.3 and 8.4, in place of sections 8.3.3 and 8.3.4. 89 FR 87803, 87814.

In the November 2024 NOPR, DOE requested feedback on its proposal to clarify and restructure appendix J3. *Id.*

Ravnitzky commented that the proposed reorganization of the test procedures for improved readability and simplicity is a significant improvement, stating that clearer procedural instructions make it easier for manufacturers and testing laboratories to accurately follow the guidelines, enhancing overall compliance, and that simplifying the test procedures helps manufacturers to meet important energy efficiency requirements for major appliances such as clothes washers and clothes dryers, supporting broader energy conservation goals. (Ravnitzky, No. 5 at p. 1)

For the reasons discussed in this final rule and in the November 2024 NOPR, DOE is finalizing its proposal, consistent with the November 2024 NOPR, to clarify and restructure appendix J3.

E. Test Procedure Costs

EPCA requires that test procedures amended by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 6314(a)(2)) DOE does not anticipate that the amendments in this final rule will impact testing costs or the burden of conducting the test procedure.

In the November 2024 NOPR, DOE presented market research indicating that the alternate test cloth proposed for use has approximately the same cost per pound as the current test cloth—approximately $40–50 per pound of unconditioned test cloth.[48] 89 FR 87803, 87814. Therefore, DOE tentatively determined that using the alternate test cloth would not impact clothes washer or clothes dryer testing costs. *Id.*

Based on an analysis of the test results presented in the Technical Appendix, in the November 2024 NOPR, DOE tentatively determined that manufacturers would be able to rely on data generated under the current test procedures for the newly finalized amendments. *Id.*

In the November 2024 NOPR, DOE requested comment on its tentative determination that that the amendments proposed in this NOPR would not impact testing costs or the burden of conducting the test procedure. *Id.*

DOE received no comments in response to the November 2024 NOPR regarding the impact of testing costs or the burden of conducting the test procedure.

For the reasons discussed in this final rule and in the November 2024 NOPR, DOE has determined that the amendments adopted in this final rule will not impact testing costs or the burden of conducting the test procedure.

F. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency

[47] An energy stuffer cloth is made from the same material as an energy test cloth but is cut to a smaller size. Test loads must consist of energy test cloths and no more than five energy stuffer cloths per load to achieve the specified weight.

[48] These cost estimates are based on DOE's most recent purchases of test cloth in relatively small quantities.

and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2); 42 U.S.C. 6314(d)(1)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3); 42 U.S.C. 6314(d)(2)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

As discussed, on September 28, 2023, DOE issued a statement stating that DOE would exercise its enforcement discretion and not impose civil penalties on a clothes washer, commercial clothes washer, or clothes dryer manufacturer for certifying compliance with DOE's energy conservation standards based on testing that exceeds the maximum test cloth run provision set forth in the DOE test procedures. Instead, DOE allowed for usage of test cloth for twice the number of runs allowed in the relevant test procedures.

In the May 2024 AHAM Letter, AHAM requested that DOE maintain its enforcement discretion policy to allow twice the number of test runs than is currently specified for test cloth meeting the current specifications, but not for any of the alternate test cloth, noting that it did not have any test data to support an extended number of cycles on the new test cloth at the time. 89 FR 87803, 87815.

In the November 2024 NOPR, DOE tentatively determined that the updated test cloth provisions would alleviate any test cloth shortages that were the impetus for the enforcement discretion policy, and that at the time of compliance of the amended test procedure, no need for such a policy would remain. *Id.* Therefore, in the November 2024 NOPR, DOE tentatively determined that upon the compliance date of test procedure provisions of an amended test procedure (*i.e.,* 180 days after publication of a test procedure final rule), the enforcement discretion policy would be withdrawn. *Id.*

In the May 2024 AHAM Letter, AHAM further requested that DOE consider allowing immediate use of the alternate test cloth as a relief to manufacturers facing test cloth shortages, rather than waiting for the completion of the rulemaking. *Id.*

In the November 2024 NOPR, DOE recognized the concern of test cloth availability. *Id.* As noted, DOE tentatively determined that it would maintain the current enforcement policy allowing for the extended lifetime of the current test cloth until 180 days after publication of a test procedure final rule and noted that the amendments could be used as early as their effective date (*i.e.,* 30 days after publication of the final rule DOE published regarding these amendments). *Id.*

In the November 2024 NOPR, DOE requested comments on its tentative determination that the enforcement discretion policy allowing twice the number of test cloth runs would be withdrawn 180 days after publication of a test procedure final rule. *Id.*

DOE did not receive any specific comments on this topic and is finalizing its proposal, consistent with the November 2024 NOPR, that the enforcement discretion policy allowing twice the number of test cloth runs will be withdrawn 180 days after publication of this final rule.

IV. Procedural Issues and Regulatory Review

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

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

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

DOE has recently conducted a focused inquiry into small business manufacturers of the RCWs, CCWs, and consumer clothes dryers covered by this rulemaking. DOE used available public information to identify potential small manufacturers. DOE accessed the

Compliance Certification Database [49] to create a list of companies that import or otherwise manufacture the RCWs, CCWs, and consumer clothes dryers covered by this final rule. Of the domestic original equipment manufacturers (''OEM'') that manufacture the RCWs, CCWs, and consumer clothes dryers covered by this final rule, DOE has identified one domestic RCW OEM that qualifies as a small business.

As detailed in section III.C.4 of this document, DOE is establishing an additional type of test cloth be permitted for testing. This alternate test cloth (and updated test cloth provisions) will alleviate any test cloth shortages currently experienced by manufacturers. This alternate test cloth is approximately the same cost as the existing test cloth and has not demonstrated any substantive differences in measured efficiency compared with historical lots used to RCW and consumer clothes dryer testing. As a result, DOE does not expect any increased cost or burdens to manufacturers from this final rule.

Therefore, DOE concludes that the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of RCWs, CCWs, and consumer clothes dryers must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including RCWs, CCWs, and consumer clothes dryers. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for RCWs, CCWs, and consumer clothes dryers in this final rule.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments for measuring the energy efficiency of RCWs, CCWs, and consumer clothes dryers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that

[49] U.S. Department of Energy Compliance Certification Database, available at: *www.regulations.doe.gov/certification-data/products.html.*

may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)–(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. When developing a Family Policymaking Assessment, agencies must assess whether: (1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and whether (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. In evaluating the above factors, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment as none of the above factors are implicated. Further, this determination would not have any financial impact on families nor any impact on the autonomy or integrity of the family as an institution.

I. Review Under Executive Order 12630

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

J. Review Under Treasury and General Government Appropriations Act, 2001

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

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedures for RCWs, CCWs, and consumer clothes dryers adopted in this final rule do not incorporate any new commercial standards or test procedures that are not already incorporated by reference at 10 CFR 430.3 and therefore DOE has not re-assessed such standards as part of this final rule.

M. Description of Materials Incorporated by Reference

AATCC Test Method 135–2010 is referenced in the amendatory text of this document but has already been approved for the sections where it appears. No changes are being made to the IBR material.

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on January 10, 2025, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2025.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend appendix D1 to subpart B of part 430 by:

■ a. Revising sections 2.6, 2.6.1, 2.6.2, and 2.6.3;

■ b. Adding sections 2.6.4 and 2.6.5; and

■ c. Revising the heading for section 2.8.

The revisions and additions read as follows:

Appendix D1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

* * * * *

2. Testing Conditions

* * * * *

2.6 *Test cloths.*

2.6.1 *Material Specifications.* The energy test cloth and energy stuffer cloth material and dimensions must conform to the specifications in section 3 of appendix J3 to this subpart.

2.6.2 *Material Verification.* The test cloth lot used to fabricate each piece of test cloth must conform with the material verification procedures specified in section 7 of appendix J3 to this subpart.

2.6.3 *Lot Identification.* Each piece of test cloth must be clean and permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes dryer.

2.6.4 *Pre-Conditioning.* The test cloth must be pre-conditioned prior to first use as specified in section 5 of appendix J3 to this subpart.

2.6.5 *Lifetime.* Each piece of test cloth must not be used for more than 25 test runs (after pre-conditioning).

* * * * *

2.8 *Clothes dryer pre-conditioning.*

* * * * *

■ 3. Amend appendix D2 to subpart B of part 430 by:

■ a. Revising sections 2.6, 2.6.1, 2.6.2, and 2.6.3;

■ b. Adding sections 2.6.4 and 2.6.5; and

■ c. Revising the heading for section 2.8.

The revisions and additions read as follows:

Appendix D2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

* * * * *

2. Testing Conditions

* * * * *

2.6 *Test cloths.*

2.6.1 *Material Specifications.* The energy test cloth and energy stuffer cloth material and dimensions must conform to the specifications in section 3 of appendix J3 to this subpart.

2.6.2 *Material Verification.* The test cloth lot used to fabricate each piece of test cloth must conform with the material verification procedures specified in section 7 of appendix J3 to this subpart.

2.6.3 *Lot Identification.* Each piece of test cloth must be clean and permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes dryer.

2.6.4 *Pre-Conditioning.* The test cloth must be pre-conditioned prior to first use as specified in section 5 of appendix J3 to this subpart.

2.6.5 *Lifetime.* Each piece of test cloth must not be used for more than 25 test runs (after pre-conditioning).

* * * * *

2.8 *Clothes dryer pre-conditioning.*

* * * * *

■ 4. Amend appendix J to subpart B of part 430 by revising section 2.7 to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

* * * * *

2. Testing Conditions and Instrumentation

* * * * *

2.7 *Test cloths.*

2.7.1 *Material Specifications.* The energy test cloth and energy stuffer cloth material and dimensions must conform to the specifications in section 3 of appendix J3 to this subpart.

2.7.2 *Material Verification.* The test cloth lot used to fabricate each piece of test cloth must conform with the material verification procedures specified in section 7 of appendix J3 to this subpart.

2.7.3 *RMC Correction Curve.* The test cloth lot used for testing must have a remaining moisture content (RMC) correction curve determined, according to section 8 of appendix J3 to this subpart.

2.7.4 *Lot Identification.* Each piece of test cloth must be clean and permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer.

2.7.5 *Pre-Conditioning.* The test cloth must be pre-conditioned prior to first use as specified in section 5 of appendix J3 to this subpart.

2.7.6 *Lifetime.* Each piece of test cloth must not be used for more than 60 test runs (after pre-conditioning).

* * * * *

■ 5. Amend appendix J2 to subpart B of part 430 by revising section 2.7 to read as follows:

Appendix J2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

* * * * *

2. Testing Conditions and Instrumentation

* * * * *

2.7 *Test cloths.*

2.7.1 *Material Specifications.* The energy test cloth and energy stuffer cloth material and dimensions must conform to the specifications in section 3 of appendix J3 to this subpart.

2.7.2 *Material Verification.* The test cloth lot used to fabricate each piece of test cloth must conform with the material verification procedures specified in section 7 of appendix J3 to this subpart.

2.7.3 *RMC Correction Curve.* The test cloth lot used for testing must have a remaining moisture content (RMC) correction curve determined, according to section 8 of appendix J3 to this subpart.

2.7.4 *Lot Identification.* Each piece of test cloth must be clean and permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer.

2.7.5 *Pre-Conditioning.* The test cloth must be pre-conditioned prior to first use as specified in section 5 of appendix J3 to this subpart.

2.7.6 *Lifetime.* Each piece of test cloth must not be used for more than 60 test runs (after pre-conditioning).

■ 6. Amend appendix J3 to subpart B of part 430 by:
■ a. Revising the heading for appendix J3;
■ b. Revising section 1;
■ c. Revising section 3;
■ d. Revising section 5;
■ e. Revising sections 7.1.1 and 7.2.5;
■ f. Revising sections 8.5 through 8.8; and
■ g. Adding section 8.9.

The revisions and additions read as follows:

Appendix J3 to Subpart B of Part 430—Test Cloth Specifications and Procedures for Pre-Conditioning and Determining Correction Coefficients of New Test Cloth Lots

* * * * *

1. Objective

This appendix includes the following: (1) Specifications for the test cloth to be used for testing clothes washers and clothes dryers; (2) procedures for pre-conditioning the test cloth for use in testing clothes washers and clothes dryers; (3) procedures for verifying that new lots of test cloth meet the defined material specifications; and (4) procedures for developing a set of correction coefficients that correlate the measured remaining moisture content (RMC) values of each new test cloth lot with a set of standard RMC values established as an historical reference point. These correction coefficients are applied to the RMC measurements performed during testing according to appendix J or appendix J2 to this subpart, ensuring that the final corrected RMC measurement for a clothes washer remains independent of the test cloth lot used for testing.

* * * * *

3. Test Cloth Specifications

The energy test cloths and energy stuffer cloths must meet the following specifications:

3.1 The test cloth material must be one of the following two types:

3.1.1 *Legacy Momie Cloth.* Test cloth meeting all of the specifications in sections 3.1.1.1 through 3.1.1.4 of this appendix.

3.1.1.1 *Fabric type.* Pure finished bleached cloth made with a momie, granite, or crepe weave.

3.1.1.2 *Fiber content of warp and filling yarn.* 50% ± 4% cotton, with the balance being polyester, open end spun, 15/1 ± 5% cotton count blended yarn.

3.1.1.3 *Thread count.* 65 x 57 per inch (warp × fill), ± 2%. Thread count is measured on the finished good, prior to pre-conditioning.

3.1.1.4 *Fabric weight.* 5.60 ± 0.25 ounces per square yard (190.0 ± 8.4 g/m^2). Fabric weight is measured on the finished good, prior to pre-conditioning.

3.1.2 *Modified AATCC Laundering Ballast Type 3.* Test cloth meeting the specifications in sections 3.1.2.1 through 3.1.2.4 of this appendix.

3.1.2.1 *Fabric Type.* Plain weave.

3.1.2.2 *Fiber content of warp and filling yarn.* 50% cotton/50% polyester ± 3%, 16/1 ring spun.

3.1.2.3 *Thread count.* 52 x 48 ± 5 yarns per inch. Thread count is measured on the finished good, prior to pre-conditioning.

3.1.2.4 *Fabric weight.* 4.57 ± 0.29 ounces per square yard (155 ± 10 g/m^2). Fabric weight is measured on the finished good, prior to pre-conditioning.

3.2 Water repellent finishes, such as fluoropolymer stain resistant finishes, must not be applied to the test cloth.

3.3. *Test cloth dimensions.*

3.3.1 *Energy test cloth.* The energy test cloth must be made from test cloth material that is cut to 24 ± ½ inches by 36 ± ½ inches (61.0 ± 1.3 cm by 91.4 ± 1.3 cm), and hemmed to 22 ± ½ inches by 34 ± ½ inches (55.9 ± 1.3 cm by 86.4 ± 1.3 cm) before pre-conditioning.

3.3.2 *Energy stuffer cloth.* The energy stuffer cloth must be made from the same test cloth material as the energy test cloth, cut to 12 ± ¼ inches by 12 ± ¼ inches (30.5 ± 0.6 cm by 30.5 ± 0.6 cm), and hemmed to 10 ± ¼ inches by 10 ± ¼ inches (25.4 ± 0.6 cm by 25.4 ± 0.6 cm) before pre-conditioning.

* * * * *

5. Test Cloth Pre-Conditioning Instructions

Use the following instructions for performing pre-conditioning of new energy test cloths and energy stuffer cloths as specified throughout section 7 and section 8 of this appendix, before any clothes washer testing using appendix J or appendix J2 to this subpart, and before any clothes dryer testing using appendix D1 or appendix D2 to this subpart.

5.1 Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per pound of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135 °F ± 5 °F (57.2 °C ± 2.8 °C) and the rinse temperature is to be controlled to 60 °F ± 5 °F (15.6 °C ± 2.8 °C).

5.2 Dry the load to bone-dry between each of the five wash-rinse-spin cycles.

5.3 The maximum shrinkage after pre-conditioning must not be more than 5 percent of the length and width. Measure per AATCC Test Method 135–2010 (incorporated by reference; see § 430.3).

* * * * *

7. Test Cloth Material Verification Procedure

* * * * *

7.1.1 *Dimensions.* Each hemmed energy test cloth must meet the size specifications in section 3.3.1 of this appendix. Each hemmed energy stuffer cloth must meet the size specifications in section 3.3.2 of this appendix.

* * * * *

7.2 *Uniformity Verification.*

* * * * *

7.2.5 Calculate the coefficient of variation (CV) of the nine average RMC values from each sample load. For test cloth lots qualified after February 18, 2025, the CV must be less than or equal to 1.5% for the test cloth lot to be considered acceptable and to perform the standard extractor RMC testing.

8. RMC Correction Curve Procedure

* * * * *

8.5 Repeat sections 8.3 and 8.4 of this appendix an additional two times, so that three replications at each extractor condition are performed. When this procedure is performed in its entirety, a total of 60 extractor RMC test runs are required.

8.6 Calculate $RMC_{cloth\text{-}avg}$ for each extractor test condition by averaging the values of the 3 replications performed specified in sections 8.3 and 8.4 of this appendix.

8.7 Perform a linear least-squares fit to determine coefficients A and B such that the standard RMC values shown in Table 8.7 of this appendix ($RMC_{standard}$) are linearly related to the $RMC_{cloth\text{-}avg}$ values calculated in section 8.6 of this appendix:

$$RMC_{standard} \sim A \times RMC_{cloth\text{-}avg} + B$$

where A and B are coefficients of the linear least-squares fit.

TABLE 8.7—STANDARD RMC VALUES

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin (percent)	4 min. spin (percent)	15 min. spin (percent)	4 min. spin (percent)
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0

TABLE 8.7—STANDARD RMC VALUES—Continued

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin (percent)	4 min. spin (percent)	15 min. spin (percent)	4 min. spin (percent)
650	23.0	26.4	24.1	28.0

8.8 Calculate the corrected RMC value for each extractor test condition, $RMC_{cloth\text{-}corr}$ as follows:

$RMC_{cloth\text{-}corr} = A \times RMC_{cloth\text{-}avg} + B$

Where:

$RMC_{cloth\text{-}avg}$ = the average RMC value, as calculated in section 8.6 of this appendix for each extractor test condition, expressed as a decimal, and

A and B are the coefficients of the linear least squares fit as determined in section 8.7 of this appendix.

8.9 Calculate the root mean square error of the linear fit, RMSE. For test cloth lots qualified after February 18, 2025, the RMSE must be less than or equal to 0.012 for the test cloth lot to be considered acceptable. The RMSE is calculated as follows:

$$RMSE = \sqrt{\sum_{i=1}^{N} \frac{\left(RMC_{standard_i} - RMC_{cloth-corr_i}\right)^2}{N-2}}$$

Where:

$RMC_{standard_i}$ = the $RMC_{standard}$ value in Table 8.7 of this appendix for the ith extractor test condition, expressed as a decimal,

$RMC_{cloth\text{-}corr_i}$ = the corrected RMC value, as calculated in section 8.8 of this appendix for the ith extractor test condition, expressed as a decimal, and

N = the number of extractor test conditions listed in Table 8.7 of this appendix = 20.

* * * * *

[FR Doc. 2025–00986 Filed 1–16–25; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–TP–0019]

RIN 1904–AF08

Energy Conservation Program: Test Procedure for Compressors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy ("DOE") is amending the test procedure for compressors to correct an error and to ensure that pressure ratio is expressed in terms of absolute pressure. DOE is also correcting the formula for isentropic efficiency and specific energy consumption of the packaged compressor by incorporating a K_6 correction factor to correct for differences in pressure ratio when testing at differing elevations. Finally, DOE is amending the definition of "air compressor" to include a minor clarification and revise a typographical error.

DATES: The effective date of this rule is April 2, 2025. The amendments will be mandatory for product testing starting July 16, 2025.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on April 2, 2025.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2022-BT-TP-0019.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

DOE incorporates by reference the following industry standards into title 10 of the Code of Federal Regulation ("CFR") part 431:

IEC 60584–1:2013, *Thermocouples—Part 1: EMF specifications and tolerances,* edition 3.0, August 2013 ("IEC 60584–1:2013").

IEC 60584–3:2021, Thermocouples—*Part 3: Extension and compensating cables—Tolerances and identification system,* edition 3.0, February 2021 ("IEC 60584–3:2021").

Copies of IEC 60584–1:2013 and IEC 60584–3:2021 may be purchased from International Electrotechnical Commission ("IEC") Central Office, 3, rue de Varembé, Case Postale 131, CH–1211, Geneva, Switzerland +41 22 919 02 11, or by going to *webstore.iec.ch.*

ISO 1217:2009(E), *Displacement compressors—Acceptance tests,* fourth edition, July 1, 2009 ("ISO 1217:2009(E)").

ISO 1217:2009/Amd.1:2016(E), *Displacement compressors—Acceptance tests* (fourth edition, July 1, 2009), AMENDMENT 1: Calculation of isentropic efficiency and relationship with specific energy, April 15, 2016 ("ISO 1217:2009/Amd.1:2016(E)").

ISO 5167–1:2022(E), *Measurement of fluid flow by means of pressure*

differential devices inserted in circular cross-section conduits running full—Part 1: General principles and requirements, third edition, June 2022 (''ISO 5167–1:2022(E)'').

ISO 9300:2022(E), *Measurement of gas flow by means of critical flow nozzles,* third edition, June 2022 (''ISO 9300:2022(E)'').

Copies of ISO 1217:2009(E), ISO 1217:2009/Amendment 1:2016(E), ISO 5167–1:2022(E), and ISO 9300:2022(E) may be purchased from International Organization for Standardization (''ISO'') at Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland +41 22 749 01 11, or by going to *www.iso.org.*

See section IV.N of this document for further discussion of these standards.

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I. Authority and Background

Compressors are included in the list of ''covered equipment'' (via the clause classifying certain types of ''industrial equipment'' as ''covered equipment'') for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(L), 6311(2)(B)(i), and 6312(b)). DOE's test procedures for compressors are currently prescribed at subpart T of part 431 of title 10 of the Code of Federal Regulations (10 CFR part 431). The following sections discuss DOE's authority to establish and amend test procedures for compressors and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C of EPCA,[2] added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes compressors, the subject of this document. Under EPCA, DOE may include a type of industrial equipment, including compressors, as covered equipment if it determines that doing so is necessary to carry out the purposes of Part A–1. (42 U.S.C. 6311(1)(L), 6311(2)(B)(i), and 6312(b)). The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment to conserve the energy resources of the Nation. (42 U.S.C. 6312(a)). On November 15, 2016, DOE published a final rule, which determined that coverage for compressors is necessary to carry out the purposes of Part A–1 of Title III of EPCA. 81 FR 79991. (42 U.S.C. 6311(1)(L); 42 U.S.C. 6311 (2)(A); 42 U.S.C. 6311 (2)(B)(i))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297). DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. 42 U.S.C. 6316(b)(2)(D).

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results that reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

representative average use cycle (as determined by the Secretary) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including compressors, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(b)(1))

B. Background

DOE's existing test procedure for compressors appears at title 10 of the Code of Federal Regulations (CFR) part 431, subpart T, appendix A—Uniform Test Method for Certain Air Compressors (hereafter ''appendix A'').

As stated, DOE published a final rule on November 15, 2016, in which DOE determined that coverage of compressors is necessary to carry out the purposes of Part A–1 of Title III of EPCA. 81 FR 79991. DOE's test procedure for determining compressor energy efficiency of certain varieties of compressors was established in a final rule published on January 4, 2017 (hereafter, the ''January 2017 Final Rule''). 82 FR 1052.

On May 17, 2019, DOE published a notice of petition for rulemaking and request for comment regarding the test procedure for compressors in response to a petition from Atlas Copco North America (''Atlas Copco''). 84 FR 22395. Atlas Copco's petition was received on April 17, 2019. Atlas Copco requested that DOE amend the compressors test procedure to specify that manufacturers could satisfy the test procedure requirements by using the industry test method for rotary air compressor energy efficiency, ISO 1217:2009(E) ''Displacement compressors—Acceptance tests''. In the notice of petition for rulemaking, DOE sought comment as to whether to proceed with the petition, but took no position at the time regarding the merits of the suggested rulemaking or the assertions made by Atlas Copco. 84 FR 22395.[3]

On January 10, 2020, DOE published a final rule for energy conservation standards for air compressors (hereafter, the ''January 2020 ECS Final Rule''). 85 FR 1504. Compliance with the energy conservation standards established in the January 2020 ECS Final Rule is required for compressors manufactured starting on January 10, 2025. 10 CFR 431.345.

On May 6, 2022, DOE issued a Request for Information (''RFI'') for a test procedure for compressors to consider whether to amend DOE's test procedure for compressors (hereafter, the ''May 2022 RFI''). 87 FR 27025. To inform interested parties and to facilitate this process, DOE identified certain issues associated with the currently applicable test procedure on which DOE is interested in receiving comment. On June 6, 2022, DOE granted a 14-day extension to the public comment period, allowing comments to be submitted until June 20, 2022. 87 FR 34220.

In general, representations of compressor performance must be in accordance with the DOE test procedure. (42 U.S.C. 6314(d)). However, DOE guidance (issued Dec. 6, 2017; revised Jun. 8, 2018) stated that it would discretionarily not enforce this requirement until compliance with a standard is required or a labeling requirement is established. On May 2, 2022, DOE announced that it was suspending the enforcement policy regarding the test procedure for air compressors and removed the policy from the DOE enforcement website.

Following retraction of the enforcement policy and to aid manufacturers in understanding DOE's regulatory requirements regarding the test procedure and forthcoming energy conservation standards, DOE held a ''Compressors Regulations 101'' webinar on May 24, 2022. The webinar reviewed testing, rating, certification, and compliance responsibilities.[4]

On February 13, 2023, DOE published a notice of proposed rulemaking and announcement of public meeting for test procedures for compressors (hereafter, the ''February 2023 NOPR''). 88 FR 9199. To inform interested parties and to facilitate this process, DOE identified certain issues associated with the currently applicable test procedure on which DOE is interested in receiving comment. On March 22, 2023, DOE held a public meeting (hereafter, the ''March 2023 Public Meeting'') to obtain stakeholder input regarding the issues and proposed amendments raised by the February 2023 NOPR.

DOE received comments in response to the February 2023 NOPR from the interested parties listed in table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE FEBRUARY 2023 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Compressed Air & Gas Institute	CAGI	21	Trade Association.
Saylor-Beall Air Compressors	Saylor-Beall	22	Manufacturer.
Sullivan-Palatek, Inc	Sullivan-Palatek	23	Manufacturer.
Kaeser Compressors	Kaeser Compressors	24	Manufacturer.
Ingersoll Rand	Ingersoll Rand	25	Manufacturer.
Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council.	NEEA & NPCC	26	Efficiency Organizations.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison.	CA IOUs	27	Utility Companies.

[3] Associated documents are available in the rulemaking docket at *www.regulations.gov/docket/EERE-2019-BT-PET-0017.*

[4] The slide material presented during the webinar has been published on DOE's website: *www.energy.gov/sites/default/files/2022-05/compressors-101.pdf.*

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE FEBRUARY 2023 NOPR—Continued

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Appliance Standard Awareness Project, American Council for an Energy-Efficient Economy, and Natural Resources Defense Council.	ASAP, ACEEE, & NRDC	28	Efficiency Organizations.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the March 2023 Public Meeting, DOE cites the written comments throughout this final rule. DOE did not identify any oral comments provided during the March 2023 Public Meeting that are not substantively addressed by written comments.

II. Synopsis of the Final Rule

In this final rule, DOE is amending subpart T of title 10 of the Code of Federal Regulations, part 431 (10 CFR part 431), which contains definitions, materials incorporated by reference, and the test procedure for determining the energy efficiency of certain varieties of compressors, as follows:

(1) Correct the formula for calculating isentropic efficiency and specific energy consumption of the packaged compressor by incorporating a K6 correction factor to correct for the change in pressure ratio when testing at differing elevations;

(2) Revise the formula for pressure ratio at full-load operating pressure currently in 10 CFR part 431, subpart T to correct a typographical error, and to calculate pressure ratio using terms expressed in absolute pressure; and

(3) Modify the current definition of ''air compressor'' to clarify that compressors with more than one compression element are still within the scope of this test procedure, and to revise the typographical error of ''compressor element'' to ''compression elements.''

DOE's actions are summarized in table II.1 compared to the current test procedure as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
References ISO 1217:2009(E) Annex C (excluding sections C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1, and C.4.5) for calculating isentropic efficiency and specific energy consumption of the packaged compressor.	Adds the K_6 correction factor in the formula calculating isentropic efficiency and specific energy consumption of the packaged compressor in order to correct for the change in pressure ratio when testing at differing elevations. Incorporates by reference Annex B, section B.4.5 of ISO 1217:2009(E).	Error correction.
Pressure ratio at full-load operating pressure formula in 10 CFR part 431, subpart T contains an error, as the wrong formula is presented.	Corrects the pressure ratio at full-load operating pressure formula in 10 CFR part 431, subpart T.	Error correction.
Air Compressor Definition: A compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment.	Air Compressor Definition: A compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of one or more compression elements (bare compressors), driver(s), mechanical equipment to drive the compression elements, and any ancillary equipment.	Clarification.

DOE has determined that the amendments described in section III and adopted in this document will more accurately comply with the requirements that test procedures be reasonably designed to produce test results that reflect energy use during a representative average use cycle and are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The amendments adopted in this final rule will ensure that any test for isentropic efficiency and specific energy consumption of a packaged compressor performed at any elevation other than 364 ft, or during low- or high-pressure weather events, will be correct. As such, these amendments will ensure accurate measured/calculated efficiency of compressors. DOE has also determined that these amendments will not require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures since the amendment aligns the test procedure with existing industry practice. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 75 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

In the following sections, DOE adopts certain amendments to its test procedure for compressors. For each amendment, DOE provides relevant background information, explains why

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for compressors. (Docket No. EERE–2022–BT–TP–0019, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

the amendment merits consideration, discusses relevant public comments, and adopts an approach.

A. Scope of Applicability

DOE's test procedure applies to a compressor that meets all of the following criteria: is an air compressor; is a rotary compressor; is not a liquid ring compressor; is driven by a brushless electric motor; is a lubricated compressor; has a full-load operating pressure of 75–200 pounds per square inch gauge (psig); is not designed and tested to the requirements of the American Petroleum Institute Standard 619; has full-load actual volume flow rate greater than or equal to 35 cubic feet per minute (cfm), or is distributed in commerce with a compressor motor nominal horsepower greater than or equal to 10 horsepower (hp); and has a full-load actual volume flow rate less than or equal to 1,250 cfm, or is distributed in commerce with a compressor motor nominal horsepower less than or equal to 200 hp. 10 CFR 431.344.

DOE received comments both supporting and opposing scope changes. CAGI, supported by Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek, stated that they support DOE's proposal to maintain the current scope of the test procedure. (CAGI, No. 21 at pp. 1–3; Kaeser Compressors, No. 24 at pp. 3–5; Ingersoll Rand, No. 25 at pp. 1–3; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1) On the other hand, NEEA & NPCC, CA IOUs, and ASAP, ACEEE, & NRDC encouraged DOE to consider expanding the scope of the test procedure to include additional air compressor types. (NEEA & NPCC, No. 26 at pp. 2–4; CA IOUs, No. 27 at pp. 2–9; ASAP, ACEEE, & NRDC, No. 28 at pp. 1–3)

As discussed in more detail in the following sections, DOE is not amending the scope of the test procedure at this time. DOE may consider test procedure scope expansion, including related comments discussed in this final rule, in a future test procedure rulemaking.

DOE responds to specific scope expansion topics in sections III.A.1 through III.A.7 of this final rule.

1. Reciprocating Compressors

As stated in section III.A of this document, the current test procedure for compressors applies to rotary compressors (and, therefore, does not apply to reciprocating compressors). 10 CFR 431.344. In the February 2023 NOPR, DOE proposed to continue excluding reciprocating compressors from the scope of the test procedure. 88 FR 9199, 9203. DOE stated that it will continue reviewing potential test procedures for reciprocating compressors, including existing test methods, and may consider expanding the scope of the test procedure to include these compressors in a future test procedure rulemaking. *Id.* DOE also asked for comment regarding its proposal to not include reciprocating compressors within the scope of test procedure applicability. *Id.*

In response to the February 2023 NOPR, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all expressed support for the DOE proposal to exclude reciprocating compressors from the scope of test procedure applicability. (CAGI, No. 21 at p. 1; Kaeser Compressors, No. 24 at p. 3; Ingersoll Rand, No. 25 at p. 1; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

However, in response to the request for comment, NEEA & NPCC recommended that DOE modify the proposed test procedure or develop a new test procedure for testing both one- and three-phase reciprocating compressors because ISO 1217:2009(E) contains a commonly used test procedure for rating reciprocating compressors among manufacturers. However, NEEA & NPCC commented that the reasons discussed in the February 2023 NOPR (88 FR 9199, 9202) for DOE not using ISO 1217:2009(E), as currently written, as the test method for reciprocating compressors are reasonable. NEEA & NPCC also stated that, by establishing a test procedure for reciprocating compressors, DOE is ensuring consistent representation of efficiency in this market and creating a path for industry stakeholders to gather data on this equipment type that would better inform future rulemakings. (NEEA & NPCC, No. 26 at pp. 2–3) ASAP, ACEEE, & NRDC agreed with this point and added that, given the significant potential energy savings for reciprocating compressors, DOE should consider the inclusion of reciprocating compressors within the test procedure scope. ASAP, ACEEE, & NRDC also stated that this would make it easier for DOE to pursue future energy conservation standards for reciprocating compressors and could provide helpful efficiency data to support voluntary programs. (ASAP, ACEEE, & NRDC, No. 28 at pp. 2–3)

DOE agrees that there could be benefits to including reciprocating compressors within the scope of the test procedure. DOE also agrees that the test method in ISO 1217:2009(E) might be appropriate for some reciprocating compressors but inappropriate for others, as there are a wide range of intended duty cycles for reciprocating compressors.

DOE is continuing to exclude reciprocating compressors from the scope of the compressors test procedure. DOE will continue reviewing potential test procedures for reciprocating compressors, including existing test methods, and may consider expanding the scope of the test procedure to include reciprocating compressors in a future test procedure rulemaking.

2. Centrifugal Compressors

As stated in section III.A of this document, the current test procedure for compressors applies to rotary positive displacement compressors (and therefore does not apply to centrifugal air compressors). 10 CFR 431.344. In the February 2023 NOPR, DOE proposed to continue excluding centrifugal compressors from the scope of the test procedure. 88 FR 9199, 9203. DOE stated that it will continue to review and consider potential test methods for centrifugal compressors and may consider developing test procedures for centrifugal compressors as a part of a future rulemaking process. *Id.* DOE also asked for comment regarding its proposal to not include centrifugal compressors within the scope of test procedure applicability and regarding whether dynamic compressor varieties other than centrifugal compete with the air compressor categories discussed in the February 2023 NOPR. *Id.*

In response to the request for comment in the February 2023 NOPR, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all expressed support for DOE's proposal to exclude centrifugal compressors from the scope of test procedure applicability. (CAGI, No. 21 at p. 2; Kaeser Compressors, No. 24 at p. 3; Ingersoll Rand, No. 25 at p. 1; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1) Additionally, in response to the request for comment regarding clarification on ''dynamic'' versus ''centrifugal'' compressors, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all supported the position that centrifugal compressors are the only form of dynamic compressor that competes with the air compressor categories discussed in the February 2023 NOPR. (CAGI, No. 21 at p. 2; Kaeser Compressors, No. 24 at p. 3; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

NEEA & NPCC also recommended that DOE consider a separate future test

procedure rulemaking for centrifugal compressors, which would create a path for expanding the current test procedure scope to rotary compressors up to 500 hp. NEEA & NPCC commented that centrifugal compressors make up a small market share but represent 18 percent of annual energy consumption for industrial compressors, and are typically above 200 hp. NEEA & NPCC also stated that rotary and centrifugal compressors from 200 hp to 500 hp represent 25 percent of total commercial and industrial compressor energy consumption. NEEA & NPCC stated that ISO 5389 is an industry-accepted test procedure for centrifugal compressors and recommended this as an option for a future centrifugal compressor test procedure rulemaking. NEEA & NPCC also stated that there is little overlap in the applications that would use a centrifugal compressor instead of a rotary compressor because centrifugal compressors are more expensive and are used for specific applications that require clean air. (NEEA & NPCC, No. 26 at pp. 3–4)

CA IOUs recommended DOE expand the scope of this test procedure to cover centrifugal compressors. CA IOUs stated that dynamic air compressors account for approximately 18 percent of total industrial air compressor national energy consumption. CA IOUs also stated that the inclusion of dynamic compressors would give end users more data to compare with and that these compressors provide oil- and particulate-free air, which would allow them to compete with regulated and large positive displacement rotary compressors in certain applications. (CA IOUs, No. 27 at pp. 7–9) ASAP, ACEEE, & NRDC also encouraged DOE to include centrifugal compressors in the scope of this test procedure final rule due to the significance of their energy usage and the fact that centrifugal compressors may compete with large rotary positive displacement compressors. ASAP, ACEEE, & NRDC added that ISO 5389, the industry test procedure for dynamic compressors, could potentially serve as the basis of the test procedure. (ASAP, ACEEE, & NRDC, No. 28 at p. 3)

It is true that centrifugal compressors can compete with large rotary positive displacement compressors, as stated by commenters. (CA IOUs, No. 27 at pp. 8–9; ASAP, ACEEE, & NRDC, No. 28 at p. 3) DOE discussed the potential for competition between these categories in the January 2017 Final Rule. 82 FR 1052, 1061–1063. Competition between these categories is considerable above 200 hp, and this reasoning was used to set the upper bound of the compressor test procedure motor nominal horsepower at 200 hp. 82 FR 1052, 1062. As discussed in section III.A.3 of this final rule, DOE is maintaining this upper bound on compressor motor nominal horsepower in the test procedure. This ensures that there is not considerable competition between unregulated centrifugal compressors and regulated positive displacement rotary compressors within the scope of the DOE compressors test procedure.

DOE has not yet determined a test procedure for centrifugal compressors that would produce test results that reflect efficiency during a representative average use cycle and that would not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Due to the reasons discussed in the February 2023 NOPR and previous paragraphs, DOE is not expanding the scope of this test procedure to include centrifugal compressors. DOE continues to review and consider potential methods for centrifugal compressors and may consider developing test procedures for centrifugal compressors as part of a future rulemaking process.

3. Compressor Motor Nominal Horsepower

As stated in section III.A of this document, the current test procedure for compressors applies to compressors that have a full-load operating pressure of 75 to 200 psig (inclusive) and either (1) a full-load actual volume flow rate of 35 to 1,250 cfm (inclusive) or (2) compressor motor nominal horsepower of 10 to 200 hp (inclusive). 10 CFR 431.344. In the February 2023 NOPR, DOE tentatively determined that the same burden concerns as discussed in the January 2017 Final Rule would continue to exist for the current compressor market. 88 FR 9199, 9203. These include a small number of shipments of units greater than 200 hp and the potential for competitive disadvantage for rotary positive displacement compressors that compete with centrifugal compressors. *Id.* Therefore, DOE did not propose any changes to the current horsepower range of 10 to 200 hp for the existing test procedure in the February 2023 NOPR. *Id.* DOE asked for comment regarding the determination to not include compressors with a horsepower rating above 200 hp within the scope of test procedure applicability. *Id.*

In response to the February 2023 NOPR, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all expressed support for the DOE proposal to not include compressors with a horsepower rating above 200 hp within the scope of test procedure applicability. (CAGI, No. 21 at p. 2; Kaeser Compressors, No. 24 at pp. 3–4; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

Kaeser Compressors encouraged DOE to investigate increasing the maximum horsepower above 200 hp to 500 hp in a future rulemaking. (Kaeser Compressors, No. 24 at p. 2) NEEA & NPCC recommended that DOE consider a separate future test procedure rulemaking for centrifugal compressors, which would create a path for expanding the current test procedure scope to rotary compressors up to 500 hp. NEEA & NPCC also stated that rotary and centrifugal compressors from 200 hp to 500 hp represent 25 percent of total commercial and industrial compressor energy consumption. (NEEA & NPCC, No. 26 at pp. 3–4)

CA IOUs recommended that DOE expand the scope of the test procedure to cover large (201–500 hp) rotary positive displacement air compressors. CA IOUs stated that all compressor types in this size range consume 29 percent of total industrial air compressor energy, and that increasing the scope of the test procedure would support the goal of fully evaluating the cost-effectiveness, technological feasibility, and economically justified savings opportunities for end users. CA IOUs also stated that air compressor manufacturers voluntarily provide CAGI data sheets for large and oil-free rotary positive displacement air compressors, therefore the additional test burden of covering compressors with motors operating at 201–500 hp is limited. CA IOUs provided data showing that there is a wide range of isentropic efficiencies for rotary positive displacement compressors with motor nominal power greater than 200 hp. Finally, CA IOUs provided data indicating that centrifugal compressors likely compete with fixed-speed rotary positive displacement compressors to provide baseload, but they do not likely compete with variable-speed rotary positive displacement compressors providing low part load. (CA IOUs, No. 27 at pp. 2–7)

ASAP, ACEEE, & NRDC also encouraged DOE to expand the scope of the test procedure to cover rotary positive displacement air compressors greater than 200 hp. ASAP, ACEEE, & NRDC disagreed with DOE's rationale for excluding rotary compressors greater than 200 hp for several reasons. First, ASAP, ACEEE, & NRDC indicated that CAGI performance data is already available for many of these larger models. Second, ASAP, ACEEE, & NRDC acknowledged that larger

compressors have lower shipment numbers, but they indicated that DOE has recently expanded the scope of the electric motors test procedure to 750 hp and stated that very large electric motors are also often low-volume, custom products. Third, ASAP, ACEEE, & NRDC stated that most compressor manufacturers make both in-scope rotary compressors and out-of-scope compressors, so it is unclear whether certain manufacturers would be disadvantaged by inclusion of larger rotary compressors. Finally, ASAP, ACEEE, & NRDC stated that DOE should consider expanding the test procedure scope to currently out-of-scope compressor types, such as centrifugal compressors, as this would mitigate concerns over disadvantaging certain manufacturers or pushing the market towards out-of-scope substitutions. (ASAP, ACEEE, & NRDC, No. 28 at pp. 1–2)

DOE recognizes that a considerable amount of the market for compressors greater than 200 hp is served by centrifugal compressors. As discussed in the January 2017 Final Rule, the inclusion of rotary compressors greater than 200 hp could create a competitive disadvantage for manufacturers of these compressors, as centrifugal compressors of the same horsepower do not have the same testing and representation requirements. 82 FR 1052, 1061–1062. DOE concluded at the time that this competitive advantage could incentivize users to switch from regulated rotary compressors to unregulated centrifugal compressors, thus creating a competitive advantage for manufacturers of unregulated centrifugal compressors. *Id.* Although commenters have indicated that these categories compete in only a subset of the market and that some manufacturers make both regulated and unregulated compressors, the same competitive issues still largely exist today.

Although ASAP, ACEEE, & NRDC have suggested that DOE can mitigate the concerns over competition by covering both rotary positive displacement and centrifugal compressors over 200 hp in the test procedure scope (ASAP, ACEEE, & NRDC, No. 28 at pp. 1–2), section III.A.2 of this final rule discusses that DOE is continuing to exclude centrifugal compressors from the scope of the test procedure at this time. As a result, in order to ensure that there is not considerable competition between unregulated centrifugal compressors and regulated positive displacement rotary compressors, DOE is also continuing to exclude rotary positive displacement compressors over 200 hp from the scope of the test procedure at this time.

For the reasons discussed in the February 2023 NOPR and the previous paragraphs, DOE is maintaining the current horsepower range of 10 to 200 hp for this test procedure final rule. DOE continues to review and consider potential methods for testing positive displacement rotary compressors with nominal motor horsepower greater than and less than the current scope and may consider developing test procedures for these compressors as part of a future rulemaking process.

4. Lubricant-Free Compressors

As stated in section III.A of this document, the current test procedure for compressors applies to lubricated compressors (and therefore does not apply to lubricant-free compressors). 10 CFR 431.344. In the February 2023 NOPR, DOE proposed to not expand the scope of the test procedure to include lubricant-free compressors. 88 FR 9199, 9203–9204. DOE stated that it may evaluate the justification for developing test procedures for lubricant-free compressors as part of a future rulemaking process. DOE also asked for comment regarding its proposal to not include lubricant-free compressors within the scope of test procedure applicability.

In response to the request for comment, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all responded in agreement with DOE's proposal to not include lubricant-free compressors within the scope of test procedure applicability. (CAGI, No. 21 at p. 2; Kaeser Compressors, No. 24 at p. 4; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

Kaeser Compressors encouraged DOE to evaluate recently added/verified test standards for oil-free compressors and blowers for potential incorporation in a future rulemaking. Kaeser Compressors also added that, since there are many different compressor and blower technologies in the oil-free category, they may require different ways to develop efficiency and test standards. (Kaeser Compressors, No. 24 at p. 2)

ASAP, ACEEE, & NRDC recommended DOE expand the scope of this test procedure to cover lubricant-free compressors, because including lubricant-free compressors would mitigate the risk of unregulated product substitutions, which was a concern in the January 2017 Final Rule. (ASAP, ACEEE, & NRDC, No. 28 at p. 3)

DOE discussed lubricant-free compressors in both the January 2017 Final Rule (82 FR 1052, 1063) and the January 2020 ECS Final Rule (85 FR 1504, 1519–1520), concluding that justification did not exist at the time to support extending the scope of test procedures or energy conservation standards to apply to lubricant-free compressors. DOE has determined that the conclusion made in the 2017 and 2020 final rules still applies for lubricant-free compressors.

ASAP, ACEEE, & NRDC recommended that DOE mitigate the risk of unregulated product substitutions by expanding the scope of the test procedure to cover lubricant-free compressors and other categories of compressors, such as centrifugal and scroll compressors, instead of excluding lubricant-free compressors. (ASAP, ACEEE, & NRDC, No. 28 at p. 3) Section III.A.2 of this final rule, however, discusses that DOE is continuing to exclude centrifugal compressors from the scope of the test procedure at this time. As a result, in order to ensure that there is not competition between unregulated centrifugal compressors and regulated lubricant-free positive displacement rotary compressors, DOE is also excluding lubricant-free rotary positive displacement compressors from the scope of the test procedure at this time.

For the reasons discussed in the previous paragraphs, at this time, DOE is not expanding the scope of the test procedure to include lubricant-free compressors. DOE may evaluate the justification for developing test procedures for lubricant-free compressors as part of a future rulemaking process.

5. Brushed Motors

As stated in section III.A, the current test procedure for compressors applies only to compressors with brushless motors. 10 CFR 431.344. In the February 2023 NOPR, DOE proposed to not expand the scope of the test procedure to include compressors with brushed motors. 88 FR 9199, 9204. DOE stated that it may evaluate the justification for developing test procedures for compressors with brushed motors as part of a future rulemaking process. DOE also asked for comment regarding its proposal to not include compressors with brushed motors within the scope of test procedure applicability.

In response to the request for comment, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all responded in agreement with DOE's proposal to exclude compressors with brushed motors from the scope of test procedure applicability. (CAGI, No. 21 at p. 2;

Kaeser Compressors, No. 24 at p. 4; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

ASAP, ACEEE, & NRDC encouraged DOE to include compressors with brushed motors in the test procedure scope. (ASAP, ACEEE, & NRDC, No. 28 at p. 1) ASAP, ACEEE, & NRDC commented that they were concerned that manufacturers could consider replacing brushless motors with less efficient brushed motors to avoid compressor regulations. (ASAP, ACEEE, & NRDC, No. 28 at p. 3)

DOE discussed compressors with brushed motors in both the January 2017 Final Rule (82 FR 1052, 1060) and the January 2020 ECS Final Rule (85 FR 1504, 1515), concluding that the burden associated with establishing testing requirements for brushed motor compressors outweighed the associated benefits. This was because, although there were potential benefits to expanding scope to include these models, brushed motors are uncommon in compressors with significant operating hours, and most brushed motor compressors are not tested for efficiency. 82 FR 1052, 1060. In addition, DOE stated that brushed motors are uncommon in compressors with significant potential energy savings (*i.e.,* high operating hours) due to higher maintenance costs, short operating lives, significant acoustic noise, and electrical arcing. *Id.* For these reasons, DOE concluded that brushed motors are not a viable substitution risk for compressors within the scope of the DOE compressor test procedure. *Id.*

DOE has determined that the conclusions made in the January 2017 Final Rule still apply for compressors with brushed motors. Due to this reasoning, at this time, DOE is not expanding the scope of the test procedure to include compressors with brushed motors. DOE may evaluate the inclusion of compressors with brushed motors as part of a future rulemaking.

6. Output Pressure Less Than 75 psig

As stated in section III.A, the current test procedure for compressors applies only to compressors that have a full-load operating pressure greater than or equal to 75 psig and less than or equal to 200 psig. 10 CFR 431.344. In the February 2023 NOPR, DOE proposed to not include equipment for compressed air applications for pressures under 75 psig within the scope of test procedure applicability. 88 FR 9199, 9204. DOE stated that it may evaluate the justification for developing test procedures for compressors with output pressure of less than 75 psig as part of a future rulemaking process. *Id.* DOE also asked for comment regarding its proposal to not include equipment for compressed air applications for pressures under 75 psig within the scope of test procedure applicability. *Id.*

In response to the request for comment, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all commented in agreement with DOE's proposal to not include compressors with output pressure less than 75 psig. (CAGI, No. 21 at p. 2; Kaeser Compressors, No. 24 at p. 4; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

Kaeser Compressors encouraged DOE to evaluate recently added/verified test standards for oil-free compressors and blowers for potential incorporation in a future rulemaking, which would include pressure ranges of 50–160 psig. Kaeser Compressors added that 1–30 psig is also a large area of energy consumption, which includes wastewater treatment and other aeration and conveying applications that include 24/7 operation. (Kaeser Compressors, No. 24 at p. 2)

At this time, DOE is not expanding the scope of the test procedure to include compressors with output pressure of less than 75 psig. DOE discussed compressors with output pressure of less than 75 psig in both the January 2017 Final Rule (82 FR 1052, 1062–1063) and the January 2020 ECS Final Rule (85 FR 1504,1519), concluding that justification did not exist at the time to support extending the scope of either test procedures or energy conservation standards to apply to compressors with output pressure of less than 75 psig. DOE has determined that the conclusion made in the January 2017 Final Rule and the January 2020 ECS Final Rule still applies for compressors with output pressure of less than 75 psig. DOE may evaluate the justification for developing test procedures for compressors with output pressure of less than 75 psig as part of a future rulemaking process.

7. Integrated Dryers

In response to the February 2023 NOPR, Kaeser Compressors commented that, while integrated dryers inside a compressor package are not listed in the DOE procedure, it might be necessary to specifically exclude them from this test procedure. (Kaeser Compressors, No. 24 at p. 8)

Section 2.2.4 of appendix A contains tables 1 and 2, which specify the compressor components and ancillary equipment that must be present and installed when testing an air compressor. These tables were discussed in the January 2017 Final Rule. 82 FR 1052, 1055–1057, 1080–1082. Table 1 to appendix A contains the equipment that must be present and installed for all tests. If the compressor is distributed in commerce without an item from table 1 to appendix A, the manufacturer must provide an appropriate item to be installed for the test. If any of the equipment listed in table 2 to appendix A is distributed in commerce with units of the compressor basic model, it must be present and installed for all tests specified in appendix A. Additional ancillary equipment beyond the items listed in tables 1 and 2 to appendix A may be installed for the test, if distributed in commerce with the compressor, but this additional ancillary equipment is not required.

Neither table 1 nor table 2 to appendix A specify an integrated dryer, or any type of dryer, as a piece of equipment that must be installed for testing. Table 1 to appendix A specifies a moisture separator and drain, but this is different from a dryer, in that a moisture separator removes liquid water from the air, whereas a dryer removes water vapor from the air. As a result, an integrated dryer is not required to be present and installed for the tests specified in the compressors test procedure. A manufacturer may install an integrated dryer for the tests if the integrated dryer is distributed in commerce with the compressor, but the integrated dryer is not required.

Although Kaeser Compressors suggested that it might be necessary to specifically exclude integrated dryers from the test procedure, DOE is not doing that in this final rule. As discussed in the previous paragraphs, a manufacturer is not required to install an integrated dryer for testing, but the manufacturer may install an integrated dryer if they wish to represent the performance of their compressor with an integrated dryer installed. This flexibility is indicated by the text of section 2.2.4 of appendix A and tables 1 and 2 to appendix A, and no changes are required at this time to clarify this flexibility.

B. Updates to Industry Standards

1. ISO 1217:2009(E) as the Basis for This Test Procedure

DOE's current test procedure incorporates by reference certain sections of ISO 1217:2009(E) as amended through Amendment 1:2016 for test methods and acceptance tests regarding volume rate of flow and power requirements of displacement

compressors, in addition to the operating and testing conditions that apply when a full performance test is specified. In the February 2023 NOPR, DOE did not propose amendments to the existing reference to ISO 1217:2009(E) as amended through Amendment 1:2016 as the basis for the compressors test procedure. 88 FR 9199, 9204–9205. DOE also asked for comment regarding its initial determination to continue to use ISO 1217:2009(E) as amended through Amendment 1:2016 as the basis for the compressors test procedure.

In response to the request for comment, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all commented in agreement with DOE's proposal to continue to use ISO 1217:2009(E) as amended through Amendment 1:2016 as the basis for the compressors test procedure. (CAGI, No. 21 at p. 3; Kaeser Compressors, No. 24 at p. 4; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

DOE agrees with the comments received and is continuing to incorporate by reference certain sections of ISO 1217:2009(E) as amended through Amendment 1:2016 in the compressors test procedure at 10 CFR 431.343. As discussed in section III.E.1, DOE is revising 10 CFR 431.343 to add section B.4.5 of Annex B of ISO 1217:2009(E) to the list of sections that DOE is incorporating by reference in the compressors test procedure. *See* section III.E.1 for a full discussion of this revision.

2. Ambient Temperature Range Requirement

DOE adopted the ambient temperature range for testing of 68 to 90 °F in the January 2017 Final Rule partially in response to concern that creating a climate-controlled space for testing compressors could be a significant burden on small businesses. DOE stated that this temperature range provides representative measurements without unduly burdening manufacturers. 82 FR 1052, 1079–1080. In the February 2023 NOPR, DOE proposed to maintain the current ambient temperature range requirement of 68 to 90 °F for testing air compressors. 88 FR 9199, 9205. DOE also asked for comment regarding its proposal to maintain the current ambient temperature range requirement.

In response to the request for comment, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all commented in agreement with DOE's proposal to maintain the current ambient temperature range requirement of 68 to 90 °F for testing air compressors. (CAGI, No. 21 at p. 3; Kaeser Compressors, No. 24 at p. 5; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1) They added that narrowing the range or specifying specific requirements would add burden to the industry without providing any advantages to consumers. (*Id.)*

For the reasons discussed in the February 2023 NOPR and the previous paragraphs, DOE is not amending the current ambient temperature range requirement of 68 to 90 °F for testing air compressors in this final rule.

C. Definitions

1. Multi-Element Air Compressors

Air compressors may include multiple compression elements to increase compression efficiency or to generate a greater pressure increase than would be possible with a single compression element. The current definition of ''air compressor'' specifies inclusion of a compression element but does not exclude air compressors that include more than one compression element. DOE discussed the current definition of ''air compressor'' as applying to multi-element air compressors in both the January 2017 Final Rule (82 FR 1052, 1068) and the January 2020 ECS Final Rule, in which multi-staging was identified as a technology option for improving the energy efficiency of compressors. 85 FR 1504, 1537.

In the February 2023 NOPR, DOE tentatively determined that revising the definition of ''air compressor'' to explicitly include air compressors with more than one compression element would reduce the probability that the definition is misinterpreted to exclude air compressors with more than one compression element. 88 FR 9199, 9205–9206. DOE proposed to amend the definition of ''air compressor'' such that ''compression element (bare compressor)'' is replaced by ''one or more compression elements (bare compressors).'' *Id.* Additionally, DOE proposed to change ''compressor element'' to ''compression elements'' to correct a typographical error. *Id.* DOE also issued a request for comment in the February 2023 NOPR regarding its proposed amendment of the definition of ''air compressor.'' 88 FR 9199, 9206.

In response to the request for comment, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, Sullivan-Palatek, and CA IOUs all expressed support for DOE's proposed amendment to the definition of ''air compressor.'' (CAGI, No. 21 at p. 2; Kaeser Compressors, No. 24 at p. 4; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1; CA IOUs, No. 27 at p. 1)

The current formulation of the definition of ''air compressor'' does not exclude air compressors with more than one compression element; nonetheless, stating expressly that multi-element compressors meet the definition of ''air compressor'' limits the potential for misinterpretation.

For the reasons discussed in the February 2023 NOPR and the preceding paragraphs, DOE is amending the definition of ''air compressor'' to be ''a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of one or more compression elements (bare compressors), driver(s), mechanical equipment to drive the compression elements, and any ancillary equipment.''

D. Efficiency Metrics

1. Load Point for Fixed-Speed Compressors

The current efficiency metric for fixed-speed compressors, full-load package isentropic efficiency, uses a single load point at 100 percent of full-load actual volume flow rate. In the February 2023 NOPR, DOE proposed to maintain the requirement to measure the performance of fixed-speed compressors at full load, or more specifically, full-load actual volume flow rate at full-load operating pressure, as described in paragraph 3.3.1 of appendix A. 88 FR 9199, 9209. DOE also asked for comment on whether the test procedure reflects actual operating costs for compressors based on their realistic average use cycles. *Id.*

In response to the February 2023 NOPR, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all expressed support for the provision that the test procedure can be considered reflective of realistic average use cycles. They commented that, in practical terms, no one compressor installation will have identical or predictable use cycles, and that the current regulatory provision to certify fixed-speed machines based on their performance at 100 percent flow rate and for variable-speed machines based on a weighted average for flow conditions provides a realistic, representative framework for testing, certifying, and presenting meaningful and consistent data to customers. (CAGI, No. 21 at p. 5; Kaeser Compressors, No. 24 at p. 8; Ingersoll Rand, No. 25 at p. 4; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

For the reasons discussed in the February 2023 NOPR and preceding paragraphs, DOE is not proposing to alter the current metric for fixed-speed compressors in this test procedure final rule.

2. Load Points for Variable-Speed Compressors

The part-load package isentropic efficiency metric for variable-speed air compressors uses three load points: 40, 70, and 100 percent of full-load actual volume flow rate. In the February 2023 NOPR, DOE proposed to continue using those load points. 88 FR 9199, 9208–9209. DOE requested comment on its proposal to maintain the number of load points for variable-speed air compressors and to not include points with greater than 100 percent of full-load actual volume flow rate. *Id.*

In response to the request for comment in the February 2023 NOPR, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all expressed support for the DOE proposal to maintain the number of test points and to not include points with greater than 100-percent load.

For the reasons discussed in the February 2023 NOPR and the previous paragraphs, in this final rule, DOE is maintaining the load points for the part-load package isentropic efficiency metric for variable-speed air compressors at 100 percent, 70 percent, and 40 percent of full-load actual volume flow rate.

3. Inclusion of Unloaded Operation for Fixed-Speed Compressors

The isentropic efficiency metric for fixed-speed compressors currently includes performance at full-load operation only. No measure of performance is included from unloaded operation. In the February 2023 NOPR, DOE proposed to maintain this exclusion of unloaded operation from the isentropic efficiency metric. 88 FR 9199, 9208.

ASAP, ACEEE, & NRDC encouraged DOE to explore how unloaded power measurements could be incorporated into the test procedure. ASAP, ACEEE, & NRDC stated that fixed-speed air compressors are tested and evaluated only at full load. However, they elaborated that fixed-speed compressors often include controls such as ''load/unload'' or ''start/stop'' and commented that testing and evaluating fixed-speed compressor efficiency at both fully loaded and fully unloaded (*i.e.,* zero flow) conditions would be more representative of typical usage. ASAP, ACEEE, & NRDC further stated that the CAGI Performance Verification Program already specifies testing at a fully unloaded test point, and that capturing differences in unloaded power usage will become increasingly important as compressor efficiencies improve. (ASAP, ACEEE, & NRDC, No. 28 at p. 3)

NEEA & NPCC recommended that DOE include a no-load power measurement in the test procedure for fixed-speed compressors that use start/stop and load/unload control strategies. NEEA & NPCC stated that unlike variable-airflow controls, fixed-speed air compressors that use start/stop and load/unload control strategies operate at either fully loaded or fully unloaded states, and testing units that have start/stop or load/unload control strategies at fully loaded and fully unloaded states would be more representative of typical usage. NEEA & NPCC commented that the January 2020 ECS Final Rule indicates that a significant portion of annual energy consumption is spent in a no-load or fully unloaded state for fixed-speed compressors with unload strategies. NEEA & NPCC further stated that, because the metric does not currently account for a no-load power, DOE can't consider technologies that reduce no-load power consumption in its standard analysis; manufacturers that develop products that use less energy in no-load are not given credit in their regulated ratings; and the DOE test procedure assumption for non-operating hours is zero, which is not in agreement with the analysis performed in the January 2020 ECS Final Rule and does not align with the typical usage of compressors. NEEA & NPCC also stated that standby mode and off mode energy consumption measurements are required for all consumer products' test procedures, and that including a no-load power measurement for industrial equipment that consumes power in a no-load state, such as start/stop and load/unload compressors, ensures consistency in test procedure requirements across industrial and consumer products. (NEEA & NPCC, No. 26 at pp. 5–6)

NEEA & NPCC disagreed with DOE's statement in the February 2023 NOPR that testing at a no-load state is not an essential output of the test procedure and, therefore, would cause unneeded incremental burden on testing and reporting requirements. NEEA & NPCC stated that DOE requiring testing at a no-load state is the necessary step for no-load power measurement to be an essential output of the test procedure. NEEA & NPCC also stated that the incremental burden of testing a unit at a no-load state is minimal, as units under test are already set up for testing at specified load points and the CAGI data sheets already specify tolerances for testing at a fully unloaded test point. (NEEA & NPCC, No. 26 at p. 6)

DOE agrees that information describing unloaded states of operation could be useful to the end user. This subject was discussed in the January 2017 Final Rule. 82 FR 1052, 1068–1070. This included mention of possible methods to include loaded and unloaded points in a representative manner, including, potentially, the energy required during the transient periods between loaded and unloaded operation. *Id.* At the time, it was noted that there were no methods that had been developed and accepted by industry consensus, although Atlas Copco did provide an example of a cycle energy requirement approach to consider the energy during loaded operation, unloaded operation, and the transient periods between loaded and unloaded operation. *Id.* At the time, DOE did not include unloaded performance in its isentropic efficiency metric because there was no accepted industry test method. *Id.* DOE indicated at the time that DOE may consider incorporating such a method in future rulemakings if the metric gains acceptance in the industry and the test method can be formalized and validated beyond a case study. 82 FR 1052, 1069. DOE also stated that manufacturers may measure and advertise unloaded power, but it would not require measurement of unloaded performance as part of the test procedure. 82 FR 1052, 1070.

At the current time, DOE is not aware that an industry standard test method has been developed to provide a representative measure of performance across loaded and unloaded operation. In a comment in response to the February 2023 NOPR, Kaeser Compressors indicated that DOE could consider new industrial standards for a future rulemaking, including ISO 4376, Cycle energy requirement.[6] This standard is described on the ISO website as measuring the additional energy required for a single cycle caused by transient conditions, which sounds similar to the method from Atlas Copco that was discussed in the January 2017 Final Rule. The standard is currently listed as ''under development'' on the ISO website, and DOE is not aware of any compressors that are currently rated using this standard. As a result, it appears that this standard is not currently being used widely by industry. DOE is also not aware of any other industry consensus method to

[6] Available at *iso.org/standard/85352.html.*

combine loaded and unloaded performance.

The concerns that existed in the January 2017 Final Rule regarding the lack of an accepted industry test method to combine loaded and unloaded performance still exist. As a result, DOE is not including any measure of unloaded performance in the metrics of the compressors test procedure at this time, although manufacturers may measure and advertise unloaded power. DOE may consider including unloaded performance in the metrics of the compressors test procedures as part of a future rulemaking process.

4. Part-Load Performance of Fixed-Speed Compressors With Variable-Airflow Controls

The isentropic efficiency metric for fixed-speed compressors includes performance at full-load operation only. No measure of performance is included from part-load operation. In the February 2023 NOPR, DOE proposed to maintain this exclusion of part-load operation from the isentropic efficiency metric for fixed-speed compressors. 88 FR 9199, 9208.

ASAP, ACEEE, & NRDC encouraged DOE to include voluntary testing and reporting of part-load performance of fixed-speed compressors with variable-airflow controls. ASAP, ACEEE, & NRDC stated that fixed-speed compressors sold with variable-airflow controls, such as ''variable displacement'' or ''inlet modulation,'' can provide similar utility as variable-speed compressors. Thus, ASAP, ACEEE, & NRDC stated that DOE should provide specific voluntary provisions to test and rate compressors with variable-airflow controls (*e.g.,* using the variable-speed compressor test points at 40, 70, and 100 percent of full load). ASAP, ACEEE, & NRDC further stated that part-load testing of fixed-speed compressors with airflow controls would facilitate comparison of part-load efficiency among variable-airflow compressors as well as between variable-airflow and variable-speed compressors. Finally, ASAP, ACEEE, & NRDC indicated that these provisions would also ensure that any manufacturer representations of variable-airflow compressor part-load performance are consistent across the industry. (ASAP, ACEEE, & NRDC, No. 28 at pp. 3–4)

NEEA & NPCC recommended DOE coordinate with CAGI in rating fixed-speed rotary compressors with variable-airflow controls at variable load points to align with variable-speed compressors. NEEA & NPCC stated that many fixed-speed rotary compressors have variable-airflow controls and non-flat load profiles. Fixed-speed compressors that use variable-airflow controls, such as inlet valve modulation and variable displacement, provide the same function as variable-speed compressors; however, these compressors are tested only at full-load operation currently. Testing fixed-speed rotary compressors with variable-airflow controls at variable load points would be more representative of typical usage and produce a more representative isentropic efficiency. Furthermore, NEEA & NPCC stated that by not testing compressors with variable-airflow controls at part-load set points, consumers cannot compare and select the most efficient air compressors for part-load operations. (NEEA & NPCC, No. 26 at p. 4)

NEEA & NPCC disagreed with DOE's reasoning in the February 2023 NOPR that because fixed-speed rotary compressors in the CAGI data sheets are rated at only full-load isentropic efficiency, establishing part-load isentropic efficiencies for compressors with variable-airflow controls in the test procedure is not warranted at this time. NEEA & NPCC stated that DOE should consider improvements to the testing of variable-airflow compressors for several reasons. First, NEEA & NPCC stated that DOE is not limited to CAGI's performance verification program or the information on CAGI data sheets in their test procedure, and that DOE should fully consider the burden and value of changes to the testing of fixed-speed variable-airflow compressors. Second, NEEA & NPCC commented that the January 2020 ECS Final Rule indicated that about 37 percent of fixed-speed industrial air compressors use inlet valve modulation or variable displacement with high, low, or even load profiles, indicating that a significant portion of fixed-speed air compressors are tested in conditions at which they rarely or never operate. Finally, NEEA & NPCC commented that there may be a significant savings opportunity for fixed-speed rotary compressors with variable-airflow controls, and that DOE should investigate the savings opportunity by testing these compressors the same as variable-speed compressors. NEEA & NPCC stated that if significant savings potential is noted, DOE should update testing to better reflect the energy consumption and potential for savings in this equipment. In addition, NEEA & NPCC stated that DOE could also coordinate with CAGI on how to include these reporting requirements in their data sheets so that both continue to align, should DOE make changes. (NEEA & NPCC, No. 26 at p. 6)

DOE agrees that a part-load package isentropic efficiency metric for fixed-speed variable-airflow compressors could acceptably represent the typical energy use of fixed-speed compressors with variable-airflow controls. This subject was discussed in the January 2017 Final Rule. 82 FR 1052, 1072–1073. At the time, it was noted that CAGI was doing preliminary work on developing a method for one of these control methods (variable displacement), but that there was not yet an industry consensus method for measuring the part-load performance of variable-airflow fixed-speed compressors. *Id.* at 82 FR 1073. The lack of an accepted test method was one of the reasons that DOE did not include a part-load package isentropic efficiency metric for fixed-speed variable-airflow compressors in the test procedure. The other reasons included the lack of historical part-load performance data for these compressors and the approach taken by CAGI and the EU Lot 31 draft standard. *Id.* DOE also acknowledged in the January 2017 Final Rule that part-load performance information for these varieties of compressors can provide valuable information for the end user, and that manufacturers of fixed-speed compressors may continue making graphical or numerical representations of package isentropic efficiency and package specific power as functions of flow rate or rotational speed. *Id.*

At the current time, DOE is not aware of an industry consensus method for measuring part-load package isentropic efficiency for fixed-speed variable-airflow compressors, nor is DOE aware of this metric being used widely for this category of compressors. As a result, the concerns that existed in the January 2017 Final Rule regarding the lack of an accepted industry test method still exist. Therefore, DOE is not including any measure of part-load package isentropic efficiency for fixed-speed variable-airflow compressors in the compressors test procedure at this time. DOE may consider part-load package isentropic efficiency for fixed-speed variable-airflow compressors as part of a future rulemaking process.

E. Test Method

1. K6 Correction Factor

ISO 1217:2009(E) contains several correction factors that correct for variables of the environment, process gas, and compressor operation. The K_6 correction factor in ISO 1217:2009(E) is labeled in section 4.1 of ISO 1217:2009(E) as the correction factor for

the isentropic exponent. The DOE test procedure uses only a subset of the correction factors in ISO 1217:2009(E), and it does not use the K_6 correction factor. The DOE test procedure specifies in sections 3.3.2.2, 3.4.3.2, 3.4.4.2, and 3.5 of appendix A to multiply measured power by the K_5 correction factor, which is labeled in section 4.1 of ISO 1217:2009(E) as the correction factor for the inlet pressure, polytropic exponent, and pressure ratio.

In response to the May 2022 RFI, DOE received comments about potentially needing to use the K_6 correction factor in certain situations. CAGI, supported by Kaeser Compressors, commented that if testing is conducted at sites significantly above sea level, use of the K_6 correction factor may be necessary to obtain accurate representative results. (CAGI, No. 11 at p. 2; Kaeser Compressors, No. 17 at p. 1)

In the February 2023 NOPR, DOE explained that DOE had deliberately omitted the K_6 correction factor during the January 2017 Final Rule. 82 FR 1052, 1084; 88 FR 9199, 9206. As listed in the footnotes of the January 2017 Final Rule, the isentropic exponent of air has some limited variability with atmospheric conditions, and DOE adopted a fixed value of 1.400 to align with the EU Lot 31 draft standard's metric calculations. *Id.* As such, DOE did not propose to amend the current fixed value of 1.400 for the isentropic exponent in the February 2023 NOPR. 88 FR 9199, 9206. DOE also asked for comment regarding its initial determination to continue to use a fixed value of 1.400 for the isentropic exponent, as opposed to incorporating a K_6 correction factor. *Id.*

In response to the request for comment, CAGI, supported by Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek, commented in support of DOE's initial determination to continue to use a fixed value of 1.400 for the isentropic exponent of air. However, they added that to ensure results derived from testing at elevation are accurate, the K_6 correction factor is necessary to incorporate both isentropic exponent and pressure ratio. They indicated that is necessary to correct the measured power with both the K_5 and K_6 correction factors in order to correct for inlet pressure and pressure ratio. The DOE test procedure directs that performance be normalized to a reference ambient inlet pressure of 100 kPa, approximately corresponding to an altitude of 364 ft above sea level. CAGI presented a table illustrating that calculated results are incorrect at elevations greater than and less than 364 ft if K_6 is not used. (CAGI, No. 21 at pp. 3–5; Kaeser Compressors, No. 24 at p. 6; Ingersoll Rand, No. 25 at p. 3; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1) The commenters also indicated that correcting the DOE test procedure to include K_6 will reduce burdens and potential burdens for the industry, because currently the DOE test method and its correction deviates from the national consensus standard. They also stated that correcting the procedure will not result in a need to retest and recertify but will ensure that any verification/certification performed at any elevation other than 364 ft or during low- or high-pressure weather events will be correct. (CAGI, No. 21 at pp. 4–5; Kaeser Compressors, No. 24 at pp. 8–9; Ingersoll Rand, No. 25 at pp. 4–5; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

After reviewing CAGI's comments and the content of ISO 1217:2009(E), DOE now understands that K_6 is required to calculate package isentropic efficiency and specific power accurately in the DOE test procedure. Although K_5 is labeled as ''correction factor for inlet pressure, polytropic exponent and pressure ratio'' and K_6 is labeled as ''correction factor for isentropic exponent'' in section 4.1 of ISO 1217:2009(E), which appears to be inaccurate. K_5, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E), appears to correct only for inlet pressure, because it is a ratio of inlet pressures. K_6, as determined in section B.4.5 of Annex B to ISO 1217:2009(E), appears to correct for both the isentropic exponent and pressure ratio, because it contains ratios of isentropic exponents and pressure ratios. In the case of the DOE test procedure, for which a fixed value of 1.400 is used for the isentropic exponent, K_6 will correct for only pressure ratio. For the packaged compressors covered by the DOE test procedure, both inlet pressure and pressure ratio change with elevation and weather conditions. By including the K_5 correction factor but excluding the K_6 correction factor, the DOE test procedure currently corrects for variations in inlet pressure but does not correct for variations in pressure ratio. By including K_6 as well, the DOE test procedure will correct for variations in both inlet pressure and pressure ratio, thereby resulting in more accurate measurements of isentropic efficiency and specific power.

To incorporate the K_6 correction factor, DOE is making the following changes in the DOE test procedure. First, DOE is incorporating by reference section B.4.5 of ISO 1217:2009(E) into subpart T of 10 CFR part 431, which includes equations to calculate the K_6 correction factor: equation B.9 for single-stage displacement compressors with or without cooling and multi-stage compressors without intercooling, and equation B.10 for multi-stage displacement compressors with intercoolers. Second, DOE is revising sections 3.3.2.2, 3.4.3.2, 3.4.4.2, and 3.5 of appendix A to multiply measured power by both K_5 and K_6, instead of only multiplying measured power by K_5.

As indicated by commenters, these changes will make the results of the DOE test procedure more accurate, reduce burden by making the DOE test procedure consistent with the industry test method, and not require any retesting or recertifying.

2. Correction of Pressure Ratio at Full-Load Operating Pressure Formula

Section 3.6 of appendix A specifies a formula for pressure ratio at full-load operating pressure, which is used to classify whether a machine or apparatus qualifies as a compressor, as the definition of ''compressor'' stated in 10 CFR 431.342 states that the machine or apparatus must have a pressure ratio at full-load operating pressure greater than 1.3. Pressure ratio at full-load operating pressure does not factor directly into the measured values of compressor performance.

In response to the May 2022 RFI, DOE received comments noting that there is an apparent error in the formula for pressure ratio. In the February 2023 NOPR, DOE concurred with the commenters that the current formula contains an error, as it both does not match the discussion in the preamble of the January 2017 Final Rule and does not contain terms related to the calculation of pressure ratio at full-load operating pressure. 88 FR 9199, 9207.

The current formula for pressure ratio at full-load operating pressure inadvertently duplicates a formula used in a calculation related to determining a represented value of performance for a compressor basic model from a tested sample of units. Specifically, the current formula of pressure ratio at full-load operating pressure exactly matches the formula for the lower 95-percent confidence limit (''LCL'') of the true test mean divided by 0.95. In the February 2023 NOPR, DOE proposed to change the formula for pressure ratio at full-load operating pressure in section 3.6 of appendix A to rectify this error and reflect the proper pressure ratio at full-load operating pressure equation that will be utilized in the test procedure. The numerator of this proposed formula for pressure ratio incorporated full-load

operating pressure, determined in section 4.3.4 of appendix A (Pa gauge), while the denominator was standard atmospheric pressure, 100 kPa. 88 FR 9199, 9207.

DOE requested comment in the February 2023 NOPR regarding its proposal to correct the equation for pressure ratio at full-load operating pressure. In response, CAGI, supported by Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek, commented in support of DOE's proposal to correct the equation for pressure ratio at full-load operating pressure to amend a previous typographical error. In addition, the commenters noted that pressure ratio must always be calculated in terms of absolute pressure and recommended the addition of 100 kPa to the numerator of the equation to achieve this. (CAGI, No. 21 at p. 4; Kaeser Compressors, No. 24 at p. 7; Ingersoll Rand, No. 25 at p. 4; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

DOE evaluated the stakeholders' recommendation to express pressure ratio in terms of absolute pressure and agrees with the proposed solution. ''Absolute pressure'' is defined as pressure relative to a perfect vacuum. In the correction proposed in the February 2023 NOPR, the equation for pressure ratio expresses pressure in terms of gauge pressure in the numerator and absolute pressure in the denominator. 88 FR 9199, 9207. ''Gauge pressure'' is defined as the pressure above atmospheric pressure and has a different reference pressure compared to absolute pressure. For the calculated pressure ratio to be accurate, both the numerator and denominator must be expressed in terms of absolute pressure.

As a result, in this test procedure final rule, DOE is amending the formula for pressure ratio at full-load operating pressure in section 3.6 of appendix A to rectify the typographical error and to adjust the proposed equation so that pressure ratio is calculated in terms of absolute pressure by adding atmospheric pressure of 100 kPa to the numerator. The amended calculation for pressure ratio at full-load operating pressure is shown below in equation 1:

$$PR = \frac{(P_1 + P_{FL})}{P_1}$$

Eq. 1

Where:

PR = pressure ratio at full-load operating pressure;
P_1 = 100 kPa; and
P_{FL} = full-load operating pressure, determined in section 4.3.4 of appendix A to subpart T of part 431 (Pa gauge).

This change has no effect on the scope of compressors subject to the test procedure and does not increase the associated testing burden on manufacturers.

3. Tolerances for Measured Energy Efficiency Values

DOE adopted the tolerances specified in table 1 of ISO 1217:2009(E) in the January 2017 Final Rule in order to align with ISO 1217:2009(E), as amended, to reduce the burden and cost to manufacturers. DOE stated that most manufacturers currently use ISO 1217:2009(E), and with the modifications adopted in the January 2017 Final Rule, the test methods established for compressors are intended to produce results equivalent to those produced historically under ISO 1217:2009(E). 82 FR 1052, 1076. In the February 2023 NOPR, DOE proposed to continue to use the tolerances for measured energy efficiency values specified in ISO 1217:2009(E) and asked for comment regarding this proposal. 88 FR 9199, 9205.

In response to the request for comment, CAGI, Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek all commented in support of DOE's proposal to continue to use the tolerances for measured energy efficiency values specified in ISO 1217:2009(E). (CAGI, No. 21 at p. 3; Kaeser Compressors, No. 24 at p. 5; Ingersoll Rand, No. 25 at p. 2; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1) CAGI stated that uncertainty of measurement and variation in performance as a result of variation in manufacturing needs to be reflected in data presented to consumers, and that tolerances defined in Annex C of ISO 1217:2019 relate only to the verification of the measured parameters by a practical test. *Id.*

For the reasons discussed in the previous paragraphs, DOE is not amending the tolerances for measured energy efficiency values specified in ISO 1217:2009(E).

F. Reporting

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For compressors, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.63. DOE is not amending the product-specific certification requirements for these products at this time.

G. Test Procedure Costs and Harmonization

EPCA requires that test procedures established by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The following sections discuss DOE's evaluation of estimated costs associated with the amendments included in this final rule.

In this final rule, DOE is amending the test procedure for compressors by: (1) correcting the formula for calculating isentropic efficiency and specific energy consumption of the packaged compressor to the specified pressure ratio by incorporating a K_6 correction factor, (2) updating the formula for pressure ratio at full-load operating pressure currently presented in appendix A to rectify a previous error, and (3) modifying the current definition of ''air compressor'' to clarify that compressors with more than one compression element are still within the scope of this test procedure, and to revise the typographical error of ''compressor element'' to ''compression element.''

1. Amendment To Incorporate K6 Correction Factor

In the February 2023 NOPR, DOE issued a request for comment on the benefits and burdens of the proposed updates to the test procedure for compressors. 88 FR 9199, 9210. In response to DOE's request for comment, regarding DOE's amendment to include a K_6 correction factor, DOE received comments from CAGI, supported by Kaeser Compressors, Ingersoll Rand, Saylor-Beall, and Sullivan-Palatek, stating that this correction will reduce potential burdens for the industry. These commenters commented that,

currently, the DOE test method and its correction deviate from the national consensus standard. These commenters believe this deviation was not intentional, as it provides no benefit and reduces test accuracy. These commenters further stated that the error and deviation are more significant the farther the elevation is from 364 ft. These commenters also stated that error can occur during atmospheric weather events leading to extreme low or high pressure, and that testing that is not performed at the exact rated full-load operating pressure is incorrectly converted to efficiency and specific power in the current DOE test procedure. CAGI elaborated that 100 kPa represents the mean ambient pressure at 111 m (364 ft), and that if lab elevation differs significantly from this level, measurements deriving efficiency will deviate when using the DOE test method. CAGI stated that, using the industry standard correction, the efficiency as measured (with no corrections) is the same exact value as applying K_5 and K_6 factors to correct specific power consumption and deriving isentropic efficiency at the conclusion (as presented in Annex C and Annex H of ISO 1217:2009). CAGI concluded that correcting the test procedure using their recommendations will not result in a need to retest and recertify, but will ensure that any verification/certification performed at any elevation other than 364 ft or during low- or high-pressure events will be correct. (CAGI, No. 21 at pp. 5–6; Kaeser Compressors, No. 24 at pp. 8–9; Ingersoll Rand, No. 25 at pp. 4–5; Saylor-Beall, No. 22 at p. 1; Sullivan-Palatek, No. 23 at p. 1)

DOE agrees with the stakeholder comments that the incorporation of the K_6 correction factor will not add any test burden or associated costs and will only increase the accuracy of efficiency representations in this test procedure. DOE has also determined that this amendment will not require retesting or recertification solely as a result of DOE's adoption of the amendment to the test procedures, since the amendment aligns the test procedure with existing industry practice. Current industry practice is to use the K_6 correction factor to correct for error introduced by non-standard ambient pressures when testing at elevations above or below 364 ft. As such, although the newly incorporated correction factor would alter the final efficiency output of the DOE test procedure for compressors tested at non-standard ambient pressures as compared to the incorrect calculation in the current test procedure, this correction will not result in a need for manufacturers to retest or to update the isentropic efficiency ratings of their compressors because the industry already uses the appropriate correction factor consistent with the existing industry test procedure. This amendment serves to harmonize the DOE test procedure with the existing industry practice for testing compressor efficiency.

DOE does not anticipate any added test burden or associated costs from the amendment incorporating the K_6 correction factor, as: (1) the test method follows accepted industry practice, and (2) representations of compressor efficiency would not need to be updated, since the amendment DOE is adopting in this final rule will align DOE's test procedure with current industry testing practice, making it so manufacturers do not need to retest their models. As any representations are voluntary prior to the compliance date of any energy conservation standards for compressors, there is no direct burden associated with any of the testing requirements adopted in this final rule.

2. Amendment To Update Formula for Pressure Ratio at Full-Load Operating Pressure

The amendment regarding updating the formula for pressure ratio at full-load operating pressure will not impact the representations of compressor energy efficiency/energy use. The definition of a compressor is ''a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher-pressure values above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3,'' as stated in 10 CFR 431.342. In the test procedure for compressors, the calculation of pressure ratio at full-load operating pressure is only used to determine if a compressor meets the statutory definition of ''compressor'' by ensuring that the pressure ratio at full-load operating pressure is greater than 1.3. As such, this amendment does not impact representations of energy efficiency/energy use, and DOE does not anticipate any added test burden or associated costs for manufacturers stemming from this correction to the compressors test procedure.

3. Amendment To Update Definition of ''Air Compressor''

DOE does not anticipate any added test burden or associated costs from the amendment updating the definition of ''air compressor.'' This amendment serves to clarify that compressors with more than one compression element are still within the scope of this test procedure, and to revise the typographical error of ''compressor element'' to ''compression elements.'' As such, DOE does not anticipate any added test burden or associated costs for compressor manufacturers due to this amendment.

4. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA), or estimated operating costs of that product during a representative average use cycle. 10 CFR 431.4; section 8(c) of appendix A of 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

The test procedure for compressors at appendix A is based on, and incorporates by reference, much of ISO 1217:2009(E), ''Displacement compressors—Acceptance tests,'' as amended through Amendment 1:2016. In this final rule, DOE will incorporate by reference section B.4.5 of Annex B of ISO 1217:2009(E) via amendment. The industry standards DOE has incorporated by reference for the test procedure for compressors are located in 10 CFR 431.343.

H. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 75 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

I. Renumbering of Appendix A

Currently, appendix A is organized using a hierarchy that uses Roman numerals (*i.e.,* ''I, II, III, IV . . .'') for first-level headings, Latin capital letters for second-level headings (*i.e.,* ''A, B, C, D . . .''), and Arabic numerals (*i.e.,* 1, 2, 3 . . .'') for third-level headings.

In this final rule, DOE is revising the numbering hierarchy of appendix A to use only Arabic numerals, consistent with the numbering hierarchy that DOE uses across test procedures for consumer products at 10 CFR part 430, subpart B and for commercial and industrial equipment generally at 10 CFR part 431. For example, the current heading ''I.B.2'' of appendix A is renumbered to ''2.2.2'' (also reflecting the addition of a new section at the beginning of appendix A). This renumbering is for consistency purposes only and does not result in any substantive changes solely as a result of the renumbering.

IV. Procedural Issues and Regulatory Review

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

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

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

For manufacturers of compressors, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 13 CFR part 121. The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support-table-size-standards.* Compressor manufacturing is classified under NAICS 333912, ''air and gas compressor manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered a small business in this category. This employment figure is enterprise-wide, encompassing employees at all parent, subsidiary, and sister corporations.

To identify and estimate the number of small business manufacturers of equipment within the scope of this rulemaking, DOE conducted a market survey using available public information. DOE's research involved industry trade association membership directories (including CAGI), individual company and online retailer websites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture equipment covered by this rulemaking. DOE additionally reviewed publicly available data, data available through market research tools, and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer equipment within the scope of this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE identified a total of 12 domestic small businesses manufacturing compressors. However, as previously stated, the amendments adopted in this final rule revise certain definitions and formulas to ensure the clarity and accuracy of existing requirements and procedures, and the amendments harmonize the DOE test procedure with existing industry practices, without requiring manufacturers to retest their compressors. DOE has determined that the adopted test procedure amendments would not impact testing costs otherwise experienced by manufacturers.

Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of compressors must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first

obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including compressors. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for compressors in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for compressors under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for compressors. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

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

proposed rule or policy that may affect family well-being. When developing a Family Policymaking Assessment, agencies must assess whether: (1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the proposed benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and whether (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. In evaluating the above factors, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment as none of the above factors are implicated. Further, this proposed determination would not have any financial impact on families nor any impact on the autonomy or integrity of the family as an institution.

I. Review Under Executive Order 12630

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

J. Review Under Treasury and General Government Appropriations Act, 2001

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

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for compressors adopted in this final rule incorporate testing methods contained in certain sections of the following commercial standards: ISO 1217:2009(E), as amended through ISO 1217:2009(E)/Amd.1:2016. While this test procedure is not exclusively based on this industry testing standard, some components of the DOE test procedure adopt definitions, test parameters, measurement techniques, and additional calculations from them without amendment. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) In the January 2017 Final Rule, DOE consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and received no comments objecting to their use. 82 FR 1052, 1099.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

The following standards have not previously been approved for incorporation by reference in subpart T, appendix A, but are incorporated by reference in this final rule on the basis that they are referenced by other standards which had been previously and remain incorporated by reference in subpart T, appendix A.

ISO 1217:2009(E), ''Displacement compressors—Acceptance tests,'' fourth edition, July 1, 2009. ISO 1217:2009(E) specifies methods for acceptance tests regarding volume rate of flow and power requirements of displacement compressors. It also specifies methods for testing liquid-ring type compressors and the operating and testing conditions which apply when a full performance test is specified.

ISO 1217:2009/Amd.1:2016(E), Displacement compressors—Acceptance tests (fourth edition, July 1, 2009), AMENDMENT 1: Calculation of isentropic efficiency and relationship with specific energy, April 15, 2016. ISO 1217:2009/Amd.1.:2016(E) provides a method for the calculation of isentropic efficiency and relationship with specific energy.

ISO 5167–1:2022(E), Measurement of fluid flow by means of pressure differential devices inserted in circular cross-section conduits running full—Part 1: General principles and

requirements, third edition, June 2022. ISO 5167–1:2022(E) defines terms and symbols and establishes the general principles for methods of measurement and computation of the flow rate of fluid flowing in a conduit by means of pressure differential devices (orifice plates, nozzles, Venturi tubes, cone meters, and wedge meters) when they are inserted into a circular cross-section conduit running full. The standard also specifies the general requirements for methods of measurement, installation and determination of the uncertainty of the measurement of flow rate.

ISO 9300:2022(E), Measurement of gas flow by means of critical flow nozzles, third editions, June 2022. ISO 9300:2022(E) specifies the geometry and method of use (installation in a system and operating conditions) of critical flow nozzles used to determine the mass flow rate of a gas flowing through a system basically without the need to calibrate the critical flow nozzle. It also gives the information necessary for calculating the flow rate and its associated uncertainty.

IEC 60584–1:2013, Thermocouples—Part 1: EMF specifications and tolerances, edition 3.0, August 2013. IEC 60584–1:2013 specifies reference functions and tolerances for letter-designated thermocouples.

IEC 60584–3:2021, Thermocouples—Part 3: Extension and compensating cables—Tolerances and identification system, edition 3.0, February 2021. IEC 60584–3:2021 provides tolerances and an identification system necessary for the measurement of thermocouple circuits.

In this final rule, DOE includes revisions to the regulatory text that contained references to section B.4.5 of Annex B of ISO 1217:2009(E), which was not specifically incorporated by reference before this test procedure final rule.

See **SUPPLEMENTARY INFORMATION** section of this document for availability information of this material.

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on January 10, 2025, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2025.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 431 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.342 by revising the definition of ''Air compressor'' to read as follows:

§ 431.342 Definitions concerning compressors.

* * * * *

Air compressor means a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of one or more compression elements (bare compressors), driver(s), mechanical equipment to drive the compression elements, and any ancillary equipment.

* * * * *

■ 3. Revise § 431.343 to read as follows:

§ 431.343 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 1000 Independence Avenue SW, EE–5B, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email: *fr.inspection@nara.gov.* The material may be obtained from the sources in paragraphs (b) and (c) of this section:

(b) *IEC.* International Electrotechnical Commission Central Office, 3, rue de Varembé, Case Postale 131, CH–1211 GENEVA 20, Switzerland; + 41 22 919 02 11; *webstore.iec.ch.*

(1) IEC 60584–1:2013, *Thermocouples—Part 1: EMF specifications and tolerances,* editions 3.0, August 2013; IBR approved for appendix A to this subpart.

(2) IEC 60584–3:2021, *Thermocouples—Part 3: Extension and compensating cables—Tolerances and identification system,* edition 3.0, February 2021; IBR approved for appendix A to this subpart.

(c) *ISO.* International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland +41 22 749 01 11, *www.iso.org.*

(1) ISO 1217:2009(E), *Displacement compressors—Acceptance tests,* fourth edition, July 1, 2009; IBR approved for appendix A to this subpart.

(2) ISO 1217:2009/Amd.1:2016(E), *Displacement compressors—Acceptance tests* (fourth edition, July 1, 2009), AMENDMENT 1: *Calculation of isentropic efficiency and relationship with specific energy,* April 15, 2016; IBR approved for appendix A to this subpart.

(3) ISO 5167–1:2022(E), *Measurement of fluid flow by means of pressure differential devices inserted in circular cross-section conduits running full—* Part 1: General principles and requirements, third edition, June 2022; IBR approved for appendix A to this subpart.

(4) ISO 9300:2022(E), *Measurement of gas flow by means of critical flow nozzles,* third edition, June 2022; IBR approved for appendix A to this subpart.

■ 4. Revise appendix A to subpart T to read as follows:

Appendix A to Subpart T of Part 431—Uniform Test Method for Certain Air Compressors.

Note: Prior to July 16, 2025, any representations made with respect to the energy use or efficiency of compressors must be based on testing conducted in accordance with:

(a) The applicable provisions of this appendix as they appeared in this subpart T of part 431 as of January 1, 2023; or

(b) This appendix.

Beginning July 16, 2025, representations with respect to energy use or efficiency of compressors, including compliance certifications, must be based on testing conducted in accordance with this appendix.

1. Incorporation by Reference

DOE incorporated by reference in § 431.343, the entire standard for: IEC 60584–1:2013, IEC 60584–3:2021, ISO 1217:2009(E), ISO 1217:2009/Amd.1:2016(E), ISO 5167–1:2022, and ISO 9300:2022; however, only enumerated provisions of ISO 1217:2009(E) and ISO 1217:2009/Amd.1:2016(E) are applicable to this appendix as listed in section 1. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 ISO 1217:2009(E)

1.1.1 Section 2, Normative references;

1.1.2 Section 3, Terms and definitions;

1.1.3 Section 4, Symbols;

1.1.4 Section 5, Measuring equipment, methods and accuracy (excluding 5.1, 5.5, 5.7, and 5.8);

1.1.5 Section 6, Test procedures: the introductory text to Section 6.2, Test arrangements, paragraphs 6.2(g) and 6.2(h), and Table 1—Maximum deviations from specified values and fluctuations from average readings of this appendix;

1.1.6 Annex B (normative), Simplified acceptance test for bare displacement compressors, Section B.4.5 Comparison with specified values;

1.1.7 Annex C (normative), Simplified acceptance test for electrically driven packaged displacement compressors (excluding C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1, and C.4.5).

1.2 ISO 1217:2009/Amd.1:2016(E)

1.2.1 Section 3.5.1: isentropic power;

1.2.2 Section 3.6.1: isentropic efficiency;

1.2.3 Annex H (informative), Isentropic efficiency and its relation to specific energy requirement, sections H.2, Symbols and subscripts, and H.3, Derivation of isentropic power.

2. Measurements, Test Conditions, and Equipment Configuration

2.1. Measurement Equipment.

2.1.1. For the purposes of measuring air compressor performance, the equipment necessary to measure volume flow rate, inlet and discharge pressure, temperature, condensate, and packaged compressor power input must comply with the equipment and accuracy requirements specified in sections 5.2, 5.3, 5.4, 5.6, and 5.9 of ISO 1217:2009(E), (including the applicable provisions of IEC 60584–1 and IEC 60584–3, as referenced in section 5.3 of ISO 1217:2009(E) and the applicable provisions of ISO 5167–1 and ISO 9300, as referenced in section 5.6 of ISO 1217:2009(E)) and sections C.2.3 and C.2.4 of Annex C to ISO 1217:2009(E).

2.1.2. Electrical measurement equipment must be capable of measuring true root mean square (RMS) current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency.

2.1.3. Any instruments used to measure a particular parameter specified in section 2.1.1 of this appendix must have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the square root of the sum of the squares of individual instrument accuracies.

2.1.4. Any instruments used to directly measure the density of air must have an accuracy of ±1.0 percent of the measured value.

2.1.5. Any pressure measurement equipment used in a calculation of another variable (*e.g.,*actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.2 of ISO 1217:2009(E).

2.1.6. Any temperature measurement equipment used in a calculation of another variable (*e.g.,*actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.3 of ISO 1217:2009(E).

2.1.7. Where ISO 1217:2009(E) refers to ''corrected volume flow rate,'' the term is deemed synonymous with the term ''actual volume flow rate,'' as defined in section 3.4.1 of ISO 1217:2009(E).

2.2. Test Conditions and Configuration of Unit Under Test

2.2.1. For both fixed-speed and variable-speed compressors, conduct testing in accordance with the test conditions, unit configuration, and specifications of section 6.2 paragraphs (g) and (h) of ISO 1217:2009(E) and sections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, and C.4.3.2 of Annex C to ISO 1217:2009(E).

2.2.2. The power supply must:

(a) Maintain the voltage greater than or equal to 95 percent and less than or equal to 110 percent of the rated value of the motor,

(b) Maintain the frequency within ±5 percent of the rated value of the motor,

(c) Maintain the voltage unbalance of the power supply within ±3 percent of the rated values of the motor, and

(d) Maintain total harmonic distortion below 12 percent throughout the test.

2.2.3. Ambient Conditions. The ambient air temperature must be greater than or equal to 68 °F and less than or equal to 90 °F for the duration of testing. There are no ambient condition requirements for inlet pressure or relative humidity.

2.2.4. All equipment indicated in table 1 of this appendix must be present and installed for all tests specified in this appendix. If the compressor is distributed in commerce without an item from table 1 of this appendix, the manufacturer must provide an appropriate item to be installed for the test. Additional ancillary equipment may be installed for the test, if distributed in commerce with the compressor, but this additional ancillary equipment is not required. If any of the equipment listed in table 2 of this appendix is distributed in commerce with units of the compressor basic model, it must be present and installed for all tests specified in this appendix.

TABLE 1—EQUIPMENT REQUIRED DURING TEST

Equipment	Fixed-speed rotary air compressors	Variable-speed rotary air compressors
Driver	Yes	Yes.
Bare compressors	Yes	Yes.
Inlet filter	Yes	Yes.
Inlet valve	Yes	Yes.
Minimum pressure check valve/backflow check valve	Yes	Yes.
Lubricant separator	Yes	Yes.
Air piping	Yes	Yes.
Lubricant piping	Yes	Yes.
Lubricant filter	Yes	Yes.
Lubricant cooler	Yes	Yes.
Thermostatic valve	Yes	Yes.
Electrical switchgear or frequency converter for the driver	Yes	Not applicable.*
Device to control the speed of the driver (*e.g.,* variable speed drive)	Not applicable **	Yes.
Compressed air cooler(s)	Yes	Yes.
Pressure switch, pressure transducer, or similar pressure control device	Yes	Yes.

TABLE 1—EQUIPMENT REQUIRED DURING TEST—Continued

Equipment	Fixed-speed rotary air compressors	Variable-speed rotary air compressors
Moisture separator and drain	Yes	Yes.

* This category is not applicable to variable-speed rotary air compressors.
** This category is not applicable to fixed-speed rotary air compressors.

TABLE 2—EQUIPMENT REQUIRED DURING TEST, IF DISTRIBUTED IN COMMERCE WITH THE BASIC MODEL

Equipment	Fixed-speed rotary air compressors	Variable-speed rotary air compressors
Cooling fan(s) and motors	Yes	Yes.
Mechanical equipment	Yes	Yes.
Lubricant pump	Yes	Yes.
Interstage cooler	Yes	Yes.
Electronic or electrical controls and user interface	Yes	Yes.
All protective and safety devices	Yes	Yes.

2.2.5. The inlet of the compressor under test must be open to the atmosphere and take in ambient air for all tests specified in this appendix.

2.2.6. The compressor under test must be set up according to all manufacturer instructions for normal operation (*e.g.,* verify lubricant level, connect all loose electrical connections, close off bottom of unit to floor, cover forklift holes).

2.2.7. The piping connected to the discharge orifice of the compressor must be of a diameter at least equal to that of the compressor discharge orifice to which it is connected. The piping must be straight with a length of at least 6 inches.

2.2.8. Transducers used to record compressor discharge pressure must be located on the discharge piping between 2 inches and 6 inches, inclusive, from the discharge orifice of the compressor. The pressure tap for transducers must be located at the highest point of the pipe's cross section.

3. Determination of Package Isentropic Efficiency, Package Specific Power, and Pressure Ratio at Full-Load Operating Pressure

3.1 Data Collection and Analysis.

3.1.1. Stabilization. Record data at each load point under steady-state conditions. Steady-state conditions are achieved when a set of two consecutive readings taken at least 10 seconds apart and no more than 60 seconds apart are within the maximum permissible fluctuation from the average (of the two consecutive readings), as specified in table 1 of ISO 1217:2009(E) for—

(a) Discharge pressure;

(b) Temperature at the nozzle or orifice plate, measured per section 5.3 of ISO 1217:2009(E); and

(c) Differential pressure over the nozzle or orifice plate, measured per section 5.2 of ISO 1217:2009(E).

3.1.2. Data Sampling and Frequency. At each load point, record a minimum set of 16 unique readings, collected over a minimum time of 15 minutes. Each consecutive reading must be no more than 60 seconds apart, and not less than 10 seconds apart. All readings at each load point must be within the maximum permissible fluctuation from average specified in table 1 of ISO 1217:2009(E) for—

(a) Discharge pressure;

(b) Temperature at the nozzle or orifice plate, measured per section 5.3 of ISO 1217:2009(E); and

(c) Differential pressure over the nozzle or orifice plate, measured per section 5.2 of ISO 1217:2009(E).

If one or more readings do not meet the requirements, then all previous readings must be disregarded and a new set of at least 16 new unique readings must be collected over a minimum time of 15 minutes. Average the readings to determine the value of each parameter to be used in subsequent calculations.

3.1.3. Calculations and Rounding. Perform all calculations using raw measured values. Round the final result for package isentropic efficiency to the thousandth (*i.e.,* 0.001), for package specific power in kilowatts per 100 cubic feet per minute to the nearest hundredth (*i.e.,* 0.01), for pressure ratio at full-load operating pressure to the nearest tenth (*i.e.,* 0.1), for full-load actual volume flow rate in cubic feet per minute to the nearest tenth (*i.e.,* 0.1), and for full-load operating pressure in pounds per square inch gauge (psig) to the nearest integer (*i.e.,* 1). All terms and quantities refer to values determined in accordance with the procedures set forth in this appendix for the tested unit.

3.2. Full-Load Operating Pressure and Full-Load Actual Volume Flow Rate

Determine the full-load operating pressure and full-load actual volume flow rate (referenced throughout this appendix) in accordance with the procedures prescribed in section 4 of this appendix.

3.3. Full-Load Package Isentropic Efficiency for Fixed- and Variable-Speed Air Compressors

Use this test method to test fixed-speed air compressors and variable-speed air compressors.

3.3.1. Test unit at full-load operating pressure and full-load volume flow rate according to the requirements established in sections 2, 3.1, and 3.2 of this appendix. Measure volume flow rate and calculate actual volume flow rate in accordance with section C.4.2.1 of Annex C to ISO 1217:2009(E) with no corrections made for shaft speed. Measure discharge gauge pressure and packaged compressor power input. Measured discharge gauge pressure and calculated actual volume flow rate must be within the deviation limits for discharge pressure and volume flow rate specified in tables C.1 and C.2 of Annex C to ISO 1217:2009(E), where full-load operating pressure and full-load actual volume flow rate (as determined in section 4 of this appendix) are the targeted values.

3.3.2. Calculate the package isentropic efficiency at full-load operating pressure and full-load actual volume flow rate (full-load package isentropic efficiency, $\eta_{isen,FL}$) using the equation for isentropic efficiency in section 3.6.1 of ISO 1217:2009(E) as modified by ISO 1217:2009/Amd.1:2016(E). For $P_{isen,}$ use the isentropic power required for compression at full-load operating pressure and full-load actual volume flow rate, as determined in section 3.3.2.1 of this appendix. For $P_{real,}$ use the real packaged compressor power input at full-load operating pressure and full-load actual volume flow rate, as determined in section 3.3.2.2 of this appendix.

3.3.2.1. Calculate the isentropic power required for compression at full-load operating pressure and full-load actual volume flow rate using equation (H.6) of Annex H to ISO 1217:2009/Amd.1:2016(E). For $q_{V1,}$ use the actual volume flow rate (cubic meters per second) calculated in section 3.3.1 of this appendix. For $p_{1,}$ use 100 kPa. For $p_{2,}$ use the sum of

(a) 100 kPa, and

(b) The measured discharge gauge pressure (Pa) from section 3.3.1 of this appendix. For *K,* use the isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.

3.3.2.2. Calculate real packaged compressor power input at full-load operating pressure and full-load actual volume flow rate using the following equation:

$$P_{real,100\%} = K_5 \cdot K_6 \cdot P_{PR,100\%}$$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E). For calculations of this variable use a value of 100 kPa for contractual inlet pressure;

K_6 = correction factor for pressure ratio, as determined in section B.4.5 of Annex B to ISO 1217:2009(E). For calculations of this variable use a value of 1.400 for isentropic exponent, and for contractual pressure ratio, use the ratio of (a) The sum of 100 kPa and the measured discharge gauge pressure (kPa) from section 3.3.1 of this appendix, to

(b) 100 kPa; and

$P_{PR,100\%}$ = packaged compressor power input reading at full-load operating pressure and full-load actual volume flow rate measured in section 3.3.1 of this appendix (W).

3.4. Part-Load Package Isentropic Efficiency for Variable-Speed Air Compressors

Use this test method to test variable-speed air compressors.

3.4.1. Test unit at two load points:

(a) Full-load operating pressure and 70 percent of full-load actual volume flow rate and

(b) Full-load operating pressure and 40 percent of full-load actual volume flow rate, according to the requirements established in sections 2, 3.1, and 3.2 of this appendix. To reach each specified load point, adjust the speed of the driver and the backpressure of the system. For each load point, measure volume flow rate and calculate actual volume flow rate in accordance with section C.4.2.1 of Annex C to ISO 1217:2009(E), with no corrections made for shaft speed. For each load point, measure discharge gauge pressure and packaged compressor power input. Measured discharge gauge pressure and calculated actual volume flow rate must be within the deviation limits for discharge pressure and volume flow rate specified in tables C.1 and C.2 of Annex C to ISO 1217:2009(E).

3.4.2. For variable-speed compressors, calculate the part-load package isentropic efficiency using the following equation:

$$\eta_{isen,PL} = \omega_{40\%} \times \eta_{isen,40\%} + \omega_{70\%} \times \eta_{isen,70\%} + \omega_{100\%} \times \eta_{isen,100\%}$$

Where:

$\eta_{isen,PL}$ = part-load package isentropic efficiency for a variable-speed compressor;

$\eta_{isen,100\%}$ = package isentropic efficiency at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section 3.3.2 of this appendix;

$\eta_{isen,70\%}$ = package isentropic efficiency at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section 3.4.3 of this appendix;

$\eta_{isen,40\%}$ = package isentropic efficiency at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section 3.4.4 of this appendix;

$\omega_{40\%}$ = weighting at 40 percent of full-load actual volume flow rate and is 0.25;

$\omega_{70\%}$ = weighting at 70 percent of full-load actual volume flow rate and is 0.50; and

$\omega_{100\%}$ = weighting at 100 percent of full-load actual volume flow rate and is 0.25.

3.4.3. Calculate package isentropic efficiency at full-load operating pressure and 70 percent of full-load actual volume flow rate using the equation for isentropic efficiency in section 3.6.1 of ISO 1217:2009(E) as modified by ISO 1217:2009/Amd.1:2016(E). For $P_{isen,}$ use the isentropic power required for compression at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section 3.4.3.1 of this appendix. For $P_{real,}$ use the real packaged compressor power input at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section 3.4.3.2 of this appendix.

3.4.3.1. Calculate the isentropic power required for compression at full-load operating pressure and 70 percent of full-load actual volume flow rate using equation (H.6) of Annex H to ISO 1217:2009/Amd.1:2016(E). For $q_{V1,}$ use actual volume flow rate (cubic meters per second) at full-load operating pressure and 70 percent of full-load actual volume flow rate, as calculated in section 3.4.1 of this appendix. For $p_{1,}$ use 100 kPa. For $p_{2,}$ use the sum of

(a) 100 kPa, and

(b) Discharge gauge pressure (Pa) at full-load operating pressure and 70 percent of full-load actual volume flow rate, as calculated in section 3.4.1 of this appendix. For *K,* use the isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.

3.4.3.2. Calculate real packaged compressor power input at full-load operating pressure and 70 percent of full-load actual volume flow rate using the following equation:

$$P_{real,70\%} = K_5 \cdot K_6 \cdot P_{PR,70\%}$$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E). For calculations of this variable use a value of 100 kPa for contractual inlet pressure;

K_6 = correction factor for pressure ratio, as determined in section B.4.5 of Annex B to ISO 1217:2009(E). For calculations of this variable use a value of 1.400 for isentropic exponent, and for contractual pressure ratio, use the ratio of

(a) The sum of 100 kPa and the measured discharge gauge pressure (kPa) from the test at 70 percent of full-load actual volume flow rate in section 3.4.1 of this appendix, to

(b) 100 kPa; and

$P_{PR,70\%}$ = packaged compressor power input reading at full-load operating pressure and 70 percent of full-load actual volume flow rate, as measured in section 3.4.1 of this appendix (W).

3.4.4. Calculate package isentropic efficiency at full-load operating pressure and 40 percent of full-load actual volume flow rate using the equation for isentropic efficiency in section 3.6.1 of ISO 1217:2009(E) as modified by ISO 1217:2009/Amd.1:2016(E). For $P_{isen,}$ use the isentropic power required for compression at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section 3.4.4.1 of this appendix. For $P_{real,}$ use the real packaged compressor power input at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section 3.4.4.2 of this appendix.

3.4.4.1. Calculate the isentropic power required for compression at full-load operating pressure and 40 percent of full-load actual volume flow rate using equation (H.6) of Annex H to ISO 1217:2009/Amd.1:2016(E). For $q_{V1,}$ use actual volume flow rate (cubic meters per second) at full-load operating pressure and 40 percent of full-load actual volume flow rate, as calculated in section 3.4.1 of this appendix. For $p_{1,}$ use 100 kPa. For $p_{2,}$ use the sum of

(a) 100 kPa, and

(b) Discharge gauge pressure (Pa) at full-load operating pressure and 40 percent of full-load actual volume flow rate, as calculated in section 3.4.1 of this appendix. For *K,* use the isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.

3.4.4.2. Calculate real packaged compressor power input at full-load operating pressure and 40 percent of full-load actual volume flow rate using the following equation:

$$P_{real,40\%} = K_5 \cdot K_6 \cdot P_{PR,40\%}$$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E). For calculations of this variable use a value of 100 kPa for contractual inlet pressure;

K_6 = correction factor for pressure ratio, as determined in section B.4.5 of Annex B to ISO 1217:2009(E). For calculations of this variable use a value of 1.400 for isentropic exponent, and for contractual pressure ratio, use the ratio of

(a) The sum of 100 kPa and the measured discharge gauge pressure (kPa) from the test at 40 percent of full-load actual volume flow rate in section 3.4.1 of this appendix, to

(b) 100 kPa; and

$P_{PR,40\%}$ = packaged compressor power input reading at full-load operating pressure and 40 percent of full-load actual volume

flow rate, as measured in section 3.4.1 of this appendix (W).

3.5. Determination of Package Specific Power

For both fixed and variable-speed air compressors, determine the package specific power, at any load point, using the equation for specific energy consumption in section C.4.4 of Annex C to ISO 1217:2009(E) and other values measured pursuant to this appendix, with no correction for shaft speed. Calculate P_{Pcorr} in section C.4.4 of Annex C to ISO 1217:2009(E) using the following equation:

$P_{Pcorr} = K_5 \cdot K_6 \cdot P_{PR}$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E). For calculations of this variable use a value of 100 kPa for contractual inlet pressure;

K_6 = correction factor for pressure ratio, as determined in section B.4.5 of Annex B to ISO 1217:2009(E). For calculations of this variable use a value of 1.400 for isentropic exponent, and for contractual pressure ratio, use the ratio of

(a) The sum of 100 kPa and the measured discharge gauge pressure (kPa) from the test used to determine the package specific power, to

(b) 100 kPa; and

P_{PR} = packaged compressor power input reading (W), as determined in section C.2.4 of Annex C to ISO 1217:2009(E).

3.6. Determination of Pressure Ratio at Full-Load Operating Pressure

Pressure ratio at full-load operating pressure, as defined in § 431.342, is calculated using the following equation:

$$PR = \frac{(P_1 + P_{FL})}{P_1}$$

Where:

PR = pressure ratio at full-load operating pressure;

P_1 = 100 kPa; and

P_{FL} = full-load operating pressure, determined in section 4.3.4 of this appendix (Pa gauge).

4. Method To Determine Maximum Full-Flow Operating Pressure, Full-Load Operating Pressure, and Full-Load Actual Volume Flow Rate

4.1. Principal Strategy

The principal strategy of this method is to incrementally increase discharge pressure by 2 psig relative to a starting point, and identify the maximum full-flow operating pressure at which the compressor is capable of operating. The maximum discharge pressure achieved is the maximum full-flow operating pressure. The full-load operating pressure and full-load actual volume flow rate are determined based on the maximum full-flow operating pressure.

4.2. Pre-test Instructions

4.2.1. Safety. For the method presented in section 4.3.1 of this appendix, only test discharge pressure within the safe operating range of the compressor, as specified by the manufacturer in the installation and operation manual shipped with the unit. Make no changes to safety limits or equipment. Do not violate any manufacturer-provided motor operational guidelines for normal use, including any restriction on instantaneous and continuous input power draw and output shaft power (*e.g.,* electrical rating and service factor limits).

4.2.2. Adjustment of Discharge Pressure

4.2.2.1. If the air compressor is not equipped, as distributed in commerce by the manufacturer, with any mechanism to adjust the maximum discharge pressure output limit, proceed to section 4.2.3 of this appendix.

4.2.2.2. If the air compressor is equipped, as distributed in commerce by the manufacturer, with any mechanism to adjust the maximum discharge pressure output limit, then adjust this mechanism to the maximum pressure allowed, according to the manufacturer's operating instructions for these mechanisms. Mechanisms to adjust discharge pressure may include, but are not limited to, onboard digital or analog controls, and user-adjustable inlet valves.

4.2.3. Driver speed. If the unit under test is a variable-speed compressor, maintain maximum driver speed throughout the test. If the unit under test is a fixed-speed compressor with a multi-speed driver, maintain driver speed at the maximum speed throughout the test.

4.2.4. Measurements and Tolerances

4.2.4.1. Recording. Record data by electronic means such that the requirements of section 4.2.4.5 of this appendix are met.

4.2.4.2. Discharge Pressure. Measure discharge pressure in accordance with section 5.2 of ISO 1217:2009(E). Express compressor discharge pressure in psig in reference to ambient conditions, and record it to the nearest integer. Specify targeted discharge pressure points in integer values only. The maximum allowable measured deviation from the targeted discharge pressure at each tested point is ±1 psig.

4.2.4.3. Actual Volume Flow Rate. Measure actual volume flow rate in accordance with section C.4.2.1 of Annex C to ISO 1217:2009(E) (where it is called ''corrected volume flow rate'') with no corrections made for shaft speed. Express compressor actual volume flow rate in cubic feet per minute at inlet conditions (cfm).

4.2.4.4. Stabilization. Record data at each tested load point under steady-state conditions, as determined in section 3.1.1 of this appendix.

4.2.4.5. Data Sampling and Frequency. At each load point, record a set of at least two readings, collected at a minimum of 10 seconds apart. All readings at each load point must be within the maximum permissible fluctuation from the average (of the two consecutive readings), as specified in 3.1.2 of this appendix. Average the measurements to determine the value of each parameter to be used in subsequent calculations.

4.2.5 Adjusting System Backpressure. Set up the unit under test so that backpressure on the unit can be adjusted (*e.g.,* by valves) incrementally, causing the measured discharge pressure to change, until the compressor is in an unloaded condition.

4.2.6 Unloaded Condition. A unit is considered to be in an unloaded condition if capacity controls on the unit automatically reduce the actual volume flow rate from the compressor (*e.g.,* shutting the motor off, or unloading by adjusting valves).

4.3. Test Instructions

4.3.1. Adjust the backpressure of the system so the measured discharge pressure is 90 percent of the expected maximum full-flow operating pressure, rounded to the nearest integer, in psig. If the expected maximum full-flow operating pressure is not known, then adjust the backpressure of the system so that the measured discharge pressure is 65 psig. Allow the unit to remain at this setting for 15 minutes to allow the unit to thermally stabilize. Then measure and record discharge pressure and actual volume flow rate at the starting pressure.

4.3.2. Adjust the backpressure of the system to increase the discharge pressure by 2 psig from the previous value, allow the unit to remain at this setting for a minimum of 2 minutes, and proceed to section 4.3.3 of this appendix.

4.3.3. If the unit is now in an unloaded condition, end the test and proceed to section 4.3.4 of this appendix. If the unit is not in an unloaded condition, measure discharge pressure and actual volume flow rate, and repeat section 4.3.2 of this appendix.

4.3.4. Of the discharge pressures recorded under stabilized conditions in sections 4.3.1 through 4.3.3 of this appendix, identify the largest. This is the maximum full-flow operating pressure. Determine the full-load operating pressure as a self-declared value greater than or equal to the lesser of (A) 90 percent of the maximum full-flow operating pressure, or (B) 10 psig less than the maximum full-flow operating pressure.

4.3.5 The full-load actual volume flow rate is the actual volume flow rate measured at the full-load operating pressure. If the self-declared full-load operating pressure falls on a previously tested value of discharge pressure, then use the previously measured actual volume flow rate as the full-load actual volume flow rate. If the self-declared full-load operating pressure does not fall on a previously tested value of discharge pressure, then adjust the backpressure of the system to the self-declared full-load operating pressure and allow the unit to remain at this setting for a minimum of 2 minutes. The measured actual volume flow rate at this setting is the full-load actual volume flow rate.

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2024–BT–DET–0012]

RIN 1904–AE57

Energy Conservation Program: Commercial Warm Air Furnaces; Final Determination

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final determination.

SUMMARY: On June 2, 2023, the U.S. Department of Energy (''DOE'' or the ''Department'') published a test procedure final rule which established test procedures for commercial warm air furnaces (''CWAFs''). On August 1, 2023, the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') filed a petition for review of the final rule in the United States Court of Appeals for the Fourth Circuit. In a February 6, 2024, order, the Fourth Circuit granted a voluntary remand of the final rule to the Department of Energy (''DOE'') to determine whether establishment of the test procedure for the thermal efficiency two (''TE2'') metric is supported by the specific provisions applicable to CWAFs under the Energy Policy and Conservation Act (''EPCA''). More specifically, DOE agreed in this voluntary remand to not enforce the TE2 test procedure unless and until the Department determines that the TE2 test procedure is consistent with the amended industry test procedure, or determines, supported by clear and convincing evidence, that the amended industry test procedure fails to satisfy the statutory requirements. This document provides DOE's determination that the amended industry test procedure fails to satisfy EPCA's statutory requirements.

DATES: The effective date of July 3, 2023, for the TE2 test procedure is confirmed.

ADDRESSES: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2024-BT-DET-0012.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C of EPCA, added by Public Law 95–619, title IV, sec. 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CWAFs, the subject of this document. (42 U.S.C. 6311(1)(J)).

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. DOE's test procedures for CWAFs are currently prescribed at subpart D of part 431 of title 10 of the Code of Federal Regulations (''CFR'').

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede state laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C.

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

6297) DOE may, however, grant waivers of Federal preemption for particular state laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D)).

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results that reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by DOE) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)).

EPCA generally requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including CWAFs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3)) DOE refers to these provisions as the ''lookback'' provisions and rulemakings conducted under these provisions as ''lookback'' rulemakings.

Specific to certain commercial equipment, including CWAFs, EPCA required that the initial test procedures for this equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''), that were in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C)) DOE refers to these provisions as the ''ASHRAE trigger'' provisions and rulemakings conducted under these provisions as ''ASHRAE trigger'' rulemakings.

Whether pursuant to the lookback provision or the ASHRAE trigger provision, if DOE determines that a test procedure amendment is warranted, EPCA requires that the Department publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)).

B. Energy Conservation Standards Rulemaking Process Under EPCA

The purpose of energy conservation standards issued under EPCA is to reduce energy use by improving the energy efficiency of covered products and equipment. (*See* 42 U.S.C. 6312(a)). The first step in establishing new or amended energy conservation standards for any covered product or equipment is to determine what energy use by a covered product or equipment will be within the scope of the energy conservation standard, *i.e.,* what is the representative average use cycle for the covered product or equipment. For example, prior to the Energy Independence and Security Act of 2007 (''EISA 2007''), the representative average use cycle for many covered products only included active mode energy use, *i.e.,* energy used while the product was performing its main function. As such, the representative use cycle did not include any energy used while the product was in a standby or off mode. Thus, manufacturers had little incentive to reduce standby or off mode energy use as it had no effect on whether a covered product complied with the applicable energy conservation standards. But in EISA 2007, Congress required DOE to include standby and off mode energy use as part of the representative average use cycle for any energy conservation standard adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)).

Representative average use cycles for covered products and equipment can also change over time as DOE's understanding of how the product or equipment is used in the field improves, consumer habits change, or technologies improve. Of particular importance here is the introduction of variable-speed compressors in the heating, ventilation, and air conditioning (HVAC) market. Variable-speed technology allows compressors used in HVAC equipment to run at part-load values in response to different operating conditions in the field. For example, if a room temperature is only 2 or 3 degrees warmer than the set temperature, an HVAC unit with variable-speed technology could run at partial capacity, *e.g.,* 40% capacity, to cool the room to the setpoint. This saves energy as the HVAC unit uses less energy running at a lower speed. And variable-speed HVAC units still maintain the capability of operating at 100% capacity when needed, *e.g.,* cooling down a home after a homeowner returns from vacation. As HVAC units with variable-speed technology have become more prevalent in the market, the representative average use cycle for this equipment has changed. HVAC units with variable-speed technology run for longer periods of time at slower speeds that single-speed HVAC units. As a result, DOE amends the test procedures for specific HVAC equipment to ensure the representative average use cycle reflects manufacturer innovation and how models with this technology will operate in the field. For example, DOE recently issued an amended test procedure for air-cooled commercial package air conditioners and heat pumps that, among other things, has provisions for measuring part-load energy use because of the presence of variable-speed technology in the market. 89 FR 43986 (May 20, 2024). DOE adopted this new test procedure for air-cooled commercial air conditioners and heat pumps with the support of a cross-section of stakeholders, including the heating and cooling industry, who recommended the details of the new test procedure to DOE as part of a negotiated consensus recommendation. *Id.* at 89 FR 43991. In fact, every type of HVAC consumer product or covered equipment regulated by DOE that has an energy conservation standard that accounts for part-load operation, *e.g.,* residential central air conditioners and heat pumps and variable refrigerant flow air conditioners and heat pumps has an associated test procedure that has provisions for measuring energy use during part-load operation.

Having determined a representative average use cycle for a covered product or equipment, the next step in EPCA's energy conservation standards rulemaking process is to prescribe a test procedure that is reasonably designed to produce test results that measure energy use of the covered product or equipment for that representative average use cycle and that is not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)). For example, when Congress required DOE to include standby and off mode energy use in standards for covered products, it first directed DOE to amend test procedures

for all covered products to include provisions for measuring standby and off mode energy use. (42 U.S.C. 6295(gg)(2)(A)). Congress then directed DOE to use these amended test procedures when prescribing new or amended standards that incorporate standby and off mode energy use. (42 U.S.C. 6295(gg)(3)(A)). As the new standards would be based on a different representative use cycle, *i.e.,* one that includes active mode, standby mode, and off mode, Congress clarified that the amended test procedures ''shall not be used to determine compliance with product standards established prior to the adoption of the amended test procedures.'' (42 U.S.C. 6295(gg)(2)(C)). It would have made little sense for Congress to require manufacturers to use test procedures that measure active, standby, and off mode energy when determining compliance with an energy conservation standard that is only based on active mode energy use. DOE takes the same approach when prescribing an amended test procedure for use in evaluating new or amended energy conservation standards that are based on an updated representative average use cycle. Use of the amended test procedure is only required upon the compliance date of the new or amended energy conservation standards. *See* section 8(f) of appendix A to subpart C of 10 CFR part 430.

C. Background

Under EPCA's lookback provision, DOE initiated a test procedure rulemaking for CWAFs by publishing a request for information (''RFI'') in the **Federal Register** on May 5, 2020 (''May 2020 RFI''). 85 FR 26626. The current energy conservation standards for CWAFs are based on a representative average use cycle that assumes CWAFs always operate at 100 percent capacity in the field and that the only energy losses are from flue exhaust gases. The May 2020 RFI solicited public comments, data, and information on aspects of the existing DOE test procedure for CWAFs at 10 CFR part 431, subpart D, appendix A (''appendix A''), which measures Thermal Efficiency (''TE'') and is used for determining compliance with the current energy conservation standards for CWAFs, including whether there were any issues with the existing test procedure at that time and whether it was in need of updates or revisions. *Id.*

DOE subsequently published a notice of proposed rulemaking (''NOPR'') for the CWAFs test procedure in the **Federal Register** on February 25, 2022, which proposed amendments to the existing test procedure for TE as well as a new test procedure based on DOE's tentative determination that the representative average use cycle for CWAFs should include jacket losses and part-load operation. 87 FR 10726 (''February 2022 NOPR''). DOE noted that CWAFs are typically installed outdoors and, as a result, jacket losses can be a significant source of energy loss. 87 FR 10726, 10735. DOE also noted that many CWAFs now have multiple heating stages and performance for these CWAFs can vary at different heating loads. *Id.* As a result, DOE proposed that any new or amended energy conservation standards for CWAFs should be based on a representative average use cycle that includes jacket losses and part-load operation, and proposed a new metric, TE2, that captured those aspects of CWAF energy use. DOE proposed a new test procedure in 10 CFR part 431, subpart D, appendix B (''appendix B''), to measure energy efficiency under the TE2 metric. DOE tentatively determined that the appendix B test procedure met the statutory criteria in 42 U.S.C. 6314(a)(2) and (3). 87 FR 10726, 10737–10738. The February 2022 NOPR had a 60-day comment period and DOE held a webinar public meeting on March 29, 2022.

Following publication of the February 2022 NOPR, the latest update to ASHRAE Standard 90.1 was released in January 2023 (''ASHRAE Standard 90.1–2022''). ASHRAE Standard 90.1–2022 references CSA/ANSI Z21.47–2021, *Gas-fired central furnaces* (''ANSI Z21.47–2021''), as the test method for gas-fired CWAFs and Underwriters Laboratories (''UL'') standard UL 727–2018, ''Standard for Safety Oil-Fired Central Furnaces'' (''UL 727–2018''), as the test method for oil-fired CWAFs.

On June 2, 2023, DOE published a test procedure final rule for CWAFs. 88 FR 36217 (''June 2023 Final Rule''). In the June 2023 Final Rule, DOE amended the current test procedure for TE in appendix A and incorporated by reference the latest industry test procedures referenced in ASHRAE Standard 90.1–2022. The amendments to the industry test procedure were relatively minor and not based on any updates to the representative average use cycle for CWAFs. Rather, they were clarifications to the existing test procedure intended to improve clarity and help with the execution of the current test procedure. DOE also finalized the proposed appendix B test procedure that is based on an updated representative average use cycle that includes jacket losses and part-load operation. Similar to other rulemakings where DOE has determined that the representative average use cycle should be updated, *e.g.,* air-cooled commercial air conditioners and heat pumps, the June 2023 Final Rule states that use of the appendix B test procedure would not be required until such time as compliance is required with amended energy conservation standards based on the new metric, should DOE adopt such standards.

On August 1, 2023, following publication of the June 2023 Final Rule, the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') filed a petition for review of the final rule in the United States Court of Appeals for the Fourth Circuit. In its opening brief, AHRI argued that DOE failed to provide notice and an opportunity for comment after being triggered by the ASHRAE Standard 90.1–2022 publication prior to publishing the June 2023 Final Rule; that DOE did not undertake the required analysis under 42 U.S.C. 6314(a)(4)(B); and that if DOE had conducted the correct analysis under that provision, it would necessarily have concluded that it lacked clear and convincing evidence that the industry test procedure did not meet the statutory requirements. *See Air-Conditioning, Heating, and Refrigeration Institute* v. *United States Department of Energy,* No. 23–1793 (4th Cir. Oct. 23, 2023), 15–1.

On February 6, 2024, the Fourth Circuit granted the Department's motion for voluntary remand. In its order, the Court granted DOE's motion for voluntary remand to clarify that, in this particular circumstance, where ASHRAE published an amended industry test procedure during the pendency of a rulemaking under the 7-year lookback provision, the Department will solicit public comment prior to making: (1) a final determination that the test procedure in appendix B for the TE2 metric is consistent with the amended industry test procedure; or (2) a final determination, supported by clear and convincing evidence, that the industry test procedure fails to satisfy the statutory requirements. *See Air-Conditioning, Heating, and Refrigeration Institute* v. *United States Department of Energy,* No. 23–1793 (4th Cir. Feb. 6, 2024), 22–1 (hereafter ''Remand Order''). The Remand Order did not vacate the June 2023 Final Rule; the challenged failure to solicit public comment (and other related claims brought in the petition for review) applied only to the determination that the industry test procedure did not meet the applicable statutory requirements and not DOE's determination that the appendix B test procedure satisfied the applicable statutory criteria. But, per the Remand Order, DOE will not enforce the

appendix B test procedure until the Department determines that the appendix B test procedure is consistent with the amended industry test procedure or DOE determines, supported by clear and convincing evidence, that the amended industry test procedure fails to satisfy the statutory requirements in 42 U.S.C. 6314(a)(2) and (3). *See* Remand Order at 2.

In accordance with the Remand Order from the Fourth Circuit, on December 26, 2024, DOE published a notification of tentative determination and request for comment (''December 2024 NOTD''), which tentatively determined, supported by clear and convincing evidence, that the industry test procedure is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. 89 FR 104859. The December 2024 NOTD sought comment on DOE's proposed determination that the amended industry test procedure, which does not have provisions for measuring energy loss to the ambient environment (jacket losses) and energy use during part-load operation, is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation.

DOE received comments in response to the December 2024 NOTD from the interested parties listed in table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE DECEMBER 2024 NOTD

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
Michael Ravnitzky	Ravnitzky	2	Individual.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	6	Trade Association.
Appliance Standards Awareness Project and Northwest Energy Efficiency Alliance (Joint Commenters).	ASAP and NEEA	7	Efficiency Organization.
Trane Technologies	Trane	8	Manufacturer.
Johnson Controls	JCI	9	Manufacturer.
Daikin Applied Americas Inc	Daikin	10	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[2]

II. Discussion

As discussed in the December 2024 NOTD, EPCA requires that if the industry test procedure for CWAFs is amended, DOE must update its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C)) The publication of ASHRAE Standard 90.1–2022 represented an ASHRAE trigger for CWAFs.

However, due to the timing of the ASHRAE trigger, which occurred after DOE had published the February 2022 NOPR, but prior to the June 2023 Final Rule, DOE had not sought comment in the February 2022 NOPR on whether the amended industry test procedure met the applicable statutory requirements for measuring energy use for the TE2 metric, which is based on a representative average use cycle that includes jacket losses and part-load operation in the field. DOE also did not initiate a separate process to determine whether the amended industry test procedure satisfied the applicable statutory criteria. DOE did, on the other hand, follow all of the procedural requirements in 42 U.S.C. 6314(b) for prescribing the appendix B test procedure. DOE published the proposed appendix B test procedure in the **Federal Register**, provided a comment period of not less than 45 days (*i.e.,* 60 days), and held a public webinar meeting on March 29, 2022. *See* 42 U.S.C. 6314(b)(1)–(2). As a result, in accordance with the Remand Order, DOE is addressing only the challenged failure to determine, after notice and comment, whether the amended industry test procedure is consistent with the appendix B test procedure, or whether, as supported by clear and convincing evidence, the amended industry test procedure fails to satisfy the statutory requirements. Remand Order p. 2.

In the December 2024 NOTD, DOE tentatively determined, supported by clear and convincing evidence,[3] that the amended industry test procedure is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. In making that tentative determination, DOE noted that a CWAF with a TE of 81 percent as measured by the amended industry test procedure could, depending on jacket losses and part-load operation, have an actual range of efficiencies from 77.5 to 82 percent using the appendix B test procedure for TE2. 89 FR 104859, 104864. DOE found that to be a significant difference that would impact both consumers and manufacturers. The following sections discuss comments received in response to the December 2024 NOTD and DOE's decision to finalize its determination that the amended industry test procedure is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation.

A. Appendix B Test Procedure for TE2

DOE received several comments that focused on the appendix B test procedure. For example, both Trane and JCI stated that DOE had not shown that the appendix B test procedure met the statutory requirement of not being unduly burdensome to conduct. (Trane, No. 8, p. 3; JCI, No. 9, pp. 1–2) Similarly, AHRI commented on the representativeness, burden, and costs of the appendix B test procedure and attached comments that were previously

[2] The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2024–BT–DET–0012–0001, which is maintained at *www.regulations.gov.*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[3] ''[C]lear and convincing evidence requires a factfinder . . . to have an 'abiding conviction' that her findings . . . are 'highly probable' to be true.'' *Am. Pub. Gas Ass'n* v. *United States Dep't of Energy,* 22 F.4th 1018, 1025 (D.C. Cir. 2022) (quoting *Colorado* v. *New Mexico,* 467 U.S. 310, 316 (1984)).

submitted in response to the February 2022 NOPR. (AHRI, No. 6, pp. 6–9).

In response to these and similar comments, DOE reiterates that the scope of this rulemaking process, as laid out in the Remand Order, is to determine whether the amended industry test procedure is consistent with the appendix B test procedure for TE2, or whether the amended industry test procedure fails to satisfy the applicable requirements in 42 U.S.C. 6314(a)(2) and (3). In accordance with the Remand Order, DOE issued the December 2024 NOTD, which tentatively determined, supported by clear and convincing evidence, that the amended industry test procedure was not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. DOE sought comment on this tentative determination. In the December 2024 NOTD, DOE specifically noted that the remand order did not vacate the June 2023 Final Rule, nor did it require DOE to revisit its determination that the appendix B test procedure meets the statutory requirements at 42 U.S.C. 6314(a)(2) and (3). 89 FR 104859, 104862. As such, DOE will not address comments on whether the appendix B test procedure meets the statutory requirements in 42 U.S.C. 6314(a)(2) and (3). Instead, DOE invites stakeholders to review the June 2023 Final Rule where these same comments regarding representativeness, burden, and cost of the appendix B test procedure were fully addressed.

B. Comment Period Length

Several commenters expressed concerns about the length of the comment period provided in the December 2024 NOTD. (Daiken, No. 10, p. 2; JCI, No. 9, p. 1; AHRI, No. 6, pp. 2–4) More specifically, JCI commented that there was not sufficient time to complete a notable research effort including the necessary internal reviews and approvals. (JCI, No. 9, p. 1) JCI also expressed concern that the shortened comment period could set a dangerous precedent for future rulemakings. *Id.* AHRI stated that the comment period fell short of the minimum 45-day comment period required for proposed test procedures under 42 U.S.C. 6314(b).

In response to these comments, DOE first notes, as AHRI correctly pointed out, that prior to prescribing a final test procedure DOE is required to publish the proposed test procedure in the **Federal Register** and provide at least a 45-day comment period. (42 U.S.C. 6314(b)) But, as clearly stated in the Remand Order, the December 2024 NOTD, and throughout this document, the court did not vacate the June 2023 Final Rule, nor did it require DOE to revisit its determination that the appendix B test procedure meets the statutory requirements at 42 U.S.C. 6314(a)(2) and (3), which remains in effect. Hence, this is not a rulemaking to prescribe a final test procedure to which the 45-day comment period would apply. Instead, DOE is determining, ''by rule, published in the **Federal Register** and supported by clear and convincing evidence,'' that the amended industry test procedure does not meet the applicable statutory criteria in EPCA. (42 U.S.C. 6314(a)(4)(B)) There is no minimum comment period specified in EPCA for this type of determination. In some cases, DOE may choose to conduct one rulemaking to make this determination and propose an amended test procedure (*see* 42 U.S.C. 6314(a)(4)(C)), which would require a 45-day comment period. But in other cases, DOE may issue a rule that only makes a determination, supported by clear and convincing evidence, that the amended industry test procedure does not satisfy the requirements in 42 U.S.C. 6314(a)(2) and (3). For example, if the current DOE test procedure satisfies the requirements in 42 U.S.C. 6314(a)(2) and (3) and DOE determines that the amended industry test procedure does not satisfy the requirements in 42 U.S.C. 6314(a)(2) and (3), there would be no need for DOE to propose an amended test procedure. As another example, if the ASHRAE trigger occurs after DOE has already proposed an amended test procedure under the 7-year lookback provision (as was the case here), DOE would conduct a separate rulemaking to make the required ASHRAE determination under 42 U.S.C. 6314(a)(4)(B).

Under the Administrative Procedure Act (APA), an agency engaged in rulemaking must: (1) publish a general notice of proposed rulemaking in the **Federal Register** that includes the terms or substance of the proposed rule or a description of the subjects and issues involved; (2) give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments; and (3) after consideration of the relevant matter presented incorporate in the rules adopted a concise general statement of their basis and purpose. *See* 5 U.S.C. 553(b) and (c). Taken together, Courts have typically understood these provisions to require Federal agencies to provide the public with a ''meaningful opportunity'' to comment. *See N. Carolina Growers' Ass'n, Inc.* v. *United Farm Workers,* 702 F.3d 755, 763 (4th Cir. 2012). Daiken, JCI, and AHRI take issue with the length of time provided to stakeholders to review the December 2024 NOTD and develop comments.

In response, DOE first notes that the Administrative Procedure Act does not provide for a minimum comment period (*see* 5 U.S.C. 553) and rules proposed by Federal agencies run the gamut from the incredibly complex to the relatively simple. In other words, the length of time required to give the public a meaningful opportunity to comment will vary based on the content of the proposed rule. For example, the National Highway Traffic Safety Administration typically used a 60-day comment period when it proposed new fuel economy standards for passenger cars and light trucks. 88 FR 56128 (Aug. 17, 2023). This proposed rule was over 260 pages and used complex analytical methods to propose new fuel economy standards.

In contrast, the 7-page December 2024 NOTD simply sought comment on DOE's tentative determination that an amended industry test procedure that does not have provisions for measuring two sources of energy consumption, jacket losses and part-load operation, which can account for an over 4 percent difference in overall measured efficiency, is not reasonably designed to measure energy efficiency during a representative average use cycle that, as determined by DOE for the TE2 metric, includes jacket losses and part-load operation. It should be emphasized that DOE was not seeking comment on methodologies for calculating jacket losses and energy use in part-load operation for a CWAF, which would have warranted a longer comment period to give stakeholders time to evaluate those testing provisions. Instead, DOE sought comment on whether—as opposed to every other type of HVAC equipment where DOE determined that part-load operation was part of the representative average use cycle—an amended industry test procedure for CWAFs that does not have provisions for measuring jacket losses and energy use during part-load operation of a CWAF is reasonably designed to measure energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation.

DOE posted the signed, pre-publication copy of the December 2024 NOTD on the DOE website on December 13, 2024. That same day DOE sent an email to stakeholders, including AHRI, Daiken, and JCI, announcing the public

availability of the document and providing stakeholders with a website link to the document. The document was then published in the **Federal Register** on December 26, 2024, with a 14-day comment period that ended on January 8, 2025. In total, stakeholders like AHRI, Daiken, and JCI had 4 weeks to review the document and provide comments. As such, this proceeding provided stakeholders with sufficient time to review the December 2024 NOTD and develop any comments on why an amended industry test procedure that does not have provisions for measuring jacket losses and energy use during part-load operation still gives reasonable results when used to measure CWAF energy use in the field that includes jacket losses and part-load operation.

C. Application of the ASHRAE Trigger Provision in 42 U.S.C. 6314(a)(4)(B)

In the December 2024 NOTD, DOE evaluated the amended industry test procedure in the context of the ASHRAE trigger provision and presented DOE's tentative determination, supported by clear and convincing evidence, that the amended industry test procedure is not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. As support for this tentative determination, DOE estimated that the amended industry test procedure could not account for as much as a 4.5 percent difference in efficiency between a CWAF model with high jacket losses and poor part-load performance and a model with negligible jacket losses and good part-load performance. DOE noted that this variation in efficiency was significant. For example, when DOE last amended the standards for gas-fired CWAFs, the minimum required efficiency went from 80 to 81 percent, which DOE determined would result in significant additional conservation of energy. 81 FR 2420, 2430. Further, the average life-cycle cost savings to a consumer from that 1 percent increase in efficiency was $284. *Id.* at 81 FR 2423. Those already significant impacts are only magnified when larger differences in measured efficiency are considered. Therefore, DOE tentatively determined, supported by clear and convincing evidence, that the amended industry test procedures referenced in ASHRAE Standard 90.1–2022 are not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle that, as determined by DOE for the TE2 metric, includes jacket losses and part-load operation.

In response to the December 2024 NOTD, the Joint Commenters stated that the potential 4.5 percent difference in energy efficiency corresponds to a significant difference in energy consumption and that the amended industry test procedure would likely result in an inaccurate ranking of equipment in the market in terms of energy use and operating cost. (Joint Commenters, No. 7, p. 1) As such, the Joint Commenters agreed with DOE's tentative determination that the amended industry test procedure is not reasonably designed to measure energy efficiency during a representative average use cycle. *Id.*

Daiken, on the other hand, stated that DOE did not provide any data to support its assertion that the industry test procedure is not representative but has stated that clear and convincing evidence is present. (Daiken, No. 9, p. 3) DOE strongly disagrees with this statement. As discussed previously, DOE provided estimates that jacket losses and part-load operation could account for as much as a 4.5 percent difference in efficiency. And DOE noted that even a 1 percent increase in efficiency corresponded to average life-cycle cost savings of $284.

AHRI asserted that DOE cannot satisfy the clear-and-convincing evidence requirements because AHRI believes the record did not demonstrate the test procedures referenced in Standard 90.1 would fail to meet the requirements of sections 6314(a)(2) and (a)(3). More specifically, AHRI commented that the range of efficiencies that would result from the inclusion of part-load operation is narrower than for other air-conditioning products. AHRI pointed to an example of a furnace in a large commercial unit in a milder climate primarily operating at night or during morning warm up to demonstrate its belief that CWAFs are basically on-off, *i.e.,* do not spend a significant amount of time operating at part-load. (AHRI, No. 6 at p. 7)

In the June 2023 Final Rule, after considering comments and input from stakeholders, DOE determined that the representative average use cycle for the TE2 metric should include part-load operation and adopted the 50 percent weighting at full load and part load. 88 FR 36217, 36226. In making that determination, DOE reviewed modeling submitted by NEEA that showed a range of times for CWAF operation at full and part loads, from operating as much as 70 percent of the time at full load (and 30 percent of the time at part load) to operating as little as 25 percent of the time at full load (and 75 percent at part load). DOE also observed that in the modeling certain building types (warehouses) were modeled to operate at full load over 50 percent of the time, while other buildings (retail) were modeled to operate at full load less than 50 percent of the time. DOE acknowledges that the time a CWAF operates at full load and part load could vary based on the climate region, building type and load, and CWAF sizing. But based on the available data, it is clear that CWAFs in the field spend a significant amount of time operating at part-load.

Even if AHRI were correct and part-load operation is less of a contributor to the overall energy efficiency of a CWAF, DOE notes that none of the commenters argued that jacket losses are not important to the overall efficiency of a CWAF. In fact, AHRI points out its importance by citing to the relevant provisions in ASHRAE 90.1 showing that CWAFs installed in buildings where ASHRAE 90.1–2022 building code requirements apply (*e.g.,* newly constructed commercial equipment where a jurisdiction has adopted the ASHRAE Standard 90.1–2022 building energy codes) must meet certain jacket loss provisions. This position highlights the importance of including jacket losses in the representative average use cycle for any future standards, which as DOE noted in the December 2024 NOTD could account for as much as a 2.5 percent difference in efficiency. 89 FR 104859, 104863.

III. Conclusion

The potential difference in CWAF efficiency measured under the industry test procedure and the appendix B test procedure is an excellent example of why Congress updated representative use cycles for covered products to include standby and off mode energy use in new or amended energy conservation standards and why stakeholders, including manufacturers, asked DOE to update the representative average use cycle for air-cooled commercial air conditioners and heat pumps—consumers and manufacturers are both better off when DOE test procedures and energy conservation standards capture more energy use in the field. For example, as discussed previously, a CWAF with a TE of 81 percent as measured by the industry test procedure could, depending on jacket losses and part-load operation, have an actual range of efficiencies from 77.5 to 82 percent using the appendix B test procedure for TE2. That is a significant difference in efficiency and corresponds to a significant difference in fuel costs

over the lifetime of the CWAF, which is important information for consumers. The industry test procedure also does not allow manufacturers to fully differentiate their products in the market. For example, under the industry test procedure, a manufacturer with a line of CWAF models with well-insulated jackets has no way to advertise their improved efficiency in the market. Under the industry test procedure, these models will have the same advertised efficiency as similar models that lack insulation and have higher jacket losses.

Having determined that any future, amended standards for CWAFs should be based on a representative average use cycle that includes jacket losses and part-load operation, DOE adopted the appendix B test procedure in the June 2023 Final Rule. The appendix B test procedure contains specific provisions for measuring jacket losses and energy use during part-load operation and will be used by DOE to evaluate potential amended standards for CWAFs. Use of the appendix B test procedure by manufacturers would not be required until such time as compliance is required with amended energy conservation standards based on the new representative average use cycle, should DOE adopt such standards.

For this final determination, as was done initially in the December 2024 NOTD, DOE evaluated whether the industry test procedure is reasonably designed to produce test results which reflect energy use during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. Unlike the appendix B test procedure, the industry test procedure does not have provisions for calculating jacket losses and changes in energy efficiency due to part-load operation. As discussed previously, this results in the industry test procedure producing test results that do not account for significant variations in energy use across different CWAF models. As a result, DOE has determined, supported by clear and convincing evidence, that the industry test procedure is not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation for the TE2 metric.

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the June 2023 Final Rule remain unchanged for this notification of final determination. These determinations are set forth in the June 2023 Final Rule. 88 FR 36217, 36230–36233. DOE is publishing this document to present its final determination, supported by clear and convincing evidence, that the industry test procedure would not provide test results that are representative of an average use cycle for the TE2 metric.

V. Approval of the Office of the Secretary

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

Signing Authority

This document of the Department of Energy was signed on January 13, 2025, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2025.

Treena V. Garrett,

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

[FR Doc. 2025–01082 Filed 1–16–25; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2024–30]

Statement of Policy Regarding the Notification of Respondents in Matters Under Review Remanded From a Challenge Pursuant to 52 U.S.C. 30109(a)(8)

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Federal Election Commission (''Commission'' or ''FEC'') is issuing a Policy Statement to explain that, if the Commission receives a remand in litigation instituted pursuant to 52 U.S.C. 30109(a)(8), it will notify the respondents in the Matter Under Review (''MUR'') of the relevant court decision(s) and provide an opportunity to file supplemental responses.

DATES: The effective date of this Statement of Policy is February 18, 2025.

FOR FURTHER INFORMATION CONTACT: Claudio J. Pavia, Assistant General Counsel, Enforcement Division, 1050 First Street NE, Washington, DC 20463, (202) 694–1650.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971, as amended, (''Act'') 52 U.S.C. 30101–30145, provides for enforcement based upon complaints filed by the public. Such complaints are filed with the FEC, which notifies each individual or organization accused of wrongdoing (''Respondents'') and provides an opportunity to respond to the allegations of the complaint.

''Any party aggrieved by an order of the Commission dismissing a complaint filed by such party . . . or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.'' 52 U.S.C. 30109(a)(8)(A). ''[I]n any proceeding'' brought under 52 U.S.C. 30109(a)(8) ''the court may declare that the dismissal of the complaint or the failure to act is contrary to law and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.'' 52 U.S.C. 30108(a)(8)(C).

Because lawsuits filed under 52 U.S.C. 30108(a)(8) are brought by Complainants against the Commission, Respondents may not be aware of actions taken in these cases. Respondents' interests are implicated, however, where a MUR is remanded to the Commission for further action. In particular, because the Commission will generally be ordered to conform to a particular judicial opinion, and because the facts and circumstances of a MUR may have changed with the passage of time, any response previously provided by a Respondent may be stale. *See* 52 U.S.C. 30109(a)(1) (''Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint'').

Accordingly, the Commission is issuing this Policy Statement to announce that whenever a remand is ordered by final judgment or appellate decision in a case brought pursuant to 52 U.S.C. 30109(a)(8)(C), the FEC will provide notice of that decision by letter within 48 hours to both the email and physical address on file. This letter will be drafted by the Office of General Counsel's Litigation Division, in consultation with the Enforcement Division, and will enclose the relevant opinion and order. Further, the letter will note any deadline for Commission action and advise that the Commission will consider any supplemental response or material the Respondent may wish to provide for the purpose of the remand.

This policy describes how the Commission will provide notice to Respondents of opinions and orders that result in a remand in cases brought pursuant to 52 U.S.C. 30109(a)(8). The policy does not confer any rights on any person and does not in any way limit the right of the Commission to evaluate every MUR based upon its particular facts and circumstances.

This document represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedure Act (''APA''). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or other relevant statute, are not applicable.

Dated: December 19, 2024.

On behalf of the Commission,

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–31124 Filed 1–16–25; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 47

[Docket No.: FAA–2024–2765; Amdt. No. 47–36]

RIN 2120–AM08

Electronic Issuance of Aircraft Registration and Dealer Certificates

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

ACTION: Final rule.

SUMMARY: This rulemaking amends FAA regulations pertaining to aircraft registration and dealer's registration certificates to facilitate the electronic issuance of these certificates. Electronic issuance of the certificates is more efficient and cost effective than the traditional agency procedure of printing paper registration certificates and mailing them to aircraft owners and dealers.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Wendolynn Hendrick, Aircraft Registration Branch, Federal Aviation Administration, 6500 S MacArthur Blvd., Bldg 29, Oklahoma City, OK 73169; telephone (405) 954–3131; email *Wendolynn.R.Hedrick@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA's authority. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

This rulemaking is also promulgated pursuant to 49 U.S.C. 44101–44106 and 44110–44113, which require aircraft to be registered as a condition of operation and establish the requirements for registration and registration processes. The FAA Civil Aviation Registry is responsible for the registration and recordation of civil aircraft.

The regulations in this rule are within the scope of that authority because they provide for the electronic issuance of aircraft registration and dealer's registration certificates.

II. Immediate Adoption of Final Rule

The notice and comment procedures required under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553) do not apply to rules of ''agency organization, procedure, or practice.'' Under this section, an agency may issue a final rule without seeking comment prior to the rulemaking. This rulemaking updates the regulations for aircraft registration and recordation in part 47 of title 14 of the Code of Federal Regulations (14 CFR) to provide for the electronic issuance of aircraft registration and dealer's registration certificates. This rule does not alter the substantive rights or obligations of persons applying for aircraft registration or dealer's certificates, only the procedures by which the FAA issues such certificates. Therefore, the FAA has determined that this rulemaking is a rule of agency procedure or practice for which notice and public comment are not required.

Accordingly, because this is a rule of agency practice or procedure for which notice and public comment is not required, the FAA also finds good cause to waive the delay of the effective date as set forth in 5 U.S.C. 553(d). This rule will be immediately effective upon publication.

III. Background

A. Background and Current Processes

The Civil Aviation Registry, FAA Aircraft Registration Branch (Registry) is responsible for developing, maintaining, and operating the Federal registration and recordation system for United States civil aircraft. Within these functions is the statutory requirement for issuance of aircraft registration and dealer's registration certificates. Currently, the Registry issues certificates in the physical form of a 4'' x 9'' document printed on card stock. The Registry delivers both aircraft registration certificates and aircraft dealer certificates in paper form. The Registry issues over 5,000 of these certificates per month. These certificates are then delivered as bulk mail to registrants in approximately 7–10 business days.

Due to the long delivery time required by using regular mail, the Registry has had to create special priority processes to meet the demands of a changing fast-paced environment of the aviation industry. Costs involved in this process

include printing, supplies, mailing, and manpower needed for sorting and distribution.

B. Developing the CARES System

Section 546 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) [1] requires that the FAA complete covered upgrades of the Civil Aviation Registry. The required upgrades include digitization of Registry functions and business operations ''by leveraging digital technologies and a broader use of digitized data,'' as well as expansion of electronic and remote access to the Registry by members of the public.

Following this Congressional direction, the Registry began exploring alternatives to the legacy system and developed a modernization plan. As of 2022, the Aircraft Registration Branch started implementing a new system of registration and recordation called the Civil Aviation Registry Electronic Services, or ''CARES.'' The project implements a web-based electronic system that allows the aviation community to securely submit applications, upload documentation, and provide the data necessary for the Registry to perform aircraft registration and airman certification services. For registrants using the system, CARES allows more comprehensive functionality, including a personal portal for users to view their submissions, pay fees online, and digitally sign their applications. Full implementation of the CARES system is expected by late 2025. Ultimately, CARES will become the central and legal repository of all aircraft registration and will fully replace the existing service.

IV. Discussion of the Final Rule

A. Electronic Issuance of Aircraft Registration and Dealer Certificates

The federal statutes that authorize the FAA to issue aircraft registration and dealer's registration certificates do not prescribe the manner in which the certificates are to be issued.[2] As discussed, the FAA has traditionally issued aircraft registration and dealer's registration certificates, including replacement certificates, in paper form by mail. This process results in costs to the FAA to print the certificates, for supplies and associated labor hours, and for postage costs required to deliver the certificates by mail, which takes approximately 7 to 10 business days to arrive. With the capability to utilize electronic delivery means, such as email, and the future implementation of the CARES system, the FAA has determined that the traditional agency procedure of printing and mailing aircraft registration and dealer's registration certificates should be replaced with the electronic issuance of these certificates.

A feature of CARES will allow the Registry to electronically issue and deliver a registration certificate, enabling almost instant delivery of the certificate to the registrant without the normal 7–10 business day wait time for regular mail delivery. Regardless of the timeline of CARES implementation, the Registry will still be able to send electronic certificates by email either through the legacy registration system or through alternate means.

Electronic delivery of certificates will provide a streamlined and expedited delivery service while also reducing the cost and labor burden of mailing for the Registry. However, if a traditional paper certificate is still desired, an applicant may request a paper certificate be issued instead of an electronic certificate.

This final rule effectuates this change in the FAA's procedures for the issuance of aircraft registration and dealer's registration certificates, from traditional paper form to electronic issuance as the primary delivery method.

The FAA emphasizes, however, that the issuance of a registration certificate in electronic form does not, in any way, obviate or affect the need to comply with statutory, regulatory, or other requirements involving aircraft registration or dealer's registration certificates. Notably, in general, a Certificate of Aircraft Registration must still be carried on the aircraft.[3]

B. Discussion of Affected Regulations

For the reasons discussed in the preceding section, in this final rule the FAA is making several additions and revisions to the regulations in 14 CFR part 47. These amendments are designed to enable and facilitate the FAA's electronic issuance of aircraft registration and dealer's registration certificates. Applicants for these certificates will continue to be able to receive paper certificates upon request.

The FAA is adding language to the end of § 47.1, which sets forth the applicability of part 47. The additional regulatory language expressly provides that part 47 applies to the issuance of a Certificate of Aircraft Registration or a Dealer's Registration Certificate, whether by mail, electronic, or other means.

The FAA is revising § 47.41(b) to address the return or destruction (in the case of § 47.41(b)(3)) of aircraft registration certificates that are issued in electronic form. Currently, § 47.41(b) requires an aircraft registration certificate be returned to the Registry within specified timeframes under the circumstances set forth in paragraphs (b)(1) through (4). For paper certificates, the holder of the certificate must notify the FAA of the reasons for a change in status by completing the reverse side of the certificate and returning it.

The FAA has determined that it is unnecessary and impractical to require the ''return'' of an electronically issued aircraft registration certificate. The FAA does not expect certificate holders to have to permanently delete the originating email sent by the FAA, or other electronic or digital method used by the FAA, that transmitted the registration certificate. This rule amends § 47.41(b) to maintain only the requirement that the holder of an electronically issued certificate notify the FAA by email or other acceptable means within the existing timeframes, in lieu of completing the reverse side of a paper certificate, when any of the changes specified in § 47.41(a) occurs, regarding the status of the registered aircraft or registered owner. The revised language of § 47.41(b) provides flexibility for holders of electronically issued certificates to notify the FAA of a change in status in the most practicable manner.

This rule also clarifies that only the paper or printed copies of the aircraft registration certificate need to be destroyed when required under § 47.41(b)(3). A requirement to ''destroy'' an electronic certificate is impractical because the certificate, even if no longer effective, can be repeatedly printed, copied, and electronically duplicated. However, even though an electronic certificate may potentially exist in electronic form indefinitely, the use of an invalid or ineffective certificate remains unlawful. The registration status of civil aircraft is publicly available online and searchable by N-number for those persons who may need to ascertain the aircraft's current registration status.[4]

The FAA is also amending § 47.43(b), which currently requires that the holder

[1] 132 Stat. 3376 (Oct. 5, 2018).

[2] *See* 49 U.S.C. 44103(a) and 44104.

[3] *See* 49 U.S.C. 44103(d); Article 29 of the Convention on International Civil Aviation (the ''Chicago Convention''); and 14 CFR part 91, § 91.203(a)(2). The FAA anticipates that the Certificate of Aircraft Registration will be permitted to be carried in electronic or digital format on the aircraft, subject to implementation of security and authentication features within CARES and international standards.

[4] *https://registry.faa.gov/aircraftinquiry/.*

of an invalid aircraft registration return the registration certificate to the Registry as soon as possible, to clarify that only a certificate issued in paper form must be returned.

Similarly, the FAA is amending § 47.49, which prescribes the procedures for requesting a replacement aircraft registration certificate, to enable the Registry to send replacement certificates electronically.

Finally, the FAA is revising several regulations in part 47 to remove the references to FAA form numbers ''AC Form 8050–3'' and ''AC Form 8050–6,'' which are the form numbers designated by the FAA for the Certificate of Aircraft Registration and the Dealer's Aircraft Registration Certificate, respectively. The affected sections of part 47 include the following: §§ 47.1; 47.5(c); 47.7(d); 47.8(c); 47.11(e); 47.13(b) 47.15(a), (f), and (i); 47.16(a); 47.31(a); 47.39; 47.40(b); 47.41(a), and (b); 47.43(b); 47.45; 47.47(a); 47.49(a); 47.61(a); 47.63; 47.65; 47.67; 47.69, and 47.71. These form numbers are associated with the issuance of traditional paper certificates. Removing the form numbers from the regulations will reduce the need to amend the regulations should new aircraft registration forms be introduced in the future. The FAA will benefit from the administrative flexibility provided to more efficiently implement the digitization requirements contained in section 546 of the FAA Reauthorization Act of 2018, among other purposes. In addition, some regulations in part 47 include the form numbers when referring to the registration certificates, while other regulations do not. Removing the form numbers will maintain consistency in the regulatory language used throughout part 47.

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') require agencies to regulate in the ''most cost-effective manner'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' The Office of Management and Budget has determined that this final rule is not a significant regulatory action as defined in section (3)(f)(1) of Executive Order 12866, as amended by Executive Order 14094, ''Modernizing Regulatory Review.''

The rule enables the FAA to distribute registration certificates electronically. It also amends language to ensure that such electronic certificates may be used in a similar fashion to printed certificates. Paper certificates may still be issued upon request. The FAA does not know or estimate how many registrants will opt for a paper certificate.

Prior to this rulemaking, the Registry's practice had been to mail out paper copies of the certificates. The legacy registration system is scheduled to be replaced by the newer CARES system separate from this rulemaking, and the CARES system has the capability to distribute such certificates electronically. However, without this rule, the FAA would continue distributing paper certificates.

The FAA estimates that registrants using the new system will receive their certificates 7 to 10 business days sooner on average under this rule.

The rule will have minimal to no costs, as the infrastructure is scheduled to be deployed with or without the rulemaking. Furthermore, the rule is expected to result in cost savings for the FAA by reducing the postage and printing costs associated with mailing a paper certificate. It may also result in reduced costs for the FAA by reducing the time employees spend handling paper documents and preparing them to mail.

The FAA distributes an average of 60,324 certificates each year. These are printed on card stock and sent out via bulk mail. The FAA estimates the unit cost of printing and mailing each certificate is $0.971.[5] Therefore, if all future registrants use electronically issued certificates, the cost savings to the FAA may be about $58,575 per year (60,324 certificates multiplied by $0.971).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes that this is a rule of agency procedure or practice for which notice and comment are not required. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

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

D. Unfunded Mandates Assessment

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The information collection for aircraft registration and recordation is approved under OMB Control Number 2120–0042. The FAA has determined that there will be no new requirement for information

[5] Assumes rate for marketing mail flats (bulk). See USPS Price List, Notice 123, effective October 6, 2024: *https://pe.usps.com/text/dmm300/Notice123.htm?_gl=1*1e8cdrr*_gcl_au*NDY1OTc0MzQwLjE3MzA4MTUxMjQ.*_ga*MTc5MTgzMzg5Ni4xNzMwODE1MTI0*_ga_3NXP3C8S9V*MTczMTA3NTA3NC4yLjAuMTczMTA3NTA3NC4wLjAuMA..#_c119,* accessed on November 6, 2024.

collection associated with this final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that these regulations, as amended, do not conflict with the ICAO Standards and Recommended Practices pertaining to the issuance of a certificate of registration.

G. Environmental Analysis

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

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[6] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[7] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

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

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

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

VII. Additional Information

A. Electronic Access and Filing

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

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

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

B. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 47

Aircraft, Reporting and Recordkeeping Requirements.

The Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 47—Aircraft Registration

■ 1. The authority citation for part 47 continues to read as follows:

Authority: 4 U.S.T. 1830; Public Law 115–254, Public Law 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 40113–40114, 44101–44108, 44110–44113, 44701, 44703–44704, 44713, 45302, 46104, 46301.

■ 2. Revise § 47.1 to read as follows:

§ 47.1 Applicability.

This part prescribes the requirements for registering aircraft under 49 U.S.C. 44101–44104. Subpart B applies to each applicant for, and holder of, a Certificate of Aircraft Registration. Subpart C applies to each applicant for, and holder of, a Dealer's Aircraft Registration Certificate. This part applies to the issuance by the FAA of such certificates, whether by mail, electronic, or other means.

■ 3. Amend § 47.5 by revising paragraph (c) to read as follows:

§ 47.5 Applicants.

* * * * *

(c) 49 U.S.C. 44103(c) provides that registration is not evidence of ownership of aircraft in any proceeding in which ownership by a particular person is in issue. The FAA does not issue any certificate of ownership or endorse any information with respect to ownership on a Certificate of Aircraft

[6] 65 FR 67249 (Nov. 6, 2000).

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

Registration. The FAA issues a Certificate of Aircraft Registration to the person who appears to be the owner on the basis of the evidence of ownership submitted pursuant to § 47.11 with the Aircraft Registration Application, or recorded at the Registry.

* * * * *

■ 4. Amend § 47.7 by revising paragraph (d) introductory text to read as follows:

§ 47.7 United States citizens and resident aliens.

* * * * *

(d) *Partnerships.* A partnership may apply for a Certificate of Aircraft Registration under 49 U.S.C. 44102 only if each partner, whether a general or limited partner, is an individual who is a citizen of the United States. Nothing in this section makes ineligible for registration an aircraft that is not owned as a partnership asset but is co-owned by—

* * * * *

■ 5. Amend § 47.8 by revising paragraph (c) to read as follows:

§ 47.8 Voting trusts.

* * * * *

(c) If the voting trust terminates or is modified, and the result is less than 75 percent control of the voting interest in the corporation by citizens of the United States, a loss of citizenship of the holder of the Certificate of Aircraft Registration occurs, and § 47.41(a)(3) of this part applies.

* * * * *

■ 6. Amend § 47.11 by revising paragraphs (e) and (f) to read as follows:

§ 47.11 Evidence of ownership.

* * * * *

(e) The executor or administrator of the estate of the deceased former owner of an aircraft must submit a certified copy of the letters testamentary or letters of administration appointing him executor or administrator. The Certificate of Aircraft Registration is issued to the applicant as executor or administrator.

(f) The buyer of an aircraft from the estate of a deceased former owner must submit both a bill of sale, signed for the estate by the executor or administrator, and a certified copy of the letters testamentary or letters of administration. When no executor or administrator has been or is to be appointed, the applicant must submit both a bill of sale, signed by the heir-at-law of the deceased former owner, and an affidavit of the heir-at-law stating that no application for appointment of an executor or administrator has been made, that so far as he can determine none will be made, and that he is the person entitled to, or having the right to dispose of, the aircraft under applicable local law.

* * * * *

■ 7. Amend § 47.13 by revising paragraph (b) to read as follows:

§ 47.13 Signatures and instruments made by representatives.

* * * * *

(b) When one or more persons doing business under a trade name submits an Aircraft Registration Application, a document submitted as supporting evidence under this part, or a request for cancellation of a Certificate of Aircraft Registration, the application, document, or request must be signed by, or on behalf of, each person who shares title to the aircraft.

* * * * *

■ 8. Amend § 47.15 by revising paragraph (a) introductory text, paragraph (f), and paragraph (i)(2) to read as follows:

§ 47.15 Registration number.

(a) *Number required.* An applicant for aircraft registration must place a U.S. registration number (registration mark) on the Aircraft Registration Application, AC Form 8050–1, and on any evidence submitted with the application. There is no charge for the assignment of numbers provided in this paragraph. This paragraph does not apply to an aircraft manufacturer who applies for a group of U.S. registration numbers under paragraph (c) of this section; a person who applies for a special registration number under paragraphs (d) through (f) of this section; or a holder of a Dealer's Aircraft Registration Certificate who applies for a temporary registration number under § 47.16.

* * * * *

(f) The Registry authorizes a special registration number change on the Assignment of Special Registration Numbers, AC Form 8050–64. The authorization expires one year from the date the Registry issues an Assignment of Special Registration Numbers unless the special registration number is permanently placed on the aircraft. Within five days after the special registration number is placed on the aircraft, the owner must complete and sign the Assignment of Special Registration Numbers, state the date the number was placed on the aircraft, and return the original form to the Registry. The duplicate of the Assignment of Special Registration Numbers and the present Certificate of Aircraft Registration must be carried in the aircraft as temporary authority to operate it. This temporary authority is valid until the date the owner receives the revised Certificate of Aircraft Registration showing the new registration number, but in no case is it valid for more than 120 days from the date the number is placed on the aircraft.

* * * * *

(i) * * *

(2) Following the expiration date shown on the Dealer's Aircraft Registration Certificate, for any aircraft registered under Subpart C of this part, when the certificate has not been renewed, and the owner has not applied for registration in accordance with § 47.31; or

* * * * *

■ 9. Amend § 47.16 by revising paragraph (a) to read as follows:

§ 47.16 Temporary registration numbers.

(a) Temporary registration numbers are issued by the FAA to manufacturers, distributors, and dealers who are holders of Dealer's Aircraft Registration Certificates for temporary display on aircraft during flight allowed under Subpart C of this part.

* * * * *

■ 10. Amend § 47.31 by revising paragraph (a) introductory text to read as follows:

§ 47.31 Application.

(a) Each applicant for a Certificate of Aircraft Registration must submit the following to the Registry—

* * * * *

■ 11. Revise § 47.39 to read as follows:

§ 47.39 Effective date of registration.

An aircraft is registered on the date the Registry determines that the submissions meet the requirements of this part. The effective date of registration is shown as the date of issue on the Certificate of Aircraft Registration.

■ 12. Amend § 47.40 by revising paragraph (b) to read as follows:

§ 47.40 Registration expiration and renewal.

* * * * *

(b) *Renewal.* Each holder of a Certificate of Aircraft Registration containing an expiration date may apply for renewal of a Certificate of Aircraft Registration by submitting an Aircraft Registration Renewal Application, AC Form 8050–1B, and the fee required by § 47.17 during the six months preceding the expiration date for the Certificate of Aircraft Registration.

* * * * *

■ 13. Amend § 47.41 by revising paragraph (a) introductory text, paragraph (b) introductory text, and paragraph (b)(3) to read as follows:

§ 47.41 Duration and return of certificate.

(a) Each Certificate of Aircraft Registration issued by the FAA under this subpart is effective, unless registration has ended by reason of having been revoked, canceled, expired, or the ownership is transferred, until the date upon which one of the following events occurs:

* * * * *

(b) The FAA must be given notice of, and the reason(s) for, any change in status of the registered aircraft or registered owner specified under paragraph (a) of this section. In the case of an electronically issued Certificate of Aircraft Registration, notice must be provided by email or other means acceptable to the Administrator, and, in the case of a certificate issued in paper form, the certificate, with the reverse side completed, must be returned to the Registry—

* * * * *

(3) Within 21 days of the termination of the registration, by the holder of the Certificate of Aircraft Registration in all other cases mentioned in paragraph (a) of this section, except in the case of expired certificates, the holder must destroy the expired certificate, if in paper or printed form.

* * * * *

■ 14. Amend § 47.43 by revising paragraph (b) to read as follows:

§ 47.43 Invalid registration.

* * * * *

(b) If the registration of an aircraft is invalid under paragraph (a) of this section, the holder of the invalid Certificate of Aircraft Registration, if issued in paper form, must return it as soon as possible to the Registry.

■ 15. Revise § 47.45 to read as follows:

§ 47.45 Change of address.

Within 30 days after any change in a registered owner's mailing address, the registered owner must notify the Registry in writing of the change of address. If a post office box or mailing drop is used for mailing purposes, the registered owner also must provide that owner's physical address or location. Upon acceptance, the Registry will issue, without charge, a revised Certificate of Aircraft Registration reflecting the new mailing address. When a post office box or mailing drop is used for mailing purposes, and the registered owner's physical address or location changes, the registered owner must notify the Registry in writing of the new address or location within 30 days.

■ 16. Amend § 47.47 by revising paragraph (a) introductory text to read as follows:

§ 47.47 Cancellation of Certificate for export purpose.

(a) The holder of a Certificate of Aircraft Registration or the holder of an irrevocable deregistration and export request authorization recognized under the Cape Town Treaty and filed with the FAA who wishes to cancel the Certificate of Aircraft Registration for the purpose of export must submit to the Registry—

* * * * *

■ 17. Revise § 47.49 to read as follows:

§ 47.49 Replacement of Certificate.

(a) If the original Certificate of Aircraft Registration is lost, stolen, or mutilated, the registered owner may submit to the Registry a written request that states the reason a replacement certificate is needed and the fee required by § 47.17. The Registry will send a replacement certificate to the registered owner by email or other electronic or digital means, or, if such means are unavailable, to the registered owner's mailing address or to another mailing address if requested in writing by the registered owner.

(b) The registered owner may request a temporary Certificate of Aircraft Registration pending receipt of a replacement certificate. The Registry issues a temporary Certificate of Aircraft Registration that must be carried in the aircraft until receipt of the replacement certificate.

■ 18. Amend § 47.61 by revising paragraph (a) introductory text to read as follows:

§ 47.61 Dealer's Aircraft Registration Certificates.

(a) The FAA issues a Dealer's Aircraft Registration Certificate to U.S. manufacturers and dealers to—

* * * * *

■ 19. Amend § 47.63 by revising paragraph (a) introductory text to read as follows:

§ 47.63 Application.

(a) A manufacturer or dealer that wishes to obtain a Dealer's Aircraft Registration Certificate must submit—

* * * * *

■ 20. Revise § 47.65 to read as follows:

§ 47.65 Eligibility.

To be eligible for a Dealer's Aircraft Registration Certificate, the applicant must have an established place of business in the United States, must be substantially engaged in manufacturing or selling aircraft, and must be a citizen of the United States, as defined by 49 U.S.C. 40102 (a)(15).

■ 21. Revise § 47.67 to read as follows:

§ 47.67 Evidence of ownership.

Before using a Dealer's Aircraft Registration Certificate for operating the aircraft, the holder of the certificate (other than a manufacturer) must send to the Registry evidence of ownership under § 47.11. An Aircraft Bill of Sale, AC Form 8050–2, or its equivalent, may be used as evidence of ownership. There is no recording fee.

■ 22. Amend § 47.69 by revising the introductory text to read as follows:

§ 47.69 Limitations.

A Dealer's Aircraft Registration Certificate is valid only in connection with use of aircraft—

* * * * *

■ 23. Amend § 47.71 by revising paragraph (a) to read as follows:

§ 47.71 Duration of Certificate; change of status.

(a) A Dealer's Aircraft Registration Certificate expires 1 year after the date it is issued. Each additional certificate expires on the date the original certificate expires.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44101–44106 in Washington, DC

Michael Gordon Whitaker,

Administrator.

[FR Doc. 2025–00764 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 47 and 49

[Docket No.: FAA–2024–2764; Amdt. Nos. 47–35 AND 49–12]

RIN 2120–AM07

Aircraft Registration and Recordation Procedural Updates: Original Documents and Stamping

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is updating certain procedural regulations relating to civil aircraft registration and recordation to provide administrative relief from the requirements for submitting original

documents and to sunset the FAA's practice of stamping documents. Amending these regulations will reduce administrative burdens and enable the FAA to better utilize the capabilities of the Civil Aviation Registry Electronic Services (CARES) system for civil aircraft registration and recordation.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Craig Whitbeck, Registry Services and Information Management Branch, Federal Aviation Administration, 6500 S MacArthur Blvd., Bldg 29, Oklahoma City, OK 73169; telephone (405) 954–3131; email *Craig.Whitbeck@faa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA's authority. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

This rulemaking is also promulgated pursuant to 49 U.S.C. 44101–44108 and 44110–44113, which require aircraft to be registered as a condition of operation and establish the requirements for registration, registration processes, and the recordation of conveyances, leases, and security instruments. The FAA Civil Aviation Registry is responsible for the registration and recordation of civil aircraft and conveyances.

The regulations in this rule are within the scope of the above authorities because they prescribe the form and means by which aircraft registration applications, conveyances, and related documents and materials are to be submitted to the Registry, and the procedures for the Registry to process such documents.

II. Immediate Adoption of Final Rule

The notice and comment procedures required under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553) do not apply to rules of ''agency organization, procedure, or practice.'' Under this section, an agency may issue a final rule without seeking comment prior to the rulemaking. This rulemaking updates certain procedural regulations for aircraft registration and recordation in parts 47 and 49 of Title 14 of the Code of Federal Regulations (14 CFR) to provide the FAA with flexibility in accepting non-original documents and to sunset the FAA's practice of date stamping incoming documents. This rule does not alter the substantive rights or obligations of persons applying for aircraft registration or submitting conveyances for recordation. Rather, the rule allows such persons the option of submitting non-original documents electronically while retaining the existing option of submitting original documents if a person prefers. The rule also amends the internal FAA processing of submissions, which does not affect the rights or interests of regulated parties. With these inefficiencies removed, the use of modern technology will enable greater flexibility for the public and the Registry, will reduce document rejection rates, and improve the aircraft registration process. Therefore, the FAA has determined that this rulemaking is a rule of agency procedure or practice for which notice and public comment are not required.

Accordingly, because this is a rule of agency practice or procedure for which notice and public comment is not required, the FAA also finds good cause to waive the delay of effective date as set forth in 5 U.S.C. 553(d). This rule will be immediately effective upon publication.

III. Background

The Civil Aviation Registry, FAA Aircraft Registration Branch (Registry) is responsible for developing, maintaining, and operating the Federal registration and recordation system for United States aircraft. The Registry's legacy information technology infrastructure, Registry Modernization Services (RMS), last updated in 2008, has been used to ensure aircraft and security conveyances are properly registered and recorded. RMS was implemented on a mainframe environment that is costly to operate and difficult to support.

In addition, section 546 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) [1] requires that the FAA complete covered upgrades of the Civil Aviation Registry. The term ''covered upgrades'' includes the digitization of nondigital Registry information, the digitization of manual and paper-based processes, the implementation of electronic or remote methods for the public to submit their information, and the provision of more efficient, broader, and remote access to the Registry.

Following this Congressional direction, the Registry began exploring alternatives to the legacy system and developed a modernization plan. As of 2022, the Aircraft Registration Branch started implementing a new system of registration and recordation called the Civil Aviation Registry Electronic Services, or ''CARES.'' The project implements a web-based electronic system that allows the aviation community to securely submit applications, upload documentation, and provide the data necessary for the Registry to perform aircraft registration and airman certification services. For registrants using the system, CARES allows more comprehensive functionality, including a personal portal for users to view their submissions, pay fees online, and digitally sign their applications. Full implementation of the CARES system is expected by late 2025. Ultimately, CARES will become the central and legal repository of all aircraft registration and airman certification records and will fully replace the existing service.

While CARES is equipped with features for online document submission, including the automated recordation of the date and time of submission, a number of regulations in 14 CFR parts 47 and 49 continue to require the submission of original documents, which occurs by mail, and also include references in various sections to the Registry's procedures for the date stamping of documents.

IV. Discussion of the Final Rule

A. Document Stamping

Historically and to this day, the Registry stamps the date and time of receipt and processing on many of the forms and documents submitted in accordance with parts 47 and 49, such as aircraft registration applications, conveyances for recordation, and supporting documentation. This agency practice is referenced in two of the regulations at issue in this final rule.

The FAA has determined that its procedures for the stamping of documents submitted to the Registry are no longer necessary. As discussed, the Registry is in the process of replacing the legacy RMS system with the cloud-based CARES system. Document stamps helped RMS users track the date and time documents were received and processed by the Registry. The CARES system will maintain digital document records that replace the need for document stamps.

[1] 132 Stat. 3376 (Oct. 5, 2018).

Accordingly, in this rule the FAA is amending §§ 47.39 and 49.21, both of which refer to the stamping of documents. With respect to § 47.39, which concerns the effective date of aircraft registration, the FAA is removing language that refers to the effective date of registration being shown by a date stamp on the application for aircraft registration. Similarly, § 49.21 is being revised to delete the reference to stamping. Section 49.21 is also being revised because of the procedures for returning original documents and is discussed further in the section that follows.

B. Submission of Original Documents

A few procedural regulations in parts 47 and 49 require the submission of original documents, which results in inefficiencies with the CARES online submission capability. The CARES system provides a free online, self-guided aircraft registration application (Form 8050–1) with an FAA approved digital signature feature, online payment, and electronic submission to the Registry. Other required forms and supporting documents, as well as conveyances for recording, may be uploaded to CARES for submission to the Registry.

However, uploaded copies of ink signed documents are currently rejected because they are not original documents. Digitally signed original documents are also not permitted to be uploaded; they must be printed and mailed to meet the regulatory requirements for submission of original documents. The procedural requirements to submit the originals of certain documents, such as an original Aircraft Bill of Sale in support of an application for aircraft registration (§ 47.31(a)(2)), are unnecessary barriers to the FAA's ability to fully utilize the functionalities of CARES or other modern technologies.

Moreover, in accordance with the procedures in current § 49.21, the FAA is obligated to return a submitted original document when the person making the submission sends a true copy with the original. This procedural requirement is another administrative burden on the FAA that can be ameliorated if the regulations no longer mandate the submission of original documents.

To address these inefficiencies, in this rule the FAA is amending the procedural regulations at issue to relieve registrants, and others who submit conveyances and supporting materials for recordation, from the requirements to submit original documents. While the Registry will still accept original documents and materials, the preferred approach is now to submit non-original documents in a form and by a means acceptable to the FAA. For some documents and materials, a photocopy or digital image may be acceptable; for others, a true or certified copy may be required (see, *e.g.,* §§ 47.8(a)(1), 47.11(b)(2), 49.31(a), and 49.33(c), as amended). The regulatory relief provided will enable persons to upload copies of ink signed documents and digitally signed original documents for submission via CARES and a successor system.

Accordingly, to provide this relief, the FAA is removing the term ''original'' in §§ 47.31(a)(2) and 49.21. In § 49.17(d)(3), the FAA is replacing the term ''original agreement'' with ''originating agreement'' to avoid confusion. And in § 49.33(c)—which requires, for the types of conveyances specified in § 49.31(a), an original document, or a duplicate original document, or if neither is available, a true copy—the FAA is re-ordering the regulatory text such that the true copy is listed first, as the preferred form for submission.

The FAA is also revising §§ 47.19 and 49.11 to provide for needed administrative flexibility in determining the acceptability of non-original documents now that original documents are no longer mandated (*e.g.,* if a true or certified copy will be required for authentication). Sections 47.19 and 49.11 already require applications, conveyances, requests, notifications, and other communications to be delivered to the FAA by a means acceptable to the Administrator. To clarify that any document or other material submitted in support of an application under part 47 is also covered, the FAA is adding the term ''submission'' to the regulatory text in § 47.19. In addition, this rule revises §§ 47.19 and 49.11 to clarify that any submission or communication must also be delivered in a form acceptable to the Administrator, and it adds descriptive language specifying that acceptable forms and means include electronic or digital forms and means compatible with systems used by the Registry.[2] These clarifications to §§ 47.19 and 49.11 will enable the FAA to accept non-original documents in an acceptable form and manner, to include electronic or digital means compatible with CARES, or a successor system.

Finally, the FAA is revising § 49.21 which currently prescribes the procedural requirement for the FAA to return an original conveyance if the person submitting the conveyance wants it returned and submits a true copy with the original. Now that original documents are no longer mandatory, the requirement for the FAA to return original documents is no longer necessary when non-original documents are submitted. However, the current procedure for processing original paper documents remains in place; original documents filed with a certified true copy will still be returned upon request. Therefore, the FAA is replacing the regulatory requirement with language expressly permitting a person to submit a true copy of a conveyance in lieu of submitting the original (except when specifically required to submit an original document by law, regulation, or other authority). The FAA is also making conforming and clarifying changes to the last sentence of § 49.21, which establishes the requirements for a copy to qualify as a ''true'' copy. Instead of the current requirement that the copy be imprinted on paper permanent in nature, including dates and signatures, the FAA is now requiring only that the true copy be in a form and manner acceptable to the Administrator. This change will allow acceptance of true copies that are in electronic or digital form. With regard to the requirement that a certificate stating that the copy has been compared with the original and that it is a true copy be attached with the submission, the FAA is adding language to clarify that the required certificate could take the form of some other type of acceptable attestation. This addition serves only to clarify that, for purposes of § 49.21, a statement attesting to the trueness of a copy is functionally and legally equivalent to a statement certifying the trueness of a copy.

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' The Office of Management and Budget has determined that this rule is not a significant regulatory action as defined in section 3(f)(1) of Executive Order 12866, as amended by Executive Order.

[2] The FAA provides additional instructions and information regarding submitting documents and information electronically at: *https://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry.*

14094, ''Modernizing Regulatory Review.''

The rule enables the FAA to accept non-original documents and removes the requirement to stamp documents. Historically, stamping was used to track the date and time documents were received and processed by the Registry. This functionality is already built into the existing RMS and upcoming CARES system. The FAA has also determined that requiring original documents is unnecessary in many cases and restricts the efficiency gains from electronic systems such as CARES. Prior to this rulemaking, the Registry required original copies of certain documents, and ink signed copies uploaded to CARES would be rejected. Similarly, prior to this rulemaking, the FAA would mail back any received original documents.

The FAA receives original documents in registration applications, as well as other documents for recordation. The FAA receives 76,440 applications per year. This includes 60,324 approved applications and 16,116 rejected applications. The FAA also receives roughly 25,000 conveyances for recordation each year. This rule may generate cost savings including saved postage costs for registrants and other users from not having to mail in original copies. The FAA assumes all such documents are mailed together and that such applications and conveyances could be completed entirely electronically and would not require documents to be mailed under this rule. The USPS charges $1.50 to mail a flat envelope,[3] which the FAA assumes is sufficient to contain all application and recordation materials. If all Registry users submitted electronically, the rule could result in $152,160 of cost savings per year (76,440 applications plus 25,000 conveyances multiplied by $1.50).

The rule will reduce the wait time for an application by reducing the delay between an applicant submitting materials and the FAA receiving the materials. It also may reduce printing costs by allowing documents to be submitted electronically rather than requiring them to be printed or copied.

The rule will have minimal to no costs, as the infrastructure is scheduled to be deployed with or without the rulemaking. Furthermore, the rule is expected to result in cost savings for the FAA by reducing the postage costs associated with mailing back original documents. It may also result in reduced costs for the FAA by reducing the time employees spend handling and stamping paper documents and preparing them to mail.

The FAA assumes that only the 60,324 annual successful applications include original documents, and that all conveyance submissions include original documents. These are sent out via bulk mail. The FAA estimates the unit cost of mailing the original documents from each application is $0.971.[4] If all future customers use electronic document submission, the cost savings to FAA may be up to $82,849 per year (60,324 applications plus 25,000 conveyances multiplied by $0.971).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes that this is a rule of agency procedure or practice for which notice and comment are not required. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

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

The FAA has assessed the potential effect of this rule and determined that it ensures the safety of the American public and does not exclude imports that meet this objective. As a result, the FAA does not consider this rule as creating an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The information collection for aircraft registration and recordation is approved under OMB control number 2120–0042. The FAA has determined that there will be no new requirement for information collection associated with this final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and

[3] *https://www.usps.com/ship/first-class-mail.htm,* last accessed November 6, 2024.

[4] Assumes rate for bulk marketing mail flats (bulk). See USPS Price List, effective October 4, 2024: *https://pe.usps.com/text/dmm300/Notice123.htm?_gl=1*1e8cdrr*_gcl_au*NDY1OTc0MzQwLjE3MzA4MTUxMjQ.*_ga*MTc5MTgzMzg5Ni4xNzMwODE1MTI0*_ga_3NXP3C8S9V*MTczMTA3NTA3NC4yLjAuMTczMTA3NTA3NC4wLjAuMA..#_c119,* accessed on November 6, 2024.

involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[5] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[6] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

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

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

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

VII. Additional Information

A. Electronic Access and Filing

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

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

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

B. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 49

Aircraft, Reporting and recordkeeping requirements.

The Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 47—AIRCRAFT REGISTRATION

■ 1. The authority citation for part 47 is revised to read as follows:

Authority: 4 U.S.T. 1830; Pub. L. 115–254, Pub. L. 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 40113–40114, 44101–44108, 44110–44113, 44701, 44703–44704, 44713, 45302, 46104, 46301.

■ 2. Revise § 47.19 to read as follows:

§ 47.19 Registry.

Each application, submission, request, notification, or other communication sent to the Administrator under this part must be delivered to the Registry by a means and in a form acceptable to the Administrator, to include electronic or digital forms and means compatible with systems of the Registry.

■ 3. Amend § 47.31 by revising paragraph (a)(2) to read as follows:

§ 47.31 Application.

* * * * *

(a) * * *

(2) The Aircraft Bill of Sale, AC Form 8050–2, or other evidence of ownership authorized by § 47.33, § 47.35, or § 47.37 (unless already recorded at the Registry); and

* * * * *

■ 4. Revise § 47.39 to read as follows:

§ 47.39 Effective date of registration.

An aircraft is registered on the date the Registry determines that the submissions meet the requirements of this part. The effective date of registration is shown as the date of issue on the Certificate of Aircraft Registration.

PART 49—RECORDING OF AIRCRAFT TITLES AND SECURITY DOCUMENTS

■ 5. The authority citation for part 49 is revised to read as follows:

Authority: 4 U.S.T. 1830; Pub. L. 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 40113–40114, 44101–44108, 44110–44113, 44701, 44704, 44713, 45302, 46104, 46301.

■ 6. Revise § 49.11 to read as follows:

§ 49.11 FAA Aircraft Registry.

To be eligible for recording, a conveyance must be delivered to the

[5] 65 FR 67249 (Nov. 6, 2000).

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

Registry by a means and in a form acceptable to the Administrator, to include electronic or digital forms and means compatible with systems of the Registry.

■ 7. Amend § 49.17 by revising paragraph (d)(3) to read as follows:

§ 49.17 Conveyances recorded.

* * * * *

(d) * * *

(3) An assignment of an interest in a security agreement must be signed by the assignor and, unless it is attached to and is a part of the originating agreement, must describe the agreement in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

* * * * *

■ 8. Revise § 49.21 to read as follows:

§ 49.21 True copy of original conveyance.

A person submitting a conveyance for recording may submit a true copy in lieu of the original, except where an original is specifically required. The true copy must be in a form and manner acceptable to the Administrator, to which is attached a certificate, or other acceptable attestation, of the person submitting the conveyance stating that the copy has been compared with the original and that it is a true copy.

■ 9. Amend § 49.33 by revising paragraph (c) to read as follows:

§ 49.33 Eligibility for recording: general requirements.

* * * * *

(c) It is a true copy of an original document, certified under § 49.21, or an original document or a duplicate original document;

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44101–44108 in Washington, DC.

Michael Gordon Whitaker,

Administrator.

[FR Doc. 2025–00763 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31585; Amdt. No. 4148]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 17, 2025. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2025.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures

(TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on January 3, 2025.

Thomas J. Nichols,

Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs,

*Identified as follows: * * * Effective Upon Publication.*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Procedure Name
20–Feb–25 ...	TX	San Antonio	San Antonio Intl	4/2294	10/22/2024	RNAV (GPS) Y RWY 4, Amdt 4.
20–Feb–25 ...	AR	De Queen	J Lynn Helms Sevier County ..	4/2730	12/6/2024	RNAV (GPS) RWY 8, Orig-C.
20–Feb–25 ...	AK	Dillingham	Dillingham	4/4396	10/4/2024	LOC RWY 19, Amdt 8.
20–Feb–25 ...	WI	Milwaukee	General Mitchell Intl	4/4496	11/15/2024	ILS OR LOC RWY 19R, Amdt 13A.
20–Feb–25 ...	AK	St Mary's	St Mary's	4/4943	11/22/2024	RNAV (GPS) RWY 35, Amdt 2E.
20–Feb–25 ...	TX	Wichita Falls	Wichita Valley	4/5961	11/20/2024	VOR–B, Amdt 6B.
20–Feb–25 ...	TN	Sparta	Upper Cumberland Rgnl	4/6311	11/20/2024	NDB RWY 4, Amdt 4E.
20–Feb–25 ...	MO	Bolivar	Bolivar Muni	4/6398	11/20/2024	RNAV (GPS) RWY 36, Orig-C.
20–Feb–25 ...	NJ	Newark	Newark Liberty Intl	4/7221	12/16/2024	RNAV (GPS) W RWY 29, Orig.
20–Feb–25 ...	NY	Canandaigua	Canandaigua	4/7362	12/16/2024	RNAV (GPS) RWY 31, Amdt 1C.
20–Feb–25 ...	NY	Canandaigua	Canandaigua	4/7363	12/16/2024	RNAV (GPS) RWY 13, Amdt 2B.
20–Feb–25 ...	ME	Sanford	Sanford Seacoast Rgnl	4/7407	12/17/2024	ILS OR LOC RWY 7, Amdt 5A.
20–Feb–25 ...	PA	State College	State College Rgnl	4/7532	12/17/2024	ILS OR LOC RWY 24, Amdt 10.
20–Feb–25 ...	PA	State College	State College Rgnl	4/7533	12/17/2024	RNAV (GPS) RWY 24, Amdt 2.
20–Feb–25 ...	NM	Gallup	Gallup Muni	4/7547	12/20/2024	RNAV (GPS) RWY 6, Amdt 2A.
20–Feb–25 ...	NM	Gallup	Gallup Muni	4/7548	12/20/2024	LOC RWY 6, Amdt 3D.
20–Feb–25 ...	NV	Las Vegas	Harry Reid Intl	4/7773	12/19/2024	RNAV (GPS) Y RWY 19L, Amdt 3.
20–Feb–25 ...	NV	Las Vegas	Harry Reid Intl	4/7774	12/19/2024	RNAV (GPS) Y RWY 19R, Amdt 3A.
20–Feb–25 ...	OR	Lexington	Lexington	4/8249	12/19/2024	RNAV (GPS) RWY 8, Orig-B.
20–Feb–25 ...	OR	Lexington	Lexington	4/8250	12/19/2024	RNAV (GPS)-A, Orig-B.
20–Feb–25 ...	KS	Iola	Allen County	4/9000	11/27/2024	RNAV (GPS) RWY 19, Amdt 1.
20–Feb–25 ...	CA	Twentynine Palms ..	Twentynine Palms	4/9993	11/7/2024	RNAV (GPS) RWY 26, Amdt 2B.
20–Feb–25 ...	CA	Twentynine Palms ..	Twentynine Palms	4/9994	11/7/2024	VOR RWY 26, Amdt 2C.

[FR Doc. 2025–00962 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31584; Amdt. No. 4147]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 17, 2025. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2025.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Air Missions (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore-(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on January 3, 2025.

Thomas J. Nichols,

Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 20 February 2025

Fort Myers, FL, FMY, ILS OR LOC RWY 5, Amdt 7E
Fort Myers, FL, FMY, RNAV (GPS) RWY 23, Amdt 2
Fort Myers, FL, FMY, VOR RWY 13, Amdt 1A
Claxton, GA, CWV, RNAV (GPS) RWY 10, Amdt 3
Rose Hill, KS, K50, RNAV (GPS)-A, Orig
Rose Hill, KS, K50, Takeoff Minimums and Obstacle DP, Orig
Cambridge, MD, CGE, RNAV (GPS) RWY 34, Amdt 2
Salem, MO, K33, RNAV (GPS) RWY 17, Orig-B
Salem, MO, K33, RNAV (GPS) RWY 35, Orig-B
Salem, MO, K33, Takeoff Minimums and Obstacle DP, Orig-A
Elko, NV, EKO, VOR/DME–B, Amdt 5A, CANCELED
New York, NY, 6N5, Takeoff Minimums and Obstacle DP, Amdt 2
New York, NY, KJRA, Takeoff Minimums and Obstacle DP, Amdt 3
New York, NY, KJRB, Takeoff Minimums and Obstacle DP, Amdt 2
Plattsburgh, NY, PBG, RNAV (GPS) RWY 17, Amdt 2
Marysville, OH, MRT, RNAV (GPS) RWY 9, Amdt 1
Tulsa, OK, RVS, RNAV (GPS) RWY 1L, Amdt 2
Tulsa, OK, RVS, RNAV (GPS) RWY 19R, Amdt 1A
State College, PA, UNV, RNAV (GPS) RWY 6, Amdt 2D
Aguadilla, PR, BQN/TJBQ, RNAV (GPS) RWY 26, Amdt 1
Isla De Vieques, PR, VQS/TJVQ, RNAV (GPS) RWY 9, Amdt 2
Dallas-Fort Worth, TX, DFW, ILS V RWY 13R (CONVERGING), Amdt 7B
Dallas-Fort Worth, TX, DFW, ILS Z OR LOC Z RWY 13R, ILS Z RWY 13R (SA CAT I), ILS Z RWY 13R (CAT II), Amdt 9C
Cody, WY, COD, RNAV (GPS) RWY 22, Amdt 4
Dubois, WY, DUB, RNAV (GPS) RWY 29, Orig
Dubois, WY, KDUB, ROWEY ONE, Graphic DP
Dubois, WY, DUB, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. 2025–00961 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is implementing adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Marie Choi, Attorney (202–326–3368), Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act (''FCPIAA'') of 2015 [1] directs agencies to adjust the civil penalty maximums under their jurisdiction for inflation every January. Accordingly, the Commission issues annual adjustments to the maximum civil penalty amounts under its jurisdiction.[2]

Commission Rule 1.98 sets forth the applicable civil penalty amounts for violations of certain laws enforced by the Commission.[3] As directed by the FCPIAA, the Commission is issuing adjustments to increase these maximum civil penalty amounts to address inflation since its prior 2024 adjustment. The following adjusted amounts will take effect on January 17, 2025:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from $51,744 to $53,088;
- Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from $27,491 to $28,205;
- Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*) (violation of final Commission order)—Increase from $51,744 to $53,088;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (knowing violation of rule respecting unfair or deceptive acts or practices)—Increase from $51,744 to $53,088;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (knowing violation of cease and desist order respecting unfair or deceptive acts or practices)—Increase from $51,744 to $53,088;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from $680 to $698;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from $680 to $698;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)—Increase from $680 to $698;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from $680 to $698;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from $680 to $698;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (knowing violations of EPCA § 332, including labeling violations)—Increase from $560 to $575;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from $27,491 to $28,205;
- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from to $51,744 to $53,088;
- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from $4,857 to $4,983;

[1] Public Law 114–74, 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act, Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

[2] 81 FR 42476 (2016); 82 FR 8135 (2017); 83 FR 2902 (2018); 84 FR 3980 (2019), 85 FR 2014 (2020); 86 FR 2539 (2021); 87 FR 1070 (2022); 88 FR 1499 (2023); 89 FR 1445 (2024).

[3] 16 CFR 1.98.

• Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note (failure to comply with filing requirements)—Increase from $18,293 to $18,768; and

• Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—Increase from $1,472,546 to $1,510,803.

Calculation of Inflation Adjustments

The FCPIAA, as amended, directs federal agencies to adjust each civil monetary penalty under their jurisdiction for inflation in January of each year pursuant to a cost-of-living adjustment.[4] The cost-of-living adjustment is based on the percent change between the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year.[5] Based on that formula, the cost-of-living adjustment multiplier for 2025 is 1.02598. The FCPIAA also directs that these penalty level adjustments should be rounded to the nearest dollar. Agencies do not have discretion over whether to adjust a maximum civil penalty, or the method used to determine the adjustment.

The following chart illustrates the application of these adjustments to the civil monetary penalties under the Commission's jurisdiction.

CALCULATION OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES

Citation	Description	2024 Penalty level	Adjustment multiplier	2025 Penalty level (rounded to the nearest dollar)
16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)	Premerger filing notification violations	$51,744	1.02598	$53,088
16 CFR 1.98(b): 15 U.S.C. 21(*l*)	Violations of cease and desist orders	27,491	1.02598	28,205
16 CFR 1.98(c): 15 U.S.C. 45(*l*)	Violations of final Commission orders	51,744	1.02598	53,088
16 CFR 1.98(d): 15 U.S.C. 45(m)(1)(A)	Knowing violations of rules respecting unfair or deceptive acts or practices.	51,744	1.02598	53,088
16 CFR 1.98(e): 15 U.S.C. 45(m)(1)(B)	Knowing violations of cease and desist orders respecting unfair or deceptive acts or practices.	51,744	1.02598	53,088
16 CFR 1.98(f): 15 U.S.C. 50	Failure to file required reports	680	1.02598	698
16 CFR 1.98(g): 15 U.S.C. 65	Failure to file required statements	680	1.02598	698
16 CFR 1.98(h): 15 U.S.C. 68d(b)	Failure to maintain required records	680	1.02598	698
16 CFR 1.98(i): 15 U.S.C. 69a(e)	Failure to maintain required records	680	1.02598	698
16 CFR 1.98(j): 15 U.S.C. 69f(d)(2)	Failure to maintain required records	680	1.02598	698
16 CFR 1.98(k): 42 U.S.C. 6303(a)	Knowing violations of the Energy Policy and Conservation Act.	560	1.02598	575
16 CFR 1.98(*l*): 42 U.S.C. 6395(a)	Recycled oil labeling violations	27,491	1.02598	28,205
16 CFR 1.98(*l*): 42 U.S.C. 6395(b)	Willful recycled oil labeling violations	51,744	1.02598	53,088
16 CFR 1.98(m): 15 U.S.C. 1681s(a)(2)	Knowing violations of the Fair Credit Reporting Act.	4,857	1.02598	4,983
16 CFR 1.98(n): 21 U.S.C. 355 note	Non-compliance with filing requirements	18,293	1.02598	18,768
16 CFR 1.98(o): 42 U.S.C. 17304	Market manipulation or provision of false information to federal agencies.	1,472,546	1.02598	1,510,803

Effective Dates of New Penalties

These new penalty levels apply to civil penalties assessed after the effective date of the applicable adjustment, including civil penalties whose associated violation predated the effective date.[6] These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

Procedural Requirements

The FCPIAA, as amended, directs agencies to adjust civil monetary penalties through rulemaking and to publish the required inflation adjustments in the **Federal Register**, notwithstanding section 553 of title 5 in the United States Code. Pursuant to this congressional mandate, prior public notice and comment under the APA and a delayed effective date are not required. For this reason, the requirements of the Regulatory Flexibility Act (''RFA'') also do not apply.[7] Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

Text of Amendments

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

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

Authority: 28 U.S.C. 2461 note.

■ 2. Revise § 1.98 to read as follows:

[4] 28 U.S.C. 2461 note at (4).

[5] *Id.* (3), (5)(b); Office of Management and Budget, Memorandum M–25–02, *Implementation of Penalty Inflation Adjustments for 2025 Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 17, 2024), available at: *https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf.*

[6] 28 U.S.C. 2461 note at (6).

[7] A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following maximum civil penalty amounts apply only to penalties assessed after January 17, 2025, including those penalties whose associated violation predated January 17, 2025.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$53,088;

(b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—$28,205;

(c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—$53,088;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$53,088;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$53,088;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$698;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$698;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—$698;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$698;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$698;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$575;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$28,205 and $53,088, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—$4,983;

(n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note—$18,768;

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—$1,510,803; and

(p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2025–01361 Filed 1–16–25; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2024–0056]

RIN 0960–AI93

Further Extension of the Flexibility in Evaluating ''Close Proximity of Time'' To Evaluate Ongoing Changes in Healthcare

AGENCY: Social Security Administration.

ACTION: Temporary final rule with request for comments.

SUMMARY: We are extending the flexibility in the ''close proximity of time'' standard, as defined in two prior temporary final rules (TFR), through May 11, 2029. We issued a TFR providing the ''close proximity of time'' flexibility on July 23, 2021, because the COVID–19 national public health emergency (PHE) caused many individuals to experience barriers that prevented them from timely accessing in-person healthcare. On September 29, 2023, we extended the flexibility to evaluate evolving healthcare practices and consumption in a post-PHE environment. We determined that we need additional time to fully evaluate still-evolving healthcare practices after the PHE. We are therefore issuing this TFR to extend the ''close proximity of time'' flexibility until May 11, 2029, so we can continue to evaluate changes in healthcare practices and determine the proper ''close proximity of time'' standard for the musculoskeletal disorders listings.

DATES:

Effective date: This TFR is effective on February 18, 2025.

Comment date: We invite written comments. Comments must be submitted no later than March 18, 2025.

Expiration date: Unless we extend the provisions of this TFR by a final rule published in the **Federal Register**, it will cease to be effective on May 11, 2029.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comment(s) multiple times or by more than one method. Regardless of which method you choose, please state that your comment(s) refer to Docket No. SSA–2024–0056 so that we may associate your comment(s) with the correct rule.

Caution: You should be careful to include in your comment(s) only information that you wish to make publicly available. We strongly urge you not to include any personal information in your comment(s), such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comment(s) via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the ''search'' function to find docket number SSA–2024–0056. The system will issue a tracking number to confirm your submission. You will not be able to view your comment(s) immediately because we must post each comment manually. It may take up to one week for your comment(s) to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Legislation and Congressional Affairs Regulations and Reports Clearance Staff, Mail Stop 3253, Altmeyer, 6401 Security Blvd., Baltimore, MD 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Michael J. Goldstein, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020.

For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.ssa.gov/.*

Background

On December 3, 2020, we published the final rule, *Revised Medical Criteria for Evaluating Musculoskeletal Disorders* (final rule),[1] which became effective on April 2, 2021. This final rule revised the criteria in the listings that we use to evaluate disability claims involving musculoskeletal disorders in adults and children at the third step of our sequential evaluation process under titles II and XVI of the Social Security Act (Act).[2] The final rule, among other

[1] 85 FR 78164 (2020).

[2] For adults, the listings describe, for each of the major body systems, impairments that we consider to be severe enough to prevent an individual from doing any gainful activity regardless of his or her age, education, or work experience. 20 CFR 404.1525(a) and 416.925(a). For children, the listings describe impairments we consider severe enough to cause marked and severe functional limitations. 20 CFR 416.925(a). We use the listings at step 3 of the sequential evaluation process to identify claims in which the individual is clearly disabled under our rules. 20 CFR 404.1520, 416.920, and 416.924). We do not deny a claim when a person's medical impairment(s) does not satisfy the criteria of a listing. Instead, we continue

things, revised the listings in response to the decision in *Radford* v. *Colvin,*[3] which interpreted former listing 1.04A to require a disability claimant to show only ''that each of the symptoms are present, and that the claimant has suffered or can be expected to suffer from [the condition] continuously for at least 12 months.'' [4] Under the court's interpretation of the former listing, a claimant did not need to show that each necessary criterion was present simultaneously or in particularly close proximity, as required by our interpretation of that listing.[5] The final rule clarified that, for the purposes of applying certain musculoskeletal disorders listings,[6] all of the required medical criteria must be present simultaneously, or within a close proximity of time, to satisfy the level of severity needed for the impairment to meet the listing. The final rule further defined the phrase ''within a close proximity of time'' to mean ''that *all* of the relevant criteria must appear in the medical record within a consecutive 4-month period'' (emphasis in original).[7] We also provided that ''[w]hen the criterion is imaging, we mean that we could reasonably expect the findings on imaging to have been present at the date of impairment or date of onset.'' [8]

We established the consecutive 4-month period as a criterion to meet the level of severity in some of the musculoskeletal disorders listings based on our research of then relevant medical literature and clinical guidelines.[9] When we proposed this requirement as part of a notice of proposed rulemaking (NPRM),[10] we specifically asked interested members of the public to comment on this issue and provide us with any studies and data that supported their comments for a different standard.[11] In response, a number of commenters raised concerns regarding barriers to accessing medical providers or documenting medical listing criterion.[12] However, none of the commenters submitted studies or data. In the final rule, we concluded that the consecutive 4-month period was consistent with the timeframe medical providers were generally trained to use for scheduling their patients,[13] the general standard of care,[14] and the frequency of healthcare visits by individuals with musculoskeletal conditions.[15] At the same time, the consecutive 4-month period provided some leeway for claimants, because the standard for patient revisits was once every 3 months.[16]

Onset of COVID–19

In 2020, the COVID–19 virus began to spread throughout the country, prompting the Secretary of Health and Human Services (HHS) to declare a national PHE on January 31, 2020.[17] With the outbreak of COVID–19, access to and the provision of healthcare changed significantly. Throughout the PHE, individuals across the country—including those with musculoskeletal disorders—altered their frequency and manner of seeking access to healthcare. This was due in part to healthcare organizations and government agencies such as the Centers for Medicare & Medicaid Services (CMS) [18] prioritizing the most urgent services and encouraging patients to delay other procedures during the PHE. Likewise, many individuals delayed or deferred important treatments due to closures of medical offices, fears of contracting COVID–19 infection (including fear of exposing high-risk individuals living in their household to infection), and other challenges created or exacerbated by the pandemic, such as difficulty accessing transportation.

In July 2021, we published a TFR entitled *Flexibility in Evaluating ''Close Proximity of Time'' Due to COVID–19 Related Barriers to Healthcare* [19] (2021 TFR). We acknowledged at that time that the response to the COVID–19 pandemic dramatically changed the provision of, and access to, healthcare services throughout the country, and we cited evidence showing that significant numbers of people had foregone or delayed care, or replaced in-person medical visits with telehealth visits.[20] Therefore, we concluded that individuals with musculoskeletal impairments who, before the pandemic, would have sought and received healthcare at a frequency consistent with the standards in our final rule, might have become unable to seek, or might have chosen not to seek, care for their condition in the same manner and frequency. Affected individuals whose impairments might have previously met the applicable listing requirements might have subsequently failed to meet the ''close proximity of time'' standard because of the changes in the provision of healthcare resulting from COVID–19. We therefore extended the timeframe for an individual's record to demonstrate the necessary listing criteria throughout the pandemic period.

The 2021 TFR defined the ''pandemic period'' for the purposes of our regulations and provided that during the ''pandemic period,'' the phrase ''within a close proximity of time'' meant that *all* of the relevant criteria must appear in the medical record within a consecutive 12-month period.'' [21] We further defined the ''pandemic period'' as beginning on April 2, 2021 and ending 6 months after the Secretary of HHS determined that the COVID–19 national PHE no longer existed. We extended the ''pandemic period'' for 6 months after the end of the COVID–19 national PHE to allow time for healthcare access and provision to normalize and return to pre-pandemic period levels as well as to account for potential backlogs in medical care that may have continued to interfere with

the sequential evaluation process. 20 CFR 404.1520(a)(4) and 416.920(a)(4).

[3] *Radford* v. *Colvin,* 734 F.3d 288 (4th Cir. 2013).

[4] Id. at 294.

[5] See Acquiescence Ruling 15–1(4). We rescinded that Acquiescence Ruling after we revised the listings in 2020. 85 FR 79063 (2020).

[6] Listings 1.15, 1.16, 1.17, 1.18, 1.20C, 1.20D, 1.22, 1.23, 101.15, 101.16, 101.17, 101.18, 101.20C, 101.20D, 101.22, and 101.23.

[7] See 85 FR 78164 (2020) (revising 20 CFR part 404, subpart P, Appendix 1, 1.00C7c and 101.00C7c).

[8] Id.

[9] See 85 FR at 78169–78170.

[10] 83 FR 20646 (2018).

[11] Id. at 20647.

[12] See, *e.g.,* comment from Community Legal Services of Philadelphia on Document SSA–2006–0112–0010, *https://www.regulations.gov/comment/SSA-2006-0112-0046.*

[13] 85 FR at 78169 n.37 (citing Bavafa, H., Savin, S., & Terwiesch, C. (2019). Redesigning Primary Care Delivery: Customized Office Revisit Intervals and E-Visits. *https://dx.doi.org/10.2139/ssrn.2363685.* Paper referenced by Bavafa: Schectman, G., G. Barnas, P. Laud, L. Cantwell, M. Horton, E.J. Zarling. 2005. Prolonging the return visit interval in primary care. The American Journal of Medicine, 118(4) 393–399).

[14] 85 FR at 78169 n.34 (citing Gore, M., Sadosky, A., Stacey, B.R., Tai, K.S., & Leslie, D. (2012). The burden of chronic low back pain: Clinical comorbidities, treatment patterns, and health care costs in usual care settings. Spine, 37(11), E668–E677. *https://doi.org/10.1097/BRS.0b013e318241e5de*).

[15] 85 FR at 78169 n.35 (citing BMUS: The Burden of Musculoskeletal Diseases in the United States. In: BMUS: The Burden of Musculoskeletal Diseases in the United States [internet]. [cited 15 July 2020]. *https://www.boneandjointburden.org/fourth-edition/viiic2/utilization-condition-group*).

[16] See 85 FR at 78169 n.36 (citing J Gen Intern Med. 1999 Apr; 14(4): 230–235. doi: 10.1046/j.1525–1497.1999.00322.x Lisa M Schwartz, MD, MS, Steven Woloshin, MD, MS, John H Wasson, MD, Roger A Renfrew, MD, and H Gilbert Welch, MD, MPH, Dartmouth Primary Care Cooperative Research Network).

[17] Determination That A Public Health Emergency Exists by Alex M. Azar II, *Secretary of Health & Human Services* (Jan. 31. 2020) (*https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx).*

[18] Centers for Medicare & Medicaid Services (CMS) Recommendations: Re-opening Facilities to Provide Non-emergent Non-COVID–19 Healthcare (*https://www.cms.gov/files/document/covid-recommendations-reopening-facilities-provide-non-emergent-care.pdf*); see also Non-Emergent, Elective Medical Services, and Treatment Recommendations (*https://www.cms.gov/files/document/cms-non-emergent-elective-medical-recommendations.pdf*).

[19] 86 FR 38920 (2021).

[20] Id.

[21] 86 FR at 38925.

access to the relevant care and documentation needed to satisfy the listing criteria. We also indicated that we would study the application of ''close proximity of time'' flexibility on our programs.[22]

When we published the 2021 TFR in the **Federal Register**, we provided the public with a 60-day comment period, which ended on September 21, 2021. We specifically contemplated the possibility of extending the flexibility and we invited comments on all aspects of the rule, including the definition of ''pandemic period'' and the expiration date. We received one comment from the National Organization of Social Security Claimants' Representatives (NOSSCR) [23] that encouraged us to make the temporary 12-month standard permanent. The commenter also recommended, if we chose not to make the 12-month standard permanent, that we extend the period to one year after the end of the PHE. They argued that access to care issues exist regardless of the pandemic and that it would take longer than 6 months for healthcare delivery to normalize after the end of the PHE.

Issuance of the 2023 TFR Extending the 12-Month Standard

The 2021 TFR was effective until six months after the effective date of a determination by the Secretary of HHS that a PHE resulting from the COVID–19 pandemic ended. The Secretary of HHS made that determination on May 11, 2023.[24] Consequently, the 2021 TFR was set to expire in November 2023.

On September 29, 2023, we extended the ''close proximity of time'' flexibility through May 11, 2025.[25] We explained at the time that we intended the extension to allow for time to study changes in healthcare access and provision, and to account for the ongoing increased use of telehealth services following the PHE. We further explained that we would continue to evaluate these evolving practices and their effects to determine the appropriate ''close proximity of time'' standard to include in the musculoskeletal disorders listings going forward.[26]

In issuing the extension, we also discussed the public comment we received from NOSSCR about the 2021 TFR, encouraging us to make the 12-month standard permanent or extend it to apply for one year after the end of the PHE. We explained that by May 2025, we expected to determine whether we should extend the TFR again, make the flexibility in the TFR permanent, as the commenter recommended, propose a different standard, or let the TFR expire and revert to the 4-month ''close proximity of time'' standard. Additionally, we noted that while the commenter raised issues regarding general barriers to accessing care that disability benefit applicants may be disproportionally likely to experience, we considered the comment outside the scope of the second TFR and committed to addressing these comments in a future venue.

Public Comment on the 2023 TFR

When we extended the flexibility again in 2023, we received one comment, from The Connected Health Initiative. The commenter was supportive of us extending the flexibility provided in the TFR and our commitment to continuing to study the appropriate time period for ''close proximity of findings,'' noting that ''data indicates that, going forward, telehealth will likely replace some in-person visits for some people with musculoskeletal disorders post-PHE, which could lead to extended revisit intervals between thorough examinations.'' [27] We appreciate this commenter's feedback and, consistent with the comment, intend to continue studying these impacts.

Rationale for This Rule

We are extending the ''close proximity of time'' flexibility through May 11, 2029, to allow for additional time to study changes in healthcare access and provision, and to account for the ongoing increased use of telehealth services following the PHE. We will evaluate these evolving practices and their effects to determine the appropriate time standard to include in the musculoskeletal disorders listings going forward.

The PHE caused changes in healthcare provision and access, which led to a decrease in health care use and a shift from in-person healthcare to telehealth (phone or video). In response, we published the 2021 TFR, which temporarily amended the introductory text of the musculoskeletal disorders listings to define the ''close proximity of time'' standard as presence of the required findings in the record within a consecutive 12-month period. This flexibility was limited to the ''pandemic period,'' originally defined as the period beginning April 2, 2021, until 6 months after the end of the COVID–19 national PHE, November 11, 2023. Due to the ongoing increased use of telehealth services following the PHE and the many changes to healthcare rules and legislation that were set to be phased out over a two-year period, we concluded that healthcare would be in a state of rapid change in the period immediately following the PHE, so we would need to study the changes in healthcare provision before defining the appropriate ''close proximity of time'' interval going forward. We thus published an extension of the flexibility provided in the TFR by redefining the ''pandemic period'' to end on May 11, 2025, two years after the end of the PHE.

After studying the available data regarding the changes in healthcare immediately following the PHE, we have concluded that a further extension is necessary because healthcare access and provision remains different from what it was prior to the PHE and we are continuing to evaluate whether the 4-month period is supported. There is still uncertainty and change in the medical and legal framework regarding telehealth, and the limited data available about telehealth use immediately after the PHE shows ongoing increased telehealth use compared to the period prior to the PHE. For example, Medicare data shows that telehealth usage across all medical specialties increased significantly during the pandemic, and while telehealth usage gradually declined from its peak, it has not returned to pre-pandemic levels.[28]

Telehealth examinations may provide continuity of care, but they generally cannot provide all the medical findings required under the musculoskeletal disorders listings. Additionally, anecdotal evidence from after the PHE suggests that healthcare costs and workforce shortages, which were exacerbated by the pandemic, have led

[22] 86 FR at 38924.

[23] See Comment from National Organization of Social Security Claimants' Representatives on Document SSA–2021–0010–0001, *https://www.regulations.gov/comment/SSA-2021-0010-0002.*

[24] Becarra, X. (2023, May 11). Statement on End of the COVID–19 Public Health Emergency. *Department of Health and Human Services. https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html.*

[25] 88 FR 67081 (2023).

[26] 88 FR 67082.

[27] See Comment from The Connected Health Initiative on Document SSA–2023–0023–0002, *https://www.regulations.gov/comment/SSA-2023-0023-0002.*

[28] Centers for Medicare & Medicaid Services (2024, July). *Medicare Telehealth Trends Report.* Centers for Medicare and Medicaid Services, U.S. Department of Health & Human Services (HHS). *.https://data.cms.gov/sites/default/files/2024-09/c213a5e9-9e70-4b46-b5f1-2fb941ea0f6c/Medicare%20Telehealth%20Trends%20Snapshot%2020240827_508.pdf.*

to deferment of care and long wait times to see providers. These issues are projected to get worse over the next decade,[29] which could result in further delays in accessing in-person examinations, which provide the evidence we need to evaluate musculoskeletal disorders. We need further data to establish a permanent definition for ''close proximity of time.''

Available research and data on post-PHE healthcare provides an uncertain picture of the long-term impact of the COVID–19 pandemic. Although the PHE ended on May 11, 2023, several flexibilities provided during the PHE to increase telehealth access have been extended through March 31, 2025 (*e.g.,* Medicare coverage of audio-only telehealth, telehealth originating at a patient's home, and telerehabilitation).[30] Additionally, Congress is considering permanent changes to provide additional flexibilities for telehealth.[31] In addition to the evolving nature of telehealth, there are also significant delays in care provision due to healthcare workforce shortages and access issues that have persisted and, in many cases, worsened after the PHE.

Although the research is still developing and most professional organizations still have yet to update their clinical practice guidelines for post-pandemic healthcare, the emerging research and data suggest that the increased use of telehealth (including in place of some in-person visits) is generally appreciated by patients and providers and expected to continue for some time, but at a lower level than at the height of the pandemic.[32] This appears true for both audio-only and audio-visual telehealth modalities, and for specialties that previously only sparingly used telehealth, such as orthopedic surgery, spine surgery, and rehabilitation.[33] In the field of rehabilitation, the American Physical Therapy Association recently published clinical practice guidelines supporting telerehabilitation as a mode of delivering physical therapist services to patients who would benefit from services and whose barriers can be accommodated. At the same time, they noted that additional telerehabilitation research is needed for all ages, digital health applications, physical therapist measures, and interventions.[34] Nevertheless, there is a yearslong research lag that limits availability of post-PHE data, making it difficult to fully quantify the post-PHE utilization of telehealth and in-person care in practice.[35]

The initial data from CMS and the Department of Veterans Affairs (VA) appears to show that rates of telehealth use for the first few months after the end of the PHE remained steady and generally consistent with utilization rates in late 2021 and 2022.[36] VA data showed an overall increase in the proportion of telehealth visits from 20 percent prior to the pandemic to about 35 percent leading up to and for the first few months after the end of the PHE. Researchers analyzing the VA data through August 2023 indicated that telehealth rates stabilized around May 2021 and that ''although primary care and subspecialty telemedicine is often limited by the need for in-person evaluations (for example, physical examinations), about 10% of in-person primary and subspecialty care has converted to telemedicine.'' [37] Additionally, Medicare data trends through the second quarter of 2024 showed rates of telehealth stabilizing between 12 and 15 percent of Medicare users in 2022 through June 2024, compared to 7 percent of users prior to the pandemic. They also showed differences in telehealth use by race, ethnicity, age, disability status, and dual enrollment status with Medicaid. The data shows that Medicare users who were disabled or who were dually eligible for Medicare and Medicaid tended to use telehealth more both during and after the PHE.[38]

Anecdotal evidence supports that telehealth is still being used at higher rates than prior to the pandemic, but that additional research is needed to describe the role of telehealth in healthcare after the PHE. At their presentation to the National Academies of Science, Engineering, and Medicine (NASEM) Standing Committee of Medical and Vocational Experts for the Social Security Administration's Disability Programs, two experts in musculoskeletal care affirmed that although telehealth is more common now than prior to the pandemic and provides benefits for those who use it, there is no currently available data that provides a picture of telehealth use following the PHE. They concluded that there is not an industry standard for telehealth utilization at this time, with more research, consensus, and standardization needed in the field.[39]

[29] *See, e.g.,* Blumenthal, D., Gumas, E., & Shah, A. (2024). The Failing U.S. Health System. *The New England journal of medicine, 391*(17), 1566–1568. *https://doi.org/10.1056/NEJMp2410855,* and GlobalData Plc. (2024, March) *The Complexities of Physician Supply and Demand: Projections From 2021 to 2036.* AAMC; *https://www.aamc.org/media/75236/download?attachment.*

[30] HHS (2023, May 10). *HHS Fact Sheet: Telehealth Flexibilities and Resources and the COVID–19 Public Health Emergency.* HHS *https://www.hhs.gov/about/news/2023/05/10/hhs-fact-sheet-telehealth-flexibilities-resources-covid-19-public-health-emergency.html; see also* American Physical Therapy Association (2023, May) *Three Years of Physical Therapy in a Public Health Emergency: the Impact of the COVID–19 Pandemic on the Physical Therapy Profession.* APTA and The American Relief Act of 2025, Public Law 118–158. BILLS–118hr10545eh.pdf. *https://www.apta.org/contentassets/143242e710e147cfa30c0405f5c8ef64/apta_covid19_report2023.pdf.*

[31] Cottrill, A. & Cubanski, J. & Neuman, T., (2024, October 2). *What to Know about Medicare Coverage of Telehealth.* The Kaiser Family Foundation. *https://www.kff.org/medicare/issue-brief/what-to-know-about-medicare-coverage-of-telehealth/.*

[32] Shaver J. (2022). The State of Telehealth Before and After the COVID–19 Pandemic. *Primary care, 49*(4), 517–530. *https://doi.org/10.1016/j.pop.2022.04.002.*

[33] Bartelt, K., Piff, A., Allen, S., & Barkley, E. (2023, November 21). *Telehealth Utilization Higher Than Pre-Pandemic Levels, but Down from Pandemic Highs.* Epic Research. *https://epicresearch.org/articles/telehealth-utilization-higher-than-pre-pandemic-levels-but-down-from-pandemic-highs.* Accessed on November 27, 2024.

[34] Lee, A.C., Deutsch, J.E., Holdsworth, L., Kaplan, S.L., Kosakowski, H., Latz, R., McNeary, L.L., O'Neil, J., Ronzio, O., Sanders, K., Sigmund-Gaines, M., Wiley, M., & Russell, T. (2024). Telerehabilitation in Physical Therapist Practice: A Clinical Practice Guideline From the American Physical Therapy Association. *Physical therapy, 104*(5), pzae045. *https://doi.org/10.1093/ptj/pzae045.*

[35] Standaert, Christopher, M.D. COVID Disruptions and their Impact on Musculoskeletal Care. Presentation to the Standing Committee of the National Academies of Science and Medicine Health and Medicine Division, on June 20, 2024.

[36] Ferguson, J.M., Wray, C.M., Van Campen, J., & Zulman, D.M. (2024). A New Equilibrium for Telemedicine: Prevalence of In-Person, Video-Based, and Telephone-Based Care in the Veterans Health Administration, 2019–2023. *Annals of internal medicine, 177*(2), 262–264. *https://doi.org/10.7326/M23-2644; see also* Centers for Medicare & Medicaid Services (2022, December). *Medicare Telehealth Trends Report.* Centers for Medicare & Medicaid Services, HHS. *https://data.cms.gov/sites/default/files/2022-12/a7c3a319-5ded-4baf-ad7c-9aa2a897263a/MedicareTelehealthTrends Snapshot20221201.pdf.*

[37] Ferguson, J.M., Wray, C.M., Van Campen, J., & Zulman, D.M. (2024). A New Equilibrium for Telemedicine: Prevalence of In-Person, Video-Based, and Telephone-Based Care in the Veterans Health Administration, 2019–2023. *Annals of internal medicine, 177*(2), 262–264. *https://doi.org/10.7326/M23-2644.*

[38] Centers for Medicare & Medicaid Services (2024, November). Medicare Telehealth Trends Report. *Centers for Medicare & Medicaid Services, HHS https://data.cms.gov/sites/default/files/2024-12/f5b35fbf-002a-425d-924d-f99aa362a63f/Medicare%20Telehealth%20Trends%20Snapshot%2020241127_508.pdf; see also* Centers for Medicare & Medicaid Services (2024, May). Medicare Telehealth Trends Report. *Centers for Medicare & Medicaid Services, HHS https://data.cms.gov/sites/default/files/2024-05/Medicare%20Telehealth%20Trends%20Snapshot%2020240528_508.pdf.*

[39] Standaert, Christopher, M.D. COVID Disruptions and their Impact on Musculoskeletal Care. Presentation to the Standing Committee of the National Academies of Science and Medicine Health and Medicine Division, on June 20, 2024; *see also* Escorpizo, Reuben, P.T., M.Sc., D.P.T. Musculoskeletal Health, and Telehealth—Rapid Overview. Presentation to the Standing Committee

Continued

The conclusions of the experts are supported by a report from the Outcomes Planning Committee of the VHA Office of Health Services Research and Development's State-of-the-Art Conference on Virtual Care. The report concluded that there is a need for additional research to identify the specific scenarios in which virtual care can be leveraged to improve patient outcomes, and that additional research regarding the use of hybrid models ''will be critical in determining whether virtual visits should function primarily as periodic check-ins before patients can receive certain examinations or procedures in-person, or whether virtual care can fully replace in-person care in specific clinical scenarios.'' [40]

Although many individuals access telehealth visits successfully, the clinical signs and findings required by some of the musculoskeletal disorders listings may not be present in the telehealth record due to the limitations of telemedicine. While testing by the patient is possible through telehealth, there are limits in provocative testing (testing that manipulates the areas where an individual has pain in order to reproduce the pain), discrete palpation (a technique that uses targeted pressure to identify and quantify the abnormalities of the musculoskeletal system, such as warmth, swelling, pain, tenderness, and trigger points), and strength or stability testing.[41] During the beginning of the COVID–19 pandemic, orthopedists created guidelines for virtual examinations of patients through telemedicine, and found that while the patient could perform many tests, there are inherent limitations to testing in this manner. For example, the authors recommend using another person to hold the camera during gait examination to get a better view of the patient's gait mechanics, which is not always possible.[42] Further, the VHA has found that although patients appreciate telehealth, many are unable to complete exams that require precise measurements, such as range of motion or reflexes.[43] While it appears that since the end of the PHE there have been some post-surgical innovations to conduct follow-up spine care virtually, such as applications that can be used on a smartphone,[44] a recent survey of orthopedic trauma care providers shows that concerns still exist about the generalizability of telemedicine to the field of orthopedic trauma care, as a majority of orthopedic physicians felt that virtual physical examinations allowed for only limited information.[45] Thus, the utility of telehealth examination in the specific context of surgical and/or orthopedic trauma care remains uncertain.

Additionally, an increasing number of people are unable to access needed healthcare due to cost as the PHE flexibilities are phased out. Medicaid redeterminations restarted at the end of the PHE, leading to an increase in the uninsured, and the enhanced health insurance marketplace subsidies will expire in 2025.[46] According to data from the Kaiser Family Foundation (KFF), over 25 million people have been disenrolled from Medicaid since April 2023, when the ''unwinding'' of the continuous enrollment provision began, leading to an increase in the uninsured population.[47]

The Congressional Budget Office predicts an increase in the share and number of people without insurance over the next decade, with a predicted increase in the uninsured population from 24 million in 2023 to 32 million in 2027, primarily driven by changes in Medicaid and Children's Health Insurance Program (CHIP) enrollment over the next few years resulting from the expiration of PHE-era programs.[48] National surveys from KFF and the Federal Reserve in 2022 and 2023 showed that a large percentage of people (25 to 28 percent) postponed or went without needed medical care due to cost regardless of insurance status, and that the uninsured population was significantly more likely to forego or postpone care (42 to 60 percent) than the insured population.[49]

The Commonwealth Fund's 2024 report, which compared the performance of health systems of 10 high-income countries using data from 2020 or later and is the first such report to account for the effects of the COVID–19 pandemic, found that the United States ranked last on several measures, including access to care, and this was attributed largely to cost-related barriers, such as the percentage of uninsured residents as well as inadequate coverage and high deductibles and copayments.[50] The Commonwealth Fund's 2023 survey noted that nearly half of adults with lower or average incomes in the U.S., and nearly one of three with higher incomes, reported at least one cost-related problem accessing health care in the prior year. The problems included

of the National Academies of Science and Medicine Health and Medicine Division, on June 20, 2024.

[40] Connolly, S.L., Sherman, S.E., Dardashti, N., Duran, E., Bosworth, H.B., Charness, M.E., Newton, T.J., Reddy, A., Wong, E.S., Zullig, L.L., & Gutierrez, J. (2024). Defining and Improving Outcomes Measurement for Virtual Care: Report from the VHA State-of-the-Art Conference on Virtual Care. *Journal of general internal medicine, 39*(Suppl 1), 29–35. *https://doi.org/10.1007/s11606-023-08464-1.*

[41] Tanaka, M.J., Oh, L.S., Martin, S.D., & Berkson, E.M. (2020). Telemedicine in the Era of COVID–19: The Virtual Orthopaedic Examination. *The Journal of Bone and Joint Surgery, American volume, 102*(12), e57. *http://dx.doi.org/10.2106/JBJS.20.00609.*

[42] Laskowski, E.R., Johnson, S.E., Shelerud, R.A., Lee, J.A., Rabatin, A.E., Driscoll, S.W., Moore, B.J., Wainberg, M.C., & Terzic, C.M. (2020). The Telemedicine Musculoskeletal Examination. *Mayo Clinic Proc.* 95(8). doi: *https://doi.org/10.1016/j.mayocp.2020.05.026.*

[43] Baus, Shanna, PA–C. Telehealth & Disability Items: Veterans Health Administration. Presentation to the Standing Committee of the National Academies of Science and Medicine Health and Medicine Division, on December 1, 2020; *see also* Cannedy, S., Leung, L., Wyte-Lake, T., Balut, M.D., Dobalian, A., Heyworth, L., Paige, N.M., & Der-Martirosian, C. (2023). Primary Care Team Perspectives on the Suitability of Telehealth Modality (Phone vs Video) at the Veterans Health Administration. *Journal of primary care & community health, 14,* 21501319231172897. *https://doi.org/10.1177/21501319231172897.*

[44] Leyendecker, J., Prasse, T., Bieler, E., Yap, N., Eysel, P., Bredow, J., Hofstetter, C.P., & Members of the Endoscopic Spine Research Group (ESRG) (2024). Smartphone applications for remote patient monitoring reduces clinic utilization after full-endoscopic spine surgery. *Journal of telemedicine and telecare,* 1357633X241229466. Advance online publication. *https://doi.org/10.1177/1357633X241229466.; see also* Murhekar, S., Relwani, S., Lau, S., & Virani, S. (2024). Evaluation of the Effectiveness of Virtual Telephone Consultations Against Traditional Face-to-Face Consultations in Spine Surgery Using an Objective Metric. *Cureus, 16*(9), e69433. *https://doi.org/10.7759/cureus.69433.*

[45] Gammel, J., Rivas, G., Horn, R., Munford, J., Reid, K., & Harstock, L. (2024, September 4). A survey of telehealth and its role in orthopaedic trauma during and after COVID–19. *Journal of Public Health (Berl.) https://doi.org/10.1007/s10389-024-02347-3.*

[46] Tolbert, J., & Corallo, B. (2024, September 18). *An examination of Medicaid Renewal Outcomes and enrollment changes at the end of the Unwinding.* The Kaiser Family Foundation. *https://www.kff.org/medicaid/issue-brief/an-examination-of-medicaid-renewal-outcomes-and-enrollment-changes-at-the-end-of-the-unwinding/; See also* Minicozzi, A., & Masi, S. (2024, June 18). CBO Publishes New Projections Related to Health Insurance for 2024 to 2034, CBO. *https://www.cbo.gov/publication/60383.*

[47] Tolbert, J., & Corallo, B. (2024, September 18). *An examination of Medicaid Renewal Outcomes and enrollment changes at the end of the Unwinding.* The Kaiser Family Foundation. *https://www.kff.org/medicaid/issue-brief/an-examination-of-medicaid-renewal-outcomes-and-enrollment-changes-at-the-end-of-the-unwinding/.*

[48] Hale, J., Hong, N., Hopkins, B., Lyons, S., Molloy, E., & The Congressional Budget Office Coverage Team (2024). Health Insurance Coverage Projections for the US Population and Sources Of Coverage, By Age, 2024–34. *Health affairs (Project Hope), 43*(7), 922–932. *https://doi.org/10.1377/hlthaff.2024.00460.*

[49] Tolbert, J., & Corallo, B. (2024, September 18). *An examination of Medicaid Renewal Outcomes and enrollment changes at the end of the Unwinding.* The Kaiser Family Foundation. *https://www.kff.org/medicaid/issue-brief/an-examination-of-medicaid-renewal-outcomes-and-enrollment-changes-at-the-end-of-the-unwinding/.*

[50] Blumenthal, D., Gumas, E., & Shah, A. (2024). The Failing U.S. Health System. *The New England journal of medicine, 391*(17), 1566–1568. *https://doi.org/10.1056/NEJMp2410855.*

having a medical issue but not visiting a doctor, skipping a medical test, treatment, or follow-up that was recommended by a doctor, not filling a prescription, or skipping medication doses.[51] Given the projected increases in the uninsured population and the impact of cost and insurance status on access to care, postponed and foregone health care is expected to remain an issue for the foreseeable future, potentially limiting the frequency of visits.

Additional research suggests that certain individuals, such as those who are uninsured or low-income, may face barriers to regular or recommended health care treatment, and that these barriers appear to have increased after the pandemic, which may warrant a longer standard to allow for developing the necessary evidence. In a separate publication, summarizing recent research, KFF notes that studies repeatedly demonstrate that uninsured individuals are less likely than those with insurance to receive preventive care and services for major health conditions and chronic diseases.[52] For example, a 2023 KFF survey found that 61 percent of uninsured adults skipped or postponed getting treatment due to cost compared to 21 percent for insured adults.[53] Similarly, a 2019 National Center for Health Statistics survey found that 36.5 percent of uninsured adults delayed or did not receive needed medical care due to cost as compared to eight percent of insured individuals.[54] That same study found that over 20 percent of individuals living at or below 200 percent of the federal poverty threshold delayed or did not receive medical care due to cost as compared to 8.5 percent of all individuals. Notably, the 2019 study showed fewer people missing care than the 2023 KFF survey, again suggesting that problems accessing care have been exacerbated by the pandemic. Given that individuals who apply for disability benefits are disproportionately uninsured [55] or low-income, a standard which helps to accommodate cost barriers to healthcare access may be appropriate.

Healthcare workforce analyses have also shown significant healthcare workforce shortages and delays in care, exacerbated by the pandemic, and have projected ongoing healthcare workforce shortages for at least a decade, further impacting access to care, with disparate access to care for different communities.[56] Preliminary data from the pandemic shows that stress during the pandemic led to burnout and retirement earlier than projected for many physicians and nurses, exacerbating workforce shortages that were already increasing due to an aging healthcare workforce.[57] At the same time, healthcare demand has increased and is expected to continue to increase due to population growth, the increase in individuals with multiple chronic conditions, and the aging population.[58] Experts in musculoskeletal care presenting to the NASEM Standing Committee reported significant persisting delays in specialty care appointments compared to pre-pandemic norms.[59] The Commonwealth Fund's 2024 report also noted that timely access to care in the United States is limited by a worsening shortage of primary care clinicians and the time spent by healthcare providers on administrative issues related to billing.[60]

The Health Resources and Services Administration (HRSA) reported in November 2023 that approximately 102 million Americans live in a primary care health professional shortage area and that maldistribution of the healthcare workforce results in severe shortages in rural communities.[61] Additionally, a 2024 HRSA report projects average physician shortages of 56 percent in non-metro areas by 2036.[62] Similarly, the Association of American Medical Colleges recently projected a shortage of up to 139,000 physicians by 2033 and concluded that if communities historically underserved by our health care system had fewer access barriers and comparable access was provided for all, the shortfall would be three to six times the magnitude of current estimates.[63]

Any ongoing decrease in the frequency of, or increase in wait times for, in-person medical visits could lead to additional barriers or delays in documenting certain findings in the medical record that are needed to meet or equal the musculoskeletal disorders listings. This is true even if the decrease in in-person visits is offset with telehealth visits that make healthcare more accessible for some, because telehealth visits cannot reliably provide all the findings provided during in-person visits. The anecdotal evidence we have suggests the possibility of ongoing changes in healthcare related to the pandemic, including significant post-PHE delays in in-person care and ongoing telehealth utilization at a higher rate than prior to the pandemic. Although this evidence may support additional flexibility in the proximity standard, there is also an overall lack of published and available data on healthcare access and utilization following the PHE on which to rely. Therefore, an extension until May 11,

[51] Gunja MZ, Gumas ED, Williams RD II, Doty MM, Shah A, Fields K. The cost of not getting care: income disparities in the affordability of health services across high-income countries. New York: Commonwealth Fund, November 16, 2023 (*https://www.commonwealthfund.org/publications/surveys/2023/nov/cost-not-getting-care-income-disparities-affordability-health*).

[52] Tolbert, J, Drake, P., & Damic, A., (2023, December 18). *Key Facts about the Uninsured Population.* The Kaiser Family Foundation. *https://www.kff.org/report-section/key-facts-about-the-uninsured-population-issue-brief/#endnote_link_607642-9.*

[53] Lopes, L., Montero, A., Presiado, M., & Hamel, L. (2024, March 01). *Americans' Challenges with Health Care Costs.* The Kaiser Family Foundation. *https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/*

[54] National Center for Health Statistics, National Health Interview Survey. See Sources and Definitions, National Health Interview Survey (NHIS) and Health, United States, 2020–2021 Table UnmtNd.

[55] For example, a 2009 study found that recent SSDI recipients were uninsured at substantially higher rates than the general population. See, Livermore, G., Stapleton, D., & Claypool, H. Health Insurance and Health Care Access Before and After SSDI Entry. New York: Commonwealth Fund, May 20, 2009. *https://www.commonwealthfund.org/publications/fund-reports/2009/may/health-insurance-and-health-care-access-and-after-ssdi-entry.*

[56] GlobalData Plc. (2024, March). *The Complexities of Physician Supply and Demand: Projections From 2021 to 2036.* AAMC; *https://www.aamc.org/media/75236/download?attachment.*

[57] Martin, B., Kaminski-Ozturk, N., O'Hara, C., & Smiley, R. (2023). Examining the Impact of the COVID–19 Pandemic on Burnout and Stress Among U.S. Nurses. *Journal of nursing regulation, 14*(1), 4–12. *https://doi.org/10.1016/S2155-8256(23)00063-7.*

[58] GlobalData Plc. (2024, March). *The Complexities of Physician Supply and Demand: Projections From 2021 to 2036.* AAMC; *https://www.aamc.org/media/75236/download?attachment.*

[59] Standaert, Christopher, M.D. COVID Disruptions and their Impact on Musculoskeletal Care. Presentation to the Standing Committee of the National Academies of Science and Medicine Health and Medicine Division, on June 20, 2024; *see also* Escorpizo, Reuben, P.T., M.Sc., D.P.T. Musculoskeletal Health, and Telehealth—Rapid Overview. Presentation to the Standing Committee of the National Academies of Science and Medicine Health and Medicine Division, on June 20, 2024.

[60] Blumenthal, D., Gumas, E., & Shah, A. (2024). The Failing U.S. Health System. *The New England journal of medicine, 391*(17), 1566–1568. *https://doi.org/10.1056/NEJMp2410855.*

[61] National Center for Health Workforce Analysis (2024, May). *State of the U.S. Health Care Workforce, 2023* HRSA; *https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/state-of-the-health-workforce-report-2023.pdf.*

[62] Bureau of Health Workforce. (2024, November). *Health Workforce Projections.* HRSA; Retrieved November 22, 2024, from *https://bhw.hrsa.gov/data-research/projecting-health-workforce-supply-demand.*

[63] GlobalData Plc. (2024, March) *The Complexities of Physician Supply and Demand: Projections From 2021 to 2036.* AAMC; *https://www.aamc.org/media/75236/download?attachment.*

2029, is necessary to ensure a sufficient research base for a permanent standard.

We are extending the flexibility until May 11, 2029, to provide time for published research to demonstrate utilization data after the PHE. Experts in musculoskeletal care presenting to the NASEM Standing Committee in June 2024 noted that there was almost no published research about musculoskeletal health care utilization in 2022 and beyond. One expert explained that this is largely due to the logistics of scientific research, where data is collected in large databases on a delay, and researchers must obtain funding and access to the database, analyze the data, and seek peer review and publication, which typically takes several years.[64] Therefore, in order to provide time for development of the evidence base and for full notice-and-comment rulemaking, we are extending the flexibility in the proximity standard until May 11, 2029. However, we will begin the rulemaking process for a permanent proximity standard as soon as the evidence base is available.

Evidence to Review

We will continue to use the extension period to study the changes in healthcare access and provision after the expiration of the PHE. During the extension period, we will also continue to review information about disparities in access to care or modalities of care. We expect this additional period will allow us to consider whether we should revert to the 4-month ''close proximity of time'' standard, adopt a permanent change to the consecutive 12-month ''close proximity of time'' period, or use a different timeframe, to account for ongoing changes in healthcare access and delivery.

We will also continue to study the application of the ''close proximity of time'' rule in our programs. In addition, we will continue to monitor the quality of our determinations and decisions to inform our policy decision and ensure the appropriate adjudication of claims for people with musculoskeletal disorders.

Solicitation for Public Comment

Although we are publishing a temporary final rule, we invite public comment on all aspects of the rule, including:

- The appropriate standard for ''close proximity of time'' to account for barriers to access to care or changes in healthcare delivery, and the justification or evidence for the standard the commenter identifies as appropriate;
- Research, evidence, or information about barriers to access to care, changes in healthcare delivery, and disproportionate burdens faced by any subset of the population and how that impacts an individual's ability to provide the required evidence for a medical listing; and
- The expiration date of this rule.

Please share any supporting information that you might have. We will consider any substantive comments we receive within 60 days of the publication of this TFR.

Summary of the Changes

This rule revises sections 1.00C7a and 101.00C7a of the musculoskeletal disorders listings to define a new term, ''post-pandemic evaluation period,'' to mean ''the period beginning on May 12, 2025, and ending on May 11, 2029.'' We are adding this new term because we are extending the more flexible ''close proximity of time'' standard to six years after the end of the PHE. This rule also revises sections 1.00C7c and 101.00C7c to indicate that, for claims determined or decided during the pandemic period or the post-pandemic evaluation period, ''within a close proximity of time'' means that all the relevant criteria must appear in the medical record within a consecutive 12-month period.

We are making changes based on the Commissioner of Social Security's rulemaking authority specified in sections 205(a), 702(a)(5), 1631(d)(1), 1631(e)(1)(A), and 1633(a) of the Social Security Act. Under those sections, the Commissioner may adopt rules regarding, among other things, the nature and extent of evidence needed to establish benefit eligibility, as well as methods of taking and furnishing such evidence.

Justification for Foregoing Notice and Comment Rulemaking

We follow the Administrative Procedure Act's (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. However, the APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)).

We find that there is good cause to issue this TFR without prior notice and public comment.[65] We have been following the more flexible 12-month ''close proximity of time'' standard for over three years, and it would be impracticable and contrary to the public interest to disrupt our claims adjudications by delaying implementation of this TFR. Delayed implementation of this TFR would require us to either delay adjudicating affected claims, potentially resulting in delayed benefits to vulnerable individuals,[66] or apply the 4-month ''close proximity of time'' standard, which does not consider changes in healthcare access and delivery related to the PHE, as discussed in the preamble. If we applied the 4-month standard, individuals might be unable to show that they meet a listing under the 4-month ''close proximity of time'' standard merely due to changes in how the healthcare system works. Implementing this TFR, without prior notice and public comment, will allow us to maintain this more flexible standard while we review and adapt to new clinical practices and healthcare data that emerge in a post-PHE landscape.

Delay in implementing this TFR would be impracticable and contrary to the public interest because it may cause some applicants to experience immediate and severe financial hardship, placing them at risk of losing their homes, means of transportation, access to health care, and other important resources, in addition to experiencing increased stress as they await the outcome of their case and their award of benefits. This is particularly true for the population that is eligible for Supplemental Security Income (SSI), which has, by definition, severely limited income and financial resources.[67] An unnecessary delay

[64] Standaert, Christopher, M.D. COVID Disruptions and their Impact on Musculoskeletal Care. Presentation to the Standing Committee of the National Academies of Science and Medicine Health and Medicine Division, on June 20, 2024.

[65] In our first TFR, we provided notice that we would consider extending the expiration date of the rule, and we invited public comments on the expiration date. 86 FR at 38920, 38924. As discussed above, we received a public comment from NOSSCR that encouraged us to make the temporary 12-month standard permanent or, if we chose not to make the 12-month standard permanent, to extend the period covered by the first TFR to one year after the end of the PHE. Similarly, in our second TFR we provided notice that we would consider extending the expiration date of the rule, and we invited public comments on the expiration date. 88 FR at 67081, 67088. As discussed above, we received a public comment from The Connected Health Initiative which supported our decision to extend the original TFR to continue to study the impacts of the PHE and barriers to healthcare.

[66] Individuals who are eligible for disability benefits are, by definition, not able to engage in substantial gainful activity, which means they may experience immediate and severe financial hardship.

[67] 42 U.S.C. 1382(a); 20 CFR 416.202.

would cause significant harm and detract substantially from the effectiveness of the disability program in providing meaningful economic relief for disabled individuals. Even if affected claimants received the same benefits at a later date, these individuals may suffer from long term or permanent consequences of the lost income during the period of delay.

Delaying implementation of this final rule to provide an opportunity for prior notice and public comment is also unnecessary. As noted above, we have applied the more flexible 12-month ''close proximity of time'' standard for over three years, and its effects have been negligible, merely resulting in more streamlined, faster disability determinations for a very small number of claimants.

Moreover, we have given interested parties an opportunity to provide public comment on the 12-month standard—including soliciting comments about a possible extension—on two prior occasions: first when we published the 2021 TFR and then, when we extended the flexibility in September 2023. Altogether, we received two public comments. The first commenter supported making the 12-month standard permanent or, alternatively, extending it, and the second commenter supported an extension of the 12-month standard. Accordingly, delaying implementation of this rule to obtain further public comment is unnecessary.

For good cause shown, to avoid delaying benefits to vulnerable individuals while providing appropriate flexibility to account for COVID–19-related healthcare changes, we are dispensing with prior notice and public comment on this rule pursuant to 5 U.S.C. 553(b)(B).

Regulatory Procedures

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Orders 13563 and 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

Executive Order 12866, as Supplemented by Executive Orders 13563 and 14094

We consulted with the Office of Management and Budget (OMB) and determined that this rule is a non-significant regulatory action under Executive Order 12866, as supplemented by Executive Orders 13563 and 14094.

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this temporary final rule would result in negligible changes (*i.e.,* less than $500,000) in scheduled Old-Age, Survivors, and Disability Insurance benefits and Federal SSI payments.

Anticipated Administrative Cost-Savings to the Social Security Administration

The Office of Budget, Finance, and Management expects the extension provided by the TFR will have a minimal administrative effect on the agency.

Anticipated Time-Savings and Qualitative Benefits

We anticipate the following qualitative benefits generated from this policy:

- Providing a more flexible 12-month ''close proximity of time'' standard in the musculoskeletal disorders listings will potentially result in streamlined, faster disability determinations for a small number of claimants. Absent this policy, a small number of determinations might be delayed due to a need for additional medical or vocational development.

Anticipated Costs

We do not believe there are more than de minimis costs to the public associated with this rule. The requirements in this rule will not impose new additional costs outside of the normal course of business for applicants or change how the public interacts with our disability programs.

Congressional Review Act

This final rule is not a major rule as defined by the Congressional Review Act.[68]

[68] 5 U.S.C. 801 *et seq.*

Executive Order 13132 (Federalism)

We analyzed this temporary final rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this temporary final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-age, survivors, and disability insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability cash payments; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Carolyn W. Colvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to Erik Hansen, who is a Federal Register Liaison for the Social Security Administration, for purposes of publication in the **Federal Register**.

Erik Hansen,

Associate Commissioner, Office of Legislative Development and Operations, Social Security Administration.

For the reasons stated in the preamble, we are amending subpart P of

part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: 42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In appendix 1 to subpart P of part 404:

■ a. In part A, amend section 1.00C7 by revising paragraphs a and c; and

■ b. In part B, amend section 101.00C7 by revising paragraphs a and c.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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Part A

* * * * *

1.00 Musculoskeletal Disorders

* * * * *

C. * * *

7. * * *

a. The term *pandemic period* as used in 1.00C7c means the period beginning on April 2, 2021, and ending on May 11, 2025. The term *post-pandemic evaluation period* as used in 1.00C7c means the period beginning on May 12, 2025, and ending on May 11, 2029.

* * * * *

c. For 1.15, 1.16, 1.17, 1.18, 1.20C, 1.20D, 1.22, and 1.23, all of the required criteria must be present simultaneously, or within a close proximity of time, to satisfy the level of severity needed to meet the listing. The phrase ''within a close proximity of time'' means that all of the relevant criteria must appear in the medical record within a consecutive 4-month period, except for claims determined or decided during the pandemic period or post-pandemic evaluation period. For claims determined or decided during the pandemic period or post-pandemic evaluation period, all of the relevant criteria must appear in the medical record within a consecutive 12-month period. When the criterion is imaging, we mean that we could reasonably expect the findings on imaging to have been present at the date of impairment or date of onset. For listings that use the word ''and'' to link the elements of the required criteria, the medical record must establish the simultaneous presence, or presence within a close proximity of time, of all the required medical criteria. Once this level of severity is established, the medical record must also show that this level of severity has continued, or is expected to continue, for a continuous period of at least 12 months.

* * * * *

Part B

* * * * *

101.00 Musculoskeletal Disorders.

* * * * *

C. * * *

7. * * *

a. The term *pandemic period* as used in 101.00C7c means the period beginning on April 2, 2021, and ending on May 11, 2025. The term *post-pandemic evaluation period* as used in 101.00C7c means the period beginning on May 12, 2025, and ending on May 11, 2029.

* * * * *

c. For 101.15, 101.16, 101.17, 101.18, 101.20C, 101.20D, 101.22, and 101.23, all of the required criteria must be present simultaneously, or within a close proximity of time, to satisfy the level of severity needed to meet the listing. The phrase ''within a close proximity of time'' means that all of the relevant criteria must appear in the medical record within a consecutive 4-month period, except for claims determined or decided during the pandemic period or post-pandemic evaluation period. For claims determined or decided during the pandemic period or post-pandemic evaluation period, all of the relevant criteria must appear in the medical record within a consecutive 12-month period. When the criterion is imaging, we mean that we could reasonably expect the findings on imaging to have been present at the date of impairment or date of onset. For listings that use the word ''and'' to link the elements of the required criteria, the medical record must establish the simultaneous presence, or presence within a close proximity of time, of all the required medical criteria. Once this level of severity is established, the medical record must also show that this level of severity has continued, or is expected to continue, for a continuous period of at least 12 months.

* * * * *

[FR Doc. 2025–01283 Filed 1–16–25; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 16

[Docket No. FDA–2024–N–3654]

RIN 0910–AI97

Regulatory Hearing Before the Food and Drug Administration; General Provisions; Amendments; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA or Agency) published in the **Federal Register** of September 20, 2024, a direct final rule amending the Scope section of our regulation that provides for a regulatory hearing before the Agency. The comment period closed December 4, 2024. FDA is withdrawing the direct final rule because the Agency received significant adverse comment.

DATES: The direct final rule published at September 20, 2024, 89 FR 77019, is withdrawn effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Schwartz, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 1–877–287–1373, *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on September 20, 2024, 89 FR 77019 is withdrawn.

Dated: January 13, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01145 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2022–C–0098]

Listing of Color Additives Exempt From Certification; Myoglobin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; order.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the safe use of myoglobin as a color additive in ground meat and ground poultry analogue products. We are taking this action in response to a color additive petition (CAP) submitted by Motif FoodWorks, Inc. (Motif FoodWorks or petitioner).

DATES: This order is effective February 19, 2025. See section X for further information on the filing of objections. Either electronic or written objections and requests for a hearing on the order must be submitted by February 18, 2025.

ADDRESSES: You may submit objections and requests for a hearing as follows.

Please note that late, untimely filed objections will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 18, 2025. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–C–0098 for ''Listing of Color Additives Exempt From Certification; Myoglobin.'' Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or with the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Ellen Anderson, Office of Pre-market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1309 or Keronica Richardson, Office of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1262.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a document published in the **Federal Register** of February 14, 2022 (87 FR 8222), we announced that FDA filed a color additive petition (CAP 2C0322) submitted by Motif FoodWorks, Inc., 27 Drydock Ave., 2nd Floor, Boston, MA 02210. The petition proposed to amend the color additive regulations in part 73 (21 CFR part 73), ''Listing of Color Additives Exempt from Certification'' to provide for the safe use of myoglobin as a color additive in ground meat and ground poultry analogue products where the amount of myoglobin protein does not exceed 2 percent by weight of the uncooked analogue product.

The petition used the terms ''analogue'' and ''alternative'' interchangeably to describe the type of food products in which the color additive is intended for use. This order will use the phrase ''ground meat and ground poultry analogue products,'' which refers to plant-based ground meat- and poultry-like food products, such as patties, sausages, links, and nuggets, subject to FDA regulation. (The petitioned use of this color additive does not include use in cell-cultured meat and poultry products under regulatory authority of the United States Department of Agriculture.)

The petition described myoglobin protein as the characterizing coloring component of a stabilized liquid mixture that imparts a red to pink coloration in uncooked ground meat and ground poultry analogue products to give an appearance similar to raw meat and poultry. The petition referred to the color additive as ''myoglobin'' or ''myoglobin preparation.'' For the purposes of this order, we refer to ''myoglobin preparation'' as the stabilized liquid mixture that contains myoglobin protein and note that ''myoglobin'' and ''myoglobin preparation'' are used interchangeably to refer to this color additive. We are establishing ''myoglobin'' as the common or usual name for this color additive.

II. Background

The color additive that is the subject of this petition is the stabilized product of controlled fermentation of a non-pathogenic and non-toxicogenic strain of the yeast, *Komagataella phaffii* (*K. phaffii*), genetically engineered to express myoglobin protein, the principal coloring component. Although the organism is referred to as *Pichia pastoris* (*P. pastoris*) throughout the petition, we note that the nomenclature for *P. pastoris* was reassigned based on genetic typing to *Komagataella phaffii.* (Ref. 1). We are referring to the organism hereafter as *K. phaffii* to reflect the current taxonomic identity.

The color additive is manufactured by the following steps: (1) construction of the *K. phaffii* production strain that is

genetically engineered to express a synthetic myoglobin gene from *Bos taurus;* (2) expression of myoglobin protein via submerged fed-batch fermentation by the *K. phaffii* production strain; (3) disruption of the *K. phaffii* cells by mechanical shearing to release myoglobin protein and removal of the *K. phaffii* cells by washing, lysing, centrifugation, and microfiltration; (4) ultrafiltration to concentrate the myoglobin protein; and (5) stabilization of the expressed protein as a liquid preparation. The gene that is inserted into the *K. phaffii* is generated by DNA synthesis and is not obtained directly from the DNA of *Bos taurus.* The amino acid sequence of the expressed myoglobin protein is identical to bovine myoglobin protein that has a history of being safely consumed.

Based on information in the petition, the myoglobin preparation has a moisture content of ≥92.5 percent, a myoglobin protein content of ≥3 percent, and may contain stabilizers, preservatives, and antimicrobial agents such as sodium phosphate, sodium ascorbate, and sodium chloride. The color additive is stored as a frozen liquid. FDA concurs with the petitioner that the genetic modifications made to generate the non-toxigenic and non-pathogenic production strain are well-characterized and the production process conforms to good manufacturing practice (Ref. 2). We are requiring a specification for the minimum purity of myoglobin protein as a percent of the total protein in the color additive and a specification limit for lead. The petitioner provided analytical data from the analyses of five lots of myoglobin preparation showing that the color additive can be manufactured to meet these specifications.

We have previously considered the safety of myoglobin preparation based on a submission from Motif FoodWorks, to which we had no questions, that the use of myoglobin preparation to impart flavor and aroma in ground meat and poultry analogue products is generally recognized as safe (GRAS). Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(s)), a substance is GRAS if it is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food before January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. Under section 201(s) of the FD&C Act, a substance that is GRAS for a particular use in food is not a food additive and may lawfully be utilized for that use without our review and approval. There is no GRAS exemption, however, to the definition of a color additive in section 201(t) of the FD&C Act. Therefore, we must approve the use of a color additive in food before it is marketed; otherwise, the food containing the color additive is adulterated under section 402(c) of the FD&C Act (21 U.S.C. 342(c)).

A firm may voluntarily submit to FDA information supporting the firm's conclusion that a substance is GRAS for its intended use in food through our GRAS Notification Program (see 81 FR 54960, August 17, 2016). Through this program, a GRAS conclusion was submitted by Motif FoodWorks and filed on June 28, 2021, as GRAS Notice 001001(GRN 001001). This GRN informed FDA that Motif FoodWorks concluded that the use of myoglobin preparation at levels providing up to 2 percent myoglobin protein to impart flavor and aroma in ground meat and poultry analogue products was GRAS. Based on our evaluation of the information provided in GRN 001001, as well as other available information, we issued a response letter on December 3, 2021, to Motif FoodWorks stating that we had no questions regarding its conclusion that myoglobin preparation is GRAS for its intended conditions of use. In our response letter to Motif FoodWorks, we stated that because myoglobin preparation imparts a red coloration when exposed to oxygen in some food applications, its use may constitute a color additive use under section 201(t)(1) of the FD&C Act and FDA regulations in 21 CFR part 70. The specific use of myoglobin preparation to impart a reddish, meat-like color to ready-to-cook meat and poultry analogue products is important to the appearance and marketability of the analogue products. As such, this use of myoglobin preparation requires premarket approval as a color additive (see § 70.3(g) (21 CFR 70.3(g))).

III. Safety Evaluation

Under section 721(b)(4) of the FD&C Act (21 U.S.C. 379e(b)(4)), a color additive may not be listed for a proposed use unless the data and information available to FDA establish that the color additive is safe for that use. Our color additive regulations at § 70.3(i) define ''safe'' to mean that there is convincing evidence establishing with reasonable certainty that no harm will result from the intended use of the color additive.

As part of our safety evaluation to establish with reasonable certainty that a color additive is not harmful under its intended conditions of use, we consider the additive's manufacturing and stability, the projected human dietary exposure to the additive and any impurities resulting from the petitioned use of the additive, the additive's toxicological data, and other relevant information (such as published literature) available to us.

IV. Safety of Petitioned Use of the Color Additive

A. Dietary Exposure Estimate

Myoglobin preparation is composed mainly of water, myoglobin protein, minor quantities of *K. phaffii* proteins, ash, fat, carbohydrates, and stabilizers and preservatives such as sodium phosphate, sodium ascorbate, and/or sodium chloride. During our safety review of this color additive petition, we evaluated the dietary exposure estimates for the myoglobin preparation, the myoglobin protein component, and selected nutrients of the preparation. The petitioner provided two sets of dietary exposure estimates. For one set of estimates, the petitioner used U.S. food consumption for meat and poultry analogue products (*e.g.,* soy burgers, vegetarian hot dogs) from the combined 2013 to 2018 National Health and Nutrition Examination Survey (NHANES) and assumed these products contained myoglobin preparation at use levels that would result in myoglobin protein concentrations of 1 percent, 1.5 percent, and 2 percent in the food. The petitioner noted that typical use levels of myoglobin protein are expected to be 1 to 1.25 percent for most food categories. The petitioner estimated the eaters-only dietary exposure to myoglobin preparation at the maximum use level of 2 percent myoglobin protein for the U.S. population aged 2 years and older to be 43.7 grams/person/day (g/p/d) at the mean and 97.6 g/p/d at the 90th percentile. For the myoglobin protein, the eaters-only dietary exposure for the U.S. population aged 2 years and older was estimated to be 1.3 g/p/d at the mean and 2.9 g/p/d at the 90th percentile.

The petitioner provided a second set of dietary exposure estimates based on a use level of 1 percent myoglobin protein and food consumption data for conventional ground meat and ground poultry products assuming a 1:1 substitution for ground meat and ground poultry analogue products. For these estimates, the petitioner selected NHANES food codes that represented the most common food applications in which myoglobin preparation is expected to be used (*i.e.,* ground patties,

crumbles, links, bacon, sausage, and meatballs from beef, pork, or poultry). The petitioner estimated the mean and 90th percentile eaters-only dietary exposures to myoglobin protein for the U.S. population aged 2 years and older to be 0.7 g/p/d and 1.5 g/p/d, respectively, and for ages 2 to 5 years to be 0.3 g/p/d and 0.7 g/p/d, respectively.

FDA replicated and confirmed the petitioner's two sets of estimates of dietary exposure to myoglobin protein and myoglobin preparation. We also conducted a third analysis using 2021 *per capita* food availability data for retail beef and poultry in the United States (USDA Economic Research Service), the assumption of a 1:1 substitution with meat and poultry alternative products, and a use level that provides 2 percent myoglobin protein in the food. FDA estimated the dietary exposure to myoglobin protein and myoglobin preparation for U.S. consumers to be 3.9 g/p/d and 129 g/p/d, respectively. We note that dietary exposures based on availability data typically overestimate *per capita* consumption because the data do not consider food loss and wastage (Ref. 2).

The petitioner also estimated dietary exposures to iron from the petitioned use of the color additive using the first two methods described above. Based on NHANES consumption data for ground meat and ground poultry analogue products and the maximum intended use level of 2 percent myoglobin protein, the petitioner estimated the mean and 90th percentile eaters-only dietary exposures to iron for the U.S. population aged 2 years and older to be 2.0 and 4.5 mg/p/d, respectively. Based on a use level of 1 percent myoglobin protein and food consumption data for conventional ground meat and ground poultry products assuming a 1:1 substitution for ground meat and ground poultry analogue products, the petitioner estimated the mean and 90th percentile eaters-only dietary exposures to iron for the U.S. population aged 2 years and older to be 1.0 and 2.0 mg/p/d, respectively, and for ages 2 to 5 years to be 0.5 and 1.0 mg/p/d, respectively.

B. Toxicological Considerations

To establish that myoglobin preparation is safe for use as a color additive that provides up to 2 percent myoglobin protein in ground meat and ground poultry analogue products, the petitioner used a weight-of-evidence approach based on the following: (1) the history of widespread and safe consumption of bovine myoglobin protein; (2) the safety of *K. phaffii* as a production organism; and (3) an allergenicity assessment of myoglobin and *K. phaffii* proteins.

Based on our review of this petition (CAP 2C0322), we conclude that the proteins in the myoglobin preparation are well defined, nontoxic, and not likely to cause an allergenic response when consumed (Ref. 3). Because the myoglobin protein expressed in *K. phaffii* is 100 percent identical in amino acid sequence to bovine myoglobin protein, we conclude that the history of safe consumption of bovine myoglobin protein from ingestion of meat in the diet can be extended to the safety of Motif FoodWorks' myoglobin protein. Regarding the *K. phaffii* strain developed by the petitioner for the production of myoglobin preparation, we conclude that it is non-toxicogenic and non-pathogenic.

We agree that the petitioned uses of the color additive are not expected to increase the dietary exposure to myoglobin protein and iron in the U.S. population, as the consumption of ground meat and poultry analogue products are substitutional for conventional ground meat and poultry products (Ref. 2). Furthermore, we note that the estimated 90th percentile eaters-only dietary exposures to *K. phaffii*-expressed myoglobin protein and iron are well below the Institute of Medicine's recommended dietary reference intakes for protein and iron for all age groups considered (Ref. 3).

In its assessment of the allergenicity of myoglobin preparation, the petitioner examined the incidence of beef allergy in consumers and bioinformatic analyses to determine if the myoglobin and *K. phaffii* proteins found in the myoglobin preparation share significant sequence identity to known allergens. We agree that the weight of evidence demonstrates the safety of myoglobin protein consumption based on the absence of beef allergy case reports since 2004; the lack of the native *Bos taurus* glycosylation pattern in Motif FoodWorks's myoglobin protein, which makes the color additive less likely to trigger an allergic reaction; and a lack of immunologically meaningful sequence identity similarities between the myoglobin preparation proteins and known allergenic proteins. Furthermore, we conclude that myoglobin and *K. phaffii* proteins in the color additive are readily digested at acidic pH conditions found in the stomach and denatured at normal cooking temperatures. Therefore, FDA agrees with the conclusion that myoglobin protein produced in *K. phaffii* is not likely to pose a risk of allergenicity or toxicity upon consumption (Ref. 3).

V. Conclusion

Based on the data and information in the petition and other available relevant information, we conclude that the petitioned use of myoglobin preparation as a color additive in ground meat and ground poultry analogue products is safe, provided the amount of myoglobin protein does not exceed 2 percent by weight of the uncooked product. We further conclude that this color additive will achieve its intended technical effect and is suitable for the petitioned use. Therefore, we are amending the color additive regulations in part 73 to provide for the safe use of myoglobin, the established common or usual name for this color additive, as set forth in this document. In addition, based on the factors in 21 CFR 71.20(b), we conclude that batch certification of myoglobin is not necessary to protect the public health.

VI. Public Disclosure

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15(b), we will delete from the documents any materials that are not available for public disclosure.

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This order contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Section 301(ll) of the FD&C Act

Our review of this petition was limited to section 721 of the FD&C Act. This order is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations

have been instituted and their existence has been made public, unless one of the exemptions in section 301(ll)(1) to (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing this color additive. Accordingly, this order should not be construed to be a statement that a food containing this color additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all color additive orders that pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

X. Objections

This order is effective as shown in the **DATES** section, except as to any provisions that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.* We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

XI. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. Kurtzman C.P., ''Biotechnological Strains of Komagataella (Pichia) Pastoris Are Komagataella Phaffii as Determined From Multigene Sequence Analysis,'' *Journal of Industrial Microbiology and Biotechnology,* 36(11):1435–1438, 2009. Doi: 10.1007/s10295–009–0638–4. PMID: 19760441.
2. Memorandum from J. Mihalov, Chemistry Review Team, Division of Food Ingredients (DFI), Office of Food Additive Safety (OFAS), Center for Food Safety and Applied Nutrition (CFSAN), FDA to E. Anderson, DFI, OFAS, CFSAN, FDA, August 23, 2024.
3. Memorandum from S. Choudhuri, Toxicology Review Team, DFI, OFAS, CFSAN, FDA to E. Anderson, DFI, OFAS, CFSAN, FDA, August 23, 2024.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

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

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Add § 73.297 to subpart A to read as follows:

§ 73.297 Myoglobin.

(a) *Identity.* (1) The color additive myoglobin is a stabilized product of controlled fermentation of a non-pathogenic and non-toxicogenic strain of the yeast, *Komagataella phaffii,* genetically engineered to express the myoglobin protein from *Bos taurus.* Myoglobin protein is the principal coloring component of the color additive and imparts a red color.

(2) Color additive mixtures made with myoglobin may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Myoglobin must conform to the following specifications and must be free from impurities, other than those named, to the extent that such impurities may be avoided by good manufacturing practice:

(1) Myoglobin protein purity on protein basis (weight/weight), not less than 85 percent.

(2) Lead, not more than 0.01 milligrams per kilogram (0.01 parts per million).

(c) *Uses and restrictions.* Myoglobin may be safely used in ground meat and ground poultry analogue products (*i.e.,* plant-based ground meat- and poultry-like food products subject to FDA regulation) where the amount of myoglobin protein does not exceed 2 percent by weight of the uncooked analogue product.

(d) *Labeling.* The label of the color additive and of any mixture prepared therefrom intended solely or in part for coloring purposes must conform to § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore, batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act.

Dated: January 14, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01239 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 12441]

RIN 1400–AF42

International Traffic in Arms Regulations: U.S. Munitions List Targeted Revisions

AGENCY: Department of State.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of State (the Department) amends the International Traffic in Arms Regulations (ITAR) to remove from the U.S. Munitions List (USML) items that no longer warrant inclusion, add to the USML items that warrant inclusion, and clarify certain entries. With these amendments, the Department also supersedes and thus terminates the temporary modification to USML Category VIII that was published on December 4, 2023, and extended on November 26, 2024.

DATES:

Effective date: September 15, 2025.

Comment due date: Send comments by March 18, 2025.

ADDRESSES: Interested parties may submit comments to the Department of State by any of the following methods:

- *Visit the Regulations.gov website at: https://www.regulations.gov* and search for the docket number DOS–2024–0047.

• *Email: DDTCPublicComments@state.gov.* Commenting parties must include RIN 1400–AF42 in the subject line of the email message.

See **SUPPLEMENTARY INFORMATION** for other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rasmussen, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2217; email *DDTCCustomerService@state.gov* SUBJECT: ITAR Amendment—USML Targeted Revisions (RIN 1400–AF42).

SUPPLEMENTARY INFORMATION: The Department of State's Directorate of Defense Trade Controls (DDTC) administers the ITAR (22 CFR parts 120 through 130) to, among other things, regulate the export, reexport, retransfer, and temporary import of the defense articles and defense services identified on the USML at ITAR § 121.1. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other department or agency of the U.S. Government are subject to the Export Administration Regulations (EAR, 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774). The EAR is administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. This rule does not modify the list of defense articles and defense services controlled for purposes of permanent import by the Attorney General, as enumerated on the U.S. Munitions Import List (USMIL) at 27 CFR 447.21.

Section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778), the authority from which the ITAR is derived, requires periodic review to determine what articles and services, if any, no longer warrant designation on the U.S. Munitions List at 22 CFR 121.1. In maintaining the USML, DDTC's Office of Defense Trade Controls Policy (DTCP) identifies articles and services for review through a variety of methods, including informal public and interagency comment, commodity jurisdiction reviews, advisory opinions, and technology monitoring. The Department maintains the USML such that it comprises those defense articles or defense services that provide a critical military or intelligence advantage or, in the case of firearms, have an inherently military function. The Department, informed by consultations with its interagency partners, determined that the additional defense articles this rule designates on the USML warrant ITAR control and those articles it removes from the USML no longer do. This rule also amends certain language that describes items on the USML to provide additional clarity to the regulatory language.

22 CFR 121.0

The Department incorporates definitional language and abbreviations currently found in various notes in the USML into 22 CFR 121.0, *United States Munitions List descriptions and definitions.* Section 121.0 is amended to remove the structure of paragraphs (a) and (b) and to add definitions to the USML in an alphabetical list. The definition previously at § 121.0(b) is now listed in its alphabetical order in § 121.0. Current § 121.0(a) is moved to the introductory text of § 121.0.

USML Category II

In USML Category II, Note 2 to paragraph (a)(5) is revised to correct a typographical error.

USML Category IV

USML Category IV paragraph (c) is revised and paragraphs (c)(1) and (2) are added to more clearly describe the equipment controlled therein, and to differentiate between equipment specially designed for commodities enumerated in paragraphs (a) or (b) of Category IV under the new paragraph (c)(1), and equipment specially designed for improvised explosive devices (IEDs) under the new paragraph (c)(2), similar to how they are differentiated in paragraph 4.b of the Wassenaar Arrangement Munitions List. This amendment also replaces the undefined term ''apparatus and devices'' with the § 120.40 defined term ''equipment.''

USML Category V

USML Category V paragraph (c)(2) is revised to add the CAS Registry Number for pentaborane and to replace the comma after ''pentaborane'' with a semicolon, in order to clarify this paragraph describes derivatives of carboranes, decaboranes, and pentaborane. Paragraph (f)(4)(x) is revised to correct the CAS Registry Number. Paragraphs (e)(10), (f)(19), and (g)(4) are revised to correct typographical errors.

USML Category VII

Note 3 to USML Category VII is revised to further clarify the universe of ground vehicles described, with no change to the scope of controls. Specifically, the types of vehicular control and locomotion employed are irrelevant when evaluating a vehicle against the control criteria. The Department affirms that although some unmanned ground vehicles, based on their method of control or locomotion, may be referred to by the public colloquially as ''robots,'' they must still be evaluated against the criteria in USML Category VII.

USML Category VIII

USML Category VIII(h)(1) is revised to clarify which commodities are described therein by incorporating relevant portions of the existing note to paragraph (h)(1). This revision also serves to facilitate reference to the included list of aircraft by other USML paragraphs, and to better align controls with the Department's intent around U.S. Government technology demonstrators. Additionally, it precludes release of commodities from paragraph (h)(1) based solely on their subsequent use in aircraft included in USML Category XXI (pursuant to the procedures therein) or in foreign advanced military aircraft. Foreign advanced military aircraft, as newly defined in § 121.0, include non-U.S. origin aircraft and foreign derivatives of U.S. origin aircraft, either in development or entering production after 2023, with one or more of the following advanced military capabilities: Active Electronically Scanned Array (AESA) fire control radar, integrated signature management, electronic warfare systems, or the ability to engage targets beyond visual range (BVR). The Department further highlights the use of the term ''AESA *fire control* radar'' to ensure that AESA weather radars commonly used in civil aviation are clearly excluded from this list of advanced military capabilities. The year 2023 was chosen as the production year in this definition to ensure alignment with the temporary modification to the USML issued on December 4, 2023 (88 FR 84072), and extended on November 26, 2024 (89 FR 93170), which states that parts used in or with the KF–21 continue to be described on the USML.

As practitioners have confused the F–15SE (Silent Eagle) with the F–15E (Strike Eagle), the F–15SE nomenclature is also clarified. Further, the ''B1B'' is replaced by ''B–1.'' As the B–1A never entered into production, this change does not change the export classification of existing items. The Department makes this change consistent with the majority of aircraft listed in the paragraph and its intent to include future variants of those aircraft. The Department notes the only aircraft listed with series letters (F–15SE, F/A–18E/F, and EA–18G) in this paragraph intentionally exclude earlier variants (for example, the control does not include the F–15A, which is an F–15 variant developed before the F–15SE).

Additionally, the Department adds the MQ–25 and the RQ–170 to the list of aircraft in paragraph (h)(1)(i). The MQ–25 provides a critical military advantage in its ability to support the future Navy carrier air wing and is central to the Navy's strategic Unmanned Campaign Framework. The RQ–170 is a high-altitude, long-endurance, low-observable unmanned aerial vehicle that provides a critical military and intelligence advantage in its ability to perform key intelligence, surveillance, reconnaissance, target acquisition, and electronic warfare functions. Paragraph (h)(1) describes articles used in some of the most advanced U.S. military aircraft. The changes to paragraph (h)(1) ensure those specially designed articles are not released from this entry based on their subsequent use in USML Category XXI aircraft, foreign advanced military aircraft, or U.S. Government (USG) technology demonstrator aircraft.

Ensuring those elements are not released from paragraph (h)(1) based on subsequent use in foreign advanced military aircraft is consistent with the language of § 120.3(a)(2). With this change, the Department treats use of these commodities in foreign advanced military aircraft as it has in their use in advanced U.S. military aircraft. This addition facilitates opportunities for reuse and commonality with partner aircraft by enabling U.S. content to be utilized in those platforms without unnecessary redesigns or unmerited removal from the USML.

The Department further considered amending the language to remove commodities designed exclusively for non-Department of Defense (DoD) USG technology demonstrators from paragraph (h)(1). The Department declines to do so, as such commodities are generally not currently described in paragraph (h)(1). Specifically, USG technology demonstrators are unique among the aircraft listed in paragraph (h)(1), as some technology demonstrators are described on the USML, while others are not. The Department notes commodities used in technology demonstrators are often developed exclusively for those demonstrators or repurposed from other USML or CCL platforms for time and cost savings; those commodities must be reviewed on a case-by-case basis for proper export classification. Specifically, *for USG technology demonstrators that are themselves not described on the USML (''these aircraft''),* it is generally the case that:

—Articles designed for and used only in other aircraft listed in paragraph (h)(1) before and during subsequent unmodified use in *these aircraft* generally remain described in paragraph (h)(1), as explained by the following analysis:

—In the context of paragraph (h)(1), such articles meet the criteria in, and thus are caught by, § 120.41(a)(1) as having properties peculiarly responsible for the controlled characteristic (*i.e.,* their use in the listed aircraft), and (a)(2) for their use in or with the other listed aircraft.

—In the context of paragraph (h)(1), such articles are not released by § 120.41(b)(3), (4), or (5), as they were originally developed for aircraft described in either USML Category VIII or XXI, and the USG technology demonstrator does not enter production as defined in § 120.43.

—Articles designed for, and used in, aircraft subject to the EAR prior to unmodified use in *these aircraft* are not described in paragraph (h)(1) but may be described elsewhere on the USML, as explained by the following analysis:

—In the context of paragraph (h)(1), there are circumstances wherein such articles would be released by § 120.41(b)(3), regardless of meeting the criteria in § 120.41(a).

—With contemporaneous documentation, there are circumstances in which the articles would also be released by paragraph (b)(4) or (5).

—Articles designed for, and only used in, *these aircraft* are not described in paragraph (h)(1), but may be described elsewhere on the USML, as explained by the following analysis:

—In the context of paragraph (h)(1), such articles meet the criteria in § 120.41(a)(1) as having properties peculiarly responsible for the controlled characteristic (*i.e.,* their use in the listed aircraft), but not (a)(2) unless they are used in or with a defense article.

—In the context of paragraph (h)(1), such articles are not released by § 120.41(b)(3), as the USG technology demonstrator does not enter production. However, they could be released by paragraph (b)(4), as they were developed with the knowledge they would be used in *these aircraft,* often in a system that is subject to the EAR.

—In contrast, articles designed for, and only used in, USG technology demonstrators described on the USML are described in paragraph (h)(1), as explained in the following analysis:

—In the context of paragraph (h)(1), such articles meet the criteria in § 120.41(a)(1) as having properties peculiarly responsible for the controlled characteristic (*i.e.,* their use in the listed aircraft), and (a)(2) for their use in or with aircraft described in USML Category VIII.

In the context of paragraph (h)(1), such articles are not released by § 120.41(b)(3), (4), or (5), as they were originally developed for an aircraft described in USML Category VIII. The Department is also amending the text of the current ''Note to paragraph (h)(1),'' redesignating it as ''Note 1 to paragraph to (h)(1),'' and adding ''Note 2 to paragraph (h)(1).'' The addition of ''Note 2 to paragraph (h)(1)'' outlines an example of the scope of paragraph (h)(1) for articles used in USG technology demonstrators.

With these revisions to paragraph (h)(1) and the notes to paragraph (h)(1), the Department also terminates the temporary modification to Category VIII of the USML that was issued on December 4, 2023 (88 FR 84072) and extended on November 26, 2024 (89 FR 93170).

The Department notes certain commodities designed exclusively for DoD-funded developmental aircraft, including aircraft jointly funded by DoD and another agency, remain defense articles described in paragraph (f) of USML Category VIII.

Paragraph (h)(29) of USML Category VIII is revised to clarify the commodities described therein include both those designed for the aircraft listed and the defense articles described in paragraph (h)(1), with a change in control via the removal of commodities specially designed for USG technology demonstrators.

The note located at the end of USML Category VIII is moved to follow USML Category VIII paragraph (h), renamed ''Note 1 to paragraph (h),'' and revised for clarity, with no change in scope.

USML Category IX

USML Category IX(e)(2) is placed in reserve to eliminate redundancy. Technical data directly related to the software and databases enumerated in paragraph (b)(4) is already described in paragraph (e)(1).

USML Category X

Developmental exoskeletons have been identified as a technology warranting ITAR control due to the critical military advantage they provide. Thus, Category X is amended by removing paragraph (b) from reserve and adding a new paragraph (b) to describe exoskeletons under development for DoD, along with standard exclusions applied to other developmental articles to provide advance notice to industry and to avoid

controlling those that do not provide a critical military advantage.

The Department also amends Category X to align body armor protection levels with the most recent NIJ standard, 0123.00, ''Specification for NIJ Ballistic Protection Levels and Associated Test Threats.'' All references to ''NIJ Type IV'' have been updated to NIJ RF3. ''Note 1 to paragraph (a)(1)'' and ''Note to paragraphs (a) and (d)'' have also been updated to reference the new standard. ''Note to paragraphs (a) and (d)'' is redesignated as ''Note 1 to paragraphs (a) and (d).''

USML Category XI

USML Category XI paragraphs (c)(10)(i) and (ii) are revised to reflect that certain anti-jam antennas no longer provide a critical military advantage, with increasing commercial utilization applicable to civil GPS resiliency. Following consultations with DoD, the beam switching speed criterion in paragraph (c)(10)(i) is revised from 50 milliseconds down to one millisecond, and the convergence time criterion in paragraph (c)(10)(ii) is revised from one second down to one millisecond, as the Department seeks to control only the most sensitive and effective anti-jam antennas in USML Category XI(c)(10)(i) and (ii). The Department further intends to exclude Controlled Reception Pattern Antennas (CRPAs) for Position, Navigation, and Timing (PNT) from paragraph (c)(10). To implement this, the Department is removing all CRPAs from paragraphs (c)(10)(i) and (ii) and adding paragraphs (c)(10)(v) and (vi) to describe the CRPAs for non-PNT applications that meet the updated criteria used in paragraphs (c)(10)(i) and (ii) the CRPA antennas were moved from. In removing CRPAs for PNT, the Department intends to facilitate civil global navigation system resiliency. CRPAs use multiple elements and advanced signal processing techniques to dynamically control their reception pattern, thereby enhancing signal reception from desired directions and suppressing interference from undesired directions. Generally, in comparing CRPAs to the antennas that remain described in paragraphs (c)(10)(i) and (ii), CRPAs are more optimized to control the reception pattern instead of the transmission beam steering or switching. This is in line with the Position, Navigation, and Timing, Advisory Board's (PNTAB) recommendation to remove CRPAs from the USML. The antennas removed from the USML by these changes are neither subject to multilateral controls nor controlled as munitions in other countries that produce them. Once removed from the USML, these anti-jam antennas will become subject to the EAR under the jurisdiction of the Department of Commerce.

USML Category XII

USML Category XII paragraph (d)(2)(ii) is revised to update the language to reflect the current description of Positioning Service from Precise Positioning Service to Protected Positioning Service (PPS). In the 2021 Federal Radionavigation Plan published by the Departments of Defense, Transportation, and Homeland Security (available at *https://rosap.ntl.bts.gov/view/dot/63024*), PPS has been updated to ''Protected'' Positioning Service from the former ''Precise'' Positioning Service. This change accurately reflects the technology's ability to operate in degraded environments as opposed to legacy encryption abilities that facilitate greater position precision and no longer provide a critical military advantage.

USML Category XIII

USML Category XIII paragraph (b)(4) is revised to update the name of the Unified Cross Domain Management Office (UCDMO) to the National Cross Domain Strategy and Management Office (NCDSMO).

The Department further amends Category XIII to align armor protection levels with the most recent NIJ standard, 0123.00, ''Specification for NIJ Ballistic Protection Levels and Associated Test Threats.'' All references to ''NIJ Level III'' are updated to NIJ RF1. As the new RF1 standard corresponds to the previous Type III standard, this is not a significant change in control. The reference in paragraph (m)(10) is also updated to reference the new standard.

Additionally, paragraph (e)(2) is revised for clarification and to add paragraphs (e)(2)(i) and (ii). Category XIII is further revised to add specific fluids to the USML in paragraph (j)(3). Each of these fluids was developed for one or more critical military applications for which existing fluids were unsuitable; by including a specially designed criterion, general-purpose fluids subsequently selected for use in a military application are not described by this control. Lastly, paragraph (m)(9) is amended to clarify the definitions of variables in the equation for E_m.

USML Category XIV

Additional nerve agents and a defoliant are added to USML Category XIV in paragraphs (a)(1)(iv) through (viii) and (j), and controls on Chemical Agent Resistive Coatings (CARC) are clarified in paragraph (f)(7). The nerve agent additions are made pursuant to changes to Schedule 1 of the Chemical Weapons Convention, while the defoliant addition is a constituent of Agent Orange, for which the Department is unaware of current commercial applications.

The clarification of CARC controls in paragraph (f)(7) is made consistent with longstanding policy published on DDTC's website. As CARC is controlled only through the point of application and curing, export applications for CARC must specify the proposed end-users and end-uses, and export licenses for CARC impose limitations on the same. Of note, the control release for CARC that has been applied and cured only applies to USML Category XIV(f)(7); this release does not apply to coatings or materials described elsewhere on the USML. For example, when a USML Category XIII(j)(2) coating is applied to an item subject to the EAR, a DDTC license or other approval continues to be required for the coating, when the item to which the coating was applied is exported, reexported, or retransferred.

USML Category XIX

USML Category XIX paragraphs (d) and (f)(1) are amended to add specific DoD-funded aircraft engines in development that provide a critical military or intelligence advantage, as well as their specially designed parts, components, accessories, and attachments. Specifically, paragraph (d) is split into two parts, paragraphs (d)(1) and (2), and amended to include the XT900, which is a developmental engine resulting from the enumerated HPW3000 technology demonstrator.

The note to paragraph (d) is redesignated as the note to paragraph (d)(1), to continue its applicability to the engines in former paragraph (d) following their movement to paragraph (d)(1), with no change in scope. Paragraph (f)(1) is amended to include specially designed parts, components, accessories, and attachments for the engine now described in paragraph (d)(2), and to incorporate a portion of the note to paragraph (f)(1). The remainder of the note to paragraph (f)(1) is redesignated as ''Note 1 to paragraph (f)(1)'' and revised for clarity. Paragraph (f)(1) is further amended to clarify that parts, components, accessories, and attachments are not released if common only to a listed engine and an engine designated in USML Category XXI(a), and to add a catch-all control for XA100, XA101, XA102, XA103, and T901 engine hardware. The XA-series engines represent a substantial leap in propulsion capability. Items specially

designed for these engines provides a critical military or intelligence advantage in enabling the engines to provide improved thrust-to-weight capability while addressing fuel efficiency, affordability, and sustainment for warfighter operational readiness. The T901 powers the Future Vertical Lift platform and provides 33% more thrust than, but retains the same size as, its predecessor.

Paragraph (f)(2) is amended to clarify the items described in paragraph (f)(2) by replacing a term of art (''hot section components'') with defined regulatory terms (hot section ''parts'' and ''components''), with no change in scope, and to add related cooled structures for combustion chambers and liners. Punctuation is also updated with no change in scope.

USML Category XX

USML Category XX is amended to add paragraphs (a)(9) and (10) to control two new classes of uncrewed, untethered vessels and vehicles that provide a critical military advantage: specifically, those equipped with anti-recovery features, and larger systems with significant range or endurance. Paragraph (a)(10) includes criteria to avoid control of systems below certain weight and performance thresholds the Department assesses are best suited for scientific research or commercial applications. Tethered systems are similarly excluded from both paragraphs (a)(9) and (10).

USML Category XX(b)(2) is revised for clarity, with no change to the scope of the control.

USML Category XXI

USML Category XXI is amended to move the second sentence of paragraph (a) into a new note, and to further clarify the considerations when designating an article in USML Category XXI.

Effective Date and Updating of Licenses and Agreements

The Department notes it previously provided a 180-day transition period between the publication of the final rule for reviews of entire USML categories revised under Export Control Reform and the effective date of the transition of items to updated classifications. *See* 78 FR 22740, 22747 (Apr. 16, 2013). While the Department has also recently issued rules with shorter transition periods, the Department provides a 240-day delayed effective date for this rule. Consistent with prior revisions of USML categories, additional guidance that addresses specific licensing scenarios will be provided on DDTC's website.

Timeline for Applications, Amendments, and Grandfathering

Items Transitioning Jurisdiction From the ITAR to the EAR

Items removed from a USML paragraph by this rule may still be described in other USML paragraphs or may become subject to the export licensing jurisdiction of the Department of Commerce pursuant to the EAR. Exporters should evaluate the control status of their item using the orders of review in the ITAR and the EAR and may submit a commodity jurisdiction request to DDTC for assistance or—if there is no doubt it is subject to the EAR—a commodity classification request to BIS. Licensing requirements under the EAR are determined by the reasons for control applicable to the item, the destination, the end use, and the end user. General Order No. 5 in supplement no. 1 to part 736 of the EAR describes the transition process for items moving from the USML to the CCL upon the publication of the pertinent final rules. The general order describes the grandfathering of DDTC licenses and agreements, the use of BIS authorizations, and the submission of disclosures to BIS and DDTC related to the transition of items from the USML to the CCL.

For those wishing to export under the authority of the EAR as soon as possible for items moving from the USML to the CCL, applicants may submit license applications immediately after the publication of the BIS final rule adding such items to the CCL. Thus, applicants may, in effect, pre-position license applications early to facilitate processing of the license application. Such a pre-positioned license application will be processed in accordance with § 750.4 of the EAR, but if BIS completes processing the application prior to the effective date of the applicable final rule, BIS will hold the application without action (HWA), until the effective date of that final rule. Applications for transitioned items received after the effective date of the final rule will be processed as described in § 750.4 of the EAR.

Existing holders of DDTC licenses, agreements, or other approvals, may maintain existing authorizations or obtain new authorizations for items moving from the USML to the CCL. Questions regarding the continued use of DDTC licenses, agreements, or other approvals should be directed to DDTC.

Acceptance of Licenses

During the transition period, license applications will be accepted by both DDTC and BIS for items moving from the USML to the CCL. BIS will not issue approved licenses for such items until on or after the effective date of this rule.

DSP–5 Licenses: Licenses for items transitioning to the CCL that are issued prior to the effective date of the final rule and do not include items remaining on the USML will remain valid until expired, returned by the license holder, or for a period of three years from the effective date of the final rule, whichever occurs first, unless otherwise revoked, suspended, or terminated. Licenses containing both transitioning and non-transitioning items (mixed authorizations) will remain valid until expired or returned by the license holder, unless otherwise revoked, suspended, or terminated. Any limitation, proviso, or other requirement required by the DDTC authorization remains in effect if the DDTC authorization is relied upon for export, re-export, or re-transfer. License amendment requests received by DDTC prior to the effective date of the rule will be adjudicated on a case-by-case basis up until the effective date of the rule.

DSP–61 and DSP–73 Licenses: All temporary licenses that are issued in the period prior to the effective date of the rule will remain valid until expired or returned by the license holder, unless otherwise revoked, suspended, or terminated. Any limitation, proviso, or other requirement imposed on the DDTC authorization will remain in effect if the DDTC authorization is relied upon for export. License amendment requests received by DDTC before the effective date of the rule will be adjudicated on a case-by-case basis until the effective date of the rule. All license applications, including amendments, received after the effective date for items that are transitioning to the CCL that are not identified in an (x) paragraph entry will be Returned Without Action (RWA) with instructions to contact the Department of Commerce.

Technical Assistance Agreements, Manufacturing License Agreements, Distribution Agreements, and Related Reporting Requirements: Agreements and amendments containing both USML and CCL items will be adjudicated up to the effective date of the final rule. Agreements containing transitioning and non-transitioning items that are issued prior to the effective date of the final rule will remain valid until expired, unless they require an amendment, or for a period of three years from the effective date of the final rule, whichever occurs first, unless otherwise revoked, suspended, or terminated. In order for an agreement to remain valid beyond three years, an amendment must be submitted to

authorize the CCL items using the new (x) paragraph from the relevant USML category. Any activity conducted under an agreement will remain subject to all limitations, provisos, and other requirements stipulated in the agreement.

Agreements containing solely transitioning items issued prior to the effective date of the final rule will remain valid for a period of three years from the effective date of the rule, unless revoked, suspended, or terminated. After the three-year period ends, any ongoing activity must be conducted under the appropriate Department of Commerce authorization. Agreements and agreement amendments solely for items moving to the CCL which are received after the effective date of the rule will be Returned Without Action (RWA) with instructions to contact the Department of Commerce.

All reporting requirements for Manufacturing License Agreements and Distribution Agreements must be complied with and such reports must be submitted to the Department of State while the agreement is relied upon as an export authorization by the exporter.

Reexport/Retransfer of USML Items That Have Transitioned to the CCL: Foreign persons or U.S. persons abroad that have USML items in their inventory at the effective date of transition should review both the USML and the CCL to determine the proper export jurisdiction of those items. If the item is controlled by the Department of Commerce, any reexport or retransfer must comply with the requirements of the EAR. If doubt exists on the jurisdiction of the items, the foreign person should contact the original exporter or manufacturer. In instances when those parties are unavailable, the foreign person should review the DDTC or BIS website for guidance and support options.

Following the effective date, foreign persons (including end-users, consignees, and intermediate consignees) who receive, via a Department of State authorization, an item they are certain has transitioned to the CCL (*e.g.,* confirmed in writing by manufacturer or supplier), should treat the item as such and submit requests for post-transition reexports or retransfers to the Department of Commerce, as may be required by the EAR. If reexport or retransfer was previously authorized under an MLA or WDA that continues to provide the export authority or any stand-alone reexport/retransfer authorization received pursuant to ITAR § 123.9, such authorizations remain valid.

Items Transitioning to the USML

For those wishing to export under the authority of the ITAR as soon as possible for items moving onto the USML, applicants may submit license applications as soon as this rule is published in the **Federal Register**.

Submission of Voluntary Self-Disclosures

In reviewing the clarifications provided by this rule, if you identify a potential violation of the ITAR, you are encouraged to submit a voluntary disclosure to DDTC, consistent with the procedures outlined in § 127.12. For potential violations of the EAR, persons are encouraged to submit voluntary self-disclosures to BIS. For potential violations of both the EAR and the ITAR, persons are encouraged to submit disclosures to both agencies.

Request for Comments

Consistent with its ongoing USML review process, the Department is requesting public comments on the revisions described in this rulemaking. The Department encourages the public to provide comments directly related to this rule and responsive to the questions described below. To facilitate timely review and assessment, comments should be provided in a concise sentence or paragraph, followed by supporting explanatory paragraphs and examples, with each distinct comment treated separately (as opposed to multiple comments in one paragraph or section). The Department requests comments focused on the following questions:

1. How much would practitioners benefit from the Department defining the term ''Controlled Reception Pattern Antennas (CRPAs)'' as used in USML Category XI(c)(10)? Are there criteria, other than those described in the preamble of this rule, that may help better distinguish between CRPAs described in paragraph (c)(10)(v) and antennas described in paragraph (c)(10)(i)?

2. The addition of paragraph (h)(1)(iii) to USML Category VIII ensures that parts, components, accessories, and attachments specially designed for aircraft listed in paragraphs (h)(1)(i) and (ii) are not released from paragraph (h)(1) due to their use in foreign advanced military aircraft described in paragraphs (a)(1) and (2) of USML Category VIII.

a. The Department requests comment on its consideration of adding to paragraph (h)(1) a new paragraph (h)(1)(iv), to retain parts used in paragraphs (h)(1)(i) or (ii) aircraft even when they are used in ''aircraft described in paragraph (a)(3) of USML Category VIII,'' as the Department assesses that training aircraft described in paragraph (a)(3) often serve as proving grounds for future paragraph (a)(1) or (2) aircraft.

b. The Department requests comment on its consideration of expanding paragraph (h)(1) to add parts, components, accessories, and attachments specially designed for the foreign advanced military aircraft listed in paragraph (h)(1)(iii), even if they are not utilized in an aircraft listed in paragraph (h)(1)(i) or (ii), commensurate with the Department's regulation of similar items for the advanced U.S. aircraft described in paragraphs (h)(1)(i) and (ii). For example, what effect would describing these foreign articles in paragraph (h)(1) have on existing international defense industrial cooperation and supply chains?

3. With this rule, the Department changes paragraph (d) of USML Category XIX to read ''The following engines:'' and then describes specific aircraft engines in paragraphs (d)(1) and (2). The Department requests comment on its consideration of changing that language to ''The following engine series:'' in order to more completely describe engines that provide a critical military or intelligence advantage.

4. Paragraphs (d)(1) and (2) of USML Category XIX describe specific aircraft engines. The Department requests comment on its consideration of expanding that scope to include ''military variants'' of those engines, similar to its regulation of certain gas turbine engine parts in paragraph (f)(1)(i) of USML Category XIX for military variants of the listed engines.

5. Are there commodities, services, or technical data closely related to these revisions that warrant ITAR control, but are currently either not described on the USML, or not described with sufficient clarity? If so, please provide examples and a concise explanation.

6. Are there specific commodities, services, or technical data described on the USML following these revisions that are, or have previously been, in normal commercial use, that were previously transitioned to another agency's jurisdiction, or that were previously determined not to be subject to the ITAR via a Commodity Jurisdiction determination? If so, please include supporting documentation.

7. Are there specific commodities, services, or technical data described on the USML following these revisions for which civil use is proposed, intended, or anticipated in the next five years? Please include supporting

documentation and a point of contact familiar with the details.

8. Are there specific functions, performance levels, or characteristics related to these revisions that could better:

a. Distinguish between the commodities that do, and do not, warrant ITAR control;

b. Delineate the criteria for control, in lieu of using the term 'specially designed'; or

c. Align with the constructions or language used in other USML entries?

9. Can any of these revisions be more concisely stated?

Comment Submissions

Instructions

Include the Regulatory Information Number (RIN) (1400–AF42) for all submissions related to this rule. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Commenters are cautioned not to include proprietary, export-controlled, personal, or other sensitive information in their comments that they would not want to be made public. If such information would provide useful insight to the comment: (1) assemble that information in a separate document with proprietary markings; (2) include ''Proprietary supplement on file with: [provide POC]'' as the first line in the body of the email submission; (3) submit the public portion of the comment via email; and (4) call DDTC at (202) 663–1282 to coordinate submission of the proprietary supplement.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from the rulemaking requirements of section 553 of the Administrative Procedure Act (APA) pursuant to section 553(a)(1) as a military or foreign affairs function of the United States. Although the Department has elected to publish this interim final rule with a concurrent 30-day request for public comment and a 240-day delayed effective date, it does so without prejudice to its determination that controlling the export, reexport, retransfer, and temporary import of defense articles and defense services is a military or foreign affairs function.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule does not meet the criteria of 5 U.S.C. 804(2).

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Order 12866, as amended by Executive Orders 13563 and 14094, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. After review by the Office of Management and Budget (OMB), this rule has been deemed a ''significant regulatory action.'' This rule was undertaken pursuant to a statutory directive to periodically review the items on the USML. The Department generally determines which items warrant addition to, or removal from, the USML by assessing whether each provides a critical military or intelligence advantage based on national security and foreign policy considerations. Because the costs and benefits of changing what is controlled focus on the effect or utility of the item or service, rather than its market prevalence or economic value, quantitative analyses cannot be usefully estimated and are not available, particularly since the global prevalence or availability of the item or service are not known. Moreover, the Department does not have useful estimates or models to predict whether or how frequently the items added to the USML by this rule will be applied for export or to which countries, or for temporary import and from which countries. Qualitatively, the rule was assessed for costs and benefits. Because listing individual items or model numbers would necessarily lead to incomplete controls when an item is renamed or slightly modified, the USML contains many descriptive controls that are based on broader characteristics, including form, fit, function, and performance capability. To more accurately describe only what the Department intends to control, and to provide companies and individuals with better certainty, some USML revisions made by this rule are aimed to improve and clarify various entries and to more precisely focus controls. These revisions are also informed by confidential commodity jurisdiction determination and advisory opinion requests, submitted by industry. The Department takes into account common questions and strives to streamline and simplify USML entries based on how it understands industry experience with certain parts of the USML. Finally, when a complete redundancy is identified, as in one revision made by this rule, it is removed so that exporters, brokers, and temporary importers may better rely on a single entry, which can help to reduce compliance costs and increase the accuracy of relevant metrics. One alternative to this is inaction or delay. The Department could have waited to amend larger parts of the USML at once or continued to gather data to evaluate the controls affected by this rule. These alternatives were rejected. Statutory requirements, including section 38(f) of the Arms Export Control Act (22 U.S.C. 2778(f)), and section 1345 of the National Defense Authorization Act for Fiscal Year 2024, require a periodic review of the USML for edits like those made by this rule. While the Department continuously reviews the entire USML, it aims to focus on particular USML categories for targeted revisions in cycles, as it has done in implementing this rule.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. chapter 35.

Signing Authority

Assistant Secretary C.S. Eliot Kang, having reviewed and approved this document, has delegated the authority to electronically sign this document to Stanley L. Brown, Acting Assistant Secretary, Bureau of Political-Military Affairs, for purposes of publication in the **Federal Register**.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For reasons stated in the preamble, the Department of State amends 22 CFR part 121, the United States Munitions List, as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

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

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. Revise § 121.0 to read as follows:

§ 121.0 United States Munitions List description and definitions.

For a description of the U.S. Munitions List and its designations, including the use of asterisks and the parenthetical ''(MT)'', see § 120.10 of this subchapter. Within this part, the following definitions apply:

CCL. See Commerce Control List.

Commerce Control List means Commerce Control List in 15 CFR part 774, supplement no. 1.

Department of Defense means U.S. Department of Defense.

DoD. See Department of Defense.

EAR means Export Administration Regulations in 15 CFR parts 730 through 774.

ECCN means Export Control Classification Number, the alphanumeric designation used on the CCL. See definition at 15 CFR part 772.

Foreign advanced military aircraft means non-U.S.-origin aircraft, including foreign derivatives of U.S.-origin aircraft, in development, or entering production, after 2023 with one or more of the following advanced military capabilities: an Active Electronically Scanned Array (AESA) fire control radar, integrated signature management or electronic warfare systems, or the ability to engage targets beyond visual range (BVR).

■ 3. Amend § 121.1 as follows:
■ a. In Category II, revise Note 2 to paragraph (a)(5);
■ b. In Category IV, revise paragraph (c);
■ c. In Category V, revise paragraphs (c)(2), (e)(10), (f)(4)(x), (f)(19), and (g)(4);
■ d. In Category VII, revise Note 3 to Category VII;
■ e. In Category VIII:
■ i. Revise paragraphs (h)(1) and (29);
■ ii. Add Note 1 to paragraph (h); and
■ iii. Remove the Note at the end of the category.
■ f. In Category IX:
■ i. Revise paragraph (e)(1); and
■ ii. Remove and reserve paragraph (e)(2);
■ g. In Category X:
■ i. Revise paragraphs (a)(1) and (6);
■ ii. Add paragraph (b);
■ iii. Revise paragraph (d)(1); and
■ iv. Redesignate the Note to paragraphs (a) and (d) as Note 1 to paragraphs (a) and (d) and revise newly redesignated Note 1 to paragraphs (a) and (d).
■ h. In Category XI, revise paragraph (c)(10).
■ i. In Category XII, revise paragraph (d)(2)(ii).
■ j. In Category XIII:
■ i. Revise paragraphs (b)(4) and (d)(1) and (2);
■ ii. Redesignate Note to paragraph (d) as Note 1 to paragraph (d);
■ iii. Remove the Note to paragraph (d)(2) following newly redesignated Note 1 to paragraph (d); and
■ iv. Revise paragraphs (e)(1), (2), (5), and (6), (j), and (m)(9) and (10).
■ k. In Category XIV:
■ i. Revise paragraph (a)(1)(ii);
■ ii. Add paragraphs (a)(1)(iv) through (viii);
■ iii. Revise paragraph (f)(7); and
■ iv. Add paragraph (j).
■ l. In Category XIX, revise paragraphs (d) and (f)(1) and (2).
■ m. In Category XX:
■ i. Revise paragraphs (a)(7) and (8);
■ ii. Add paragraphs (a)(9) and (10); and
■ iii. Revise paragraph (b)(2).
■ n. In Category XXI, revise paragraph (a) and add Note 1 to Category XXI.

The revisions and additions read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category II—Guns and Armament

(a) * * *

Note 2 to paragraph (a)(5): Note 1 to paragraph (a)(5) does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

* * * * *

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines

* * * * *

(c) Equipment specially designed for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of any of the following:

(1) A commodity enumerated in paragraphs (a) or (b) of this category (MT for those systems enumerated in paragraph (a)(1) or (2) or (b)(1) of this category); or

(2) Improvised Explosive Devices (IEDs).

Note 1 to paragraph (c): This paragraph (c) includes specialized handling equipment (*e.g.,* transporters, cranes, and lifts) specially designed to handle articles enumerated in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites. The equipment in this paragraph (c) also includes specially designed robots, robot controllers, and robot end-effectors, and liquid propellant tanks specially designed for the storage or handling of the propellants controlled in USML Category V, CCL ECCNs 1C011, 1C111, and 1C608, or other liquid propellants used in the systems enumerated in paragraph (a)(1), (2), or (5) of this category.

Note 2 to paragraph (c): Aircraft Missile Protection Systems (AMPS) are controlled in USML Category XI.

* * * * *

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents

* * * * *

(c) * * *

(2) Carboranes; decaborane (CAS 17702–41–9); pentaborane (CAS 19624–22–7); and derivatives thereof (MT);

* * * * *

(e) * * *

(10) Poly-NIMMO (poly nitratomethylmethyoxetane, poly-NMMO, (poly[3-nitratomethyl-3-methyl oxetane])) (CAS 84051–81–0);

* * * * *

(f) * * *

(4) * * *

(x) Diethylferrocene (CAS 1273–97–8);

* * * * *

(19) TEPANOL (HX-878) (tetraethylenepen taamineacrylonitrileglycidol) (CAS 68412–46–4); cyanoethylated polyamines adducted with glycidol and their salts (MT for TEPANOL (HX-878));

* * * * *

(g) * * *

(4) CL-20 precursors (any molecule containing hexaazaisowurtzitane) (*e.g.,* HBIW (hexabenzylhexaazaiso wurtzitane), TAIW (tetraacetyldibenzylhexa azaisowurtzitane));

* * * * *

Category VII—Ground Vehicles

* * * * *

Note 3 to Category VII: Ground vehicles include any vehicle meeting the control parameters, regardless of: the surface upon which the vehicle is designed to operate (*e.g.,* highway, off-road, amphibious, or rail); the manner of control of the vehicle (*e.g.,* manual, remote, or autonomous); or the mode of locomotion of the vehicle (*e.g.,* wheeled, tracked, or multi-pedal).

* * * * *

Category VIII—Aircraft and Related Articles

* * * * *

(h) * * *

(1) Parts, components, accessories, and attachments specially designed for aircraft listed within paragraphs (h)(1)(i) through (ii) of this category, excluding those common to aircraft that are or were in production and are not listed within paragraphs (h)(1)(i) through (iv), as follows:

(i) B–1, B–2, B–21, F–15SE (Silent Eagle), F/A–18E/F, EA–18G, MQ–25, F–22, F–35, F–117, RQ–170, or future variants thereof;

(ii) U.S. Government technology demonstrators;

(iii) Foreign advanced military aircraft described in paragraph (a)(1), (2), or (3) of USML Category VIII; or

(iv) Aircraft included in a USML Category XXI(a) determination;

Note 1 to paragraph (h)(1): The following is an example of the scope of this paragraph (h)(1) for an article common to multiple aircraft: A part common to the F–16 (not listed within paragraphs (h)(1)(i) through (iv) of this category) and F–35 (listed) is not described in this paragraph (h)(1), while a part common only to the F–22 and F–35 (both listed) is described in this paragraph (h)(1), subject to a specially designed analysis as set forth in § 120.41 of this subchapter.

Note 2 to paragraph (h)(1): The following is an example of the scope of this paragraph (h)(1) for articles used in U.S. Government (USG) technology demonstrators: A part used only in a USG technology demonstrator, where the USG technology demonstrator is otherwise subject to the EAR, is not described in this paragraph (h)(1) (see § 120.41(b)(4)), while a part common only to the EA–18G (listed in paragraph (h)(1)(i) of this category) and a USG technology demonstrator is described in this paragraph (h)(1), subject to the analysis set forth in § 120.41 of this subchapter.

* * * * *

(29) Any of the following equipment if specially designed for defense articles described in this paragraph (h)(1) or aircraft listed in paragraph (h)(1)(i), (ii), or (iii) of this category or developmental aircraft described in paragraph (f) of this category:

(i) Scale test models;

(ii) Full scale iron bird ground rigs used to test major aircraft systems; or

(iii) Jigs, locating fixtures, templates, gauges, molds, dies, or caul plates.

Note 1 to paragraph (h): Parts, components, accessories, and attachments in paragraphs (h)(3) through (5) or paragraph (h)(7), (14), (17), or (19) of this category are licensed by the Department of Commerce when incorporated in an aircraft subject to the EAR and classified under ECCN 9A610. Replacement parts, components, accessories, and attachments remain subject to the ITAR.

* * * * *

Category IX—Military Training Equipment and Training

* * * * *

(e) * * *

(1) Directly related to the defense articles enumerated in paragraphs (a) and (b) of this category; or

* * * * *

Category X—Personal Protective Equipment

(a) * * *

(1) Body armor providing a protection level equal to or greater than NIJ RF3;

Note 1 to paragraph (a)(1): For body armor providing a level of protection of NIJ HG1, NIJ HG2, NIJ RF1, or NIJ RF2, see ECCNs 1A005 and 1A613.

Note 2 to paragraph (a)(1): See USML Category XIII(e) for controls on related materials.

* * * * *

(6) Helmets and helmet shells providing a protection level equal to or greater than NIJ RF3;

* * * * *

(b) Developmental exoskeletons funded by the U.S. Department of Defense via contract, or other funding authorization, dated after January 20, 2026; and specially designed parts, components, accessories, and attachments therefor; excluding those that are:

(1) Enumerated elsewhere on the USML;

(2) In production;

(3) Documented as subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter); or

(4) Identified in the relevant DoD contract or other funding authorization as being developed for both civil and military applications.

* * * * *

(d) * * *

(1) Ceramic or composite plates that provide protection equal to or greater than NIJ RF3;

* * * * *

Note 1 to paragraphs (a) and (d): See National Institute of Justice Classification, NIJ Standard 0123.00, or national equivalents, for a description of level of protection for armor.

* * * * *

Category XI—Military Electronics

* * * * *

(c) * * *

(10) Antennas, and specially designed parts and components therefor, other than Traffic Collision Avoidance Systems (TCAS) equipment conforming to FAA TSO C–119c, as follows:

(i) Antennas, other than Controlled Reception Pattern Antennas (CRPAs), that employ four or more elements, electronically steer angular beams, independently steer angular nulls, create angular nulls with a null depth greater than 20 dB, and achieve a beam switching speed faster than 1 millisecond;

(ii) Antennas, other than CRPAs, that form adaptive null attenuation greater than 35 dB with convergence time less than 1 millisecond;

(iii) Antennas that detect signals across multiple RF bands with matched left hand and right hand spiral antenna elements for determination of signal polarization;

(iv) Antennas that determine signal angle of arrival with an accuracy better than (less than) two degrees (*e.g.,* interferometer antenna);

(v) CRPAs specially designed for functions other than Position, Navigation, and Timing (PNT), that employ four or more elements, electronically steer angular beams, independently steer angular nulls, create angular nulls with a null depth greater than 20 dB, and achieve a beam switching speed faster than 1 millisecond; or

(vi) CRPAs specially designed for functions other than PNT, that form adaptive null attenuation greater than 35 dB with convergence time less than 1 millisecond;

* * * * *

Category XII—Fire Control, Laser, Imaging, and Guidance Equipment

* * * * *

(d) * * *

(2) * * *

(ii) Global Positioning System (GPS) receiving equipment specially designed for encryption or decryption (*e.g.,* Y-Code, M-Code) of GPS protected positioning service (PPS) signals (MT if designed or modified for airborne applications);

* * * * *

Category XIII—Materials and Miscellaneous Articles

* * * * *

(b) * * *

(4) Military or intelligence systems, equipment, assemblies, modules, integrated circuits, components, or software (including all previous or derived versions) authorized to control access to or transfer data between different security domains as listed on the National Cross Domain Strategy and Management Office (NCDSMO) Control List (UCL); or

* * * * *

(d) * * *

* (1) Ablative materials fabricated or semi-fabricated from advanced composites (*e.g.,* silica, graphite, carbon, carbon/carbon, and boron filaments) specially designed for the articles in USML Category IV or XV (MT if usable for nozzles, re-entry vehicles, nose tips, or nozzle flaps usable in rockets, space launch vehicles (SLVs), or missiles capable of achieving a range greater than or equal to 300 km); or

(2) Carbon/carbon billets and preforms that are reinforced with continuous unidirectional fibers, tows, tapes, or woven cloths in three or more dimensional planes (MT if designed for rocket, SLV, or missile systems and usable in rockets, SLVs, or missiles capable of achieving a range greater than or equal to 300 km).

Note 1 to paragraph (d)(2): This paragraph (d)(2) does not control carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only.

* * * * *

(e) * * *

(1) Spaced armor with E_m greater than 1.4 and meeting NIJ RF1 or better;

(2) Transparent armor with areal density less than or equal to 40 pounds per square foot (≤40 lb/ft^2), having either:

(i) E_m greater than or equal to 1.3 (E_m ≥1.3); or

(ii) E_m less than 1.3 (E_m <1.3) and meeting or exceeding NIJ RF1 standards;

* * * * *

(5) Composite armor with E_m greater than 1.4 and meeting or exceeding NIJ RF1;

(6) Metal laminate armor with E_m greater than 1.4 and meeting or exceeding NIJ RF1; or

* * * * *

(j) Equipment, materials, coatings, treatments, and fluids not elsewhere specified in this section, as follows:

(1) Specially treated or formulated dyes, coatings, and fabrics used in the design, manufacture, or production of personnel protective clothing, equipment, or face paints designed to protect against or reduce detection by radar, infrared, or other sensors at wavelengths greater than 900 nanometers (see USML Category X(a)(2));

* (2) Equipment, materials, coatings, and treatments that are specially designed to modify the electro-optical, radiofrequency, infrared, electric, laser, magnetic, electromagnetic, acoustic, electro-static, or wake signatures of defense articles or 600 series items subject to the EAR through control of absorption, reflection, or emission to reduce detectability or observability (MT for applications usable for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range greater than or equal to 300 km, and their subsystems. See note to paragraph (d) of this category); or

(3) Fluids, including greases, specially designed for any of the following:

(i) Aircraft listed in USML Category VIII(h)(1)(i), (ii), or (iii);

(ii) Coatings described in USML Category XIV(f)(7);

(iii) Engines listed in USML Category XIX(f)(1)(i) or (ii); or

(iv) Articles described in USML Categories XVIII (Directed Energy Weapons) or XX (Submersible Vessels and Related Articles).

* * * * *

(m) * * *

(9) E_m is the line-of-sight target mass effectiveness ratio and provides a measure of the tested armor's performance to that of rolled homogenous armor, where E_m is defined as follows:

$$E_m = \frac{(P_o - P_r)\rho_{RHA}}{AD_{Target}}$$

Where:

= density of MIL–A–12560 RHA, (7.85 g/cm^3)

P_o = Baseline Penetration of RHA

P_r = Residual Line of Sight Penetration, either positive or negative (RHA equivalent)

AD_{RHA} = Line-of-Sight Areal Density of RHA

AD_{TARGET} = Line-of-Sight Areal Density of Target

If witness plate is penetrated, P_r is the distance from the projectile to the front edge of the witness plate. If the target armor has no measurable penetration, $P_r = 0$, and the E_m equation reduces to a ratio of AD_{RHA}/AD_{TARGET}.

(10) NIJ is the National Institute of Justice and RF1 refers to the requirements specified in NIJ standard 0123.00, Specification for NIJ Ballistic Protection Levels and Associated Test Threats.

* * * * *

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

* (a) * * *

(1) * * *

(ii) O-Alkyl (equal to or less than C_{10}, including cycloalkyl) N,N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphoramidocyanidates, such as: Tabun (GA): O-Ethyl N, N-dimethylphosphoramidocyanidate (CAS 77–81–6) (CWC Schedule 1A);

* * * * *

(iv) P-alkyl (H or equal to or less than C_{10}, including cycloalkyl) N-(1-(dialkyl (equal to or less than C_{10}, including cycloalkyl) amino)) alkylidene (H or equal to or less than C_{10}, including cycloalkyl) phosphonamidic fluorides and corresponding alkylated or protonated salts; *e.g.,* N-(1-(di-n-decylamino)-n-decylidene)-P-decylphosphonamidic fluoride (CAS 2387495–99–8) and Methyl-(1-(diethylamino) ethylidene) phosphonamidofluoridate (CAS 2387496–12–8) (CWC Schedule 1A);

(v) O-alkyl (H or equal to or less than C_{10}, including cycloalkyl) N-(1-(dialkyl (equal to or less than C_{10}, including cycloalkyl) amino)) alkylidene (H or equal to or less than C_{10}, including cycloalkyl) phosphoramidofluoridates and corresponding alkylated or protonated salts; *e.g.,* O-n-Decyl N-(1-(di-n-decylamino)-n-decylidene) phosphoramidofluoridate (CAS 2387496–00–4), Methyl (1-(diethylamino) ethylidene) phosphoramidofluoridate (CAS 2387496–04–8), and Ethyl (1-(diethylamino) ethylidene) phosphoramidofluoridate (CAS 2387496–06–0) (CWC Schedule 1A);

(vi) Methyl-(bis (diethylamino) methylene) phosphonamidofluoridate (CAS 2387496–14–0) (CWC Schedule 1A);

(vii) Quaternaries of dimethylcarbamoyloxypyridines: 1-[N,N-dialkyl (equal to or less than C_{10})-N-(n-(hydroxyl, cyano, acetoxy) alkyl (equal to or less than C_{10})) ammonio]-n-[N-(3-dimethylcarbamoxy-α-picolinyl)-N,N-dialkyl (equal to or less than C_{10})

ammonio] decane dibromide (n=1–8); *e.g.,* 1-[N,N-dimethyl-N-(2-hydroxy) ethylammonio]-10-[N-(3-dimethylcarbamoxy-α-picolinyl)-N,N-dimethylammonio] decane dibromide (CAS 77104–62–2) (CWC Schedule 1A); or

(viii) Bisquaternaries of dimethylcarbamoyloxypyridines: 1,n-Bis[N-(3-dimethylcarbamoxy-α-picolyl)-N,N-dialkyl (equal to or less than C_{10}) ammonio]-alkane-(2,(n-1)-dione) dibromide (n=2–12); *e.g.,* 1,10-Bis[N-(3-dimethylcarbamoxy-α-picolyl)-N-ethyl-N-methylammonio] decane-2,9-dione dibromide(CAS 77104–00–8) (CWC Schedule 1A);

* * * * *

* (f) * * *

(7) Chemical Agent Resistant Coatings (CARC), prior to the application and curing thereof, that have been qualified to military specifications (MIL–PRF–32348, MIL–DTL–64159, MIL–C–46168, or MIL–DTL–53039); or

* * * * *

(j) Constituent elements of defoliants, as follows: 2,4,5-Trichlorophenoxyacetic acid (CAS 93–76–5).

* * * * *

Category XIX—Gas Turbine Engines and Associated Equipment

* * * * *

* (d) The following engines:

(1) AGT1500, CTS800, GE38, GE3000, HPW3000, MT7, T55, T408, or T700; or

Note 1 to paragraph (d)(1): Engines subject to the control of this paragraph (d)(1) are licensed by the Department of Commerce when incorporated in an aircraft subject to the EAR and controlled under ECCN 9A610. Such engines are subject to the controls of the ITAR in all other circumstances.

(2) XT900.

* * * * *

(f) * * *

(1) Parts, components, accessories, and attachments specially designed for the engines listed within paragraph (f)(1)(i) or (ii) of this category, excluding those common to engines that are or were in production that are not listed within paragraphs (f)(1)(i) through (iii) of this category, as follows:

(i) F101, F107, F112, F118, F119, F120, F135, F136, F414, F415, J402, T901, XA100, XA101, XA102, and XA103; and military variants thereof;

(ii) Engines described in paragraph (d)(2) of this category; or

(iii) Engines included in a USML Category XXI(a) determination.

Note 1 to paragraph (f)(1): For example, a part common to the F110 (not listed within paragraphs (f)(1)(i) through (iii) of this category) and F136 (listed) engines is not described in this paragraph (f)(1), while a part common only to the F119 and F135 (both listed) is described in this paragraph, subject to a specially designed analysis using § 120.41 of this subchapter.

* (2) Hot section parts and components (*i.e.,* combustion chambers and liners, and related cooled structures; high pressure turbine blades, vanes, disks, and related cooled structures; cooled intermediate pressure turbine blades, vanes, disks, and related cooled structures; cooled low pressure turbine blades, vanes, disks, and related cooled structures; cooled shaft-driving power turbine blades, vanes, disks, and related cooled structures; cooled augmenters; and cooled nozzles) specially designed for gas turbine engines controlled in this category;

* * * * *

Category XX—Submersible Vessels and Related Articles

(a) * * *

(7) Equipped with any mission systems controlled under this subchapter;

Note 1 to paragraph (a)(7): ''Mission system'' is defined as a ''system'' (see § 120.40(h) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

(8) Developmental vessels funded by the Department of Defense via contract or other funding authorization;

Note 1 to paragraph (a)(8): This paragraph (a)(8) does not control vessels, and specially designed parts, components, accessories, attachments, and associated equipment therefor, in production, determined to be subject to the EAR via a commodity jurisdiction determination, or identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(8): Note 1 to this paragraph (a)(8) does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (a)(8): This paragraph (a)(8) is applicable to those contracts and funding authorizations that are dated July 8, 2014, or later.

(9) Uncrewed, untethered vessels (and vehicles) that have an anti-recovery (*e.g.,* scuttle or self-destruct) feature; or

(10) Uncrewed, untethered vessels (and vehicles) with a gross weight rating exceeding three-thousand pounds (3,000 lb), that are designed to operate without human interaction for longer than 24 hours or for more than seventy nautical miles (70 nmi).

Note 1 to paragraph (a)(10): ''Gross weight rating'' in this paragraph (a)(10) means the maximum operating weight, or displacement, of the conveyance, including the fully configured weight of all fuel, fluids (excluding wet ballast open to the operating environment), payloads, other deployables or expendables (*e.g.,* countermeasures, other autonomous commodities, and torpedoes), and cargo.

* (b) * * *

(2) Electric motors specially designed for submarines that have a power output of more than 0.75 MW (1,000 hp), and are all of the following:

(i) Quick reversing;

(ii) Liquid cooled; and

(iii) Totally enclosed.

* * * * *

Category XXI—Articles, Technical Data, and Defense Services Not Otherwise Enumerated

* (a) Any article not enumerated on the U.S. Munitions List may be included in this category until such time as the appropriate U.S. Munitions List category is amended to describe the article.

* * * * *

Note 1 to Category XXI: The decision to designate an article in this category, whether to designate a catch-all control for that article, the Significant Military Equipment designation of those articles, and any exclusion of those articles from eligibility for specific licensing exemptions, shall be made by the Director, Office of Defense Trade Controls Policy.

Stanley L. Brown,

Acting Assistant Secretary, Political-Military Affairs, U.S. Department of State.

[FR Doc. 2025–01313 Filed 1–16–25; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 58 and 1005

[Docket No. FR–5593–N–05]

RIN 2577–AD01

Strengthening the Section 184 Indian Housing Loan Guarantee Program; Extension of Compliance Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; extension of compliance date.

SUMMARY: This document extends the compliance date for HUD's final rule entitled ''Strengthening the Section 184 Indian Housing Loan Guarantee Program'' (the final rule). HUD is

extending the compliance date from March 1, 2025, to December 31, 2025 to provide additional time for HUD to develop and implement a comprehensive handbook, to prepare new forms, and to allow Tribes, lenders, servicers, and other participants time to conform their policies, procedures, and systems to comply with the final rule.

DATES: The compliance date announced on June 14, 2024, at 89 FR 20032, is extended from March 1, 2025, to December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Chung-Yiu ''Andrew'' Lee, Senior Native American Policy Advisor, Office of Loan Guarantee, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4108, Washington, DC 20410; email at *Section184comments@hud.gov* or telephone number 202–402–6190 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 20, 2024, HUD published the final rule (89 FR 20032), which amended the regulations to the Section 184 Indian Housing Loan Guarantee Program (Section 184 Program). Since its inception, the Section 184 Program has experienced an increase in demand. As a result, the final rule updated program regulations to minimize potential risk and increase program participation by financial institutions, and added eligibility and participation requirements for Lender Applicants, Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders and Servicers and other Section 184 Program participants. The final rule also clarified the rules governing Tribal participation in the program, established underwriting requirements, specifies rules on the closing and endorsement process, established stronger and clearer servicing requirements, established program rules governing claims submitted by servicers and paid by HUD, and added standards governing monitoring, reporting, sanctions, and appeals. Lastly, the final rule added new definitions and makes statutory conforming amendments, including the categorical exclusion of the Section 184 Program in HUD's environmental review regulations.

On June 14, 2024, HUD published a document in the **Federal Register** (89 FR 50523) announcing that the final rule's effective date would be delayed from June 18, 2024, to December 31, 2024, with a compliance date of March 1, 2025.

II. Delay of Compliance Date

HUD is currently drafting a handbook to implement the final rule. The handbook will provide comprehensive guidance and clarification for all stakeholders to fully understand and implement the final rule. Given the size of the handbook, its accompanying forms, and level of additional consultation with stakeholders needed to complete the handbook, HUD has determined that it needs additional time to draft this document. Further, HUD has heard from Tribes, lenders, servicers, and other participants that additional time is needed after the publication of the handbook for these stakeholders to conform their policies, procedures, and systems to comply with handbook and the final rule. As a result of these factors, HUD is extending the compliance date of March 1, 2025, established at 89 FR 50523, to December 31, 2025.

Dominique Blom,

General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. 2025–01300 Filed 1–16–25; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 575

Annual Adjustment of Civil Monetary Penalty To Reflect Inflation

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: In compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) and Office of Management and Budget (OMB) guidance, the National Indian Gaming Commission (NIGC or Commission) is amending its civil monetary penalty rule to reflect an annual adjustment for inflation in order to improve the penalty's effectiveness and maintain its deterrent effect. The Act provides that the new penalty level must apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: This rule is applicable beginning on January 15, 2025.

FOR FURTHER INFORMATION CONTACT: Armando J. Acosta, Senior Attorney, Office of General Counsel, National Indian Gaming Commission, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74). Beginning in 2017, the Act requires agencies to make annual inflationary adjustments to their civil monetary penalties by January 15th of each year, in accordance with annual OMB guidance.

II. Calculation of Annual Adjustment

In December of every year, OMB issues guidance to agencies to calculate the annual adjustment. According to OMB, the cost-of-living adjustment multiplier for fiscal year 2025 is 1.02598, based on the Consumer Price Index for the month of October 2024, not seasonally adjusted.

Pursuant to this guidance, the Commission has calculated the annual adjustment level of the civil monetary penalty contained in 25 CFR 575.4 (''The Chairman may assess a civil fine, not to exceed $63,992 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation . . .''). The 2025 adjusted level of the civil monetary penalty is $65,655 ($63,992 × 1.02598 = $65,654.51).

III. Regulatory Matters

Regulatory Planning and Review

This final rule is not a significant rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy or will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients.

(4) This regulatory change does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Commission certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes annual adjustments for inflation.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate of more than $100 million per year on state, local, or tribal governments or the private sector. The rule also does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings

Under the criteria in Executive Order 12630, this final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' Thus, a takings implication assessment is not required.

Federalism

Under the criteria in Executive Order 13132, this final rule has no substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation. It is written in clear language and contains clear legal standards.

Consultation With Indian Tribes

In accordance with the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments,* Executive Order 13175 (59 FR 22951, November 6, 2000), the Commission has determined that consultations with Indian gaming tribes is not practicable, as Congress has mandated that annual civil penalty adjustments in the Act be implemented no later than January 15th of each year.

Paperwork Reduction Act

This final rule does not affect any information collections under the Paperwork Reduction Act.

National Environmental Policy Act

This final rule does not constitute a major federal action significantly affecting the quality of the human environment.

Information Quality Act

In developing this final rule, the Commission did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply

This final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of this Regulation

The Commission is required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule that the Commission publishes must:

(a) be logically organized;

(b) use the active voice to address readers directly;

(c) use clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

Required Determinations Under the Administrative Procedure Act

In accordance with the Act, agencies are to annually adjust civil monetary penalties without providing an opportunity for notice and comment, and without a delay in its effective date. Therefore, the Commission is not required to complete a notice and comment process prior to promulgation.

List of Subjects in 25 CFR Part 575

Administrative practice and procedure, Gaming, Indians-lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 575 as follows:

PART 575—CIVIL FINES

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 575.4 [Amended]

■ 2. Amend § 575.4, in the introductory text, by removing ''$63,992'' and adding in its place ''$65,655''.

Dated: January 13, 2025.

Sharon M. Avery,

Chair (Acting).

Jean C. Hovland,

Vice Chair.

[FR Doc. 2025–01060 Filed 1–16–25; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10016]

RIN 1545–BO07

Taxable Income or Loss and Currency Gain or Loss With Respect to a Qualified Business Unit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; correction and correcting amendments.

SUMMARY: This document includes corrections to a final regulation (Treasury Decision 10016) published in the **Federal Register** on Wednesday, December 11, 2024. Treasury Decision 10016 contained final regulations relating to the determination of taxable income or loss and foreign currency gain or loss with the respect to a qualified business unit.

DATES: These corrections are effective on January 17, 2025. For dates of applicability, see § 1.987–15.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations generally, Adam G. Province at (865) 329–4546; concerning the character and source of section 987 gain or loss, Larry Pounders at (202) 317–5465; concerning consolidated groups, Jeremy Aron-Dine

at (202) 317–6847 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 10016) that are the subject of this correction are under sections 861, 985 through 989, and 1502 of the Internal Revenue Code.

Corrections to Publication

Accordingly, FR Doc. 2024–28372 (TD 10016) appearing on page 100138 in the **Federal Register** on Wednesday, December 11, 2024, is corrected as follows:

1. On page 100155, in the third column, under the caption ''A. Loss Suspension Rule 1. In General'', the second line of the third full paragraph is corrected to read ''proposed § 1.987–11(c)''.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction to the Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.987–1 is amended by revising the first sentence of paragraph (b)(3)(ii)(A) to read as follows:

§ 1.987–1 Scope, definitions, and special rules.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) * * * Solely for purposes of section 987, an owner may elect to treat all section 987 QBUs with the same functional currency as a single section 987 QBU except to the extent provided in paragraph (b)(3)(ii)(B) of this section. * * *

* * * * *

■ **Par. 3.** Section 1.987–2 is amended by revising the second sentence of paragraph (c)(10)(xviii)(B)(*2*) to read as follows:

§ 1.987–2 Attribution of items to eligible QBUs; definition of a transfer and related rules.

* * * * *

(c) * * *

(10) * * *

(xviii) * * *

(B) * * *

(*2*) * * * Under § 1.987–5(c)(4) and § 1.987–8(e), a termination of a section 987 QBU is treated as a remittance of all the gross assets of the section 987 QBU to the owner on the date of the termination. * * *

* * * * *

§ 1.1502–13 [Amended]

■ **Par. 4.** Section 1.1502–13 is amended by redesignating the second occurrence of paragraph (j)(10)(vi) as (j)(10)(vii).

Regina L. Johnson,

Federal Register Liaison, Publications and Regulations Section, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2025–01248 Filed 1–16–25; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Docket No. OAG 172; AG Order No. 6146–2025]

Office of Legal Policy

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Code of Federal Regulations to update the organizational description of the Office of Legal Policy to reflect current practice.

DATES: This rule is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, RFK Main Justice Building, 950 Pennsylvania Avenue NW, Room 4252, Washington, DC 20530. Telephone: (202) 514–8059.

SUPPLEMENTARY INFORMATION:

I. Background

In the Department of Justice's organizational regulations, 28 CFR 0.23 describes the ''General Functions'' of the Office of Legal Policy (''OLP''), but some of those provisions are out of date. For that reason, this final rule revises § 0.23 to better reflect OLP's current structure and functions. The final rule also removes two other regulatory provisions—28 CFR 0.23b and 0.15(f)—because they reference a former OLP entity that no longer exists.

II. Administrative Procedure Act

This rule is a rule of agency organization and procedure, and relates to the internal management of the Department of Justice. It is therefore exempt from the requirements of notice and comment and a delayed effective date. 5 U.S.C. 553(b), (d).

III. Regulatory Requirements

A. Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required to be prepared for this final rule since the Department was not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 604(a).

B. Executive Orders 12866, 13563, and 14094: Regulatory Planning and Review

This final rule has been drafted and reviewed in accordance with Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review). This action is limited to agency organization, management, and personnel matters and therefore is not a ''regulation'' or ''rule'' under Executive Order 12866, section 3(d)(3). Accordingly, this action has not been reviewed by the Office of Management and Budget.

C. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have federalism implications warranting the preparation of a federalism summary impact statement.

D. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

E. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year (adjusted for inflation), and it does not establish requirements that might significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Congressional Review Act

This action pertains to agency management, personnel, and

organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act. *See* 5 U.S.C. 804(3)(B), (C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegation (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.15 [Amended]

■ 2. Remove and reserve § 0.15(f).

■ 3. Revise § 0.23 to read as follows:

§ 0.23 General functions.

The Office of Legal Policy shall be headed by an Assistant Attorney General. The principal responsibilities of the Office shall be to plan, develop, and coordinate the implementation of major policy initiatives of high priority to the Department and to the Administration. In addition, the Assistant Attorney General, Office of Legal Policy, shall:

(a) Examine and study legislation and other policy proposals and coordinate Departmental efforts to secure enactment of those of special interest to the Department and the Administration.

(1) Assist in reviewing and coordinating draft regulatory actions, notices, and significant guidance documents prepared by Department components, including by coordinating with the Office of Management and Budget (''OMB'') on regulatory actions subject to OMB review under Executive Order 12866 and related directives, and supporting the Department's review of draft documents prepared by other agencies that are referred to the Department by OMB or other agencies as part of interagency regulatory review processes.

(2) Advise and assist the Attorney General and the Deputy Attorney General regarding the selection and appointment of Federal judges.

(3) Represent the Department on the Administrative Conference of the United States and, as appropriate, on regulatory reform bodies.

(4) Participate, as appropriate, in internal budget meetings of the Department with regard to policy implications of resource allocations and resource implications of major policy initiatives; and advise the Assistant Attorney General for Administration with regard to information requirements for Departmental policy formulation.

(5) Advise appropriate Departmental officials, from time to time, on investigation, litigation, negotiation, penal, or correctional policies to ensure the compatibility of those policies with overall Departmental goals.

(6) Perform such other duties and functions as may be specially assigned by the Attorney General and the Deputy Attorney General.

(b) In carrying out the responsibilities under this section, the Assistant Attorney General, Office of Legal Policy, shall have the right to call upon the relevant Departmental units for personnel and other assistance.

§ 0.23b [Removed]

■ 4. Remove § 0.23b.

Date: January 14, 2025

Merrick B. Garland,

Attorney General.

[FR Doc. 2025–01339 Filed 1–16–25; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Docket No. JMD 163; AG Order No. 6145–2025]

Office of the Executive Secretariat

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Department's organizational regulations to establish the functions of the Office of the Executive Secretariat.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Adam Kirschner, Chief of Staff and Senior Counsel, Office of the Executive Secretariat, *adam.kirschner@usdoj.gov* or *DOJExecSec@usdoj.gov,* (202) 514–2063.

SUPPLEMENTARY INFORMATION:

I. Summary

The Office of the Executive Secretariat (OES), headed by the Executive Secretary, was established as a separate component of the Department of Justice on August 17, 2023. OES's functions were previously performed by a staff within the Justice Management Division. As a standalone component, OES's functions, which broadly relate to managing the review and approval of official Department of Justice leadership documents and correspondence, are set forth in this regulation. This rule also revises 28 CFR 0.1 to add the Office of the Executive Secretariat to the list of Department components.

II. Administrative Procedure Act

This rule is a rule of agency organization, procedure, and practice and is limited to matters of agency management and personnel, and it is not a substantive rule. Therefore, this rule is exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), (b)(A), (d).

III. Regulatory Analyses

In developing this final rule, the Department considered numerous statutes and executive orders applicable to the rulemaking process. The Department's analysis of the applicability of those statutes and Executive orders to this rule is summarized below.

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094. This rule is limited to agency organization, management, and personnel as described by Executive Order 12866, section 3(d)(3), and therefore is not a ''regulation'' or ''rule'' as defined by that Executive order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–12, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. 5 U.S.C. 601.

A Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. 5 U.S.C. 603–604.

C. Paperwork Reduction Act

This final rule does not call for a new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

D. Executive Order 13132 (Federalism)

A rule has federalism implications under Executive Order 13132 if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. E.O. 13132, sec. 1(a). The Department has analyzed this final rule under that order and determined that this rule does not have federalism implications.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to determine whether a rule, if promulgated, will result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) or more in any one year. 2 U.S.C. 1532(a). This final rule does not require or result in expenditures by any of the above-named entities.

F. Executive Order 12988 (Civil Justice Reform), Plain Language

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have Tribal implications under Executive Order 13175 because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

H. Congressional Review Act

This rule relates to agency management, personnel, and organization, and does not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3)(B), (C). This action is accordingly not a ''rule'' as that term is used in the Congressional Review Act, *see* 5 U.S.C. 804(3), and the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects for 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

Authority and Issuance

For the reasons stated above, the Department of Justice amends 28 CFR part 0 as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Revise § 0.1 to read as follows:

§ 0.1 Organizational units.

The Department of Justice shall consist of the following principal organizational units:

TABLE 1 TO § 0.1

Offices:
- Office of the Attorney General.
- Office of the Deputy Attorney General.
- Office of the Associate Attorney General.
- Office of the Solicitor General.
- Office of Legal Counsel.
- Office of Legislative Affairs.
- Office of Professional Responsibility.
- Office of Legal Policy.
- Office of Public Affairs.
- Office of the Pardon Attorney.
- Office of Special Counsel for Immigration Related Unfair Employment Practices.
- Community Relations Service.
- Executive Office for Immigration Review.
- Executive Office for United States Attorneys.
- Executive Office for United States Trustees.
- INTERPOL—United States National Central Bureau.
- Office of International Programs.
- Office of Community Oriented Policing Services.
- Office on Violence Against Women.
- Office of the Federal Detention Trustee.
- Professional Responsibility Advisory Office.
- Office of Tribal Justice.
- Office for Access to Justice.
- Office of the Executive Secretariat.

Divisions:
- Antitrust Division.
- Civil Division.
- Civil Rights Division.
- Criminal Division.
- Environment and Natural Resources Division.
- National Security Division.
- Tax Division.
- Justice Management Division.

TABLE 1 TO § 0.1—Continued

Bureaus:
Federal Bureau of Investigation.
Bureau of Prisons.
Drug Enforcement Administration.
Office of Justice Programs (and related agencies).
United States Marshals Service.
Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Boards:
Board of Immigration Appeals.
U.S. Parole Commission.
Foreign Claims Settlement Commission.

■ 3. Add subpart O–1, consisting of § 0.81, to read as follows:

Subpart O–1—Office of the Executive Secretariat

§ 0.81 Office of the Executive Secretariat.

(a) The Office of the Executive Secretariat is headed by an Executive Secretary. The Executive Secretary is appointed by the Attorney General and reports to the Deputy Attorney General.

(b) The Office of the Executive Secretariat shall:

(1) Ensure that official documents requiring the review, approval, or signature by the Attorney General, Deputy Attorney General, or Associate Attorney General are assigned, tracked, and cleared within the Department of Justice, as appropriate.

(2) Manage select correspondence within the Department of Justice. Correspondence refers to written communication from Department stakeholders addressed to the Attorney General, Deputy Attorney General, or the Associate Attorney General, or, as appropriate, other leadership within the Department of Justice.

(3) Manage select interagency requests for official approval or concurrence by the Attorney General, Deputy Attorney General, or Associate Attorney General; Departmental clearances; and submissions from other agencies for review within the Department of Justice.

(4) Ensure that records maintained by the Office of the Executive Secretariat are managed and preserved in accordance with applicable statutes, regulations, and policies, including but not limited to the Federal Records Act, Privacy Act of 1974, Freedom of Information Act, and U.S. National Archives and Records Administration-approved records schedules.

(5) Perform such other duties and assignments as directed by the Attorney General or the Deputy Attorney General.

Dated: January 14, 2025.

Merrick B. Garland,

Attorney General.

[FR Doc. 2025–01338 Filed 1–16–25; 8:45 am]

BILLING CODE 4410–PR–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is an independent adjudicatory agency that provides trials and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (the ''Mine Act''). Trials are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. This rule makes final revisions to many of the Commission's procedural rules. The Commission makes these changes in a continued effort to ensure the just, speedy, and inexpensive determination of all proceedings before the Commission.

DATES: These final rules are effective on March 3, 2025. The Commission will accept written and electronic comments received on or before February 18, 2025.

ADDRESSES: Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Ave. NW, Suite 520N, Washington, DC 20004–1710. Electronic comments should state ''Comments on Procedural Rules'' in the subject line and be sent to *RulesComments@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434–9935.

SUPPLEMENTARY INFORMATION: The final rules will apply to cases initiated after the rules take effect. The final rules also will apply to further proceedings in cases pending on the effective date, except to the extent that such application would be infeasible or unfair, in which event the former procedural rules would continue to apply.

I. Background

In October 2020, the Commission published a Notice of Proposed Rulemaking (''NPRM''). 85 FR 63,047 (Oct. 6, 2020). In the notice, the Commission explained that it proposed both new rules and revisions to its current rules that reflect the Commission's practices. The Commission proposed adding new Commission Procedural Rule 32 which pertained to motions to reopen orders that have become final as the result of a failure to make a timely filing. The Commission also proposed new Commission Procedural Rule 72 which described the method by which the Commission empanels Commissioners, as authorized by section 113(c) of the Mine Act, 30 U.S.C. 823(c). The Commission proposed adding provisions to § 2700.5(e) for protecting sensitive commercial information, and for placing sensitive documents under Commission seal. In addition, the Commission proposed numerous changes with respect to § 2700.80, which more fully describe the Commission's process for investigating and making determinations in disciplinary proceedings. Finally, the Commission proposed more technical changes, including those necessitated by the evolution of the Commission's electronic management of its dockets, as well as other corrections and stylistic changes.

Although the proposed rules were procedural in nature and did not require notice and comment publication under

the Administrative Procedure Act (''APA''), 5 U.S.C. 551, 553(b)(3)(A), the Commission invited comment from the interested public until December 7, 2020. The Commission received comments from the Secretary of Labor through the U.S. Department of Labor's Office of the Solicitor (''the Secretary''), the United Mine Workers of America (''the UMWA''), and another member of the mining bar who practices before the Commission. As discussed in the section-by-section analysis below, some changes have been made in response to the comments received.

II. Section-By-Section Analysis

Set forth below is an analysis of the comments received on the Commission's proposed rules and the final actions taken.

A. Changes Related to the Commission's Paperless Docketing System

In 2014, the Commission began using an electronic case management system (''eCMS'') in order to more efficiently manage its caseload. In late 2013, the Commission published interim rules permitting parties to file and serve documents electronically. 78 FR 77354 (Dec. 23, 2013). The Commission later adopted those interim rules as final rules. 84 FR 59931 (Nov. 7, 2019). Although parties may continue to file documents non-electronically with the Commission as they have in the past, unless otherwise directed by the Commission in response to emergencies and special circumstances such as the COVID–19 considerations, experience has shown that a vast majority of documents are filed electronically through eCMS.

The Commission proposed changes to its procedural rules in recognition that most documents are filed electronically and that eCMS will likely evolve. For instance, it is likely that in the future, eCMS will allow parties to serve documents electronically through the system. Currently, parties may serve documents electronically only through the use of email. The Commission proposed changing its service requirements to allow parties to serve documents electronically by other means in addition to email in anticipation of such changes to eCMS. These proposed changes appear identically in §§ 2700.7(c) (general service requirements); 2700.9(a) (motions for extensions of time); 2700.24(d) (filing and service of documents in emergency response plan dispute proceedings; 2700.45(a) and 2700.45(f) (service in temporary reinstatement proceedings); 2700.46(d) (service of documents in temporary relief proceedings); 2700.70(f) (motions for leave to exceed page limit relating to petitions for discretionary review); and 2700.75(f) (motions for leave to exceed page limit relating to briefs).

In addition, documents issued by the Commission may be offered in electronic format rather than in paper format to parties. Consequently, the Commission proposed deleting provisions in §§ 2700.4(b)(1), 2700.24(f)(1), 2700.45(e)(3), 2700.54, 2700.66(a) that specify a method of postal mail for the issuance of documents by the Commission under those provisions. Although the Mine Act does not specify the method by which the Commission must distribute its issuances, the Commission intends to use the most expeditious means reasonably available which is appropriate under the circumstances. Because Commission Procedural Rules 24 (emergency response plan dispute proceedings) and 45 (temporary reinstatement proceedings) deal with expedited proceedings, they shall retain their current language stating that the parties shall be notified of the Judge's decision or determination by the ''most expeditious means reasonably available.'' The Commission proposed adding similar language to Commission Procedural Rule 66 (summary disposition of proceedings) in paragraph (a) stating that the order to show cause shall be provided to the party who has failed to comply by ''the most expeditious means reasonably available.''

The Commission received no comments regarding these proposed changes and adopts them as proposed.

B. Gender-Specific Pronouns

The masculine gender is currently used throughout the Commission's Procedural Rules. The Commission proposed changing the gender-specific pronouns in its rules to more gender-neutral language. Conforming changes were proposed for §§ 2700.4(a); 2700.6(a)(1), (a)(2)(ii) and (b); 2700.8 (Example 2); 2700.20(d); 2700.24(e)(2)(i) and (ii); 2700.25; 2700.26; 2700.27; 2700.41(a); 2700.45(b), (c), (d) and (g); 2700.55(h); 2700.56(c); 2700.58(c); 2700.61; 2700.62; 2700.63(b); 2700.68(a) and (b); 2700.69(a), (b) and (c); 2700.73(b); 2700.75(a)(1) and (e); and 2700.76(a)(1)(i); 2700.81(a) and (c). The Commission also proposed deleting the provision in Procedural Rule 1(c) that currently states that ''[w]herever the masculine gender is used in these rules, the feminine gender is also implied.'' 29 CFR 2700.1(c). In addition, the Commission proposed revising references in § 2700.83 from ''Chairman'' to ''Chair.''

The Commission received no comments regarding these proposed changes and adopts them as proposed.

C. Consistency in Use of Language

1. References to Pleadings

The term ''pleading'' generally refers to those documents filed in the beginning stage of proceedings in which parties formally submit their claims and defenses (*i.e.,* petitions, answers). The Commission's rules sometimes erroneously use the term ''pleading,'' when the use of a more generic term, such as ''document'' or ''filing'' is intended. The Commission proposed changing the term ''pleading'' to the term ''document'' or ''filing'' when the more generic term is intended in §§ 2700.4(c), 2700.5(h), 2700.8(b) and Example 2, 2700.10(b), 2700.11, 2700.24(d), 2700.45(a) and (f), 2700.46(d), and 2700.53(a)(4).

The Commission received no comments regarding these proposed changes and adopts them as proposed.

2. References to Website

The Commission proposed changing all references from ''website'' to ''website,'' in keeping with current accepted usage. Such changes are proposed with respect to §§ 2700.1(a)(1), and 2700.5(b), (c)(1), (f)(1), and (j).

The Commission received no comments regarding these proposed changes and adopts them as proposed.

3. References to Judge and Secretary of Labor

The Commission proposed capitalizing the word ''Judge'' wherever it appears in the Commission's Procedural Rules. Such changes were proposed with respect to §§ 2700.24(f)(2) and 2700.67(e).

The Commission also proposed making changes to references to the Secretary of Labor, noting that the rules variously refer to the Secretary of Labor as ''Secretary'' and ''Secretary of Labor.'' The Commission proposed that the first reference in the text of a rule would be to the ''Secretary of Labor,'' with a parenthetical indicating that subsequent references would be to the ''Secretary.''

The Commission received one comment regarding these proposed changes. The Secretary suggested that in order to streamline the rules, the Commission could explain the shortened reference to the Secretary in just one rule, for example, in Commission Procedural Rule 1. In addition, the Secretary commented that the word ''Judge'' should be replaced by

''ALJ'' or ''administrative law judge'' in order to distinguish between the Commission's administrative law judges and federal district court judges.

The Commission agrees with the Secretary that the rules should explain the shortened reference to the Secretary in just one rule. The Commission believes that the explanation is more appropriately made in Rule 2, which pertains to ''Definitions,'' rather than in Rule 1. Accordingly, in Rule 2, the Commission clarifies that references to the ''Secretary'' are to ''the Secretary of Labor'' or the ''Acting Secretary of Labor.'' This change affects § 2700.8, Example 3.

In addition, the Commission has revised Rule 2 to clarify that a Commission Administrative Law Judge shall be referred to as an ''ALJ'' throughout the Commission's rules. This change affects §§ 2700.1, 2700.3, 2700.4, 2700.5, 2700.8, 2700.11, 2700.12, 2700.24, 2700.30, 2700.31, 2700.44, 2700.45, 2700.47, 2700.50, 2700.51, 2700.53, 2700.55, 2700.56, 2700.57, 2700.58, 2700.59, 2700.60, 2700.61, 2700.62, 2700.64, 2700.65, 2700.66, 2700.67, 2700.68, 2700.69, 2700.70, 2700.71, 2700.73, 2700.75, 2700.76, 2700.80, 2700.81, and 2700.82.

4. References to Discrimination

The Commission did not propose any changes to references to discrimination in the NPRM.

The Secretary commented that references to ''discrimination'' that appear in the rules should also be to ''interference.''

Section 105(c) of the Mine Act, 30 U.S.C. 815(c), refers to both discrimination and interference. The Commission recognizes that proceedings involving alleged discrimination, interference, or both are processed in an identical manner procedurally. The Commission agrees that references to ''discrimination'' in the Commission's Procedural Rules should also be to ''interference.'' This change impacts Rules 7(a); 40(a) and (b); 41(a) and (b); 42, 43, 44(a) and (b); and 45(b).

D. Subpart A—General Provisions

§ 2700.3 Who May Practice

The Commission proposed revising Commission Procedural Rule 3 to clarify who may appear before the Commission as a representative of a party, and the conduct required of, and actions prohibited by, those who appear before the Commission. The proposed revisions set forth the requirements for making an appearance and listed those persons who may represent a party or subpoenaed witness. The proposed revisions further provided that all individuals authorized to practice before the Commission, including attorney representatives and other non-attorney persons, shall be subject to the standards of conduct and disciplinary proceedings set forth in 29 CFR 2700.80. As discussed below, the Commission proposed revising Commission Procedural Rule 80(a) to state in part that the American Bar Association's Model Rules of Professional Conduct shall be considered in the Commission's disciplinary proceedings.

The Commission received only one comment regarding the proposed changes. The Secretary agreed with proposed paragraph (b)(4), which states in part that an employee of a governmental agency need not seek the presiding Judge's approval before representing a party before the Commission. The Secretary further commented that, consistent with proposed paragraph (b)(4), because Conference and Litigation Representatives (''CLRs'') need not get prior approval before representing a party, conforming changes should be made to Rule 31(c)(2). The Secretary noted that § 2700.31(c)(2) currently requires CLRs to include language in proposed settlement orders stating that the Judge accepts the CLR to represent the Secretary.

Upon further consideration, the Commission found unnecessary proposed paragraph (e) specifying actions prohibited by representatives. The Commission believes that the standard of conduct required of representatives is adequately addressed by the changes to Rule 80. Accordingly, the Commission is withdrawing proposed paragraph (e) pertaining to prohibited actions. The Commission otherwise adopts Rule 3 as proposed. In addition, the Commission agrees with the Secretary's comment and has made conforming changes to Rule 31.

§ 2700.4 Parties, Intervenors, and Amici Curiae

Current Commission Procedural Rule 5, 29 CFR 2700.5, provides that parties may file documents by electronic means and non-electronic means and provides instructions for doing so. The Commission proposed revising § 2700.4(b) to state that notices of intervention shall be filed in accordance with the filing requirements set forth in Commission Procedural Rule 5. In addition, as noted with respect to changes related to the Commission's paperless docketing system, the Commission proposed deleting the reference in current § 2700.4(b)(1) that appears to recognize that copies of a notice of intervention may be provided by the Commission only by postal mail.

The Commission received no comments regarding these proposed changes and adopts them as proposed.

§ 2700.5 General Requirements for Pleadings and Other Documents; Status or Informational Requests

The Commission proposed inserting ''filing requirements'' in the title of Rule 5 in recognition that a large part of Rule 5 pertains to filing requirements. The Commission received no comments regarding this proposed change and adopts it as proposed.

The Commission also proposed revising paragraph (a) to replace an erroneous citation of ''30 U.S.C. 820(c)'' with the correct citation of ''30 U.S.C. 820.'' The Commission received no comments regarding this proposed change and adopts it as proposed.

Paragraph (c)(2) of Rule 5 (§ 2700.5(c)(2)) provides instructions for filing documents by non-electronic means. The Commission proposed two changes with respect to this paragraph. First, the Commission proposed amending paragraph (c)(2)(i) of Rule 5 to require that filings submitted by a means other than electronic transmission should be sent to the Commission's Docket Office rather than to the Commission's Executive Director. The Commission's Executive Director plays no role with respect to filings, and the proposed change reflects the Commission's actual practice. The Commission proposed a conforming change to Rule 4(b)(1) (§ 2700.4(b)(1)). The Commission received no comments regarding these proposed changes and adopts them as proposed.

Second, the Commission proposed deleting paragraph (c)(2)(iii) as superfluous and possibly confusing. Paragraph (2)(c) sets forth filing instructions pertaining to the following specific timeframes: (i) before a Judge has been assigned; (ii) after a Judge has been assigned; (iii) interlocutory review; and (iv) after a Judge has issued a final decision. Section 2700.5(c)(2)(iii) relating to documents filed in connection with interlocutory review is unnecessary and possibly confusing because such documents also fall under § 2700.5(c)(2)(ii) (after a Judge has been assigned). In addition, § 2700.5(c)(2)(iii) refers the reader to § 2700.76, which does not provide detailed information about how to file documents non-electronically. The Commission received no comments regarding this proposed change and adopts it as proposed.

The Commission proposed revising paragraph (e) of Commission Procedural Rule 5 in order to address various privacy considerations. Parties sometimes provide confidential commercial information to the Commission. Further, a party may request documents from an opposing party that contain such information. The Commission proposed adding paragraph (5) to § 2700.5(e) in order to include a requirement that parties take steps to protect their confidential commercial information. In addition, while the Commission's Judges already consider and decide motions to place records under seal, currently there is no Commission rule that specifically addresses the Commission's procedure for doing so. The Commission proposed adding paragraph (6) to § 2700.5(e) in order to expressly address the procedures for placing documents under Commission seal.

The Commission received two comments regarding the proposed changes to § 2700.5(e). The Secretary commented that proposed § 2700.5(e)(6) should be revised to permit in camera review in appropriate cases. The UMWA commented that the Commission should clarify what constitutes ''sensitive commercial information.''

The Commission recognizes that Judges already order in-camera review in appropriate circumstances. The Commission has added language to Rule 5(e)(6) to permit in-camera review in order to clarify and codify the Commission's practice.

Regarding the UMWA's comment that the Commission should clarify what constitutes ''sensitive commercial information,'' the Commission notes that such language appears only in the preamble of the NPRM, rather than in Rule 5. Proposed § 2700.5(e) referred to ''confidential commercial information.'' The Commission added language to § 2700.5(e) clarifying that ''confidential commercial information'' is defined in 29 CFR 2702.6(a)(1).

Paragraph (j) of Rule 5 sets forth the manner in which status or informational requests shall be made. It provides that such requests may be satisfied by accessing the Commission's website or by directing the request to the address of the Docket Office. The Commission proposed revising the rule to include a telephone number for contacting the Docket Office for those who need to contact the Docket Office in an expeditious manner but who do not have access to a computer. The Commission received no comments regarding this proposed change and adopts it as proposed.

Finally, the Commission deleted the option to file documents by facsimile transmission from §§ 2700.5(b), 2700.5(c)(2)(i), and 2700.5(f)(2) in recognition that the Commission no longer has the capability of receiving facsimile transmissions. Conforming changes have also been made to §§ 2700.7(c)(1), 2700.7(c)(2), 2700.8(d), 2700.9(a), 2700.24(d), 2700.45(a), 2700.45(f), and 2700.70(f).

§ 2700.6 Signing of Documents

Although Commission Procedural Rule 6 states how and by whom documents filed with the Commission must be signed, there is no specific requirement that all such documents shall be signed. The Commission proposed adding a requirement that all documents filed with the Commission must be signed.

The Commission received no comments regarding this proposed change and adopts it as proposed.

§ 2700.8 Computation of Time

Section 2700.8(b) currently provides that five additional days are added to the due date for responding to a pleading served by a method of delivery resulting in other than same-day service. As noted above with respect to references to pleadings, the Commission proposed changing the term ''pleading'' to ''filing'' since the Commission intends for the provision to apply to more documents than just those filed with the Commission during the initial stage of proceedings that set forth a party's claims and defenses.

The Commission also proposed adding a clarification to Rule 8(b) that the five extra days are not added for a response to a proposed penalty assessment because a proposed penalty assessment is not a filing with the Commission. Rather, a proposed penalty assessment is a notification sent by the Secretary to the operator or any other person against whom a civil penalty is proposed.

The Commission received no comments regarding these proposed changes and adopts them as proposed.

§ 2700.10 Motions

Commission Procedural Rule 10, which addresses motions, currently provides that oral motions may be made during a hearing or a conference. However, the rule does not require that any proceedings on such oral motions shall be on the record. A lack of such record makes review of proceedings on oral motions difficult. The Commission proposed adding a provision requiring that proceedings on any motion made at hearing or during a conference shall be on the record. The Commission also proposed making a conforming revision to § 2700.53(a) recognizing that a Judge has the discretion to record any in-person or telephonic conference.

The Commission received two comments on these proposed changes. The Secretary agreed with the proposed changes to Rule 10. With respect to the proposed changes to Rule 53, the Secretary commented that transcripts should be made available upon request and that ''reasonable'' should be deleted from the phrase, ''a transcript should be made available upon reasonable request'' since transcripts should be readily accessible and because ''reasonable'' is not defined. In addition, the Secretary suggested that Rule 53 should clarify that the Judge will notify the parties when a Judge records a conference.

A member of the mining bar commented that the recording of all in-person or telephonic motions should be mandatory rather than within the Judge's discretion unless the conference is purely non-substantive in nature.

The Commission modified the proposed language of Rule 10(a) to specify that proceedings on any motion made at a hearing or during a conference shall be ''recorded'' rather than stating that such proceedings shall be ''on the record.'' The Commission found the phrase ''on the record'' to be somewhat vague and colloquial and potentially confusing.

Upon further consideration of the proposed changes to Rule 53(a), the Commission included language clarifying that any in-person or telephonic conference shall be recorded at a party's request in addition to being recorded within the Judge's discretion. If the conference concerns a settlement discussion or mediation, the parties may request that the matter not be recorded. The Commission deleted the proposed change pertaining to transcript requests as unnecessary.

E. Subpart C—Contests of Proposed Penalties

§ 2700.25 Proposed Penalty Assessment

The Commission received a suggestion that the service requirements in a regulation promulgated by the Department of Labor's Mine Safety and Health Administration (''MSHA'') at 30 CFR 100.8(a) are inconsistent with the service requirements in § 2700.25, and that changes should be made to Commission Procedural Rule 25.

Section 2700.25 requires that the Secretary shall send a notice of a proposed civil penalty to an operator or

any other person against whom a penalty is proposed by ''certified mail.'' The requirements of Commission Procedural Rule 25 are taken directly from the language of § 105(a) of the Mine Act, 30 U.S.C. 815(a), which authorizes notification of a proposed penalty by ''certified mail'' only.

In contrast, § 100.8 states that proposed penalty assessments shall be ''delivered'' to an operator's name and address of record. Section 100.8 sets forth what constitutes a proper service address but does not state how service to that address should be made. The Commission declined proposing changes to Commission Procedural Rule 25 since the rule is wholly consistent with the Mine Act. There were no comments on the Commission's determination that changes should not be proposed.

§ 2700.28 Filing of Petition for Assessment of Penalty With the Commission

The Commission proposed two changes to Rule 28. First, the Commission proposed adding a provision to § 2700.28(b)(1) indicating that no more than 20 citations or orders may be the subject of a petition for assessment of penalty. The Commission recognized that past practice has demonstrated that more than 20 citations or orders make a docket too large and unwieldy for the Commission to efficiently manage.

The Commission received one comment on this proposed change. The Secretary commented that the current system results in penalty petitions containing more than 20 violations only on rare occasions. The Secretary urged the Commission not to adopt the proposed change, citing the Commission's ability to manually split dockets as one of several reasons why the practical need for this rule change was not clear. The Secretary also cited logistical confusion, inefficiency, and unintended substantive consequences, particularly when multiple dockets contain citations and orders involving the same inspection, inspector, and mine personnel.

The Commission has determined that it shall adopt this change as proposed. The Commission's Docket Office currently is required to manually split dockets containing more than 20 citations and orders. This approach is not sustainable in light of anticipated increasing numbers of large dockets and the Commission's limited resources. As to the Secretary's other concerns, the Commission may address such concerns on a case-by-case basis, including by consolidating proceedings as appropriate pursuant to 29 CFR 2700.12.

Second, the Commission proposed making a correction to 29 CFR 2700.28(b)(2). Current Commission Procedural Rule 28(b)(2) mistakenly refers to a ''single penalty assessment [that] has been proposed under 30 CFR 100.4.'' The Commission proposed deleting the reference to single penalty assessments in recognition that single penalty assessments have been subsumed by regular assessments.

The Commission received no comments regarding this proposed change and adopts it as proposed.

§ 2700.31 Penalty Settlement

The Commission proposed three changes with respect to Rule 31. First, the Commission proposed making a correction to § 2700.31(a). Paragraph (a) of § 2700.31 currently provides that ''in all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act,'' a settlement motion must be accompanied by a proposed order approving settlement. In ''discrimination proceedings, a party need not file a proposed order.'' 29 CFR 2700.31(a). The Commission proposed deleting the reference to discrimination proceedings because the reference appears to erroneously include discrimination proceedings arising under section 105(c) of the Act as a subcategory of ''all penalty proceedings.''

For purposes of concision, the Commission is further revising this proposed change to delete the reference to ''all penalty proceedings.'' Although the Commission has deleted this language, the remaining language of Rule 31 provides the necessary context clarifying that parties are required to file proposed orders approving settlement in all penalty proceedings, including penalty proceedings associated with a discrimination proceeding.

Second, the Commission proposed deleting unnecessary filing requirements. Section 2700.31(d) currently sets forth requirements for electronically filing proposed settlement documents under the rule. Paragraph (d) was added to Rule 31 prior to the development of e-CMS. After the development of e-CMS, the Commission promulgated rule changes for the electronic filing and service of documents, which are now final rules and include all documents filed in accordance with Rule 31. *See, e.g.,* 29 CFR 2700.5, 2700.7. The Commission proposed deleting references to electronic filing appearing in Rule 31 as superfluous and potentially confusing.

The Commission received no comments regarding this proposed change and adopts it as proposed.

The Commission also proposed deleting references that appear in Rule 31 regarding forms for approved orders approving settlement. The Commission prefers exercising flexibility regarding whether it shall provide sample forms for proposed orders approving settlement on its website.

The Commission received no comments regarding this proposed change and adopts it as proposed.

§ 2700.32 Motions To Reopen

The Commission receives requests to reopen final orders that generally fall into two categories. Requests in the first category involve circumstances in which a party has failed to file a timely contest of a proposed penalty assessment and the proposed penalty thereby becomes a final order of the Commission by operation of section 105(a) of the Mine Act, 30 U.S.C. 815(a). *See* 29 CFR 2700.27. Requests in the second category involve circumstances in which a Commission Administrative Law Judge issues a default order because a party has failed to file an answer to a petition for assessment of penalty filed by the Secretary. *See* 29 CFR 2700.28 and 2700.29.

The Commission proposed a new rule setting forth procedures for motions to reopen drawn from the Commission's experience in receiving and disposing of such motions. The Secretary commented on the proposed rule and suggested wording changes.

Upon further consideration, the Commission is withdrawing the proposed rule at this time. The Commission recognizes that the creation of a rule may not necessarily increase the efficiency of the Commission's processing of motions to reopen or reduce the instances in which a party seeks relief. The Commission may revisit the issue of promulgating a new rule in the future. In the meantime, the Commission will continue to provide guidance concerning motions to reopen in its case law and in informal guidance available on the Commission's website.

F. Subpart E—Complaints of Discharge, Discrimination or Interference

§ 2700.44 Petition for Assessment of Penalty in Discrimination Cases

The Commission proposed revisions to Commission Procedural Rule 44 so that cases brought under 30 U.S.C. 815(c)(3) could be treated in a manner similar to those brought under 30 U.S.C. 815(c)(2) in terms of when a decision becomes ripe for review. In addition, in

recognition of the Mine Act's requirement that proceedings under section 105(c) ''shall be expedited by the Secretary and the Commission,'' the Commission proposed changes to § 2700.44 that permitted expedition and eliminated unnecessary delay. 30 U.S.C. 815(c)(3).

The Commission also proposed adding a new paragraph (c) to 29 CFR 2700.41, stating that proceedings under subpart E of the part 2700, which pertain to complaints of discharge, discrimination or interference, are to be expedited.

The Commission further proposed making a conforming change to § 2700.69(a) to explicitly require that any decision of a Judge that is not final shall be denoted as an ''interim decision.''

The Commission received two comments regarding these changes. The Secretary suggested wording changes to proposed Rule 44. The UMWA and the Secretary expressed concern about the impact that proposed Rule 41(c) would have upon adequate case preparation.

Upon further consideration, the Commission withdraws these proposed revisions. The Commission recognizes that the proposed changes may create confusion rather than clarity and efficiency. The Commission may revisit these proposed changes in future rulemakings.

§ 2700.45 Temporary Reinstatement Proceedings

The Commission did not propose any changes to 29 CFR 2700.45 in the NPRM. However, a member of the mining bar commented that a provision should be added to Rule 45 requiring that a Complainant's counsel or representative must be notified if the operator requests a hearing regarding the Secretary's application for temporary reinstatement. The rule currently provides that such notice must be provided only to the Chief Administrative Law Judge and the Secretary.

The Commission agrees with the commenter that the rule should be changed. The Commission has revised §§ 2700.45(a) and 2700.45(c) to make explicit who must receive hearing requests, as well as documents, in a temporary reinstatement proceeding.

G. Subpart G—Hearings

§ 2700.64 Retention of Exhibits

Commission Procedural Rule 64 pertains generally to exhibits which are made part of the official record. The Commission proposed revising the title of the rule to more generally refer to ''exhibits,'' rather than ''retention of exhibits'' since the rule encompasses more than the retention of exhibits. In addition, the Commission proposed changing the rule to reflect that exhibits shall be ''deemed part of'' the official record, rather than ''retained with'' the official record. The Commission's official record is electronic and some physical exhibits will be deemed to be part of the official record although they may not be retained in a digital format with the other parts of the official record.

The Commission received no comments on these proposed changes and adopts them as proposed.

H. Subpart H—Review by the Commission

§ 2700.72 Commission Panels

Rule 72 is currently reserved. In order to promote transparency as to its functioning, the Commission proposed creating a new Procedural Rule 72 which would explain the Commission's process for empaneling Commissioners. Section 113(c) of the Mine Act, 30 U.S.C. 823(c), provides in part that the Commission is authorized ''to delegate to any group of three or more members any or all of the powers of the Commission.'' Proposed Rule 72 provided that the Commission may empanel a group of three or more members to hear any pending matter, and that a Commissioner's assignment to such a panel may be made by a random method agreed upon by a majority of Commissioners.

The Commission received two comments regarding proposed Rule 72. The UMWA commented that Rule 72 should specify that the parties should be informed about the ''random method'' used to determine the Commission panel so that parties could object if they believed the method used was not truly random. Another commenter questioned the need for 3-member panels given that the Commission's caseload is not extensive. The commenter stated that if the Commission decides to keep the rule, Rule 72 should be revised to include a provision whereby the losing side in a 2–1 decision issued by a panel has the right to petition the full Commission to re-hear the matter.

Upon further consideration, the Commission withdraws proposed Rule 72. The Commission believes that section 113(c) of the Mine Act provides sufficient information about the Commission's empanelment authority.

§ 2700.75 Briefs

The Commission did not propose any changes to its rules in the NPRM regarding briefs on appeal before the Commission.

The Secretary, however, commented that the Commission should revise its rules to set the required length of appellate briefs based on word count rather than page count. The Secretary explained that such a change would conform the Commission's rules to the approach that Federal Courts of Appeals have taken. In addition, the Secretary states the change would also eliminate the differing number of pages that result from setting the same text in different typefaces or from manipulating type.

The Commission has determined that it shall not make the suggested change at this time. Some documents filed with the Commission do not use word processing programs and are hand-written. In addition, § 2700.5 has procedural requirements in place that prohibit a filer from using word processing features to avoid page limits.

§ 2700.76 Interlocutory Review

The Commission proposed no changes to 29 CFR 2700.76 in the NPRM.

A member of the mining bar commented that the Commission should revise Rule 76 to establish a time limit for Judges to make a determination on a motion to certify a matter for interlocutory review. The commenter expressed a concern that a Judge could fail to act on a motion for certification until the issue became moot.

The Commission has determined that it will not make this change at this time. However, the Commission will consider this suggestion in future rulemakings.

§ 2700.78 Reconsideration

The Commission proposed revising Commission Procedural Rule 78 in order to clarify when a motion for reconsideration must be filed. Rule 78 currently provides that a petition for reconsideration must be filed with the Commission within 10 days after a decision or order. The proposed revision clarified that the ten-day period is counted from the issuance of the decision or order.

The Commission received no comments on the proposed change and adopts it as proposed.

I. Subpart I—Miscellaneous

§ 2700.80 Standards of Conduct; Disciplinary Proceedings

The Commission proposed making changes to Commission Procedural Rule 80 that would clarify the Commission's procedure in disciplinary proceedings and the standards applicable in such proceedings.

Rule 80(a) currently provides that individuals practicing before the Commission or its Judges shall conform to the standards of ethical conduct required of practitioners in the courts of the United States. The Commission proposed revising Rule 80(a) to state that the American Bar Association's Model Rules of Professional Conduct shall be considered in the Commission's disciplinary proceedings.

The Commission also proposed revising § 2700.80(c) to provide appropriate notice to the person named in a disciplinary referral, and to permit the person an opportunity for response. Proposed paragraph (c)(1) of Rule 80 required the Commission to provide written notice to the person named in a disciplinary referral of the initiation of an investigation. The Commission proposed revising paragraph (c)(2) of rule 80 to provide that after the Commission has determined that a hearing is warranted on the matter described in the disciplinary referral, the Commission shall specify the disciplinary issues to be resolved through hearing.

Proposed paragraph (c)(3) permitted the respondent named in the disciplinary proceeding an opportunity to file a response. In addition, proposed paragraph (c)(3) provided that the Chief Administrative Law Judge may assign the proceeding to a Commission Administrative Law Judge or to a non-Commission Administrative Law Judge. Proposed paragraph (c)(3) clarified that subpart G of part 2700, pertaining to hearings before the Commission's Administrative Law Judges, also applies as appropriate to all Commission disciplinary proceedings.

The Commission received one comment on the proposed changes. The Secretary commented on a typographical error in the proposed changes to Rule 80, noting that the word ''Model'' had been omitted in identifying the ABA Rules in § 2700.80(a). The Secretary further commented that to the extent an attorney may be a member of a state bar with any rule that may conflict in any way with the ABA Model Rules, the Commission should exercise discretion in favor of the attorney's state bar rules.

The Commission has made the correction noted by the Secretary but has determined that it will not accept the Secretary's suggestion to apply state ethics laws in Rule 80 proceedings. Practitioners appearing before the Commission live, work, and appear in various locations, making a number of jurisdictions' rules of conduct potentially applicable. The Commission believes it is more equitable to apply the same standards of conduct to all individuals appearing before the Commission. The Commission adopted all other changes as proposed.

§ 2700.82 Ex Parte Communications

Commission Procedural Rule 5(j) sets forth requirements regarding the manner in which status or informational requests shall be made. Section 2700.82(d) sets forth slightly different requirements for making status or informational requests. In keeping with the Commission's actual practice, the Commission proposed making changes to § 2700.82(d) so that it conforms with the provisions of § 2700.5(j).

The Commission received no comments regarding the proposed change and adopts it as proposed.

§ 2700.83 Authority To Sign Orders

Currently under § 2700.83, the Chairman or other designated Commissioner is authorized to sign an order on behalf of the other Commissioners disposing of certain procedural motions. The motions subject to Commission Procedural Rule 83 are non-substantive and involve minor procedural issues such as motions for extensions of time. The vast majority of those motions are unopposed.

The Commission proposed three changes to 29 CFR 2700.83. First, the Commission proposed adding a provision to § 2700.83 clarifying that in the absence of a quorum, the remaining Commissioner or Commissioners may dispose of the procedural motions subject to the rule.

The Commission received one comment on this proposed change. The Secretary commented that although the proposed change was practical, the Mine Act does not appear to permit a single Commissioner to act alone.

The Commission is withdrawing this proposed change at this time.

Second, the Commission proposed deleting the provision in Procedural Rule 83 stating that a person aggrieved by an order signed by the Chairman or designated Commissioner under the rule may request that the order be signed by the participating Commissioners. The Commission has not received such a request and, given the unopposed nature of the motions at issue, considers it unlikely that it would receive such a request in the future.

The Commission received no comments regarding this proposed change and adopts it as proposed.

Third, consistent with changing gender-specific pronouns to more gender-neutral language throughout its rules, the Commission proposed changing references from ''Chairman'' to ''Chair.''

The Commission received no comments regarding this proposed change and adopts it as proposed.

III. Notice and Public Procedure

A. Executive Orders

The Commission is an independent regulatory agency under section 3(b) of Executive Order (''E.O.'') 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993); E.O. 13563 (Jan. 18, 2011), 76 FR 3821 (Jan. 21, 2011); E.O. 13771 (Jan. 30, 2017), 82 FR 9339 (Feb. 3, 2017), *repealed by* E.O. 13992 (Jan. 20, 2021), 86 FR 7049 (Jan. 25, 2021); E.O. 13777 (Feb. 24, 2017), 82 FR 12285 (Mar. 1, 2017), *repealed by* E.O. 13992 (Jan. 20, 2021), 86 FR 7049 (Jan. 25, 2021); and E.O. 13132 (Aug. 4, 1999), 64 FR 43255 (Aug. 10, 1999).

The Commission has determined that this rulemaking does not have ''takings implications'' under E.O. 12630 (Mar. 15. 1988), 53 FR 8859 (Mar. 18, 1988).

The Commission has determined that these regulations meet all applicable standards set forth in E.O. 12988 (Feb. 5, 1996), 61 FR 4729 (Feb. 7, 1996).

B. Statutory Requirements

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (''APA'') do not apply to rules of agency procedure (5 U.S.C. 553(b)(4)(A)), the Commission invites members of the interested public to submit comments on this final rule. The Commission will accept public comment until February 18, 2025.

The Commission has determined that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*), because the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Commission has determined that this rule is not a ''major rule'' under the Small Business Regulatory Enforcement Fairness Act (''SBREFA'') (5 U.S.C. 804(2)).

The Commission has determined that the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act (''CRA'') (5 U.S.C. 801 *et seq.*) does not apply because, pursuant to 5 U.S.C. 804(3)(C), these rules are rules of agency procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

The Commission has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment requiring an environmental assessment under the National Environmental Policy Act (''NEPA'') (42 U.S.C. 4321 *et seq.*).

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of the Unfunded Mandates Reform Act (''UMRA'') (2 U.S.C. 1532 *et seq.*).

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Confidential business information, Mine safety and health, Penalties, Whistleblowing.

For the reasons stated in the preamble, the Commission amends 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 is revised to read as follows:

Authority: 30 U.S.C. 815, 820, and 823.

Subpart A—General Provisions

■ 2. Revise § 2700.1 to read as follows:

§ 2700.1 Scope; applicability of other rules; construction.

(a) *Scope.* (1) This part sets forth rules applicable to proceedings before the Federal Mine Safety and Health Review Commission (''the Commission'') and its Administrative Law Judges (''ALJs''). The Commission is an adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (''the Act''). The Commission is an independent agency, not a part of nor affiliated in any way with the U.S. Department of Labor or its Mine Safety and Health Administration (''MSHA''). The location of the Commission's headquarters is at 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710; and its primary phone number is 202–434–9900. The Commission maintains a website at *http://www.fmshrc.gov* where these rules, recent and many past decisions of the Commission and its ALJs, and other information regarding the Commission, can be accessed.

(2) Unless the Commission provides otherwise, amendments to these rules are effective 60 days following publication in the **Federal Register** and apply to cases initiated after they take effect. They also apply to further proceedings in cases pending on the effective date, except to the extent that application of the amended rules would not be feasible, or would work injustice, in which event the former rules of procedure would continue to apply.

(b) *Applicability of other rules.* On any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. 554 and 556), the Commission and its ALJs shall be guided so far as practicable by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.

(c) *Construction.* These rules shall be construed to secure the just, speedy and inexpensive determination of all proceedings, and to encourage the participation of miners and their representatives.

■ 3. Revise § 2700.2 to read as follows:

§ 2700.2 Definitions.

For purposes of this part, the definitions contained in section 3 of the Act, 30 U.S.C. 802, apply. For ease of reference throughout this part, the ''Secretary of Labor'' or ''Acting Secretary of Labor'' shall be referred to as the ''Secretary.'' Similarly, a Commission Administrative Law Judge shall be referred to as an ''ALJ.''

■ 4. Revise § 2700.3 to read as follows:

§ 2700.3 Who may appear before the Commission as a representative of a party.

(a) *Notice of appearance.* When first making an appearance, each representative of a party must file a notice of appearance that indicates on whose behalf the appearance is made and the proceeding name and docket number.

(b) *Who may appear.* Persons who may represent a party or subpoenaed witness before an ALJ or the Commission include:

(1) An attorney who is a member of a bar in good standing of the highest court of a State, Commonwealth, or Territory of the United States, or the District of Columbia where the attorney has been licensed to practice law, who will promptly disclose to the ALJ any action suspending, enjoining, restraining, disbarring, or otherwise currently restricting the attorney in the practice of law in any jurisdiction where the attorney is licensed to practice law;

(2) A party;

(3) A representative of miners;

(4) An owner, partner, officer or employee of a party when the party is a labor organization, an association, a partnership, a corporation, a governmental agency, other business entity, or a political subdivision; or

(5) Any other person with the permission of the presiding ALJ or the Commission.

(c) *Entry of appearance.* A representative of a party shall enter an appearance in a proceeding under the Act or these procedural rules by signing the first document filed on behalf of the party with the Commission or ALJ in accordance with § 2700.6; filing a written entry of appearance with the Commission or ALJ; or, if the Commission or ALJ permits, by orally entering an appearance in open hearing.

(d) *Duties.* All representatives authorized to appear before the Commission shall be subject to § 2700.80 (Standards of conduct; disciplinary proceedings). A representative must be diligent, prompt, and forthright when dealing with parties, other representatives and the ALJ, and act in a manner that furthers the fair and orderly conduct of the proceeding.

(e) *Withdrawal of appearance.* A representative who desires to withdraw after filing a notice of appearance, or a party desiring to withdraw the appearance of a representative, must file a motion with the Commission or ALJ. The motion must state that a notice of the withdrawal has been provided to all parties. The Commission or ALJ may deny a representative's motion to withdraw when necessary to avoid undue delay or prejudice to the rights of a party.

■ 5. Revise § 2700.4 to read as follows:

§ 2700.4 Parties, intervenors, and amici curiae.

(a) *Party status.* A person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party. In a proceeding instituted by the Secretary under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), the complainant on whose behalf the Secretary has filed the complaint is a party and may present additional evidence. A miner, applicant for employment, or representative of a miner who has filed a complaint with the Commission under section 105(c)(3) or 111 of the Act, 30 U.S.C. 815(c)(3) and 821, and an affected miner or the miner's representative who has become a party in accordance with paragraph (b) of this section, are parties.

(b) *Intervention*—(1) *Intervention by affected miners and their representatives.* Before a case has been assigned to an ALJ, affected miners or their representatives shall be permitted to intervene upon filing a written notice of intervention with the Commission. If the case has been assigned to an ALJ, the notice of intervention shall be filed with the ALJ. Notices of intervention shall be filed with the Commission or ALJ in accordance with § 2700.5(c). The

Commission or the ALJ shall provide forthwith a copy of the notice to all parties. After the start of the hearing, affected miners or their representatives may intervene upon just terms and for good cause shown.

(2) *Intervention by other persons.* (i) Motions by other persons for leave to intervene shall be filed before the start of a hearing on the merits unless the ALJ, for good cause shown, allows a later filing. The motion shall set forth:

(A) The interest of the movant relating to the property or events that are the subject of the proceeding;

(B) The reasons why such interest is not otherwise adequately represented by the parties already involved in the proceeding; and

(C) A showing that intervention will not unduly delay or prejudice the adjudication of the issues.

(ii) Such intervention is not a matter of right but of the sound discretion of the ALJ. In denying a motion to intervene, the ALJ may alternatively permit the movant to participate in the proceeding as amicus curiae.

(c) *Procedure for participation as amicus curiae.* Any person may move to participate as amicus curiae in a proceeding before an ALJ. Such participation as amicus curiae shall not be a matter of right but of the sound discretion of the ALJ. A motion for participation as amicus curiae shall set forth the interest of the movant and show that the granting of the motion will not unduly delay or prejudice the adjudication of the issues. If the ALJ permits amicus curiae participation, the ALJ's order shall specify the time within which such amicus curiae memorandum, brief, or other filing must be filed and the time within which a reply may be made. The movant may conditionally attach its memorandum, brief, or other filing to its motion for participation as amicus curiae.

■ 6. Revise § 2700.5 to read as follows:

§ 2700.5 General requirements for pleadings and other documents; filing requirements; status or informational requests.

(a) *Jurisdiction.* A proposal for a penalty under section 110, 30 U.S.C. 820; an answer to a notice of contest of a citation or withdrawal order issued under section 104, 30 U.S.C. 814; an answer to a notice of contest of an order issued under section 107, 30 U.S.C. 817; a complaint issued under section 105(c) or 111, 30 U.S.C. 815(c) and 821; and an application for temporary reinstatement under section 105(c)(2), 30 U.S.C. 815(c)(2), shall allege that the violation or imminent danger took place in or involves a mine that has products which enter commerce or has operations or products that affect commerce. Jurisdictional facts that are alleged are deemed admitted unless specifically denied in a responsive pleading.

(b) *How to file.* Unless otherwise provided for in the Act, these rules, or by order, filing may be accomplished in person, by U.S. Postal Service, by third-party commercial carrier, or by electronic transmission. Instructions for electronic filing may be accessed on the Commission's website (*http://www.fmshrc.gov*).

(c) *Where to file.* Unless otherwise provided for in the Act, these rules, or by order:

(1) *Filing by electronic transmission.* A document may be filed by electronic transmission with the Commission and its ALJs. Instructions for electronic filing may be accessed on the Commission's website (*http://www.fmshrc.gov*).

(2) *Filing in person, by U.S. Postal Service, or by third-party commercial carrier*—(i) *Before an ALJ has been assigned.* Before an ALJ has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Docket Office, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.

(ii) *After an ALJ has been assigned.* After an ALJ has been assigned, and before a decision has been issued, documents shall be filed with the ALJ at the address set forth on the notice of the assignment.

(iii) *After an ALJ has issued a final decision.* After the ALJ has issued a final decision, documents shall be filed with the Commission as described in paragraph (c)(2)(i) of this section.

(d) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address, business telephone number, cellular telephone number if available, and email address if available. Written notice of any change in contact information shall be given promptly to the Commission or the ALJ and all other parties.

(e) *Privacy considerations.* Persons submitting information to the Commission shall protect information that tends to identify certain individuals, constitute an unwarranted intrusion of personal privacy, or disclose confidential commercial information as defined by 29 CFR 2702.6(a)(1) in the following manner:

(1) Social security numbers, financial account numbers, driver's license numbers, or other personal identifying numbers, shall be redacted or excluded;

(2) Minor children shall be identified only by initials;

(3) If dates of birth must be included, only the year shall be used;

(4) Parties shall exercise caution when filing medical records, medical treatment records, medical diagnosis records, employment history, and individual financial information, and shall redact or exclude materials unnecessary to a disposition of the case, provided the party gives notice to other parties and the ALJ of the types of material redacted and the reason for such redactions.

(5) Parties shall, consistent with 29 CFR 2702.6, exercise caution when providing corporate or commercial information and, with the permission of the ALJ, shall redact or exclude any portion of its filing unnecessary to a disposition of the case or shall designate by appropriate markings any portion that it considers to be confidential.

(6) The Commission may order, sua sponte or pursuant to a party's motion, that a filing be submitted for in-camera review or placed under seal. The Commission may subsequently unseal the filing or order the person who made the submission to substitute a redacted version in the record. Prior to unsealing a filing, the Commission shall provide the party that submitted the filing a reasonable opportunity to object to the sealing or to withdraw the filing. If no response is received, the Commission will take appropriate action at its discretion. No placements under seal, redactions or withdrawals shall be permitted during the pendency of a subpoena duces tecum validly issued to the Commission or a valid request pursuant to 29 CFR part 2702 related to the filing.

(f) *Effective date of filing.* Unless otherwise provided for in the Act, these rules, or by order:

(1) *Filing by electronic transmission.* When filing is by electronic transmission, filing is effective upon successful receipt by the Commission. The electronic transmission shall be in the manner specified by the Commission's website (*http://www.fmshrc.gov*).

(2) *Filing in person, by U.S. Postal Service, or by third-party commercial carrier.* When filing is by U.S. Postal Service, filing is effective upon mailing, except that the filing of a motion for extension of time, any document in an emergency response plan dispute proceeding, a petition for review of a temporary reinstatement order, a motion

for summary decision, a petition for discretionary review, and a motion to exceed page limit is effective only upon receipt. *See* §§ 2700.9(a), 2700.24(d), 2700.45(f), 2700.67(a), 2700.70(a), (f), and 2700.75(f). When filing is in person or by third-party commercial carrier, filing is effective upon successful receipt by the Commission.

(g) *Number of copies.* Unless otherwise ordered or stated in this part, only the original of a document shall be filed.

(h) *Form of filings.* All documents, including those filed electronically, shall appear in at least 12-point type on paper 8½ by 11 inches in size, with margins of at least 1 inch on all four sides. Text and footnotes shall appear in the same size type. Text shall be double spaced. Headings and footnotes may be single spaced. Quotations of 50 words or more may be single spaced and indented left and right. Excessive footnotes are prohibited. The failure to comply with the requirements of this paragraph (h) or the use of compacted or otherwise compressed printing features may be grounds for rejection of a filing.

(i) *Citation to a decision of an ALJ.* Each citation to a decision of an ALJ should include ''(ALJ)'' at the end of the citation.

(j) *Status or informational requests.* Information concerning filing requirements, the status of cases, or docket information may be accessed through the Commission's website (*http://www.fmshrc.gov*). In the event such information is unavailable through the Commission's website or the requesting party does not have access to the website, such status or informational requests must be directed to the Docket Office of the Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710; 202–434–9950.

■ 7. Revise § 2700.6 to read as follows:

§ 2700.6 Signing of documents.

(a) *Signature.* All documents filed with the Commission must be signed by a party or representative of the party.

(1) *Documents not filed by electronic transmission.* A party or representative of the party shall sign a document by handwritten signature.

(2) *Documents filed by electronic transmission.* (i) A party or representative of the party may sign a document by including the notation ''/s/'' followed by the typewritten name of the party or representative of the party filing the document.

(ii) A party or representative of the party may sign a document by including a graphical duplicate of the handwritten signature.

(b) *Meaning of signature.* A document or signature may not be denied legal effect or enforceability solely because it is in electronic form. When a party or representative of the party signs a document in the manner described in paragraph (a) of this section, that person's signature shall constitute a certification:

(1) That under the provisions of the law, including these rules and all federal conflict of interest statutes, the person is authorized and qualified to represent the particular party in the matter; and

(2) That the person has read the document; that based on knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

■ 8. In § 2700.7, revise paragraphs (a) and (c)(1) and (2) to read as follows:

§ 2700.7 Service.

(a) *Generally.* A copy of each document filed with the Commission shall be served on all parties. Whenever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party pursuant to § 2700.3, service thereafter shall be made upon the attorney or other authorized representative. In addition, a copy of a notice of contest of a citation or order, a petition for assessment of penalty, a discrimination or interference complaint, a complaint for compensation, and an application for temporary relief shall be served upon the representative of miners, if known.

* * * * *

(c) * * *

(1) *Methods of service.* Documents may be served in person, by U.S. Postal Service, by third-party commercial carrier, or by email or other electronic transmission. For documents filed pursuant to §§ 2700.9(a), 2700.24, 2700.45, 2700.70(f), 2700.75(f), and subpart F (applications for temporary relief), the method of service used must be no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(2) *Effective date of service.* When service is by U.S. Postal service, service is effective upon mailing. When service is in person, by third-party commercial carrier, or by email or other electronic transmission, service is effective upon successful receipt by the party intended to be served.

* * * * *

■ 9. In § 2700.8:

■ a. Revise the introductory text and paragraphs (b) and (d);

■ b. Remove examples 1, 2, and 3 from the end of the section; and

■ c. Add paragraph (e).

The revisions and additions read as follows:

§ 2700.8 Computation of time.

Unless otherwise provided for in the Act, these rules, or by order, the due date for a filing or other deadline for party or Commission action (hereinafter ''due date'') is determined sequentially as follows:

* * * * *

(b) When a party serves a filing by a method of delivery resulting in other than same-day service, the due date for party action in response is extended 5 additional calendar days beyond the date otherwise prescribed, after consideration of paragraph (a) of this section where applicable. (n.b. A proposed penalty assessment is not a filing with the Commission and additional days are not added to the time for responding to a proposed assessment.)

* * * * *

(d) The time of filing with the Commission shall be determined using Washington, DC, local time. For filing by electronic means, the due date ends at midnight Washington, DC, local time. For filing by other means, the due date ends at 5:00 p.m. Washington, DC, local time.

(e)(1) *Example 1.* A motion is filed with the Commission on Tuesday, July 2, 2025. Under § 2700.10(d), other parties in the proceeding have 8 days in which to respond to the motion. Because the response period is less than 11 days, intervening weekends and holidays, such as Friday, July 4, 2025, are excluded in determining the due date. A response is thus due by Tuesday, July 15, 2025. In addition, those parties not served with the motion on the day it was filed have 5 additional calendar days in which to respond, or until Monday, July 21, 2025.

(2) *Example 2.* An ALJ issues a final decision in a case on Friday, July 11, 2025. Under § 2700.70(a), parties have until August 11, 2025, to file with the Commission a petition for discretionary review of the ALJ's decision. Even though the decision was mailed, 5

additional calendar days are not added, because paragraph (b) of this section only applies to actions in response to parties' filings. However, because August 10, 2025, is a Sunday, the actual due date for the petition is Monday, August 11, 2025.

(3) *Example 3.* Pursuant to § 2700.24(a), the Secretary files a referral of a citation arising out of a dispute over the content of an operator's emergency response plan. Certain subsequent deadlines in such cases are specifically established by reference to calendar days, and thus paragraph (a) of this section would not necessarily apply in determining due dates. For instance, if the referral was filed on Thursday, July 10, 2025, the short and plain statement the operator must file in response within 5 calendar days would be due Tuesday, July 15, 2025, because the intervening weekend days would not be excluded in determining the due date. If the fifth calendar day were to fall on a weekend, holiday, or other day on which the Commission is not open however, the terms of paragraph (c) of this section would apply and the due date would be the next day the Commission is open.

■ 10. In § 2700.9, revise paragraph (a) to read as follows:

§ 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time is effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

* * * * *

■ 11. In § 2700.10, revise paragraphs (a) and (b) to read as follows:

§ 2700.10 Motions.

(a) An application for an order shall be by motion which, unless made during a hearing or a conference, shall be made in writing and shall set forth the relief or order sought. Proceedings on any motion made at a hearing or during a conference shall be recorded.

(b) Written motions shall be set forth in a document separate from other filings.

* * * * *

■ 12. Revise § 2700.11 to read as follows:

§ 2700.11 Withdrawal of filing.

A party may withdraw a filing at any stage of a proceeding with the approval of the ALJ or the Commission.

■ 13. Revise § 2700.12 to read as follows:

§ 2700.12 Consolidation of proceedings.

The Commission and its ALJs may at any time, upon their own motion or a party's motion, order the consolidation of proceedings that involve similar issues.

Subpart B—Contests of Citations and Orders

■ 14. In § 2700.20, revise paragraphs (b) and (d) to read as follows:

§ 2700.20 Notice of contest of a citation or order issued under § 104 of the Act.

* * * * *

(b) *Time to contest.* Contests filed by an operator pursuant to paragraph (a)(1) of this section shall be filed with the Secretary at the appropriate Regional Solicitor's Office or at the Solicitor's Office, Mine Safety and Health Division, Washington, DC, within 30 days of receipt by the operator of the contested citation, order, or modification. Contests filed by a miner or representative of miners pursuant to paragraph (a)(2) of this section shall be filed in the same manner within 30 days of receipt by the miner or representative of miners of the contested order, modification, or termination.

* * * * *

(d) *Copy to Commission.* The contesting party shall also file a copy of the notice of contest with the Commission at the time the party files with the Secretary.

* * * * *

■ 15. In § 2700.24, revise paragraphs (d), (e), (f), and (g) to read as follows:

§ 2700.24 Emergency response plan dispute proceedings.

* * * * *

(d) *Filing and service of documents.* The filing with the Commission of any document in an emergency response plan dispute proceeding, including the referral, is effective upon receipt. A copy of each document filed with the Commission in such a proceeding shall be served on all parties and on any miner or miners' representative who has participated in the emergency response plan review process by a method of service no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(e) *Proceedings before the ALJ*—(1) *Submission of materials.* Within 15 calendar days of the referral, the parties shall submit to the ALJ assigned to the matter all relevant materials regarding the dispute. Such submissions shall include a request for any relief sought and may include proposed findings of fact and conclusions of law. Such materials may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated.

(2) *Hearing.* (i) Within 5 calendar days following the filing of the Secretary's referral, any party may request a hearing and shall so advise the Commission's Chief ALJ or designee, and simultaneously notify the other parties.

(ii) Within 10 calendar days following the filing of the Secretary's referral, the Commission's Chief ALJ or designee may issue an order scheduling a hearing on the ALJ's own motion, and must immediately so notify the parties.

(iii) If a hearing is ordered under paragraph (e)(2)(i) or (ii) of this section, the hearing shall be held within 15 calendar days of the filing of the referral. The scope of such a hearing is limited to the disputed plan provision or provisions. If no hearing is held, the ALJ assigned to the matter shall review the materials submitted by the parties pursuant to paragraph (e)(1) of this section, and shall issue a decision pursuant to paragraph (f) of this section.

(f) *Disposition*—(1) *Decision of the ALJ.* Within 15 calendar days following receipt by the ALJ of all submissions and testimony made pursuant to paragraph (e) of this section, the ALJ shall issue a decision that constitutes the ALJ's final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. The parties shall be notified of the ALJ's decision by the most expeditious means reasonably available.

(2) *Stay of plan provision.* Notwithstanding § 2700.69(b), an ALJ shall retain jurisdiction over a request for a stay in an emergency response plan dispute proceeding. Within two

business days following service of the decision, the operator may file with the ALJ a request to stay the inclusion of the disputed provision in the plan during the pendency of an appeal to the Commission pursuant to paragraph (g) of this section. The Secretary shall respond to the operator's motion within two business days following service of the motion. The ALJ shall issue an order granting or denying the relief sought within two business days after the filing of the Secretary's response.

(g) *Review of decision.* Any party may seek review of an ALJ's decision, including the ALJ's order granting or denying a stay, by filing with the Commission a petition for discretionary review pursuant to § 2700.70. Neither an operator's request for a stay nor the issuance of an order addressing the stay request affects the time limits for filing a petition for discretionary review of an ALJ's decision with the Commission under this paragraph (g). The Commission shall act upon a petition on an expedited basis. If review is granted, the Commission shall issue a briefing order. Except as otherwise ordered or provided for herein, the provisions of § 2700.75 apply. The Commission will not grant motions for extension of time for filing briefs, except under extraordinary circumstances.

Subpart C—Contests of Proposed Penalties

■ 16. Revise § 2700.25 to read as follows:

§ 2700.25 Proposed penalty assessment.

The Secretary, by certified mail, shall notify the operator or any other person against whom a penalty is proposed of the violation alleged, the amount of the proposed penalty assessment, and that such person shall have 30 days to notify the Secretary of the intent to contest the proposed penalty assessment.

■ 17. Revise § 2700.26 to read as follows:

§ 2700.26 Notice of contest of proposed penalty assessment.

A person has 30 days after receipt of the proposed penalty assessment within which to notify the Secretary of the contest of the proposed penalty assessment. A person who wishes to contest a proposed penalty assessment must provide such notification regardless of whether the person has previously contested the underlying citation or order pursuant to § 2700.20. The Secretary shall immediately transmit to the Commission any notice of contest of a proposed penalty assessment.

■ 18. Revise § 2700.27 to read as follows:

§ 2700.27 Effect of failure to contest proposed penalty assessment.

If, within 30 days from the receipt of the proposed penalty assessment, the operator or other person fails to notify the Secretary of the contest of the proposed penalty, the Secretary's proposed penalty assessment shall be deemed to be a final order of the Commission not subject to review by any court or agency.

■ 19. In § 2700.28, revise paragraphs (b)(1) and (2) to read as follows:

§ 2700.28 Filing of petition for assessment of penalty with the Commission.

* * * * *

(b) * * *

(1) List the alleged violations and the proposed penalties. Each violation shall be identified by the number and date of the citation or order and the section of the Act or regulations alleged to be violated. The list shall include no more than 20 citations or orders which are the subject of the petition for assessment of penalty.

(2) Include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act, 30 U.S.C. 820(i).

* * * * *

■ 20. Revise § 2700.30 to read as follows:

§ 2700.30 Assessment of penalty.

(a) In assessing a penalty the ALJ shall determine the amount of penalty in accordance with the six statutory criteria contained in section 110(i) of the Act, 30 U.S.C. 820(i), and incorporate such determination in a written decision. The decision shall contain findings of fact and conclusions of law on each of the statutory criteria and an order requiring that the penalty be paid.

(b) In determining the amount of penalty, neither the ALJ nor the Commission shall be bound by a penalty proposed by the Secretary or by any offer of settlement made by a party.

■ 21. Revise § 2700.31 to read as follows:

§ 2700.31 Penalty settlement.

(a) *General.* A proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion. A settlement motion must be accompanied by a proposed order approving settlement.

(b) *Content of motion*—(1) *Factual support.* A motion to approve a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties.

(2) *Certification.* The party filing a motion must certify that the opposing party has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement.

(c) *Content of proposed order.* A proposed order approving a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. Proposed orders shall not be submitted in PDF format.

(d) *Filing of motion and proposed order prior to filing of petition.* If a motion to approve settlement and proposed order is filed with the Commission before the Secretary has filed a petition for assessment of penalty, the filing party must also submit as attachments, electronic copies of the proposed penalty assessment and citations and orders at issue. If such attachments are filed, the Secretary need not file a petition for assessment of penalty.

(e) *Final order.* Any order by the ALJ approving a settlement shall set forth the reasons for approval and shall be supported by the record. Such order shall become the final order of the Commission 40 days after issuance unless the Commission has directed that the order be reviewed. An ALJ may correct clerical errors in an order approving settlement in accordance with the provisions of § 2700.69(c).

Subpart E—Complaints of Discharge, Discrimination or Interference

■ 22. Revise § 2700.40 to read as follows:

§ 2700.40 Who may file.

(a) *The Secretary.* A discrimination or interference complaint under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), shall be filed by the Secretary if, after an investigation conducted pursuant to section 105(c)(2), the Secretary determines that a violation of section 105(c)(1), 30 U.S.C. 815(c)(1), has occurred.

(b) *Miner, representative of miners, or applicant for employment.* A discrimination or interference complaint under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), may be filed by the complaining miner, representative

of miners, or applicant for employment if the Secretary, after investigation, has determined that the provisions of section 105(c)(1) of the Act, 30 U.S.C. 815(c)(1), have not been violated.

■ 23. Revise § 2700.41 to read as follows:

§ 2700.41 Time to file.

(a) *The Secretary.* A discrimination or interference complaint shall be filed by the Secretary within 30 days after the Secretary's written determination that a violation has occurred.

(b) *Miner, representative of miners, or applicant for employment.* A discrimination or interference complaint may be filed by a complaining miner, representative of miners, or applicant for employment within 30 days after receipt of a written determination by the Secretary that no violation has occurred.

■ 24. Revise § 2700.42 to read as follows:

§ 2700.42 Contents of complaint.

A discrimination or interference complaint shall include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or interference, and a statement of the relief requested.

■ 25. Revise § 2700.43 to read as follows:

§ 2700.43 Answer.

Within 30 days after service of a discrimination or interference complaint, the respondent shall file an answer responding to each allegation of the complaint.

■ 26. Revise § 2700.44 to read as follows:

§ 2700.44 Petition for assessment of penalty in discrimination or interference cases.

(a) *Petition for assessment of penalty in Secretary's complaint.* A discrimination or interference complaint filed by the Secretary shall propose a civil penalty of a specific amount for the alleged violation of section 105(c) of the Act, 30 U.S.C. 815(c). The petition for assessment of penalty shall include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act, 30 U.S.C. 820(i).

(b) *Petition for assessment of penalty after sustaining of complaint by miner, representative of miners, or applicant for employment.* Immediately upon issuance of a decision by an ALJ sustaining a discrimination or interference complaint brought pursuant to section 105(c)(3), 30 U.S.C. 815(c)(3), the ALJ shall notify the Secretary in writing of such determination. The Secretary file with the Commission a petition for assessment of civil penalty within 45 days of receipt of such notice.

■ 27. Revise § 2700.45 to read as follows:

§ 2700.45 Temporary reinstatement proceedings.

(a) *Service of documents.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties, the miner (in cases where the miner is without representation), and also on any representative of the complainant miner so identified in the miner's complaint to the Secretary or identified in subsequent filings, by a method of service as expeditious as that used for filing, except that, if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(b) *Contents of application.* An application for temporary reinstatement shall state the Secretary's finding that the miner's discrimination or interference complaint was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons supporting this finding. The application also shall include a copy of the miner's complaint to the Secretary and proof of notice to and service on the person against whom relief is sought by the most expeditious method of notice and delivery reasonably available.

(c) *Request for hearing.* Within 10 calendar days following receipt of the Secretary's application for temporary reinstatement, the person against whom relief is sought shall advise the Commission's Chief ALJ or designee, and simultaneously notify the Secretary, the miner (in cases where the miner is without representation), and any miner's representative who is due service under paragraph (a) of this section, whether a hearing on the application is requested. If no hearing is requested, the ALJ assigned to the matter shall immediately review the Secretary's application and, if based on the contents thereof the ALJ determines that the miner's complaint was not frivolously brought, the ALJ shall immediately issue a written order of temporary reinstatement. If a hearing on the application is requested, the hearing shall be held within 10 calendar days following receipt of the request for hearing by the Commission's Chief ALJ or designee, unless compelling reasons are shown in an accompanying request for an extension of time.

(d) *Hearing.* The scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miner's complaint was frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint was not frivolously brought. In support of the application for temporary reinstatement, the Secretary may limit presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint was frivolously brought.

(e) *Order on application.* (1) Within 7 calendar days following the close of a hearing on an application for temporary reinstatement, the ALJ shall issue a written order granting or denying the application. However, in extraordinary circumstances, the ALJ's time for issuing an order may be extended as deemed necessary by the ALJ.

(2) The ALJ's order shall include findings and conclusions supporting the determination as to whether the miner's complaint has been frivolously brought.

(3) The parties shall be notified of the ALJ's determination by the most expeditious means reasonably available.

(4) An ALJ's order temporarily reinstating a miner is not a final decision within the meaning of § 2700.69, and except during appellate review of such order by the Commission or courts, the ALJ shall retain jurisdiction over the temporary reinstatement proceeding.

(f) *Review of order.* Review by the Commission of an ALJ's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned ''Petition for Review of Temporary Reinstatement Order,'' with supporting arguments, within 5 business days following receipt of the ALJ's written order. The filing of any such petition is effective upon receipt. The filing of a petition shall not stay the effect of the ALJ's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 business days following service of a petition. Filings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or

by third-party commercial carrier, resulting in same-day delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 calendar days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

(g) *Dissolution of order.* If, following an order of temporary reinstatement, the Secretary determines that the provisions of section 105(c)(1), 30 U.S.C. 815(c)(1), have not been violated, the ALJ shall be so notified. An order dissolving the order of reinstatement shall not bar the filing of an action by the miner on the miner's own behalf under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), and § 2700.40(b).

Subpart F—Applications for Temporary Relief

■ 28. In § 2700.46, revise paragraph (d) to read as follows:

§ 2700.46 Procedure.

* * * * *

(d) *Service of documents.* A copy of each document filed with the Commission under subpart F of this part must be served on all parties by a means of delivery no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

■ 29. In § 2700.47, revise paragraph (a) to read as follows:

§ 2700.47 Contents of application.

(a) An application for temporary relief shall contain:

(1) A showing of substantial likelihood that the findings and decision of the ALJ or the Commission will be favorable to the applicant;

(2) A statement of the specific relief requested; and

(3) A showing that such relief will not adversely affect the health and safety of miners in the affected mine.

* * * * *

Subpart G—Hearings

■ 30. Revise § 2700.50 to read as follows:

§ 2700.50 Assignment of ALJs.

ALJs shall be assigned cases in rotation as far as practicable.

■ 31. Revise § 2700.51 to read as follows:

§ 2700.51 Hearing dates and sites.

All cases will be assigned a hearing date and site by order of the ALJ. In fixing the time and place of the hearing, the ALJ shall give due regard to the convenience and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors.

■ 32. Revise § 2700.53 to read as follows:

§ 2700.53 Prehearing conferences and statements.

(a) The ALJ may require the parties to participate in a prehearing conference, either in person or by telephone or other video/audio teleconferencing. Notwithstanding the mandatory recordings of motions on the record in accordance with § 2700.10(a), any in-person or telephonic conference shall be recorded at a party's request or within the ALJ's discretion. The participants at any such conference may consider and take action with respect to:

(1) The formulation and simplification of the issues;

(2) The possibility of obtaining stipulations, admissions of fact and of documents that will avoid unnecessary proof and advance rulings from the ALJ on the admissibility of evidence;

(3) The exchange of exhibits and the names of witnesses and a synopsis of the testimony expected from each witness;

(4) The necessity or desirability of amendments to the filings and the joinder of parties;

(5) The possibility of agreement disposing of any or all of the issues in dispute;

(6) Such other matters as may aid in the expedition of the hearing or the disposition of the case.

(b) The ALJ may also require the parties to submit prehearing statements addressing one or more of the matters set forth in paragraph (a) of this section.

■ 33. Revise § 2700.54 to read as follows:

§ 2700.54 Notice of hearing.

Except in expedited proceedings, written notice of the time, place, and nature of the hearing, the legal authority under which the hearing is to be held, and the matters of fact and law asserted shall be given to all parties at least 20 days before the date set for hearing.

■ 34. Revise § 2700.55 to read as follows:

§ 2700.55 Powers of ALJs.

Subject to these rules, an ALJ is empowered to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law;

(c) Rule on offers of proof and receive relevant evidence;

(d) Order depositions to be taken;

(e) Regulate the course of the hearing;

(f) Hold conferences for the settlement or simplification of the issues;

(g) Dispose of procedural requests or similar matters;

(h) Make decisions in the proceedings, provided that the ALJ shall not be assigned to make a recommended decision; and

(i) Take other action authorized by these rules, by 5 U.S.C. 556, or by the Act.

■ 35. In § 2700.56, revise paragraphs (c) and (e) to read as follows:

§ 2700.56 Discovery; general.

* * * * *

(c) *Limitation of discovery.* Upon motion by a party or by the person from whom discovery is sought or upon the ALJ's own motion, an ALJ may, for good cause shown, limit discovery to prevent undue delay or to protect a party or person from oppression or undue burden or expense.

* * * * *

(e) *Completion of discovery.* Discovery shall not unduly delay or otherwise impede disposition of the case, and must be completed at least 20 days prior to the scheduled hearing date. For good cause shown, the ALJ may extend or shorten the time for discovery.

■ 36. Revise § 2700.57 to read as follows:

§ 2700.57 Depositions.

(a) *Generally.* Any party, without leave of the ALJ, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories.

(b) *Orders for deposition.* If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by order of the *ALJ.*

■ 37. Revise § 2700.58 to read as follows:

§ 2700.58 Interrogatories, requests for admissions and requests for production of documents.

(a) *Interrogatories.* Any party, without leave of the ALJ, may serve written interrogatories upon another party. A party served with interrogatories shall answer each interrogatory separately and fully in writing under oath within 25 days of service unless the proponent of the interrogatories agrees to a longer time. The ALJ may order a shorter or longer time period for responding. A party objecting to an interrogatory shall state the basis for the objection in its answer.

(b) *Requests for admissions.* Any party, without leave of the ALJ, may serve on another party a written request for admissions. A party served with a request for admissions shall respond to each request separately and fully in writing within 25 days of service, unless the party making the request agrees to a longer time. The ALJ may order a shorter or longer time period for responding. A party objecting to a request for admissions shall state the basis for the objection in its response. Any matter admitted under this rule is conclusively established for the purpose of the pending proceeding unless the ALJ, on motion, permits withdrawal or amendment of the admission.

(c) *Request for production, entry or inspection.* Any party, without leave of the ALJ, may serve on another party a written request to produce and permit inspection, copying or photocopying of designated documents or objects, or to permit a party or its agent to enter upon designated property to inspect and gather information. A party served with such a request shall respond in writing within 25 days of service unless the party making the request agrees to a longer time. The ALJ may order a shorter or longer period for responding. A party objecting to a request for production, entry or inspection shall state the basis for the objection in its response.

■ 38. Revise § 2700.59 to read as follows:

§ 2700.59 Failure to cooperate in discovery; sanctions.

Upon the failure of any person, including a party, to respond to a discovery request or upon an objection to such a request, the party seeking discovery may file a motion with the ALJ requesting an order compelling discovery. If any person, including a party, fails to comply with an order compelling discovery, the ALJ may make such orders with regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered or dismissing the proceeding in favor of the party seeking discovery. For good cause shown the ALJ may excuse an objecting party from complying with the request.

■ 39. Revise § 2700.60 to read as follows:

§ 2700.60 Subpoenas.

(a) *Compulsory attendance of witnesses and production of documents.* The Commission and its ALJs are authorized to issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence. A subpoena may be served by any person who is at least 18 years of age. A subpoena may also be served by registered or certified mail, return receipt requested, but, in such case, any risk of delivery is on the serving party. A copy of the subpoena bearing a certificate of service shall be filed with the Commission or the ALJ.

(b) *Fees payable to witnesses.* Subpoenaed witnesses shall be paid the same fees and mileage as are paid in the district courts of the United States. The witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on the motion of the Commission or an ALJ. This paragraph does not apply to Government employees who are called as witnesses by the Government.

(c) *Motions to revoke or modify subpoenas.* Any person served with a subpoena may move within 5 days of service or at the hearing, whichever is sooner, to revoke or modify the subpoena. The Commission or the ALJ, as appropriate, shall revoke or modify the subpoena if it seeks information outside the proper scope of discovery as set forth in § 2700.56(b); or if it does not describe with sufficient particularity the evidence required to be produced; or if for any other reason it is found to be invalid or unreasonable. The Commission or the ALJ shall set forth a concise statement of the grounds for such ruling.

(d) *Availability of transcript.* Persons compelled to submit evidence at a public proceeding are entitled to obtain, on payment of prescribed costs, a transcript of that part of the proceeding that sets forth their testimony or refers to their production of evidence.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or with a subpoena issued by the Commission or the ALJ, the ALJ or the Commission's General Counsel, at the request of the ALJ or at the direction of the Commission, may undertake to initiate proceedings in the appropriate district court of the United States for the enforcement of the subpoena.

■ 40. Revise § 2700.61 to read as follows:

§ 2700.61 Name of miner informant.

An ALJ shall not, except in extraordinary circumstances, disclose or order a person to disclose to an operator or its agent the name of an informant who is a miner.

■ 41. Revise § 2700.62 to read as follows:

§ 2700.62 Name of miner witness.

An ALJ shall not, until 2 days before a hearing, disclose or order a person to disclose to an operator or its agent the name of a miner who is expected by the ALJ to testify or whom a party expects to summon or call as a witness.

■ 42. In § 2700.63, revise paragraph (b) to read as follows:

§ 2700.63 Evidence; presentation of case.

* * * * *

(b) The proponent of an order has the burden of proof. A party shall have the right to present a case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

■ 43. Revise § 2700.64 to read as follows:

§ 2700.64 Exhibits.

All exhibits received in evidence in a hearing or submitted for the record in any proceeding before the Commission shall be deemed part of the official record of the proceeding. The withdrawal of original exhibits may be permitted by the Commission or the ALJ, upon request and after notice to the other parties, if true copies are substituted, where practical, for the originals.

■ 44. Revise § 2700.65 to read as follows:

§ 2700.65 Proposed findings, conclusions and orders.

The ALJ may require the submission of proposed findings of fact, conclusions of law, and orders, together with supporting briefs. The proposals shall be served upon all parties, and shall contain adequate references to the record and authorities.

■ 45. Revise § 2700.66 to read as follows:

§ 2700.66 Summary disposition of proceedings.

(a) *Generally.* When a party fails to comply with an order of an ALJ or these rules, except as provided in paragraph (b) of this section, an order to show cause shall be directed to the party before the entry of any order of default or dismissal. The order shall be provided to the party by the most expeditious means reasonably available.

(b) *Failure to attend hearing.* If a party fails to attend a scheduled hearing, the ALJ, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause.

(c) *Penalty proceedings.* When the ALJ finds a party in default in a civil penalty proceeding, the ALJ shall also

enter an order assessing appropriate penalties and directing that such penalties be paid.

■ 46. In § 2700.67, revise paragraphs (a), (e), and (f) to read as follows:

§ 2700.67 Summary decision of the ALJ.

(a) *Filing of motion for summary decision.* At any time after commencement of a proceeding and no later than 25 days before the date fixed for the hearing on the merits, a party may move the ALJ to render summary decision disposing of all or part of the proceeding. Filing of a summary decision motion and an opposition thereto shall be effective upon receipt.

* * * * *

(e) *Affidavits.* Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or be incorporated by reference if not otherwise a matter of record. The ALJ shall permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, admissions, or further affidavits.

(f) *Case not fully adjudicated on motion.* If a motion for summary decision is denied in whole or in part, the ALJ shall ascertain what material facts are controverted and shall issue an order directing further proceedings as appropriate.

■ 47. Revise § 2700.68 to read as follows:

§ 2700.68 Substitution of the ALJ.

(a) *Generally.* Should an ALJ become unavailable to the Commission, the proceedings assigned to that ALJ shall be reassigned to a substitute ALJ.

(b) *Substitution following a hearing.* The substitute ALJ may render a decision based upon the existing record, provided the parties are notified of the ALJ's intent and they are given an opportunity to object. An objection to the ALJ rendering a decision based upon the existing record shall be filed within 10 days following receipt of the ALJ's notice, or the objection shall be deemed to be waived. An objection shall be founded upon a showing of a need for the resolution of conflicting material testimony requiring credibility determinations. Upon good cause shown the ALJ may order a further hearing on the merits, which shall be limited, so far as practicable, to the testimony in dispute.

■ 48. Revise § 2700.69 to read as follows:

§ 2700.69 Decision of the ALJ.

(a) *Form and content of the ALJ's decision.* The ALJ shall make a decision that constitutes a final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. If a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript. An order by an ALJ approving a settlement proposal is a decision of the ALJ.

(b) *Termination of the ALJ's jurisdiction.* Except to the extent otherwise provided herein, the jurisdiction of the ALJ terminates when the ALJ's decision has been issued.

(c) *Correction of clerical errors.* At any time before the Commission has directed that an ALJ's decision be reviewed, and on the ALJ's own motion or the motion of a party, the ALJ may correct clerical errors in decisions, orders, or other parts of the record. After the Commission has directed that an ALJ's decision be reviewed, the ALJ may correct such errors with the leave of the Commission. If an ALJ's decision has become the final order of the Commission, the ALJ may correct such errors with the leave of the Commission. Neither the filing of a motion to correct a clerical error, nor the issuance of an order or amended decision correcting a clerical error, shall toll the time for filing a petition for discretionary review of the ALJ's decision on the merits.

(d) *Effect of decision of the ALJ.* A decision of an ALJ is not a precedent binding upon the Commission.

Subpart H—Review by the Commission

■ 49. Revise § 2700.70 to read as follows:

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by an ALJ's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review is effective upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

(b) *Review discretionary.* Review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Review by the Commission shall be granted only by affirmative vote of at least two of the Commissioners present and voting.

(c) *Grounds.* Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except by permission of the Commission and for good cause shown, petitions for discretionary review shall not exceed 35 pages. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the ALJ had not been afforded an opportunity to pass.

(e) *Statement in opposition to petition.* A statement in opposition to a petition for discretionary review may be filed, but the opportunity for such filing shall not require the Commission to delay its action on the petition.

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit shall be received not less than 3 days prior to the date the petition for discretionary review is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. Filing of a motion requesting an extension of page limit is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(g) *Scope of review.* If a petition is granted, review shall be limited to the issues raised by the petition, unless the Commission directs review of additional issues pursuant to § 2700.71.

(h) *Denial of petition.* A petition not granted within 40 days after the issuance of the ALJ's decision is deemed denied.

■ 50. Revise § 2700.71 to read as follows:

§ 2700.71 Review by the Commission on its own motion.

At any time within 30 days after the issuance of an ALJ's decision, the Commission may, by the affirmative vote of at least two of the Commissioners present and voting, direct the case for review on its own motion. Review shall be directed only upon the ground that the decision may be contrary to law or Commission policy or that a novel question of policy has been presented. The Commission shall state in such direction for review the specific issue of law, Commission policy, or novel question of policy to be reviewed. Review shall be limited to the issues specified in such direction for review.

■ 51. In § 2700.73, revise paragraphs (b) and (d) to read as follows:

§ 2700.73 Procedure for intervention.

* * * * *

(b) A showing that the disposition of the proceeding may impair or impede the movant's ability to protect that interest;

* * * * *

(d) The reasons why the movant should be excused for failing to file for intervention before the ALJ. A motion for intervention shall also show that the granting of the motion will not unduly delay the proceeding or prejudice any party and shall explain why the movant's participation as an amicus curiae would be inadequate. If the Commission permits intervention, the Commission's order shall specify the time within which the intervenor's brief and any response or reply may be filed. In denying a motion to intervene, the Commission may alternatively permit the movant to participate in the proceeding as amicus curiae.

■ 52. In § 2700.75, revise paragraphs (a)(1), (c), (e), and (f) to read as follows:

§ 2700.75 Briefs.

(a) * * *

(1) *Opening and response briefs.* Within 30 days after the Commission grants a petition for discretionary review, the petitioner shall file an opening brief. The petitioner may notify the Commission and all other parties within the 30-day period that the petition and any supporting memorandum are to constitute the opening brief. Other parties may file response briefs within 30 days after the petitioner's brief is served. If the Commission directs review on its own motion, all parties shall file any opening briefs within 30 days of the direction for review. In such cases, a party may file a response brief within 20 days after service of the opposing party's opening brief.

* * * * *

(c) *Length of brief.* Except by permission of the Commission and for good cause shown, opening and response briefs shall not exceed 35 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the ALJ, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

* * * * *

(e) *Consequences of petitioner's failure to file brief.* If a petitioner fails to timely file a brief or to designate the petition as the opening brief, the direction for review may be vacated.

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit for a brief shall be received not less than 3 days prior to the date the brief is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. Filing of a motion requesting an extension of page limit is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

* * * * *

■ 53. Revise § 2700.76 to read as follows:

§ 2700.76 Interlocutory review.

(a) *Procedure.* Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

(1) Review cannot be granted unless:

(i) The ALJ has certified, upon the ALJ's own motion or the motion of a party, that an interlocutory ruling involves a controlling question of law and that in the ALJ's opinion immediate review will materially advance the final disposition of the proceeding; or

(ii) The ALJ has denied a party's motion for certification of the interlocutory ruling to the Commission, and the party files with the Commission a petition for interlocutory review within 30 days of the ALJ's denial of such motion for certification.

(2) In the case of either paragraph (a)(1)(i) or (ii) of this section, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, may grant interlocutory review upon a determination that the ALJ's interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. Interlocutory review by the Commission shall not operate to suspend the hearing unless otherwise ordered by the Commission. Any grant or denial of interlocutory review shall be by written order of the Commission.

(b) *Petitions for interlocutory review.* Where the ALJ denies a party's motion for certification of an interlocutory ruling and the party seeks interlocutory review, a petition for interlocutory review shall be in writing and shall not exceed 15 pages. A copy of the ALJ's interlocutory ruling sought to be reviewed and of the ALJ's order denying the petitioner's motion for certification shall be attached to the petition.

(c) *Briefs.* When the Commission grants interlocutory review, it shall also issue an order which addresses page limits on briefs and the sequence and schedule for filing of initial briefs, and, if permitted by the order, reply briefs.

(d) *Scope of review.* Unless otherwise specified in the Commission's order granting interlocutory review, review shall be confined to the issues raised in the ALJ's certification or to the issues raised in the petition for interlocutory review.

■ 54. In § 2700.78, revise paragraph (a) to read as follows:

§ 2700.78 Reconsideration.

(a) A petition for reconsideration must be filed with the Commission within 10 days after the issuance of a decision or order of the Commission. Any response must be filed with the Commission within 10 days of service of the petition.

* * * * *

Subpart I—Miscellaneous

■ 55. Revise § 2700.80 to read as follows:

§ 2700.80 Standards of conduct; disciplinary proceedings.

(a) *Standards of conduct.* Representatives appearing before the Commission or before Commission ALJs pursuant to § 2700.3(b) shall conform to the standards of ethical conduct

required of practitioners under the American Bar Association's Model Rules of Professional Conduct (''ABA's Model Rules''). The Commission shall apply the ABA's Model rules as far as practicable.

(b) *Grounds.* Disciplinary proceedings may be instituted against anyone who is appearing or has appeared before the Commission on grounds that such person has engaged in unethical or unprofessional conduct; has failed to comply with these rules or an order of the Commission or its ALJs; has been disbarred or suspended by a court or administrative agency; or has been disciplined by an ALJ under paragraph (e) of this section.

(c) *Procedure.* Disciplinary proceedings shall be subject to the following procedure:

(1) *Disciplinary referral.* Except as provided in paragraph (e) of this section, an ALJ or other person having knowledge of circumstances that may warrant disciplinary proceedings against a representative who is appearing or has appeared before the Commission shall forward to the Commission for action such information in the form of a written disciplinary referral. Whenever the Commission receives a disciplinary referral, the matter shall be assigned a docket number and a notice will be issued to the individual named in the referral of the initiation of an investigation.

(2) *Inquiry and preliminary determination by the Commission.* The Commission shall conduct an inquiry concerning a disciplinary referral and shall determine whether disciplinary proceedings are warranted. The Commission may require persons to submit affidavits setting forth their knowledge of relevant circumstances.

(i) *Termination of referral.* If the Commission determines that disciplinary proceedings are not warranted, it shall issue an order terminating the referral.

(ii) *Further disciplinary proceedings.* Whenever, as a result of its inquiry, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, determines that the circumstances warrant a hearing, the Commission shall issue an order specifying the disciplinary issues to be resolved through hearing and order the Commission's Chief ALJ to assign the matter to an ALJ, from within or outside of the Commission, other than the referring ALJ, for hearing and decision. The Commission may designate counsel from within or outside of the Commission to prosecute the matter before the ALJ.

(3) *Hearing before an ALJ*—(i) *Assignment.* Upon the Commission's order determining that further proceedings are warranted, the Commission's Chief ALJ shall select a Commission ALJ, or select a non-Commission ALJ, and issue an order of assignment for hearing. The order of assignment shall advise the respondent that the respondent may file a statement in accordance with paragraph (c)(3)(ii) of this section.

(ii) *Response.* The respondent named in the disciplinary proceeding may file a statement responding to the Commission's decision within 30 days after service of the order of assignment.

(iii) *Evidence and applicability of hearing rules.* The parties shall have the opportunity to present evidence and cross-examine witnesses. Subpart G of this part, governing Commission hearings before ALJs shall apply as appropriate to all Commission disciplinary proceedings.

(iv) *ALJ's decision.* The ALJ's decision shall include findings of fact and conclusions of law and either an order dismissing the proceedings or an appropriate disciplinary order, which may include reprimand, suspension, or prohibition from appearing before the Commission.

(d) *Appeal from ALJ's decision.* Any person adversely affected or aggrieved by the ALJ's decision is entitled to review by the Commission. A person seeking such review shall file a notice of appeal with the Commission within 30 days after the issuance of the ALJ's decision.

(e) *Misconduct before an ALJ.* An ALJ may order the removal of any person, including a representative of a party, who engages in disruptive conduct in the ALJ's presence. If a representative is ordered removed, the ALJ shall allow the party represented by the person a reasonable time to engage another representative. In all instances of removal of a person for disruptive conduct, the ALJ shall place in the record a written statement on the matter. A party aggrieved by an ALJ's order of removal may appeal by requesting interlocutory review pursuant to § 2700.76 or, alternatively, may assign the ALJ's ruling as error in a petition for discretionary review.

■ 56. Revise § 2700.81 to read as follows:

§ 2700.81 Recusal and disqualification.

(a) *Recusal.* Whenever a Commissioner or an ALJ deems appropriate, the Commissioner or ALJ may choose to be recused from a proceeding.

(b) *Request to withdraw.* A party may request a Commissioner or an ALJ to withdraw on grounds of personal bias or other disqualification. A party shall make such a request by promptly filing an affidavit setting forth in detail the matters alleged to constitute personal bias or other grounds for disqualification.

(c) *Procedure if Commissioner or ALJ does not withdraw.* If, upon being requested to withdraw pursuant to paragraph (b) of this section, the Commissioner or the ALJ does not withdraw from the proceeding, the Commissioner or ALJ shall so rule upon the record, stating the grounds for such ruling. If the ALJ does not withdraw, the ALJ shall proceed with the hearing, or, if the hearing has been completed, the ALJ shall proceed with the issuance of a decision, unless the Commission stays the hearing or further proceedings upon the granting of a petition for interlocutory review of the ALJ's decision not to withdraw.

■ 57. In § 2700.82, revise paragraphs (b), (c), and (d) to read as follows:

§ 2700.82 Ex parte communications.

* * * * *

(b) *Prohibited ex parte communication.* There shall be no ex parte communication with respect to the merits of a case not concluded, between the Commission, including any member, ALJ, officer, or agent of the Commission who is employed in the decisional process, and any of the parties, intervenors, representatives, amici, or other interested persons.

(c) *Procedure in case of violation.* (1) In the event a prohibited ex parte communication occurs, the Commission or the ALJ may make such orders or take such action to remedy the effect of the ex parte communication as circumstances require. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) A memorandum setting forth all ex parte communications, whether prohibited or not, shall be placed on the public record of the proceeding.

(d) *Status or informational requests.* Information concerning filing requirements, the status of cases, or docket information may be accessed through the Commission's website (*http://www.fmshrc.gov*). In the event such information is unavailable through the Commission's website, such status or informational requests must be directed to the Docket Office of the Federal Mine Safety and Health Review Commission, 1331 Pennsylvania

Avenue NW, Suite 520N, Washington, DC 20004–1710; 202–434–9950.

■ 58. Revise § 2700.83 to read as follows:

§ 2700.83 Authority to sign orders.

The Chair or other designated Commissioner is authorized to sign on behalf of a quorum of the Commission, orders disposing of the following procedural motions: motions for extensions of time, motions for permission to file briefs in excess of page limits, motions to accept late filed briefs, motions to consolidate, motions to expedite proceedings, motions for oral argument, and similar procedural motions. In the absence of a designated Chair or Acting Chair, Commissioners continue to be authorized to sign orders disposing of procedural motions as identified above.

Dated: January 8, 2025.

Mary Lu Jordan,

Chair, Federal Mine Safety and Health Review Commission.

[FR Doc. 2025–00703 Filed 1–16–25; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV–118–FOR (partial); Docket ID: OSM–2011–0009; SATS No. WV–126–FOR; Docket ID: OSM–2019–0012 S1D1S SS08011000 SX064A000 240S180110; S2D2S SS08011000 SX064A000 245XS501520]

West Virginia Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), published a document in the **Federal Register** on March 18, 2024, approving in part, and not approving in part, amendments to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We made an error in the document by overwriting a provision that should not have been removed; instead, we should have added a new paragraph under the not approved section. Additionally, we did not include a provision in the table where our approvals were listed. We published a correction to the March 18, 2024, **Federal Register** document on August 28, 2024, but because the March 18 revisions had already become effective, the amendatory instructions became erroneous and the August 28, 2024, corrections could not be incorporated into the Code of Federal Regulations. This document corrects the final regulations.

DATES: This correction is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Justin Adams, Director, Charleston Field Office, Telephone: (304) 977–7177. Email: *osm-chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of errata from our final rule published March 18, 2024 (89 FR 19262), FR Doc. 2024–05682, on page 19273, columns 2 and 3. We are correcting 30 CFR 948.12 (State statutory, regulatory, and proposed program amendment provisions not approved) to re-letter subsection (k) as subsection (l), and reinstate the version of subsection (k) that existed in the CFR prior to the publication of the March 18, 2024 **Federal Register** document. *See also* 89 FR 2133 (Jan. 12, 2024). We are also adding subsection 38–2–12.5.d of West Virginia's regulations to the table at 30 CFR 948.15 (Approval of West Virginia regulatory program amendments). We had approved its deletion from West Virginia's regulations in the March 18, 2024, **Federal Register**, but it was omitted from the table.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR part 948 is amended by making the following correcting amendments:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. In § 948.12, revise paragraph (k) and add paragraph (l) to read as follows:

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(k) We are not approving the following portions of provisions of the proposed program amendment that West Virginia submitted on May 15, 2017:

(1) We are deferring our decision on the deletion of provisions from W.Va. Code 22–3–11(g)(2) regarding the development of a long-range planning process for the selection and prioritization of sites to be reclaimed. We defer our decision until we make a determination on West Virginia's related amendment docketed as WV–128–FOR, which relates to the complete and accurate listing of all outstanding reclamation obligations (including water treatment) on active permits in the State.

(2) [Reserved]

(l) We are not approving the following provisions of the proposed West Virginia program amendments dated May 2, 2018:

(1) At W.Va. Code 22–3–9, revisions substituting notice by newspaper with notice in a form and manner determined by the Secretary which may be electronic.

(2) At W.Va. Code 22–3–20, revisions substituting notice by newspaper with notice in a form and manner determined by the Secretary which may be electronic.

(3) At CSR 38–2–2.37, the removal of the definition ''completion of reclamation''.

(4) At CSR 38–2–12.2.d., the elimination to the existing prohibition on bond release for any site specific bonding (*i.e.,* open-acre bonding) until all coal extraction is completed and the disturbed area is completely backfilled and regraded.

(5) At CSR 38–2–12.2.e., to restructure and revise existing approved language in this section and move it to CSR 38–2–12.2.a.4.

(6) At CSR 38–2–12.2.f., to move, unchanged, this existing language to CSR 38–2–12.2.d.

(7) At CSR 38–2–12.2.g., to move, unchanged, this existing language to CSR 38–2–12.2.f.

(8) At CSR 38–2–12.2.h., to renumber existing CSR 38–2–12.2.h to 12.2.i. and to insert it as a new CSR 38–2–12.2.h.

(9) At CSR 38–2–12.4.c., to eliminate an existing 180 day window for initiating reclamation operations to reclaim the site in accordance with the approved reclamation plan or modification thereof.

(10) At CSR 38–2–12.5., to delete subsection 12.5 of the West Virginia regulations, which directs WVDEP's collection, analysis and reporting on sites where bond has been forfeited including, in particular, data relating to the water quality of water being discharged from forfeited sites.

■ 3. In § 948.15, revise the table entry ''April 25, 2011, May 8, 2018'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission dates	Date of publication of final rule	Citation/description of approved provisions
* * * * * * *		
April 25, 2011, May 8, 2018	March 18, 2024	CSR 38–2–2.6; 9.3.d; 11.3.f; 11.4; 11.6; 12.2.a, 12.5.b, c and d; 12.4.a.2.B, 12.4.b, 4.b.1 and 4.b.2; 12.4.d; 14.5.b.
* * * * * * *		

Thomas D. Shope,

Regional Director, North Atlantic-Appalachian Region.

[FR Doc. 2025–01131 Filed 1–16–25; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is publishing this final rule to reflect inflation adjustments to its civil monetary penalties as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This rule adjusts certain maximum civil monetary penalties within the jurisdiction of FinCEN to the amounts required by that Act.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section by submitting an inquiry at *www.fincen.gov/contact.*

SUPPLEMENTARY INFORMATION:

I. Background

To improve the effectiveness of civil monetary penalties (CMPs) and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Act'') [1] requires Federal agencies to adjust for inflation each CMP provided by law within the jurisdiction of the agency. Under the Act, agencies are required to adjust CMPs annually and publish these adjustments in the **Federal Register**.[2] Agencies are to make the adjustments without engaging in notice-and-comment rulemaking, and these adjustments may be immediately effective upon publication.[3] The Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.[4] FinCEN publishes CMP inflation adjustments in its regulations at 31 CFR 1010.821.

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is determined by the Act. Under the Act and Office of Management and Budget (OMB) guidance, annual inflation adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the October preceding the date of the adjustment and the prior year's October CPI–U.[5] As set forth in OMB Memorandum M–25–02 of December 17, 2024, the adjustment multiplier for 2025 is 1.02598. To complete the 2025 annual adjustment, each current FinCEN CMP is multiplied by the 2025 adjustment multiplier. Under the Act, any increase in CMP must be rounded to the nearest multiple of $1.[6]

Procedural Matters

1. Administrative Procedure Act

Section 4(b) of the Act requires agencies, beginning in 2017, to make annual adjustments for inflation to CMPs notwithstanding the rulemaking requirements of 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment and a delayed effective date are not required for this rule.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

3. Executive Order 12866

This rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866, as amended.

4. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks, banking, Brokers, Business and industry, Citizenship and naturalization, Commodity futures, Currency, Electronic filing, Federal savings associations, Federal-States relations, Foreign persons, Holding companies, Indians, Indians—law, Indians—tribal government, Insurance companies, Investigations, Investment advisers, Investment companies, Law enforcement, Penalties, Reporting and

[1] Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Act''), Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373 (Apr. 26, 1996); the Federal Reports Elimination Act of 1998, Public Law 105–362, 112 Stat. 3293 (Nov. 10, 1998); and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 129 Stat. 599 (Nov. 2, 2015), codified as a statutory note to 28 U.S.C. 2461.

[2] Act, sec. 4(a).

[3] Act, sec. 4(b)(2) (adjustments are to be made ''notwithstanding'' the rulemaking requirements of 5 U.S.C. 553 of the Administrative Procedure Act).

[4] The increased CMPs, however, apply only with respect to underlying violations occurring after November 2, 2015, the date of enactment of the most recent amendment to the Act. Act, sec. 6.

[5] Act, sec. 5; OMB Mem. M–25–02, Implementation of Penalty Inflation Adjustments for 2025, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024), available at *https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf.*

[6] Act, sec. 5(a). FinCEN previously applied a catch-up adjustment for each penalty subject to the Act in 2016 based on the year and corresponding amount(s) for which the maximum penalty or range of minimum and maximum penalties was established or last adjusted, whichever is later. *See* FinCEN, Civil Monetary Penalty Adjustment and Table, 81 FR 42503, 42504 (June 30, 2016). Because the year of establishment or last adjustment is different for different penalties, penalties that were of the same size when each was promulgated can have different values today if promulgated at different times.

recordkeeping requirements, Small businesses, Securities, Terrorism, Time.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 457; sec. 701 Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

■ 2. Amend § 1010.821 by revising table 1 to paragraph (b) to read as follows:

§ 1010.821 Penalty adjustment and table.

* * * * *

(b) * * *

TABLE 1 TO § 1010.821—PENALTY ADJUSTMENT TABLE

U.S. Code citation	Civil monetary penalty description	Penalties as last amended by statute	Maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed on or after January 17, 2025
12 U.S.C. 1829b(j)	Relating to Recordkeeping Violations for Funds Transfers.	$10,000	$26,262
12 U.S.C. 1955	Willful or Grossly Negligent Recordkeeping Violations.	10,000	26,262
31 U.S.C. 5318(k)(3)(C)	Failure to Terminate Correspondent Relationship with Foreign Bank.	10,000	17,765
31 U.S.C. 5321(a)(1)	General Civil Penalty Provision for Willful Violations of Bank Secrecy Act Requirements.	25,000 −100,000	71,545 −286,184
31 U.S.C. 5321(a)(5)(B)(i)	Foreign Financial Agency Transaction—Non-Willful Violation of Transaction.	10,000	16,536
31 U.S.C. 5321(a)(5)(C)(i)(I).	Foreign Financial Agency Transaction—Willful Violation of Transaction.	100,000	165,353
31 U.S.C. 5321(a)(6)(A)	Negligent Violation by Financial Institution or Non-Financial Trade or Business.	500	1,430
31 U.S.C. 5321(a)(6)(B)	Pattern of Negligent Activity by Financial Institution or Non-Financial Trade or Business.	50,000	111,308
31 U.S.C. 5321(a)(7)	Violation of Certain Due Diligence Requirements, Prohibition on Correspondent Accounts for Shell Banks, and Special Measures.	1,000,000	1,776,364
31 U.S.C. 5330(e)	Civil Penalty for Failure to Register as Money Transmitting Business.	5,000	10,556
31 U.S.C. 5336(h)(3)(A)(i)	Civil Penalty for Beneficial Ownership Information Reporting Violation.	500	606
31 U.S.C. 5336(h)(3)(B)(i)	Civil Penalty for Unauthorized Disclosure or Use of Beneficial Ownership Information.	500	606

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2025–01374 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2024–HA–0119]

RIN 0720–AB91

Special Supplemental Food Program for Women, Infants, and Children (WIC) Overseas: Revision to Definition of Drafts

AGENCY: Defense Health Agency, Assistant Secretary of Defense for Health Affairs (ASD(HA)), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The ASD(HA) is issuing this final rule to revise the definition of drafts, currently defined as paper instruments, within the regulation governing the WIC Overseas Program. This final rule modernizes the definition of drafts to include not only paper instruments but also other methods and processes, including electronic benefit transfers. The rule is being published as a final rule as the change to the definition of drafts involve only a minor, technical amendment to the existing regulation. The Department has determined that notice and comment would be unnecessary and contrary to public interest.

DATES: This rule is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Kimberly Stakes, 703–275–6055, *kimberly.l.stakes.civ@health.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statement of Need for This Rule

The WIC Overseas Program is a DoD nutrition education and supplemental food program, similar to the United States (U.S.) Department of Agriculture's WIC program in the United States, for U.S. active-duty military personnel and other support staff stationed overseas and their dependents. The program provides multiple benefits such as food vouchers (or drafts), nutrition education and health screenings to help families save money and lead healthier lives. Providing WIC Overseas participants a specific prescription of supplemental nutritious foods based on their nutritional needs is a cornerstone of WIC's mission. Counselors provide participants with an approved food list and redeemable food checks called ''drafts,'' which participants exchange for specific foods and quantities in overseas commissaries and Navy Exchange Markets (NEXMARTs). Currently, WIC Overseas participants receive drafts, paper food instruments that contain their food prescription. The drafts are then transacted at participating overseas commissaries and NEXMARTs enabling the participant to receive their WIC Overseas Program food benefits.

Modernizing the definition of drafts in § 199.23 of title 32 of the Code of Federal Regulations (CFR) will provide the DoD with additional flexibility, similar to what already exists under the WIC program in the U.S., to issue drafts in the form of electronic benefit cards or other approved access devices or methods. For example, modernizing the definition of drafts in 32 CFR 199.23 could permit enrollees to use electronic benefit transactions, similar to a debit card, or other non-paper methods and processes, to purchase their authorized supplemental food items at their convenience and through multiple trips if desired or if required when items are temporarily out of stock. Existing paper instruments do not provide this level of flexibility as enrollees must use their monthly paper drafts in totality in a single shopping trip, regardless of whether they receive all the allotted foods authorized on the monthly paper draft. Expanding the definition of draft in the WIC Overseas Program allows both the WIC Overseas Program and its participants to use advanced technologies in the delivery of benefits and helps support the WIC Overseas Program's goal to improve client services through increased convenience, efficiency, and flexibility in how and when participants may purchase the authorized food items. The DoD also anticipates that the use of advanced technologies will provide opportunities for increased data analysis and feedback on the type, brand, and cost of each food item to better control food cost and help manage the WIC Overseas Program more efficiently. Additionally, the use of advanced technologies will likely reduce the risk of fraud and abuse within the program.

Generally, the Administrative Procedure Act (APA) requires a Federal agency to provide the public with notice and an opportunity to comment on agency rulemaking. The APA, however, creates an exception in cases where an agency for good cause determines that notice and public procedures are impracticable, unnecessary, or contrary to public interest. The rule is being published as a final rule as the change to the definition of drafts involve only a minor, technical amendment to the existing regulation. The Department has good cause to determine that notice and comment would be unnecessary and contrary to public interest.

Furthermore, the APA generally provides that a final rule may not become effective until at least 30 days after its publication in the **Federal Register** unless the agency determines that good cause exists to dispense with this requirement. As noted above, given that the rule does not impose new requirements and the change to the definition of drafts involve only a minor, technical amendment to the existing regulation, the Department finds sufficient good cause exists to dispense with the 30-day effective date requirement. The rule will be effective immediately upon publication.

B. Legal Authority

The legal authority for this final rule resides in chapter 53 of title 10, United States Code (U.S.C.). Within 10 U.S.C. chapter 53, section 1060a gives the Secretary of Defense the authority and responsibility to administer the Special Supplemental Food Program, known as the WIC Overseas Program, to provide supplemental foods and nutrition education to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces outside the United States (and its territories and possessions). The text of 10 U.S.C. chapter 53 can be found at *https://uscode.house.gov/view.xhtml?req=(title:%20section:1060a%20edition:prelim)%20OR%20(granuleid:U.S.C.-prelim-title-section1060a)&f=treesort&edition=prelim&num=0&jumpTo=true.*

C. Applicability

This rule will modernize the definition of drafts under the DoD's WIC Overseas Program. It is anticipated that the Department's use of the additional flexibility provided by a modernized definition of drafts will have a positive impact on eligible participants living overseas as it will give them more flexibility to purchase WIC Overseas approved foods.

D. Regulatory History

Section 199.23 was added to 32 CFR part 199 when the final rule published on March 26, 2004 (69 FR 15678) and has not been revised since. The only change being made in this final rule is to revise the definition of drafts in § 199.23.

II. Impact of This Regulation

There is no direct monetary impact to modernizing the definition of drafts in § 199.23 to provide greater flexibility in the future method(s) of issuing benefits for supplemental food prescribed under the program. It is anticipated that use of this flexibility will result in greater participant convenience and flexibility for the approximately 10,000 participants enrolled in the WIC Overseas Program.

III. Regulatory Compliance Analysis

A. Executive Order 12866, ''Regulatory Planning and Review,'' as Amended by Executive Order 14094, ''Modernizing Regulatory Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 (as amended by Executive Order 14094) and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distribution of impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated not significant, under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

B. Congressional Review Act (5 U.S.C. 801 et seq.)

Pursuant to the Congressional Review Act, this rule has not been designated a major rule, as defined by 5 U.S.C. 804(2).

C. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The ASD(HA) certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, and will not affect private sector costs.

E. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The existing WIC Overseas Program information collection has been reviewed and approved by the Office of Management and Budget (OMB) under OMB Control Number 0720–0030, ''Women, Infants, and Children Overseas–Eligibility Determination.''

F. Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This rule will not have a substantial effect on State and local governments.

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

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, Individuals with disabilities, Mental health programs, Military personnel.

Accordingly, the Department of Defense amends 32 CFR part 199 as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

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

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.23 by revising the first sentence of paragraph (b)(10) to read as follows:

§ 199.23 Special Supplemental Food Program.

* * * * *

(b) * * *

(10) *Drafts.* Food instruments, similar to a voucher (whether paper, card or other approved access device or method), issued in the WIC Overseas offices to program participants. * * * * * * * * *

Dated: January 14, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–01127 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0969]

RIN 1625–AA09

Drawbridge Operation Regulation; Umpqua River, Reedsport, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the name and operating schedule that governs the Central Oregon and Pacific railroad bridge across the Umpqua River, mile 11.5, at Reedsport, OR. This rule changes the name of the Central Oregon and Pacific railroad bridge; allows that bridge to be maintained in the closed to navigation position, removes the requirement for fog signals for that bridge and changes the name of the US 101 Bridge that crosses the side channel of the Umpqua River.

DATES: This rule is effective February 18, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2023–0969) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Danny McReynolds, Bridge Management Specialist, Thirteenth Coast Guard District Bridge Office; telephone 206–220–7234, email *d13-smb-d13-bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CBRL Coos Bay Rail Line

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 10, 2024, the Coast Guard published an NPRM titled ''Drawbridge Operation Regulation; Umpqua River, Reedsport, OR,'' in the **Federal Register** (89 FR 25198), to seek your comments on whether the Coast Guard should consider changing the name of the Central Oregon and Pacific railroad bridge, modifying the current operating schedule of the bridge, and removing the fog signal from the bridge. During the comment period that ended on May 28, 2024, the Coast Guard received zero comments. The subject bridge has had many owners in the past years and Coos Bay Rail Line (CBRL) has asked to change the bridge name to a local name vice a company name. The new name for the Central Oregon and Pacific railroad bridge is the Umpqua River railroad bridge.

The Umpqua River railroad bridge is currently maintained in the open to navigation position. This rule will allow the bridge to be maintained in the closed to navigation position and requires the bridge to open for marine vessels with a minimum of two-hours' advance notice. The subject bridge provides 15 feet of vertical clearance above high water in the closed position, which allows most mariners clearance to navigate under the bridge. The Umpqua River has experienced a reduction in marine traffic using the waterway while CBRL has experienced an increase in rail traffic that requires the draw to be placed in the closed position. Vessels that regularly request draw openings are two fishing vessels. These vessels transit upriver to a repair facility, and after repairs, the vessels transit down river to their normal moorings. Bridge opening notices may be made via the phone number posted on the bridge and in the CFR. Fog signals will not be required to warn vessels when the bridge is cycled open during reduced visibility.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Umpqua River railroad bridge across the Umpqua River, mile 11.5, at Reedsport, OR operates in accordance with 33 CFR 117.893(b). Bridge logs have shown a significant reduction in bridge opening requests for five years and the bridge is mostly cycled for maintenance. This rule is necessary to balance the needs of the railroad by reducing the need to frequently cycle the draw closed for rail traffic and back open for marine traffic while maintaining the reasonable needs of navigation.

This regulatory action is based on the ability for the Umpqua River railroad bridge to open on signal after the CBRL has received at least two-hours' notice by telephone. This rule allows any vessel that needs a draw opening to transit through the Umpqua River railroad bridge with the proper advance notice during clear visibility or reduced visibility.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 38 days, and no comments were received. No changes were made to the content of the rule since publication of the NPRM.

This rule amends the operating schedule of the Umpqua River railroad bridge by allowing the bridge to remain closed to navigation and requiring a two-hours' advance notice for all draw openings. The rule will balance the needs to accommodate frequent rail traffic and limited marine traffic and allow the Umpqua River railroad bridge to operate with the same notice requirements as the US 101 Bridge (33 CFR 117.893(a)).

In addition to the changes proposed in the NPRM, we are making two additional non-substantive changes to the regulatory text. First, given the close physical proximity of the Umpqua River railroad bridge to the US 101 Bridge, the Coast Guard will remove paragraph (b) from the 33 CFR 117.893 and add the Umpqua River railroad bridge to paragraph (a). Mariners should not experience delays with both bridges opening their draws simultaneously. CBRL states that draw tenders live within two-hours of the subject bridge, and most draw request are submitted 24-hours in advance. With paragraph (b) combining with paragraph (a), paragraph (c) will become paragraph (b). Second, the bridge name in paragraph (c) (US 101 Bridge) is incorrect. The bridge is known as the Lower Smith River Road bridge and crosses the side channel of the Umpqua River. The Coast Guard will be correcting the name in this rule.

Currently the bridge operates fog signals to warn vessels when the bridge is cycled closed and open during reduced visibility. This rule change requires the bridge to open on signal from mariners, and therefore, the mariner would know the bridge is open and have no need to be warned of the position of the draw during fog or any reduced visibility type of weather.

We have not identified any impacts on marine navigation with this rule.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability for the draw to open on signal after receiving at least two-hours advanced notice, and not delay passage of any mariner. Vessels not requiring an opening may pass under the bridge at any time.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.893 to read as follows:

§ 117.893 Umpqua River.

(a) The draws of the US 101 Bridge, mile 11.1, (541) 888–4340, and the Umpqua River railroad bridge, mile 11.5, (877) 928–5924, at Reedsport, Oregon, shall open on signal if at least two hours' notice is given via telephone.

(b) The draw of the Lower Smith River Road bridge across the side channel of the Umpqua River, mile 11.1 near Reedsport, need not be opened for the passage of vessels.

Dated: 11 December 2024.

Charles E. Fosse,

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

[FR Doc. 2025–00573 Filed 1–16–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AB70

[Docket ID ED–2024–OESE–0008]

Indian Education Discretionary Grant Programs; Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) amends the regulations that govern the Professional Development (PD) program, authorized under the Elementary and Secondary Education Act of 1965, as amended (ESEA), to establish priorities, requirements, and a definition for the program, including a priority for educator retention projects.

DATES: These regulations are effective February 18, 2025.

FOR FURTHER INFORMATION CONTACT: Linda Brake, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 987–0796. Email: *linda.brake@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

A summary of the rule is available at *https://www.regulations.gov/document/ED-2024-OESE-0008-0001.*

SUPPLEMENTARY INFORMATION:

Purpose of this Regulatory Action: Under ESEA section 6122(a)(4), one of the purposes of the PD program is to develop and implement initiatives to promote the retention of effective teachers, principals, and school leaders who have a record of success in helping low-achieving Indian students improve their academic achievement, outcomes, and preparation for postsecondary education or employment. The Department amends the program regulations to support implementation of this aspect of the program purpose.

Assistance Listing Number (ALN): 84.299B.

Background

Through this regulatory action, we amend part 263 of title 34 of the Code of Federal Regulations. We published a notice of proposed rulemaking (NPRM) for this program on July 29, 2024 (89 FR 60844). In the preamble of the NPRM, we discussed the major changes proposed in that document. In these final regulations, in addition to the

changes proposed in the NPRM, we are making the following revisions to ensure consistency throughout the regulations:

- In the NPRM, we proposed updates to the regulations to include part-time participants (89 FR 60844, 60847), but inadvertently did not make the updates in all places where it was necessary. We are making those related changes in §§ 263.3 (definition of ''stipend'') and 263.11(a), and we are removing the definition of ''full-time student,'' as it is no longer necessary.
- In § 263.5(a)(2), consistent with the other application requirements in paragraph (a), we are adding ''as applicable'' to reflect that PD program competitions may focus on a subset of the allowable activities, such as retention.
- We are revising § 263.10(b)(3) to confirm that, consistent with § 263.10(f), the deferred payback option is available for eligible full-time volunteer work ''up to a period of 36 months.''

Public Comment: In response to our invitation in the NPRM, we did not receive any substantive and/or relevant comments on the proposed regulations. Except for minor technical revisions and the conforming changes summarized above, there are no differences between the proposed regulations and these final regulations.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, OMB must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (as of 2022 but adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) of OMB for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action will not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Costs and Benefits

We believe that the potential costs associated with the regulatory changes will be minimal, and the benefits will exceed these costs.

For Professional Development grants, there will be no additional time or cost for applicants developing an application under the new priorities and application requirements. The benefits include allowing the program to better meet its mission of recruiting and retaining qualified Indian individuals to become educators. We do not anticipate grantees needing additional time to report full-time participant payback information in the Professional Development Program Data Collection System (PDPDCS). The costs of carrying out these activities would continue to be paid for with program funds.

The benefits also include enhancing project design and quality of services to better meet the objectives of the program and the needs of potential grantees with more educators remaining in their current positions and increasing their impact on Indian students and communities, as well as more accurately calculating the length of payback for participants in part-time training. We added payback deferral options for participants who serve as full-time volunteers with Indian Tribes, because it will provide them with opportunities to better understand the educational needs of Indian students, while helping to build the capacity of Tribes, and for participants who experience a temporary disability that affects the participant's ability to complete their payback obligations. These deferral pathways will provide participants more flexibility and help them obtain experience that fulfills their service obligation and provides relief to Tribal communities.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens

specifically associated with information collection requirements.

Regulatory Flexibility Act Certification

The Department certifies that these regulations will not have a substantial economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that will be affected by these regulations are LEAs, IHEs, Tribal Colleges and Universities, Tribes, and Tribally operated schools receiving Federal funds under this program. The regulations will not have a significant economic impact on the small entities affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and relate mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that these regulations present any significant impact on small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

These regulations do not create any new information collection requirements under OMB Control number 1810–0722 and therefore do not change the related information collection.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Authority: 20 U.S.C. 7442, 25 U.S.C. 5304, 5307)

List of Subjects in 34 CFR Part 263

Business and industry, College and universities, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

For the reasons discussed in the preamble, the Department amends part 263 of title 34 of the Code of Federal Regulations as follows:

PART 263—INDIAN EDUCATION PROFESSIONAL DEVELOPMENT PROGRAM

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

Authority: 20 U.S.C. 7441, unless otherwise noted.

■ 2. Amend § 263.3 by:
■ a. Adding in alphabetical order a definition for ''educator''.
■ b. Removing the definition of ''full-time student''.
■ c. Revising the definition of ''stipend''.

The addition and revision read as follows:

§ 263.3 What definitions apply to the Professional Development program?

* * * * *

Educator means an individual who is one or more of—

(1) A teacher (including an early education teacher);

(2) A principal or other school leader;

(3) An administrator;

(4) Specialized instructional personnel (*e.g.,* school psychologist, school counselor, school social worker, school nurse, librarian, early intervention service personnel);

(5) A paraprofessional; or

(6) Faculty.

* * * * *

Stipend means that portion of an award that is used for room, board, and personal living expenses for participants in pre-service training who are living at or near the institution providing the training.

* * * * *

■ 3. Revise § 263.5 to read as follows:

§ 263.5 What are the application requirements?

An applicant must—

(a) Describe how it will—

(1) Recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders, if applicable;

(2) Use funds made available under the grant to support the recruitment, preparation, retention, and professional development of Indian teachers or principals in LEAs that serve a high proportion of Indian students, as applicable; and

(3) Assist participants who receive pre-service training in meeting the payback requirements under § 263.9(b), if applicable;

(b) If required by the Secretary through a notice inviting applications published in the **Federal Register**, submit one or more letters of support from LEAs that serve a high proportion of Indian students. Each letter must include—

(1) A statement that the LEA agrees to consider program graduates for employment;

(2) Evidence that the LEA meets the definition of ''LEA that serves a high proportion of Indian students''; and

(3) The signature of an authorized representative of the LEA;

(c) If applying as an Indian organization, demonstrate that the entity meets the definition of ''Indian organization'';

(d) If it is an affected LEA that is subject to the requirements of section 8358 of the Elementary and Secondary

Education Act of 1965, as amended (ESEA), consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, as required under ESEA section 8538; and

(e) Comply with any other requirements in the application package.

■ 4. Amend § 263.6 by adding paragraphs (b)(5) and (6) to read as follows:

§ 263.6 What priority is given to certain projects and applicants?

* * * * *

(b) * * *

(5) *Indian educator retention.* The Secretary establishes a priority for projects that—

(i) Propose an educator retention initiative to help address the shortage of fully certified Indian educators to help ensure that Indian students gain knowledge and understanding of Native communities, languages, histories, traditions, and cultures, and expand their impact on Indian students' education; or

(ii) Support compensated educator leadership models designed to increase the retention of effective, experienced Indian educators who take on additional leadership and peer support responsibilities such that Indian teachers have the opportunity to advance in their careers and earn additional compensation.

(6) *State or local educational agencies or Bureau of Indian Education school lead applicants.* The Secretary establishes a priority for applications that are submitted by one or more of the below types of applicants, in consortium with an institution of higher education, which could include a Tribal college or university:

(i) State educational agency.

(ii) Local educational agency.

(iii) Bureau of Indian Education school.

* * * * *

■ 5. Amend § 263.9 by:

■ a. Revising paragraph (a) introductory text and paragraph (b)(2).

■ b. Adding paragraph (b)(5).

■ c. Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4).

■ d. Revising the newly redesignated paragraph (c)(4) and the note to § 263.9.

The revisions and addition read as follows:

§ 263.9 What are the payback requirements?

(a) *General.* All participants who receive pre-service training must—

* * * * *

(b) * * *

(2) The period of time required for a work-related payback is determined as follows:

(i) If a participant was a full-time student in a pre-service training program, the work-related payback period is equivalent to the total period of time for which pre-service training under the Professional Development program was actually received on a month-for-month basis.

(ii) If a participant was a part-time student in a pre-service training program, the work-related payback period is proportional to the accumulated academic years for which pre-service training under the Professional Development program was actually received on a month-for-month basis, taking into consideration the typical academic calendar of the institution where the training was received.

(iii) If a participant received pre-service training as a full-time student for a portion of the program and as a part-time student for another portion of the program, the period of work-related payback is prorated accordingly.

* * * * *

(5) The work-related payback period for an individual supported under the Professional Development program may extend beyond the end of the performance period of the Professional Development grant.

(c) * * *

(4) Notwithstanding paragraph (c)(1) of this section, participants who exited or completed a grant-funded pre-service training program in Federal fiscal year 2020 (October 1, 2019–September 30, 2020) who did not submit employment verification within 24 months of program exit or completion, and participants with qualifying employment during Federal fiscal year 2020 who did not submit employment verification for a 24-month period, will automatically be referred for a cash payback unless the participant qualifies for a deferral as described in § 263.10.

Note to § 263.9: For grants that provide pre-service administrator training, a participant who has received administrator training and subsequently works for a Tribal education agency that provides administrative control or direction of public schools (*e.g.,* BIE-funded schools or charter schools) satisfies the requirements of paragraph (b)(1) of this section.

■ 6. Revise § 263.10 to read as follows:

§ 263.10 What are the exceptions to payback requirements and requirements for payback deferral?

(a) *Exceptions to payback.* Based upon sufficient evidence to substantiate the grounds, the Secretary may grant, in whole or in part, an exception to the repayment requirement in § 263.9 as follows:

(1) Repayment is not required if the participant—

(i) Is unable to continue the course of study or perform the service obligation because of a permanent disability that—

(A) Had not been diagnosed at the time the participant executed the initial agreement; or

(B) Did not originally prevent the participant from performing the requirements of the course of study or the service obligation at the time the participant signed the agreement but subsequently worsened; or

(ii) Has died.

(2) To request an exception to payback under paragraph (a)(1) of this section for oneself or on behalf of another individual, a requestor must submit an explanation of the reason for the exception along with substantiating evidence to the Secretary through the program officer.

(b) *Deferral of payback.* Subject to meeting the requirements of this section, the Secretary may defer payback requirements during the time the participant is—

(1) Continuing education after completing or exiting the Professional Development program, in a full- or part-time course of study without interruption, in a program leading to a degree at an accredited institution of higher education;

(2) Serving on active duty as a member of the Armed Forces of the United States;

(3) Serving as a full-time volunteer for an Indian Tribe, for a period not to exceed 36 months;

(4) Experiencing a temporary disability that affects the participant's ability to continue the course of study or perform the work obligation, for a period not to exceed thirty-six months.

(c) *Secretarial exceptions.* Under limited circumstances as determined by the Secretary and based upon evidence submitted by the participant, the Secretary may grant an exception to, or deferral of, the payback requirement under circumstances not specified in this section. These circumstances may include, but are not limited to, the need to care for a disabled spouse, partner, or child, or to accompany a spouse or partner on active duty in the Armed Forces or Bureau of Indian Affairs law enforcement.

(d) *Requesting payback deferral for continuing education.* (1) To receive a payback deferral under paragraph (b)(1) of this section, a participant must submit a request to the Secretary through the program officer that includes—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) If the Secretary approves the deferral of the payback requirement under paragraph (b)(1) of this section, the participant must submit to the Secretary through the program officer a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(e) *Requesting payback deferral for active duty in the Armed Forces.* If a participant exits the Professional Development program because the participant is called or ordered to active duty status in connection with a war, military operation, or national emergency for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), the Secretary may defer the payback requirement until the participant has completed the military service. Requests for deferral must be submitted to the Secretary through the program officer within 30 days of the earlier of receiving the call to military service or completing or exiting the Professional Development program, and must include—

(1) A written statement from the participant's commanding or personnel officer certifying—

(i) That the participant is on active duty in the Armed Forces of the United States;

(ii) The date on which the participant's service began; and

(iii) The date on which the participant's service is expected to end; or

(2)(i) A true certified copy of the participant's official military orders; and

(ii) A copy of the participant's military identification.

(f) *Requesting payback deferral for volunteer work.* (1) To receive a payback deferral related to qualifying volunteer work under paragraph (b)(3) of this section, the participant must submit a request to the Secretary through the program officer that includes—

(i) The name of the Indian Tribe at which the participant will be volunteering;

(ii) A copy of the letter appointing the participant as a full-time volunteer at the Indian Tribe;

(iii) A statement of volunteer work to be performed; and

(iv) The projected date of completion.

(2) If the Secretary approves payback deferral under this paragraph (f), the participant must submit to the Secretary through the program officer a status report from an authorized representative from the entity with which the participant is volunteering, showing verification of continued engagement every 12 months. The Secretary may defer the payback requirement until the participant has completed his or her qualifying volunteer work, for a period not to exceed 36 months.

(g) *Requesting payback deferral for temporary disability.* To receive a payback deferral under paragraph (b)(4) of this section, the participant must submit a request to the Secretary through the program officer that includes—

(1) An explanation of the reason for the deferral;

(2) An indication of the length of time for which they are requesting deferral; and

(3) Substantiating evidence.

§ 263.11 [Amended]

■ 7. Amend § 263.11 in paragraph (a) by removing the phrase ''as a full-time student''.

■ 8. Revise § 263.12 to read as follows:

§ 263.12 What are the post-award requirements for grantees providing pre-service training?

(a) *Requirement for payback meeting.* Prior to providing funds or services to a participant, the grantee must conduct a payback meeting with the participant to explain the costs of training and payback responsibilities following training.

(b) *Requirement for payback agreement.* (1) Prior to providing funds or services to a participant, and for each subsequent year that training funds are disbursed, the grantee must enter into a written agreement with each participant in which the participant agrees to the terms and conditions required by this section.

(2) The payback agreement must explain the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to § 263.10 and include—

(i) The current Department address for purposes of the participant's compliance with § 263.11, or any other purpose under this part, and other Office of Indian Education contact information;

(ii) The estimated length of training;

(iii) The total training costs;

(iv) The total amount of assistance accrued year-to-date;

(v) The total number of months in the service obligation year-to-date;

(vi) A statement explaining that work must be in an ''LEA that serves a high proportion of Indian students,'' and the regulatory definition of that phrase; and

(vii) Information documenting that the grantee held a payback meeting with the participant that meets the requirements of this section.

(3) The grantee must submit a signed payback agreement to the Department within 30 days of the date on which the payback agreement is fully executed by the grantee and participant. The grantee must provide a copy of the payback agreement to the participant upon execution.

(c) *Exit certification.* At the time of exit from the program, the grantee must provide the below information to the participant. Upon receipt of this information from the grantee, the participant must provide written certification to the grantee that this information is correct:

(1) The name of the institution where the participant received pre-service training and the award number of the Federal grant that provided the scholarship.

(2) The number of months the participant needs to work in an LEA that serves a high proportion of Indian students to satisfy the payback requirements in § 263.9.

(3) The total amount of financial assistance received.

(4) The participant's field of study and the obligation of the participant to perform the service obligation with employment that meets the requirements in § 263.9(b).

(d) *Career preparation.* During the grant period, a grantee must conduct activities to assist participants in identifying qualified employment opportunities following completion of the program.

(e) *Information and annual reporting.* The grantee must report to the Secretary all participant training and payback information in a manner specified by the Secretary as well as any other information that is necessary to carry out the Secretary's functions under section 6122 of the ESEA and this part. Each grantee will make annual reports to the Secretary, unless more frequent reporting is required by the Secretary, that are necessary to carry out the Secretary's functions under this part.

(f) *Standards for satisfactory progress.* The grantee must establish, publish, notify participants of, and apply reasonable standards for measuring whether a participant is making satisfactory progress in the training program. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Are the same as the institution's standards for a student enrolled in the same academic program who is not receiving assistance under this program; and

(2) Include the following elements:

(i) Grades, work projects completed, including performance tasks, or comparable factors that are measurable against a norm and are aligned with demonstrating effective practice.

(ii) A maximum timeframe in which the participant must complete the participant's educational objective, degree, or certificate.

(iii) Consistent application of standards to all participants within categories of students, (*e.g.,* full-time, part-time, undergraduate students, and graduate students).

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a participant is not making satisfactory progress and for reinstatement of aid.

(g) *Requirement for Indian preference.* (1) Under section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), to the greatest extent feasible, a grantee must—

(i) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e), preference in the award of contracts in connection with the administration of the grant.

(2) For the purposes of this paragraph (g), an Indian is a member of any federally recognized Indian Tribe.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 52

[NPS–WASO–39268; PPWOBSADC0; PPMVSCS1Y.Y00000]

RIN 1024–AE47

Visitor Experience Improvements Authority Contracts

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule implements the Visitor Experience Improvements Authority given to the National Park Service by Congress in Title VII of the National Park Service Centennial Act. This authority allows the National Park Service to award and administer commercial services contracts and related professional services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System.

DATES: This rule is effective February 18, 2025.

Information collection requirements: If you wish to comment on the information collection requirements in this final rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this final rule in the **Federal Register**. Therefore, comments should be submitted to OMB by February 18, 2025.

ADDRESSES:

Docket: The comments received on the proposed rule and a related economic analysis are available in the docket for this rulemaking. Visit *https://www.regulations.gov/* and search for Docket ID: NPS–2022–0003.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, (MS–244) Herndon, VA 20171 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–AE47'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Chief of Commercial Services Program, National Park Service; (202) 513–7202; *kurt_rausch@nps.gov.* For questions regarding the NPS's information collection request contact *phadrea_ponds@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

NPS Authorities To Contract for Commercial Visitor Services

The National Park Service (NPS) enters into concession contracts with persons and entities to provide commercial visitor services in over 100 units of the National Park System. Examples of such services include lodging, food, retail, marinas, transportation, and recreational activities. NPS concession contracts generate approximately $1.8 billion per year in gross receipts, while returning approximately $180 million in franchise fees to the NPS. What was commonly known as the National Park Service Concession Policies Act of 1965 (1965 Act), Public Law 89–249, provided the first comprehensive statutory authority for the NPS to issue concession contracts. Since the repeal of the 1965 Act, concession contracts have been awarded under the National Park Service Concessions Management Improvement Act of 1998 (1998 Act), 54 U.S.C. 101911–101926. NPS regulations in 36 CFR part 51 govern the solicitation and award of concession contracts issued under the 1998 Act and the administration of concession contracts issued under the 1965 and 1998 Acts.

The National Park Service Centennial Act (Centennial Act), 54 U.S.C. 101931–101938, established the Visitor Experience Improvements Authority (VEIA) allowing the NPS to solicit, award, and administer commercial services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System. The VEIA supplements, but does not replace, the existing authority granted to the NPS in the 1998 Act to enter into concession contracts, or any other existing NPS authorities to provide commercial visitor services in units of the National Park System. The VEIA is also separate from authorities granted under the Office of Federal Procurement Policy Act and Federal Acquisition Regulations.

The VEIA established a revolving fund that the NPS can use for expenses necessary for the management, improvement, enhancement, operation, construction, and maintenance of commercial visitor services and

facilities within the National Park System; and for the payment of possessory interest and leasehold surrender interest for concession contracts. Funds collected pursuant to contracts awarded under the VEIA will be credited to the revolving fund, and the NPS is authorized to transfer to the revolving fund, without reimbursement, any additional funds or revenue in connection with the functions carried out under the VEIA.

Differences Between VEIA and the Concession Contracts Authority

The VEIA is intended to provide additional tools to expand, modernize, and improve the condition of commercial facilities and visitor services using contracting models that differ from and are in addition to the concession contracts used under the 1998 Act. These models include management agreements and percentage lease agreements found in the private hospitality industry, as well as other contract models that are consistent with the VEIA. There are differences in the revenue management and fee structure for contract models that may be used under the VEIA, as discussed below. These models may be used to provide a variety of commercial visitor services such as lodging, food, retail, marinas, transportation, camping, and recreational activities. The use of industry-standard models and industry-aligned contract terms may allow and encourage additional companies to bid on hospitality business opportunities in System units, thereby enhancing the visitor experience both at the particular System unit and across the System.

Under a management agreement, the NPS would own the assets and proceeds of the business. The operator would provide staff and expertise to run the business in exchange for the NPS paying the operator a base fee plus an incentive fee. The NPS would authorize the operator to use available funds and revenue for operations (*e.g.,* property maintenance, the purchase of supplies, furniture, and other personal property) and improvements (*e.g.,* facility upgrades and repairs). Any financial return beyond what is needed for the business would be credited to the revolving fund.

Under a percentage lease agreement, the operator would retain the revenue and pay a fee to the NPS. This would be similar to the concession contract model, although the fee structure under a percentage lease agreement would include payment of a base fee plus a percentage of revenue. Fees collected would be credited to the revolving fund.

The VEIA also provides flexibility in the solicitation process. For example, the 1998 Act requires the NPS to consider specific evaluation factors, while the VEIA does not dictate any specific evaluation factors. This flexibility may allow businesses to more effectively respond to and be evaluated on how they will meet visitor needs for the services being offered. The flexibility of the VEIA also provides the potential to streamline the solicitation process to reduce the burden on businesses submitting proposals, including the ability to negotiate on the terms of the contract and greater ability to modify or adjust operations under existing contracts to reflect changes at the System unit or different visitor expectations during the contract term.

In addition to commercial services contracts, the VEIA authorizes the NPS to enter into professional services contracts related to those commercial services contracts. These may include consulting contracts with hospitality and asset management experts for services such as developing requests for proposals, condition assessments, and operational and financial analysis.

Implementation of the VEIA

The Centennial Act requires the NPS to promulgate regulations appropriate for implementation of the VEIA. 54 U.S.C. 101936. The Centennial Act also states that the VEIA expires seven years after the enactment of the law. 54 U.S.C. 101938. The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) extended the expiration of the VEIA by an additional two years until December 16, 2025. The NPS has consulted with hospitality industry experts, including academic leaders, hospitality asset management companies, hotel owners and operators, and State agencies to assess current visitor service contract models and best practices in the hospitality industry. The NPS engaged a nationally recognized hospitality management consulting and asset management firm to assist the NPS with developing contracts, requests for qualifications and proposals, and solicitation, contract management, and accounting practices.

The NPS has evaluated certain visitor services currently provided under concession contracts that may be suitable for commercial services contracts under the VEIA. The NPS used various criteria during this evaluation, including:

- Whether the services may be authorized under a commercial services contract under the VEIA (*i.e.,* they may not be for the provision of outfitter and guide services, or for the provision of services for which the NPS has granted to an existing concessioner a preferential right of renewal under the 1998 Act);
- Whether the contract is necessary and appropriate for public use and enjoyment of the System unit where the services will be provided and can be executed in a manner that is consistent with the preservation and conservation of the resources and values of the unit;
- Whether the operator can provide the visitor services in a manner that will expand, modernize, and improve the condition of commercial visitor facilities and the services provided to visitors;
- Whether the contract would be suitable considering the type, size, and complexity of the services to be provided;
- Whether the NPS can solicit the contract before the VEIA expires; and
- Whether the level of capital investment needed makes a commercial services contract under the VEIA feasible. For example, if significant capital improvements are needed for which Federal funds would be unavailable, it may be more appropriate for the NPS to use a concession contract that allows operators to make investments in exchange for leasehold surrender interest and can have a term that is longer than ten years. These characteristics of concession contracts allow the operator to recoup some value of their investment and have more time to generate a return on their investment.

During the public comment period for the proposed rule, the NPS received specific recommendations about how the VEIA should be used to expand, modernize, and improve commercial facilities and visitor services. Some commenters discussed the use of sustainable business practices related to renewable energy, water usage, and organic food sourcing. Other commenters made specific recommendations for updating campgrounds with modern, full-service amenities such as:

- Bathing facilities with hot showers, sinks, and flush toilets;
- Access to wi-fi throughout campsites;
- Outfitting campsites with site-specific hookups for EVs and electrical, water, and sewer services, as well as modern dump stations;
- Developing wider, longer campsites for modern RVs; and
- Developing more RV-accessible campsites to accommodate growing demand.

The NPS appreciates all the feedback it received about how it can implement the VEIA for the benefit of visitors. The

NPS will look for opportunities to use the VEIA in a manner that enhances the visitor experience. This might include upgrades to campsites or other facilities such as marinas, hotels, restaurants, and retail stores. The NPS will provide information about implementation of the VEIA on the website for the NPS Commercial Services Program at *https://www.nps.gov/orgs/csp/index.htm.*

Final Rule

The final rule includes requirements and limitations applicable to the VEIA that are directed by the Centennial Act. These requirements and limitations are promulgated in new 36 CFR part 52 and are explained below.

The NPS may only issue a commercial services contract under the VEIA if the Secretary of the Interior, acting through the NPS, determines that the contract will support expansion, modernization, and improvement of the condition of commercial visitor facilities and the services provided to visitors. Commercial services contracts issued by the NPS under the VEIA must meet two additional criteria. First, the contract must be necessary and appropriate for public use and enjoyment of the National Park System unit where it is located. Second, the contract must be consistent with the preservation and conservation of the resources and values of the unit. These two criteria also must be met for concession contracts.

The NPS may not award contracts under the VEIA for the provision of outfitter and guide services (as described in the 1998 Act), or to authorize the provision of facilities or services for which it has granted an existing concessioner a preferential right of renewal under the 1998 Act. The NPS may award commercial services contracts under the VEIA without regard to Federal laws and regulations governing procurement by Federal agencies, except for those laws and regulations related to Federal Government contracts that govern working conditions and wage rates and any civil rights provisions otherwise applicable thereto.

The NPS must award VEIA commercial services contracts through a competitive selection process and must publicly solicit proposals for each contract before award. The NPS must prepare a request for proposals and publish notice of its availability. The NPS may not award a commercial services contract under the VEIA for a term greater than 10 years. The person or entity awarded a commercial services contract under the VEIA will not receive leasehold surrender interest in capital improvements (as those terms are defined by the 1998 Act at 54 U.S.C. 101915) completed during the term of the contract.

Other than these basic requirements, the VEIA authorizes the NPS to design a flexible process for the solicitation and evaluation of proposals. The NPS will adjust this process to reflect standard practices in hospitality and related industries, accounting for any necessary NPS-specific conditions. In addition to restating the statutory requirements governing the VEIA, the rule includes defined terms and other provisions that will govern the administration of contracts under the VEIA. These provisions explain solicitation, selection, and award procedures, including information about how the Director will publicly solicit proposals for a commercial services contract and how the Director will evaluate proposals. Other provisions govern the terms of the contracts themselves, including provisions related to termination, rate approval, assignments of contracts, and the management of funds. The final rule also addresses access to information and records held by operators related to their performance under commercial services contracts and by contractors related to their performance under professional services contracts.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on January 25, 2022 (87 FR 3729). The NPS accepted public comments on the proposed rule through March 28, 2022, via the mail, hand delivery, and the Federal eRulemaking Portal at *https://www.regulations.gov.* The NPS received 14 comments on the proposed rule from individuals and organizations.

The concessioner community supported the general purpose of the VEIA and this rule, but raised questions about how the NPS will use the VEIA to complement rather than replace the existing concession contracting authority and asked for more details about implementation. Several commenters predicted that the use of contract models commonly used in the hospitality industry will generate substantial interest because they require less capital investment for operators, are familiar to operators, and provide greater flexibility. These commenters predicted that this will result in more competition and better visitor services. After considering public comments and additional review, the NPS made several substantive changes to the rule. First, the NPS added a new paragraph to § 52.4 restating the statutory limitations of the VEIA that it cannot be used for outfitter and guide services, or for the provision of facilities or services for which the NPS has granted to an existing concessioner a preferential right of renewal under the 1998 Act. Similarly, the NPS added language to § 52.14 restating several other statutory criteria which apply to VEIA contracts. Second, the NPS removed paragraph (a)(1) from § 52.30. This paragraph explained a funding structure for commercial services contracts that was under consideration when the NPS published the proposed rule. The NPS has determined, however that this structure is not allowed under Federal law because it would give a private party direct access to funds in an account owned by the Federal Government. Third, § 52.41 has been updated to reflect the extended expiration date for the VEIA provided by Congress in the Consolidated Appropriations Act, 2023 (Public Law 117–328). The NPS also added language to this section addressing the possibility that Congress will further extend the expiration date and clarifying that contracts awarded under the VEIA may continue beyond the VEIA expiration date, subject to the terms of the particular contract. Additionally, the NPS corrected a reference to the Comptroller General of the United States in § 52.36 and made several minor editorial changes to improve the clarity of the regulation and ensure consistency in terminology.

A summary of the pertinent issues raised in the comments and NPS responses are provided below.

1. Comment: Several commenters stated that commercial visitor services degrade the visitor experience and therefore should be prohibited in the National Park System.

NPS Response: The NPS has several statutory authorities to allow for commercial visitor services within System units, including the VEIA. Commercial visitor services that degrade the visitor experience are not authorized by the VEIA. Commercial services contracts must be necessary and appropriate for public use and enjoyment of the System unit, and consistent with the preservation and conservation of the resources and values of the System unit. The NPS will adhere to these requirements in the planning, solicitation, award, and management of commercial service contracts under the VEIA. Moreover, the VEIA revolving fund monies cannot be used to decrease the availability of services and programs to the public.

2. Comment: One commenter stated that the NPS should not use taxpayer

funds to pay operators of businesses that provide visitor services in System units.

NPS Response: The VEIA authorizes the use of Federal taxpayer funds in furthering the VEIA's purposes, 54 U.S.C. 101935, but the NPS expects to rely primarily on proceeds from the provision of visitor services to accomplish VEIA's purposes. The NPS will conduct a detailed analysis before awarding a commercial visitor service contract under the VEIA to ensure that there is a reasonable business opportunity considering revenue, expenses, and other factors. In most cases, rates charged to visitors for services will result in net positive cash flow over the term of the contract to cover operating expenses with no need for the NPS to use funds from other sources. In some circumstances, however, the NPS may need to transfer funds to the operator from the revolving fund to cover business expenses that are not adequately covered by the cash flow of the business. For example, under the management agreement model, the NPS may need to transfer funds to the operator so that it can purchase supplies and equipment to allow the business to begin and continue operations before adequate cash flows exist to cover such expenses. As another example, under both the management agreement and percentage lease agreement models, the NPS may need to transfer funds to the operator to pay for large capital improvements to or the rehabilitation of the federally-owned buildings or other assets the NPS has assigned for use by the operator. Examples of such needs are a roof replacement or repairing a building foundation. These needs may be identified prior to issuance of the contract through a condition assessment or may be unexpected and identified during the contract term. The NPS could directly fund and contract for such projects without involving the operator. In some circumstances, however, funding such projects through the operator is beneficial because the operator can more expediently and effectively coordinate projects around visitor service operations thereby reducing impacts to the visitor experience. In either case, it would be appropriate for the NPS to pay for these projects because it would be investing in Federal facilities that the Federal Government owns.

Under any of the circumstances described above, the funds provided to the operator could be paid from taxpayer or non-taxpayer revenue sources. One example of a non-taxpayer revenue source is concession franchise fees transferred to the revolving fund established under the VEIA.

3. Comment: One commenter suggested that the NPS not use the term ''commercial services contract'' when implementing the VEIA to avoid confusion with the terms ''concession contract'' and ''commercial use authorization'' that are used under separate authorities.

NPS Response: The NPS uses the term ''commercial services contract'' because that is the term used in the authorizing statute. See for example 54 U.S.C. 101931(a). Commercial services contracts awarded under the VEIA will clearly identify the statutory authority being used to award the contract to avoid confusion with other written instruments such as concession contracts or commercial use authorizations. The contracts themselves will be titled according to the appliable contract model, such as a management agreement or a percentage lease agreement. This will further distinguish commercial services contracts issued under the VEIA from concession contracts and commercial use authorizations.

4. Comment: One commenter expressed concern that under the VEIA the NPS might deposit Federal funds into a private bank account for use by the operator, potentially leading to misuse of those funds.

NPS Response: Under the management agreement model, the NPS may make transfers of funds from the Federal revolving fund to private bank accounts established and owned by the operator that the operator will use to run the business. These accounts may include an operating account and a capital improvement account. The NPS will take numerous measures to minimize the risk of fraud, waste, and abuse of Federal funds in this process, and ensure compliance with all applicable laws pertaining to the use of Federal funds. The terms of the management agreement will require that private accounts used by the operator are insured by the Federal Deposit Insurance Corporation, that the NPS holds a first lien on account balances, and that account funds will not be commingled with other funds of the operator. Operating and capital budgets will be established and approved by the NPS. Expenses beyond approved operating and capital budgets will require written approval from NPS. Financial risk will be reduced further through monthly reporting requirements, NPS review of the operating and financial results of the business, independent annual audits of the operator's financial statements and controls, and (in some cases) ongoing review and support of business operations provided by a hospitality asset manager on behalf of the NPS.

5. Comment: One commenter noted that the rule does not state whether a percentage of the deposits in the revolving fund will be retained in the System unit where the visitor services are provided for the purposes of managing the commercial services contract and protecting visitors and resources.

NPS Response: Unlike the 1998 Act, which allows System units to retain up to 80% of franchise fees generated from concession contracts, the VEIA does not establish any specific allocations for funds collected under commercial services contracts. The NPS can use funds in the revolving fund for any expenses necessary for the management, improvement, enhancement, operation, construction, and maintenance of commercial visitor services and facilities that exist across the National Park System. The NPS will conduct annual planning to determine the appropriate level of funding that should be retained at the System unit where the funds were generated. Regardless of what percentage of funds are retained at the respective System unit, the NPS can take other actions to ensure that the operator's business activities are consistent with visitor and resource protection goals. When the NPS uses a management agreement model, it may award a related asset management contract. This contract would provide professional hospitality support services to help the NPS oversee the operator's performance, including ensuring the business activities are consistent with visitor and resource protection in the System unit.

6. Comment: One commenter recommended that the NPS address intellectual property associated with commercial operations authorized by the VEIA to protect the NPS from trademark disputes upon the expiration or termination of a contract.

NPS Response: To avoid disputes and protect NPS intellectual property, commercial service contracts will include provisions about rights to intellectual property, including trademarks, that are used by commercial service providers during the term of the contract. This will include provisions about the names of facilities used by operators.

7. Comment: One commenter stated the rule creates uncertainty for existing and potential commercial visitor service providers, as well as other stakeholders, in several areas, including the solicitation process and how the NPS will use funds in the revolving account. In general, these commenters asked the

NPS to provide more detail about how it will implement the VEIA.

NPS Response: This rule omits details about implementation, such as solicitation and financial processes, in order to give the NPS flexibility as it develops and tests new contracting models that meet the goals of the VEIA. To the extent possible, the NPS will be consistent with hospitality industry contracting practices as it tests these models. For this reason, the solicitation processes and the structures and terms of the contracts should be familiar to most hospitality service providers. The NPS will issue requests for proposals that include a clear and complete description of the solicitation process and selection criteria. The request for proposal package will include the draft contract to eliminate uncertainty for those interested in submitting proposals and operating under that contract. The NPS will develop clear, internal operating procedures and manuals addressing various topics, including accounting and financial management practices. The NPS will make these publicly available as appropriate and allowed under applicable law.

8. Comment: Several commenters asked the NPS to explain when it will use the VEIA instead of authorities to issue concession contracts, commercial use authorizations, and leases. One commenter stated that the NPS should not use the VEIA to replace the existing concession contract authority, and should use it only in unique and limited circumstances where concession contracts are not viable or do not give the respondent a chance to make a reasonable profit. Another commenter suggested that the NPS should use the VEIA only if there is no demonstrated interest from potential operators in entering into a concession contract or a commercial use authorization.

NPS Response: The statutes authorizing the NPS to enter into concession contracts and commercial use authorizations (54 U.S.C. 101911–101926), and authorizing the NPS to enter into leases (*e.g.,* 54 U.S.C. 102102, 306121), establish requirements the NPS must meet in order to use those authorities. The NPS also must follow applicable regulations and policies it has established for the use of those authorities. See, for example, 36 CFR part 51—Concession Contracts; 36 CFR part 18—Leasing of Properties in Park Areas; and Policy Memorandum 07–01 (Authorizing activities through leases versus concession contracts or commercial use authorizations). The VEIA specifically states that nothing in the statute modifies the terms and conditions of any awarded concession contract or the NPS's ability to enter into concession contracts under the 1998 Act. 54 U.S.C. 101937. This is restated for emphasis in § 52.40 of this rule. The NPS declines to impose limitations in this rule on its use of the VEIA that do not exist in the statute. As a practical matter, existing statutory limitations on the use of the VEIA could make a concession contract more appropriate in certain circumstances. Commercial services contracts awarded under the VEIA cannot exceed ten years and operators cannot receive leasehold surrender interest. As a result, a concession contract may be more appropriate if a significant capital improvement is needed to provide the visitor services. The NPS may want to leverage private investment to fund those improvements and a concession contract would allow for a longer term and an opportunity for the operator to receive leasehold surrender interest for investments made during the term of the contract. In other cases, the ability to use VEIA contract models and practices more common in the hospitality industry may result in benefits such as cost savings, greater efficiency, increased competition, and greater return to the government. The NPS will evaluate opportunities to provide commercial visitor services on a case-by-case basis to determine which authority is the most appropriate.

9. Comment: One commenter recommended that the rule explain how necessary capital improvements would be funded under commercial services contracts given the prohibition on paying leasehold surrender interest.

NPS Response: The rule does not specifically address how necessary capital improvements will be funded under commercial services contracts because it may vary from contract to contract. In some cases, operators will conduct capital improvement projects using money from operating and capital improvement accounts that are funded from business revenues or deposits from the NPS that are transferred from the revolving fund. In other cases, the NPS will directly fund and contract for such projects without the involvement of the operator.

10. Comment: One commenter asked the NPS to state in § 52.4 of the rule that the NPS may not issue commercial services contracts under the VEIA for guide and outfitter services or contracts for which there is a current preferential right of renewal under the 1998 Act.

NPS Response: The NPS has added a new paragraph to § 52.4 of the rule to include these statements.

11. Comment: Several commenters asked the NPS to include more detail in the rule about the bid process, in particular about how potential bidders and existing operators may suggest new and additional visitor services, and how the NPS will consider those suggestions during the competitive selection process and during the term of a contract.

NPS Response: The NPS often requests ideas for new and additional services as a selection factor in prospectuses issued for concession contracts under the 1998 Act. The NPS may do the same when soliciting proposals for commercial services contracts under the VEIA if the NPS determines that is appropriate. The NPS will explain the details of such requests when they occur. The contracts will specify how the operator can propose new and additional services during the term of the contract. The NPS will not consider new or additional services that would result in a material change to the services authorized by the contract and described in the request for proposals. This will ensure that those who compete for the contract are treated fairly and that this process is consistent with how the NPS manages concession contracts. Defining the processes for proposing new and additional services in requests for proposals and contracts, on a case-by-case basis, gives the NPS more flexibility to tailor those processes to the unique circumstances of each situation.

12. Comment: One commenter questioned whether the NPS will meaningfully consider information presented by respondents during request for qualifications, interview, and negotiation phases when § 52.14 of the rule allows, but does not require, the NPS to do so.

NPS Response: The rule states that NPS may (rather than must) consider such information because some of the information presented may be irrelevant to the selection process or, due to the nature of the contract, one or more of those phases might not be necessary for the evaluation process for the award of that contract. To the extent that a respondent presents relevant information in a phase that is needed for the selection process, the NPS will consider such information in a meaningful way.

13. Comment: One commenter asked the NPS to add language to the rule that protects confidential, proprietary, or other information provided by respondents to the NPS during the solicitation process. This commenter asked the NPS to include a provision similar to 36 CFR 51.100 that applies to concession contracts, which states that the NPS will not make proposals publicly available until a concession

contract is awarded, and then may make proposals and other documents publicly available in accordance with applicable law. This commenter also stated that paragraph (b) in § 52.16 does not prevent the NPS from reviewing a bid developed at substantial expense by one respondent that includes information about its technical and management approach, rejecting that bid, and then sharing and using that information in negotiations with a competing bidder.

NPS Response: As it does for concession contracts, before the commercial service contract is awarded, the NPS will consider information in proposals submitted in response to a prospectus as protected from disclosure under the Freedom of Information Act (FOIA), which establishes exemptions for information subject to deliberative process privilege and for trade secrets and commercial or financial information that is confidential or privileged. 5 U.S.C. 552(b)(4)–(5). After the contract has been awarded, the NPS may or will make the proposals and documents publicly available in accordance with applicable law. The NPS does not believe it is necessary to make these statements in the rule because determinations about whether information must be disclosed or not are governed by the FOIA, the Department's FOIA regulations (beginning at 43 CFR 2.1), and other applicable laws. The NPS will use all relevant information in proposals to make award decisions. The NPS must comply with these legal requirements in responding to a request under the FOIA, whether submitted by a respondent or another member of the public.

14. Comment: One commenter recommended that the rule require the NPS to publish notices of availability of a request for proposals on the NPS commercial services program website and on the website for the System unit or units where the services would be provided.

NPS Response: Paragraph (a) of § 52.11 of the rule states that, in addition to publication in the System for Award Management or similar publication, the NPS also may publish notices of availability electronically on websites, including social media, and in local or national newspapers or trade magazines. For concession contracts, the NPS publishes notices of availability on the websites mentioned by the commenter in accordance with internal policy and procedures. The NPS expects to do the same for commercial services contracts. Rather than make this a regulatory requirement, however, the NPS prefers to maintain the flexibility to publish notifications in a manner that is most appropriate for each request.

15. Comment: One commenter recommended that the rule provide more detail about the two potential contracting models identified by the NPS (management agreements and percentage lease agreements) and explain how those models will be used to promote investments that are necessary to expand, modernize, and improve the visitor services and facilities.

NPS Response: The management agreement and percentage lease agreement models are explained above in more detail than they were in the preamble of the proposed rule and are explained further in the cost-benefit and initial regulatory flexibility analysis that is available in the docket for this rulemaking. The details of how the NPS will use those agreement models to further the goals of the statute will be determined during implementation of the VEIA. The NPS will provide information about implementation of the VEIA on the website for the NPS Commercial Services Program at *https://www.nps.gov/orgs/csp/index.htm.*

16. Comment: One commenter encouraged the NPS to use the services of the Youth Conservation Corps for projects related to commercial visitor services provided under the VEIA and asked the NPS to consider a respondent's proposal to use the Youth Conservation Corps as a positive factor in the proposal selection process.

NPS Response: The NPS appreciates the skill and experience that the Youth Conservation Corps brings to projects throughout the National Park System and will consider using Corps members for capital improvement projects under the VEIA that are directly funded by the NPS. Rather than establish specific selection factors in this rule, the NPS prefers to maintain flexibility to establish selection factors that are tailored to the specific contracting model being used and the specific objectives of the request. The NPS may identify the use of Corps members as a positive selection factor, if appropriate, and give weight to such commitments as well as other factors as it deems appropriate.

17. Comment: One commenter expressed concern that the rule would increase costs to the public by allowing concessioners to set prices for visitor services that do not account for visitors that have a variety of income levels.

NPS Response: The NPS is sensitive to the issue of reasonableness and appropriateness of rates and charges for commercial visitor services provided in System units recognizing that it is often more expensive to provide those services in System units compared to other locations outside the System. The NPS will oversee the operations of such businesses to ensure that charges for commercial visitor services are reasonable and appropriate. As described in § 52.28 of the rule, generally, the NPS will accomplish this by approving rates for services provided to visitors based upon market demand, but the Director may specify rates or rate methods for particular services based on factors other than market demand, such as to ensure affordability to a broad segment of visitors.

Compliance With Other Laws, Executive Orders, and Department Policy

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

Executive Order (E.O.) 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this final rule is not significant.

Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and initial regulatory flexibility analysis for the proposed rule found in the report entitled ''Visitor Experience Improvements Authority (VEIA) Proposed Rule Regulatory Assessment (RA) and Initial Regulatory Flexibility Analysis (IRFA),'' which can be viewed on *https://www.regulations.gov* in Docket ID: NPS–2022–0003. The certification in that report remains valid

for the final rule due to the limited changes in this rule from the proposed version.

Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This rule:

(a) Will not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 et seq.)

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. This rule establishes administrative procedures for the NPS and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects visitor services provided on NPS-administered lands and waters. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. This rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has evaluated this proposed rule under the criteria in E.O. 13175 and under the Department's Tribal consultation policy and has determined that Tribal consultation is not required because the proposed rule will have no substantial direct effect on federally recognized Indian Tribes.

Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 et seq.)

This rule contains new information collections. All information collections require approval under the PRA. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB must approve the new reporting and recordkeeping requirements identified below:

(1) Solicitation of Proposals—The VEIA requires that the NPS solicit proposals for commercial services contracts through a competitive process. The NPS may also award and administer related professional services contracts. The solicitation process may include one or more phases such as a request for qualifications followed by or in concert with a request for more detailed information through a request for proposals. The process could also include interviews with respondents and a negotiation phase. The NPS will use the information collected to evaluate and select the best operator to provide the contracted services. Information submitted in response to a solicitation may include, as applicable to the specific project, types of information similar to the following:

- Information concerning the respondent's ability to comply with the commercial service contract terms and conditions;
- Information that demonstrates that the respondent is a qualified entity;
- Information that demonstrates the respondent's experience and prior performance in operating similar facilities and providing similar services;
- Information concerning the respondent's financial capability;
- Information concerning the respondent's proposed approach and methodology to deliver the services specified; and
- Information that the respondent provides in response to other factors identified in the request for proposals.

(2) Reporting Requirements

(A) Commercial Services Operators—In order to monitor their performance and make appropriate NPS management decisions, the NPS will require operators providing commercial services under a VEIA contract to provide information to the NPS through reports and plans such as the following:

- Annual Plan that includes information summarizing prior year operating activities, capital projects and facility condition assessment, and financial performance, and outlining projected annual operating and capital budgets, projected annual operating plans, capital project plans and designs, and staffing and marketing plans;
- Monthly Performance Reports that include monthly financial performance statements, capital project and operating performance information; and
- Ad hoc Reports such as environmental or safety incidents reports.

The above types of plans and reports to owners (*e.g.,* NPS) are standard for those providing commercial services in the hospitality industry in the private and public sector. The NPS requires financial data be submitted in accordance with Generally Accepted Accounting Principles (GAAP); however, no standardized form or format is defined for any plans or reports at this time. The NPS expects this to evolve during its implementation of the VEIA and may have forms and formats at a later time. The NPS will obtain OMB approval for any changes in reporting and/or recordkeeping requirements as they are developed.

(B) Professional Services Providers—Professional services providers will be required to provide information to the NPS through deliverables, reports, and plans such as the following:

- Operator Annual Plan Review Report analyzing operator prior year performance and operational, capital project, and financial plans for the upcoming year;
- Monthly Asset Manager Reports analyzing operator operational, capital project, and financial performance; and
- Commercial Services Contract Solicitation Support Deliverables such as financial and business opportunity analysis reports, condition assessment reports, and draft Request for Qualifications/Request for Proposals documents for commercial services contracts.

There is no standard format or form associated with these information requests.

(3) Recordkeeping Requirements—Operators under commercial services contracts and contractors under professional services contracts must keep any records that the Director of the NPS may require for the term of the contract and for five calendar years after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, for the purpose of audit and examination, must have access to and the right to examine all pertinent records, books, documents, and papers of the operator, contractor, subcontractor, and any parent or affiliate of the operator or contractor (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or contractor).

Title of Collection: Administration of Visitor Experience Improvements Authority, 54 U.S.C. 101936.

OMB Control Number: 1024–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Business entities desiring to enter VEIA-authorized contracts with the National Park Service.

Total Estimated Number of Annual Respondents: 46 (Commercial Services Operators: 18; Professional Services Providers: 28).

*Total Estimated Number of Annual Responses:*100 (Commercial Services Operators: 50; Professional Services Providers: 50).

Estimated Completion Time per Response: Average time (Varies from 24 hours to 800 hours, depending on respondent and/or activity).

Total Estimated Number of Annual Burden Hours: 7,016 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $112,900 (for costs associated with solicitations, start-up costs, and recordkeeping requirements).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer at the address specified above in **ADDRESSES**. Please include ''1024–AE47'' in the subject line of your comments.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, financial, legal, and technical in nature. In addition, the environmental effects of this rule are too speculative to lend themselves to meaningful analysis. NPS decisions to enter into contracts under the VEIA will be subject to compliance with NEPA at the time the contracts are executed. The NPS has determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211; the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A statement of energy effects is not required.

List of Subjects in 36 CFR Part 52

Commercial services, Government contracts, National parks, Visitor services.

In consideration of the foregoing, the National Park Service is adding part 52 to title 36 of the Code of Federal Regulations to read as follows:

PART 52—VISITOR EXPERIENCE IMPROVEMENTS AUTHORITY CONTRACTS

Subpart A—Authority and Purpose

Sec.

52.1 What does this part cover?
52.2 What is the purpose of a commercial services contract?
52.3 How are terms defined in this part?
52.4 What types of commercial services contracts may the Director issue?
52.5 What types of professional services contracts may the Director issue?

Subpart B—Solicitation, Selection, and Award Procedures

52.10 How will the Director solicit responses for the award of a commercial services contract?
52.11 Where will the Director publish notice of the availability of a request for proposals?
52.12 How long will respondents have to submit a response?
52.13 How will the Director share information with potential respondents after issuing the request for proposals?
52.14 How will the Director evaluate responses and select the best one?
52.15 When will the Director reject a response?
52.16 What options does the Director have in accepting or rejecting a response?
52.17 Does this part limit the authority of the Director?
52.18 When must the selected respondent execute the contract?
52.19 When may the Director award the commercial services contract?
52.20 How will the Director solicit and award professional services contracts?

Subpart C—Contract Provisions

52.25 What is the term of a commercial services contract?
52.26 When may the Director terminate a contract?
52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?
52.28 Are operator rates subject to approval by the Director?
52.29 May operators assign or encumber commercial services contracts?
52.30 How may commercial services contracts be funded?

Subpart D—Information and Access to Information

52.35 What records must the operator and professional services provider keep and what access does the Director have to records?

52.36 What access does the Comptroller General have to records kept by operators and professional services providers?

Subpart E—Miscellaneous

52.40 Does this part affect concession contracts under part 51 of this chapter?
52.41 Does the VEIA expire?
52.42 Severability.

Authority: 54 U.S.C. 101931–101938.

Subpart A—Authority and Purpose

§ 52.1 What does this part cover?

This part covers the solicitation, award, and administration of commercial services contracts and related professional services contracts. The Director solicits, awards, and administers these contracts on behalf of the Secretary of the Department of the Interior under the authority of the Act of August 25, 1916, as amended and supplemented, 54 U.S.C. 100101 *et seq.,* and title VII of the National Park Service Centennial Act, 54 U.S.C. 101931–101938. All commercial services contracts and related professional services contracts must be consistent with the requirements of this part. These contracts will contain such terms and conditions as required by this part or law and as otherwise appropriate in furtherance of the purposes of this part and the Visitor Experience Improvements Authority (VEIA).

§ 52.2 What is the purpose of a commercial services contract?

The National Park Service (NPS) will use commercial services contracts to expand, modernize, and improve the condition of commercial facilities and commercial services provided to visitors in a park area. Commercial services contracts are limited to those that are necessary and appropriate for public use and enjoyment of the park area in which they are located and consistent with the preservation and conservation of the resources and values of the park area.

§ 52.3 How are terms defined in this part?

Award occurs when the Director and a selected respondent execute a commercial services contract or related professional services contract that creates legally binding obligations on the parties to the contract.

Commercial services contract means a binding written agreement between the Director and an operator awarded under the authority of this part that authorizes the operator to provide services to visitors within a park area under specified terms and conditions.

Contract means either a commercial services contract or a related professional services contract issued under the authority of this part. The Director may award contracts without regard to Federal laws and regulations governing procurement by Federal agencies, with the exception of laws and regulations related to Federal Government contracts governing working conditions and wage rates, including the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), 40 U.S.C. 3141–3144, 3146, and 3147 (commonly known as the ''Davis-Bacon Act''), and any civil rights provisions otherwise applicable thereto. Contracts as defined in this section are not contracts within the meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations, or policies that apply only to Federal service contracts or other types of Federal procurement actions.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part.

Operator means an individual, corporation, or other legally recognized entity that duly holds a commercial services contract.

Professional services contract means a binding written agreement between the Director and a professional service provider awarded under the authority of this part that authorizes the service provider to provide hospitality consulting or other services to the National Park Service related to commercial services contracts.

Professional services provider means an individual, corporation, or other legally recognized entity that duly holds a professional services contract.

Qualified entity means an individual, corporation, or other legally recognized entity that the Director determines has the experience and financial ability to carry out the terms of a commercial services contract or professional services contract.

Respondent means an individual, corporation, or other legally recognized entity that submits a response for a commercial services contract.

Response means the information an individual, corporation, or other legally recognized entity provides to the National Park Service in response to a request for proposals.

VEIA means the authority granted to the Director under title VII of Public Law 114–289 entitled ''Visitor Experience Improvements Authority'' and codified at 54 U.S.C. 101931–101938.

Visitor services means accommodations, facilities, and other services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by an individual or entity other than the Director. Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

§ 52.4 What types of commercial services contracts may the Director issue?

(a) Except as stated in paragraph (b) of this section, the Director may issue commercial services contracts for expanding, modernizing, and improving visitor services consistent with the VEIA. Examples of such contracts include, without limitation, management agreements and percentage lease agreements.

(b) The Director may not award commercial services contracts:

(1) For the provision of outfitter and guide services described in section 54 U.S.C. 101913(8); or

(2) To authorize the provision of facilities or services for which the Director has granted to an existing concessioner a preferential right of renewal as defined in 54 U.S.C. 101911 and 101913.

§ 52.5 What types of professional services contracts may the Director issue?

The Director may issue professional services contracts that support the National Park Service in soliciting, awarding, and managing commercial services contracts. Professional services contracts may include asset management agreements under which a service provider assists the National Park Service in overseeing and administering commercial services contracts but does not itself provide visitor services. Professional services contracts also may include contracts for the provision of other consulting services to the National Park Service such as developing requests for proposals, condition assessments, operational or financial analysis, accounting, and other related services.

Subpart B—Solicitation, Selection, and Award Procedures

§ 52.10 How will the Director solicit responses for the award of a commercial services contract?

(a) The Director will award commercial services contracts through a competitive selection process. The Director will issue a request for

proposals inviting responses for consideration by the Director. The request for proposals will describe the terms and conditions of the proposed commercial services contract and the procedures the Director will follow to negotiate and award the commercial services contract.

(b) The terms and conditions of the request for proposals and the proposed commercial services contract are not final until the Director awards the commercial services contract.

(c) The solicitation process may include one or more phases, such as a request for qualifications followed by or in concert with a request for more detailed information through a request for proposals. The process could also include interviews with respondents and a negotiation phase.

(d) If the entity that will become the operator is not established at the time of submission of a response, the response must contain assurances satisfactory to the Director that the entity that will become the operator will be a qualified entity as of the date of the award of the commercial services contract and otherwise have the ability to carry out the commitments made in the response.

§ 52.11 Where will the Director publish notice of the availability of a request for proposals?

(a) The Director will publish notice of the availability of the request for proposals at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines.

(b) The Director will make the request for proposals available upon request to all interested persons. The Director may charge a reasonable fee for a printed request for proposals.

§ 52.12 How long will respondents have to submit a response?

The Director will define the process and the timeline for responding and entering into negotiations in the request for proposals. The Director will not consider untimely responses.

§ 52.13 How will the Director share information with potential respondents after issuing the request for proposals?

If the Director shares material information directly related to the request for proposals with one potential respondent, the Director will share the same information with all potential respondents who have advised the Director of their interest in the request for proposals. This does not apply to information that is publicly available.

§ 52.14 How will the Director evaluate responses and select the best one?

(a) The Director will apply the selection factors set forth in the request for proposals. The evaluation will include an assessment of the respondent's written submittals in response to the request for proposals and also may include information presented by the respondent during request for qualifications, interview, and negotiation phases. During this process, the Director may request written clarifications from any respondent that has submitted a timely response.

(b) The Director will use selection factors to evaluate responses that include compliance with the requirements in the request for proposals, ability to comply with the terms and conditions of the commercial services contract, demonstration that the respondent is a qualified entity, demonstrated experience and prior performance in operating similar facilities and providing similar services, financial capability, and the proposed approach and methodology to deliver the services specified. The Director may include other factors that are identified in the request for proposals.

(c) The Director must determine that the commercial services contract issued to the selected respondent will meet the objectives of expanding, modernizing, and improving the condition of commercial facilities and commercial services provided to visitors in the park area, and that such contract is both necessary and appropriate for public use and enjoyment of the park area, and consistent with the preservation and conservation of the resources and values of the park area.

§ 52.15 When will the Director reject a response?

The Director will reject any response if the Director makes any of the following determinations:

(a) The respondent is not a qualified entity.

(b) The response is not responsive to the requirements in the request for proposals. A response is not responsive if the Director determines that it is not timely, does not meet the minimum requirements of the proposed contract, or does not provide the information required by the request for proposals.

§ 52.16 What options does the Director have in accepting or rejecting a response?

(a) If no responsive responses are submitted, the Director may cancel the solicitation. After cancellation, the Director may establish new commercial services contract requirements and issue a new request for proposals.

(b) The Director reserves the right to accept or reject any or all responses received as a result of the solicitation, to waive minor irregularities, or to negotiate with any respondent, in any manner necessary, to serve the best interests of the National Park Service.

(c) No respondent or other person or entity will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited request for proposals for a contract.

§ 52.17 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a contract, to cancel a solicitation, or to terminate a contract in accordance with its terms.

§ 52.18 When must the selected respondent execute the contract?

The selected respondent must execute the contract within the time period established by the Director. If the selected respondent fails to execute the contract in this period, the Director may select another responsive response and enter into negotiations with that respondent, or may cancel the solicitation and choose to resolicit the contract.

§ 52.19 When may the Director award the commercial services contract?

The Director may award a commercial services contract at any time after selecting the best response, the conclusion of negotiations, and execution of the contract by the respondent.

§ 52.20 How will the Director solicit and award professional services contracts?

The Director will advertise each opportunity for professional services contracts at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines. The Director will evaluate and select professional services providers that are qualified entities following the procedures described in the advertised opportunity.

Subpart C—Contract Provisions

§ 52.25 What is the term of a commercial services contract?

A commercial services contract will generally be awarded for a set term or

for a base term plus option years, with the total term not to exceed 10 years.

§ 52.26 When may the Director terminate a contract?

Contracts will contain appropriate provisions for suspension of operations and for termination by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the VEIA.

§ 52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?

No. Operators and professional services providers will not receive leasehold surrender interest in capital improvements, as those terms are defined at 54 U.S.C. 101915.

§ 52.28 Are operator rates subject to approval by the Director?

(a) The Director may require prior approval of rates for services provided to visitors under a commercial services contract.

(b) Generally, the Director will approve rates for services provided to visitors based upon market demand, although the Director may specify rates or rate methods for particular services based on factors other than market demand, such as to ensure affordability to a broad segment of visitors.

§ 52.29 May operators assign or encumber commercial services contracts?

Commercial services contracts will include provisions that require the Director's approval prior to any assignment or encumbrance of the contract or any rights or interests under the contract to another operator.

§ 52.30 How may commercial services contracts be funded?

Contract funds will be provided to the operators, who will be solely responsible for maintaining and expending the funds on agreed-upon expenses. Commercial services contracts will clearly define what contract-related funds shall be considered revenue collected for the NPS and will provide for the periodic remittance of such funds to the NPS.

Subpart D—Information and Access to Information

§ 52.35 What records must the operator and professional services provider keep and what access does the Director have to records?

Operators and professional services providers must keep any records that the Director may require for the term of the contract and for five calendar years after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, or an authorized representative of the Director, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider). Further details on records maintenance and access will be set forth in and governed by the contracts themselves.

§ 52. 36 What access does the Comptroller General have to records kept by operators and professional services providers?

The Comptroller General of the United States, or an authorized representative of the Comptroller General, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider) going back five years from the closing date of the last fiscal year of the operator or professional service provider.

Subpart E—Miscellaneous

§ 52.40 Does this part affect concession contracts under part 51 of this chapter?

No, nothing in this part modifies the terms or conditions of any existing concession contract or the ability of the Director to enter into concession contracts under part 51 of this chapter. The 1998 Act (as that term is defined in part 51 of this chapter) remains in effect.

§ 52.41 Does the VEIA expire?

Yes. The Director may not award a contract under the VEIA after December 16, 2025, unless extended by law. However, contracts awarded under the VEIA may continue beyond such date, subject to the terms of the particular contract.

§ 52.42 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2025–01206 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

POSTAL SERVICE

39 CFR Parts 233 and 273

Inspection Service Authority; Civil Monetary Penalty Inflation Adjustment

AGENCY: Postal Service™.

ACTION: Interim final rule.

SUMMARY: This document updates postal regulations by implementing inflation adjustments to civil monetary penalties that may be imposed under consumer protection and mailability provisions enforced by the Postal Service pursuant to the Deceptive Mail Prevention and Enforcement Act and the Postal Accountability and Enhancement Act, as well as the civil monetary penalty that may be imposed by the Postal Service for false claims and statements under the Program Fraud Civil Remedies Act. These adjustments are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This document includes the adjustments for 2025 for the statutory civil monetary penalties subject to the 2015 Act and all necessary updates authorized by the 2015 Act for regulatory civil monetary penalties.

DATES: *Effective:* January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Steve Sultan, (202) 268–7385, *SESultan@uspis.gov.*

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114–74, 129 Stat. 584, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Section 3 of the 1990 Act specifically includes the Postal Service in the definition of ''agency'' subject to its provisions.

Beginning in 2017, the 2015 Act requires the Postal Service to make an annual adjustment for inflation to civil penalties that meet the definition of

''civil monetary penalty'' under the 1990 Act. The Postal Service must make the annual adjustment for inflation and publish the adjustment in the **Federal Register** by January 15 of each year. Each penalty will be adjusted as instructed by the Office of Management and Budget (OMB) based on the Consumer Price Index (CPI–U) from the most recent October. OMB has furnished detailed instructions regarding the annual adjustment for 2025 in memorandum M–25–02, *Implementation of Penalty Inflation Adjustments for 2025, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 17, 2024), *https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf.* This year, OMB has advised that an adjustment multiplier of 1.02598 will be used. The new penalty amount must be rounded to the nearest dollar.

The 2015 Act allows the interim final rule and annual inflation adjustments to be published without prior public notice or opportunity for public comment.

Adjustments to Postal Service Civil Monetary Penalties

Civil monetary penalties may be assessed for postal offenses under sections 106 and 108 of the Deceptive Mail Prevention and Enforcement Act, Public Law 106–168, 113 Stat. 1811, 1814 (*see* 39 U.S.C. 3012(a), (c)(1), (d), and 3017(g)(2), (h)(1)(A)); and section 1008 of the Postal Accountability and Enhancement Act, Public Law 109–435, 120 Stat. 3259–3261 (*see* 39 U.S.C. 3018(c)(1)(A)). The statutory civil monetary penalties subject to the 2015 Act and the amount of each penalty after implementation of the annual adjustment for inflation are as follows:

39 U.S.C. 3012(a)—False Representations and Lottery Orders

Under 39 U.S.C. 3005(a)(1)–(3), the Postal Service may issue administrative orders prohibiting persons from using the mail to obtain money through false representations or lotteries. Persons who evade, attempt to evade, or fail to comply with an order to stop such prohibited practices may be liable to the United States for a civil penalty under 39 U.S.C. 3012(a). The regulations implemented pursuant to this section currently impose a $88,412 penalty for each mailing less than 50,000 pieces, $176,820 for each mailing of 50,000 to 100,000 pieces, and $17,683 for each additional 10,000 pieces above 100,000 not to exceed $3,536,422. The new penalties will be as follows: a $90,709 penalty for each mailing less than 50,000 pieces, $181,414 for each mailing of 50,000 to 100,000 pieces, and $18,142 for each additional 10,000 pieces above 100,000 not to exceed $3,628,298.

39 U.S.C. 3012(c)(1)—False Representation and Lottery Penalties in Lieu of or as Part of an Order

In lieu of or as part of an order issued under 39 U.S.C. 3005(a)(1)–(3), the Postal Service may assess a civil penalty. Currently, the amount of this penalty, set in the implementing regulations to 39 U.S.C. 3012(c)(1), is $44,206 for each mailing that is less than 50,000 pieces, $88,412 for each mailing of 50,000 to 100,000 pieces, and an additional $8,842 for each additional 10,000 pieces above 100,000 not to exceed $1,768,212. The new penalties will be $45,354 for each mailing that is less than 50,000 pieces, $90,709 for each mailing of 50,000 to 100,000 pieces, and an additional $9,072 for each additional 10,000 pieces above 100,000 not to exceed $1,814,150.

39 U.S.C. 3012(d)—Misleading References to the United States Government; Sweepstakes and Deceptive Mailings

Persons may be liable to the United States for a civil penalty under 39 U.S.C. 3012(d) for sending certain deceptive mail matter described in 39 U.S.C. 3001((h)–(k), including:

- Solicitations making false claims of Federal Government connection or approval;
- Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;
- Solicitations containing improperly prepared ''facsimile checks''; and
- Certain solicitations for ''skill contests'' and ''sweepstakes'' sent to individuals who, in accordance with 39 U.S.C. 3017(d), have requested that such materials not be mailed to them.

Currently, under the implementing regulations, this penalty is not to exceed $17,683 for each mailing. The new penalty will be $18,142.

39 U.S.C. 3017(g)(2)—Commercial Use of Lists of Persons Electing Not To Receive Skill Contest or Sweepstakes Mailings

Under 39 U.S.C. 3017(g)(2), the Postal Service may impose a civil penalty against a person who provides information for commercial use about individuals who, in accordance with 39 U.S.C. 3017(d), have elected not to receive certain sweepstakes and contest information. Currently, this civil penalty may not exceed $3,536,422 per violation, pursuant to the implementing regulations. The new penalty may not exceed $3,628,298 per violation.

39 U.S.C. 3017(h)(1)(A)—Reckless Mailing of Skill Contest or Sweepstakes Matter

Currently, under 39 U.S.C. 3017(h)(1)(A) and its implementing regulations, any promoter who recklessly mails nonmailable skill contest or sweepstakes matter may be liable to the United States in the amount of $17,683 per violation for each mailing to an individual. The new penalty is $18,142 per violation.

39 U.S.C. 3018(c)(1)(A)—Hazardous Material

Under 39 U.S.C. 3018(c)(1)(A), the Postal Service may impose a civil penalty payable into the Treasury of the United States on a person who knowingly mails nonmailable hazardous materials or fails to follow postal laws on mailing hazardous materials. Currently, this civil penalty is at least $383, but not more than $152,461 for each violation, pursuant to the implementing regulations. The new penalty is at least $393, but not more than $156,422 for each violation.

Adjustments to Regulatory Postal Service Civil Monetary Penalties

In October 1986, Congress enacted the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812. The Program Fraud Civil Remedies Act established an administrative remedy against any person who makes, or causes to be made, a false claim or written statement to certain Federal agencies. The Act requires each covered agency to promulgate rules and regulations necessary to implement its provisions. The Postal Service's implementing regulations are found in part 273 of title 39, Code of Federal Regulations. The current penalty amount is $13,946. The new penalty amount is $14,308.

List of Subjects

39 CFR Part 233

Administrative practice and procedure, Banks, Banking, Credit, Crime, Infants and children, Law enforcement, Penalties, Privacy, Seizures and forfeitures.

39 CFR Part 273

Administrative practice and procedure, Claims, Fraud, Penalties.

For the reasons set out in the preamble, the Postal Service amends 39 CFR parts 233 and 273 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

■ 1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1), 3012, 3017, 3018; 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–208, 110 Stat. 3009; Secs. 106 and 108, Pub. L. 106–168, 113 Stat. 1806 (39 U.S.C. 3012, 3017); Pub. L. 114–74, 129 Stat. 584.

§ 233.12 [Amended]

■ 2. In § 233.12:

■ a. In paragraph (a), remove ''$88,412'' and add in its place ''$90,709'', remove ''$176,820'' and add in its place ''$181,414'', remove ''$17,683'' and add in its place ''$18,142'', and remove ''$3,536,422'' and add in its place ''$3,628,298''.

■ b. In paragraph (b), remove ''$44,206'' and add in its place ''$45,354'', remove ''$88,412'' and add in its place ''$90,709'', remove ''$8,842'' and add in its place ''$9,072'', and remove ''$1,768,212'' and add in its place ''$1,814,150''.

■ c. In paragraph (c)(4), remove ''$17,683'' and add in its place ''$18,142''.

■ d. In paragraph (d), remove ''$3,536,422'' and add in its place ''$3,628,298''.

■ e. In paragraph (e), remove ''$17,683'' and add in its place ''$18,142''.

■ f. In paragraph (f), remove ''$383'' and add in its place ''$393'' and remove ''$152,461'' and add in its place ''$156,422''.

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

■ 3. The authority citation for part 273 continues to read as follows:

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

■ 4. In § 273.3:

■ a. In paragraph (a)(1)(iv), remove ''$13,946'' and add in its place ''$14,308''.

■ b. In paragraph (b)(1)(ii), remove ''As adjusted under Public Law 114–74, the penalty is $13,946 per claim.''

■ c. In paragraph (b)(1)(iii), add at the end of the paragraph ''As adjusted under Public Law 114–74, the penalty is $14,308 for each such statement.''

Colleen Hibbert-Kapler,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2025–01062 Filed 1–16–25; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2024–0333; FRL–11817–02–OAR]

RIN 2060–AW25

State Implementation Plan Submittal Deadlines and Implementation Requirements for Reclassified Nonattainment Areas Under the Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing deadlines for submission of state implementation plan (SIP) revisions and implementation of the relevant control requirements that will apply for nonattainment areas reclassified as Moderate, Serious, and Severe under the current and any future ozone National Ambient Air Quality Standards (NAAQS) as a result of either failing to attain the standard by the applicable classification attainment date or the EPA granting a voluntary reclassification request. This final rule articulates the implementation requirements and timeframes that will apply for all such areas once reclassified. The EPA is also finalizing regulatory revisions to codify its existing interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing certain, but not all, requirements related to the prior classification level for an ozone nonattainment area.

DATES: This rule is effective on February 18, 2025.

ADDRESSES: The EPA established Docket ID No. EPA–HQ–OAR–2024–0333 for this action. All documents on the docket are listed at *https://www.regulations.gov.* Although listed in the docket index, some information may not be publicly available, *e.g.,* Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Docket materials are available electronically to the public through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this final rule, contact Erin Lowder, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C535–A Research Triangle Park, NC 27709; telephone number: (919) 541–5421; email address: *lowder.erin@epa.gov;* or Robert Lingard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01 Research Triangle Park, NC 27709; by telephone number: (919) 541–5272; email address: *lingard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means the EPA.

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I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this final rule include state, local, and tribal governments and air pollution control agencies (''air agencies'') responsible for attainment and maintenance of the NAAQS. Entities potentially affected indirectly by this final rule as regulated sources include owners and operators of sources of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) that contribute to ground-level ozone formation.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/ground-level-ozone-pollution/ozone-implementation-regulatory-actions.*

II. Overview and Basis of Final Rule

A. Background and Summary of Final Rule

The EPA is finalizing in this action default SIP submittal and implementation deadlines for areas reclassified as Moderate, Serious, and Severe by operation of law pursuant to Clean Air Act (CAA or Act) section 181(b)(2) and voluntary reclassification requests pursuant to CAA section 181(b)(3). These default deadlines are applicable for all current and future ozone NAAQS.

States responsible for areas initially designated as nonattainment under an ozone NAAQS are required to prepare and submit SIP revisions by deadlines relative to the effective date of the rule establishing area designations and classifications, and the submission deadlines vary depending on the SIP element required (*e.g.,* the statute provides 3 or 4 years from initial nonattainment designation to submit SIPs for some requirements and 2 years for others). Areas initially designated as nonattainment are also required to implement reasonably available control technology (RACT) as expeditiously as practicable, but no later than January 1 of the 5th year after the effective date of designations.

The EPA recognizes that upon reclassification to a higher classification, especially when under CAA section 181(b)(2), a state can be faced with limited time to submit and implement required SIP revisions prior to the next attainment date. In addition, in some cases, the SIP submission and implementation deadlines associated with areas formerly classified at a particular level may have already passed at the time of reclassification, making it impossible to apply those original SIP submission and implementation deadlines to areas that are reclassified to that classification level upon failure to attain by a lower classification attainment date or by voluntary request. In light of these considerations, the EPA has historically adjusted deadlines pursuant to the general rulemaking authority granted under CAA section 301(a) to prescribe regulations as are necessary to carry out the functions of the Act, and the specific authority granted by CAA section 182(i).[1] The EPA has promulgated these adjustments of SIP submission and implementation deadlines that apply to reclassified areas with the intent to assure consistency amongst submissions, encourage meaningful reductions towards expeditious attainment of the NAAQS—mindful of newly applicable attainment dates—and promote planning flexibility where possible.

On October 4, 2024, through a notice of proposed rulemaking (NPRM), the EPA solicited public comment on proposed regulatory text codifying default SIP requirements, including submittal and implementation deadlines, that would apply to any nonattainment areas reclassified as Moderate, Serious, and Severe under the current and any future ozone NAAQS. Refer to the proposal for a description of the requirements that were proposed to apply to areas reclassified as Moderate, Serious or Severe.[2] The public comment period for the NPRM ran from October 4, 2024, to November 4, 2024. The EPA received a total of 16 comment submissions on the NPRM. The preamble to this final rule discusses significant comments received on the NPRM and how those comments were considered by the EPA.[3] The comments and the EPA's responses are organized in this final rule under subject titles, and in the same order as they appear in the NPRM. The Response to Comments document associated with this final rule contains our responses to comments that are general in nature or outside the scope of the final rule. The public comments received on the NPRM are posted in the docket at *https://www.regulations.gov* (Docket ID No. EPA–OAR–HQ–2024–0333).

We are finalizing default SIP requirements, including submittal and implementation deadlines, for all ozone nonattainment areas reclassified as Moderate, Serious, and Severe under the current and any future ozone NAAQS. This final rule articulates the implementation requirements and timeframes that will apply for all such areas once reclassified, either as a result of failing to attain the standard by the applicable classification attainment date pursuant to CAA section 181(b)(2) or the EPA granting a voluntary reclassification request pursuant to CAA section 181(b)(3). For any nonattainment areas reclassified as Moderate, Serious, and Severe under the ozone NAAQS, we are finalizing regulatory text codifying default SIP submission and implementation deadlines that will apply upon the effective date of reclassification. The EPA is also finalizing regulatory revisions codifying its existing interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing certain, but not all, requirements related to the prior classification level for an ozone nonattainment area.

B. Statutory Authority for Final Rule

The statutory authority for the actions being finalized in this document is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, CAA sections 172, 181, 182, and 301(a).

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS,

[1] CAA section 182(i) specifically provides authority to the EPA to adjust applicable deadlines, other than attainment dates, for areas that are reclassified as a result of failure to attain under CAA section 182(b)(2), to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions. The provision does not specifically reference areas that are voluntarily reclassified under CAA section 181(b)(3); the EPA is therefore adjusting deadlines for such areas under its general rulemaking authority in CAA section 301(a), consistent with CAA section 182(i).

[2] 89 FR 80833 (October 4, 2024).

[3] Each commenter discussed in this preamble is identified by the docket identification number associated with the comment submission. The Response to Comments (RTC) document in this docket for this final rule contains a table identifying each commenter and their associated docket identification number.

meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Part D of title I of the CAA establishes the plan requirements that apply to all areas designated nonattainment. The purpose of these plan requirements is ensuring that these areas achieve attainment of the applicable NAAQS by the applicable area attainment date. Subpart 1 of part D sets out the plan requirements for nonattainment areas in general, and subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's design value (DV)). Classifications for ozone nonattainment areas range from Marginal to Extreme. CAA section 172 (in subpart 1) covers nonattainment area plan provisions in general, and CAA section 182 (in subpart 2) provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. Subparts 1 and 2 also establish the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and require that such plans ''shall provide for attainment of the NAAQS,'' [4] and that the ''primary standard attainment date for ozone shall be as expeditiously as practicable'' but not later than a maximum attainment date measured from the effective date of the area's designation.[5] The EPA has also promulgated regulations interpreting these requirements for the 2008 ozone NAAQS and the 2015 ozone NAAQS at 40 CFR part 51, subparts X and CC, respectively.

CAA section 182(i) governs the Act's requirements for areas reclassified by operation of law. Specifically, CAA section 182(i) states that areas that are reclassified due to failure to timely attain by the attainment date ''shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the submissions.'' Subsections (b) through (d) of CAA section 182 cover the required SIP revisions for Moderate (182(b)), Serious (182(c)), and Severe (182(d)), and those requirements are generally cumulative. *See, e.g.,* CAA section 182(b) (requiring Moderate areas to make submissions relating to Marginal areas in addition to the revisions for the Moderate classification). The SIP revisions, control measures, and timing of such submissions and controls are intended to, among other things, ensure that areas will attain the NAAQS as expeditiously as practicable, but no later than the applicable attainment date. As discussed in more detail later in this document, most SIP requirements are not dependent on the attainment date itself, but certain SIP requirements are inherently tied to the applicable attainment date and therefore are no longer required for the lower classification after the area is reclassified.

As noted, CAA section 182(i) also provides the Administrator with authority to adjust applicable deadlines (other than attainment dates) for areas that are reclassified as a result of failure to attain the NAAQS under CAA section 182(b)(2), ''to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' In finalizing the adjustment of applicable deadlines for reclassified areas, the EPA considered the timeframes provided under the statute for the submission and implementation of requirements for initial area designations and classifications. Unsurprisingly, many of the nonattainment plan requirements in subparts 1 and 2 establish timing of the submission and implementation of controls such that those plans and controls will influence attainment of the NAAQS within the area by the attainment date.[6] The EPA's submission and implementation schedules for reclassified areas in this final rule are consistent with the overall schedule of the submission of substantive requirements that are associated with a classification, but adjusts those schedules to fit the abbreviated timeframe available to reclassified areas, in nearly all cases before the next applicable attainment date. In particular, the EPA's deadlines for implementation of controls and SIP submissions are informed by the need to ensure that the reductions resulting from the Act's requirements are consistently due in time to influence an area's attainment by the attainment date, to the extent the applicable controls are necessary to achieve attainment by that date.

While some areas are reclassified due to failure to attain by the attainment date, others may be reclassified as a result of a state's request. CAA section 181(b)(3) states that ''[t]he Administrator shall grant the request of any State to reclassify a nonattainment area in that State . . . to a higher classification.'' In some cases, states may seek voluntary reclassification to a higher classification early in the planning cycle, and in those cases, the existing SIP submittal and implementation deadlines for the higher classification would continue to apply. In other instances, states may request a voluntary reclassification under CAA section 181(b)(3) where the SIP submittal and implementation deadlines have already passed or will occur in the near future. CAA section 182(i) specifically provides authority to the EPA to adjust applicable deadlines, other than attainment dates, for areas that are reclassified as a result of a failure to attain under CAA section 181(b)(2), but section 182(i) does not specifically reference areas that are voluntarily reclassified under CAA section 181(b)(3). Per CAA section 301(a)(1), in the context of implementing subpart 2 planning requirements, the EPA has determined that regulations are necessary to prescribe the SIP submittal and implementation deadlines for such voluntarily reclassified areas, where the deadlines associated with the requested higher classification have already passed or will occur in the near future (*i.e.,* less than 18 months from the effective date of the reclassification).

The EPA's default deadlines being finalized in this document were also informed by the amount of time that the CAA prescribes when new implementation plans are required to be submitted under various circumstances. *See, e.g.,* CAA section 110(k)(5) (allowing the EPA to ''establish

[4] CAA section 172(c)(1).

[5] CAA section 181(a)(1).

[6] *See, e.g.,* CAA section 172(c)(6) (''Such plan provisions shall include enforceable emission limitations . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.''); CAA section 182(b)(1)(A)(i) (''Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the [NAAQS] of for ozone by the attainment date applicable under this chapter.''); CAA section 182(b)(2) (requiring control measures on major stationary sources of VOCs or sources of VOCs covered by a CTG to be implemented as expeditiously as practicable but no later than the beginning of the ozone season of the attainment year).

reasonable deadlines (not to exceed 18 months)'' after notification that a SIP is inadequate); CAA section 179(d) (subpart 1 requirement that within 1 year of a finding that a nonattainment area has failed to attain by its attainment date, States must submit a new SIP revision addressing nonattainment plan requirements). As discussed in more detail in response to comments received on the proposed rulemaking, in section III.A.3. of this preamble, these other CAA provisions are not directly applicable to the EPA's adjustment of deadlines for reclassified areas and do not explicitly constrain the Agency's exercise of discretion and judgment under CAA sections 182(i) and 301(a). CAA sections 110(k)(5) and 179(d) are informative, but not prescriptive, to the EPA's final action.

III. Final Actions

A. Default Deadlines for Reclassified Nonattainment Areas Under the Ozone NAAQS

1. Summary of Proposal

The EPA proposed to establish a general default SIP submittal deadline for areas reclassified as Moderate, Serious, or Severe as the sooner of 18 months from the effective date of the reclassification notice or January 1 of the new classification attainment year, except for SIP revisions addressing CAA section 185. For the CAA section 185 fee program SIP submittals required for areas that are reclassified as Severe, the EPA proposed a default deadline of the sooner of 36 months after the effective date of reclassification to Severe or January 1 of the Severe area attainment year. The EPA also proposed that the default SIP submission deadlines could be adjusted where such adjustment is appropriate or necessary, through future notice-and-comment rulemaking in specific EPA actions.

The EPA also proposed default deadlines for implementation of emissions control measures for areas reclassified as Moderate, Serious, or Severe. For reasonably available control technology (RACT), the EPA proposed a default control implementation deadline of the sooner of 18 months after the proposed SIP submittal deadline or the beginning of the relevant attainment year ozone season. For vehicle emissions inspection and maintenance (I/M), the EPA proposed an implementation deadline of no later than 4 years after the effective date of reclassification (unless needed for attainment by the attainment date or to demonstrate reasonable further progress (RFP)). Similar to the SIP submittal deadlines, the EPA proposed that these default control measure implementation deadlines could be adjusted where such adjustment is appropriate or necessary.

2. Final Rule

The EPA is finalizing regulatory text in line with the EPA's position as described in the proposal. The default SIP submittal deadline for all elements, except for the CAA section 185 fee program element, for areas reclassified as Moderate, Serious, or Severe will be the sooner of 18 months from the effective date of the reclassification or January 1 of the new classification attainment year. For the CAA section 185 fee program SIP submittals required for areas that are reclassified as Severe, the default deadline will be the sooner of 36 months after the effective date of reclassification to Severe or January 1 of the Severe area attainment year. The default control implementation deadline for RACT will be as expeditiously as practicable, but no later than the sooner of 18 months after the proposed SIP submittal deadline or the beginning of the relevant attainment year ozone season. For I/M not needed for attainment by the attainment date or to demonstrate RFP, the default implementation deadline will be as expeditiously as practicable, but no later than 4 years after the effective date of reclassification. The EPA retains the authority under the CAA to deviate from these default deadlines for all ozone NAAQS, consistent with the CAA through future notice-and-comment rulemaking.

3. Comments and Responses

a. Default Deadlines Generally

Comment: Three commenters (0030, 0031, 0036) express general support for the proposed default SIP submittal and implementation deadlines, noting that the rulemaking is an effective way to streamline deadlines for ozone nonattainment areas and ensure successful SIP submission and control implementation. One commenter (0036) specifically notes that the EPA should finalize the default deadlines as proposed for the following reasons: (1) these deadlines are legally supported and offer air agencies advanced notice as to when SIPs must be submitted and implemented; (2) it is critical that programs needed to address attainment are implemented no later than the start of the attainment year ozone season; (3) these proposed deadlines offer air agencies some implementation flexibility while acknowledging the constraints of statutorily fixed attainment dates; (4) this proposal would still allow the EPA to set different submittal and implementation deadlines on a case-by-case basis in the future, as necessary. The commenter believes that, at a minimum, the EPA should finalize these deadlines as they apply to any 2015 ozone NAAQS areas reclassified to Serious. It is critical for nonattainment areas needing to meet the 2015 ozone NAAQS Serious area attainment date of August 3, 2027, to understand the requirements sooner rather than later, given the short time available to plan for and implement those requirements.

Response: The EPA agrees with the commenters and is finalizing the deadlines as proposed with minor clarifications as discussed elsewhere in this document.

Comment: One commenter (0036) requests that, for any deadlines established by the EPA that are tied to the start of an area's ozone season, the EPA should clarify that the applicable ozone season is the ozone season as modified by an EPA-approved ozone season waiver. The EPA has proposed a general deadline for certain nonattainment area planning and control requirements as the sooner of 18 months after the attainment SIP due date or the start of the attainment year ozone season as listed in appendix D to 40 CFR part 58. However, 40 CFR part 58, appendix D, section 4.1(i) allows the EPA regional administrators to grant case-by-case deviations from the otherwise applicable ozone monitoring seasons listed in appendix D. Due to approved ozone season deviations, it is possible, therefore, for the effective ozone season in a state to differ from the dates listed in the appendix. To account for these situations, the EPA should clarify that any deadlines associated with the attainment year ozone season is the ozone season as promulgated by appendix D to 40 CFR part 58 or the ozone season as modified by an EPA-approved ozone season waiver.

Response: While the EPA acknowledges that ozone monitoring seasons may be modified with approved waiver requests under 40 CFR part 58, appendix D, section 4.1(i), we note that these waivers are specific to individual monitoring sites and do not otherwise modify the statewide ozone monitoring seasons listed in table D–3 to appendix D of part 58. While it is possible that the ozone monitoring season could be modified for an individual ozone nonattainment area, this would require an approved waiver for all monitoring sites within the area. We are not aware of any nonattainment areas meeting this condition under the 2008 or 2015 ozone NAAQS, and consider it unlikely to occur in the future. Thus, the EPA is

finalizing default control implementation deadlines that align with the attainment year ozone season as promulgated by appendix D to 40 CFR part 58, as proposed.

Comment: One commenter (0030) recommends that the EPA should not allow flexibility in the proposed default deadlines. The commenter notes that allowing deadline extensions reintroduces inconsistencies and undermines the predictability of default deadlines, which is contradictory to the goal of the proposed rule. Furthermore, allowing flexible deadlines can lead to delays in implementing control measures and allowing one state to extend deadlines can set a precedent for others. On the other hand, default deadlines create a sense of urgency and accountability, forcing states to prioritize the NAAQS.

Other commenters (0039, 0042) recommend that the EPA should maximize states' flexibility when implementing ozone NAAQS in reclassified areas. One commenter (0039) notes that retaining the option of adjusting timing of SIP submittals and implementation of controls on a case-by-case basis, while ensuring the timeline is consistent with meeting the NAAQS by the prescribed attainment date, helps to preserve the flexibility contemplated by the CAA and its air quality goals.

Another commenter (0043) requests that the EPA clarify when it is necessary or appropriate to adjust the default deadlines. The commenter notes that the EPA fails to define how it will determine when such an extension is ''necessary or appropriate'' and requests that the EPA outline the factors a state must show to obtain such an adjustment in deadlines. The commenter feels that while the EPA has the authority under the CAA to adopt modified timeframes, there is far too much ambiguity in the term ''as appropriate or necessary'' to ensure that this ''standard'' will be properly and uniformly applied if a state submits a request.

Response: We are finalizing as proposed the default deadlines for reclassified areas that acknowledge that such deadlines may be further adjusted via a notice-and-comment rulemaking per CAA section 182(i). However, we agree with those commenters who note that any flexibility to set deadlines under CAA section 182(i) is constrained by the Act's requirement that the EPA ensure areas expeditiously attain the NAAQS no later than the attainment date. As an initial matter, the EPA is finalizing as proposed the overall limitation of when an adjustment of deadlines is triggered. Where otherwise applicable deadlines that apply to areas initially designated nonattainment have not yet passed or are more than 18 months from the effective date of the reclassification, those deadlines will continue to apply to reclassified areas. Therefore, the default SIP submittal and implementation deadlines finalized in this action, and any adjustment thereof, only apply where those otherwise applicable deadlines have either passed or are less than 18 months in the future from the effective date of the reclassification.

We also note that the deadlines in the EPA's final action inherently already cover much of the available flexibility for reclassified areas. By structuring the default deadlines as ''the earlier of'' an outside timeframe (*e.g.,* 18 months) or a specific date (*e.g.,* January 1 of the attainment year), the EPA is maximizing available time for SIP development, adoption, and submission, while still ensuring that controls are adopted into the SIP and implemented in time to influence attainment of the NAAQS by the attainment date. We anticipate any remaining flexibility on adjustment of deadlines, which again must be adopted through rulemaking after public notice-and-comment, to be minimal. As noted in the proposal, the EPA has in certain historical instances established a SIP submission deadline for reclassified areas as the beginning of the ozone season attainment year (*e.g.,* in March, April, or May) rather than January 1 of the attainment year. We think such flexibility, for example, is permissible under the Act's requirements. But as we stated in the proposal, there are outer boundaries to establishing reasonable deadlines under CAA section 182(i); namely that we cannot establish SIP submission deadlines for a control subsequent to a date when those controls are required under the CAA to be implemented. 89 FR 80839 (October 4, 2024).

Given the limited nature of the anticipated further adjustment of deadlines, we decline at this time to adopt a strict standard or to enumerate factors that must be considered. Rather, we will issue any such adjustments to the finalized default deadlines in accordance with the statutory text of CAA section 182(i), which allows the Administrator to ''adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' Those adjustments will be subject to notice-and-comment rulemaking, providing the public the opportunity to provide input on the EPA's application of the statute in those specific circumstances.

Comment: Several commenters provided input regarding the proposal's establishment of 18 months from the effective date of reclassification as the outer bound of the proposed general default deadline for SIP submissions for reclassified areas. Three commenters (0032, 0040, 0042) assert that the EPA's rationale for relying on CAA section 110(k)(5) to establish the proposed default deadlines is flawed, and that 18 months does not provide sufficient time to develop revisions to a SIP for an area that has been reclassified. Two of these commenters (0032, 0042) note that the EPA uses the CAA section 110(k)(5) 18-month timeframe for states to submit SIP revisions as indication that Congress judged this timeframe to be sufficient for states to identify and develop control measures, draft revisions to address attainment plans and other requirements, and complete the required public notice process, adopt such revisions, and submit them to the EPA. These two commenters claim that this is not an acceptable comparison to starting a SIP from the beginning because CAA section 110(k)(5) only applies when an existing SIP requires a revision. These commenters further provide that, in relying on CAA section 110(k)(5) in the proposal, the EPA underestimates the efforts developing a new SIP takes. In addition, one of the commenters (0042) states that CAA section 110(a)(1) provides states with up to 3 years to submit SIP revisions after a NAAQS promulgation or revision and notes that the statute allows the EPA to prescribe a shorter timeframe for such submissions, but the EPA must consider all relevant factors and provide a rational justification for such shorter timeframe. The commenter believes that the EPA's argument that 18 months is the outer bound of reasonableness fails to consider the technical complexity and unique challenges in achieving attainment of the ozone NAAQS facing states, which the commenter claims is particularly true in the case of areas reclassified as Severe. Another commenter (0040) provides that the EPA has not cited to any authority where the EPA is required to abide by the deadlines found in CAA sections 110(k)(5) and 179(d) when setting deadlines for areas that have requested voluntary reclassification. The commenter notes that, in a prior action (*see,* 89 FR 51829, June 20, 2024), the EPA explicitly noted that CAA sections 110(k)(5) and 179(d) do not directly apply to areas that are voluntarily reclassified, rather they are just

informative of what a potentially appropriate deadline may be.

Another commenter (0045) claims that the CAA explicitly provides an 18-month period to states to submit their SIPs to the EPA and to implement those SIPs. This commenter asserts that Congress has provided an overt prescription of 18 months as an adequate standard for SIP development, submittal, and implementation, and that the EPA has distorted Congress' intention in the proposal by interpreting ''this clause'' as a mere recommendation. Other commenters (0037, 0043) assert that a default SIP submission deadline of less than 18 months is contrary to the Act, which they allege establishes that 18 months as the sufficient timeframe. These commenters assert that any amount of time less than 18 months is not reasonable, cannot be justified, and imposes unfair and arbitrary burdens on the state that are contrary to the Act.

Conversely, one commenter (0044) claims that it is unlawful and unnecessary for the EPA to provide states up to 18 months to make a SIP submittal following reclassification, and the EPA's reliance on CAA section 110(k)(5) is flawed. The commenter asserts that CAA section 179(d), which establishes a 12-month deadline for nonattainment SIP submittals for areas that fail to timely attain, is the more relevant CAA deadline. The commenter states that because nothing more specific supplants or overrides CAA section 179(d), that ''generally applicable nonattainment SIP requirement dictates the outer bound of the EPA's authority to extend SIP submittal deadlines following ozone reclassifications.'' The commenter points to the EPA's rule regarding reclassifications of areas designated Marginal under the 2015 ozone NAAQS to illustrate that the EPA has previously determined that 12 months provides adequate time for nonattainment SIP submittals.

Response: As noted in the proposal, neither CAA section 179(d) nor section 110(k)(5) are directly applicable to reclassified ozone areas, and the EPA therefore disagrees with all commenters that have suggested that either of these two provisions dictate how the EPA should adjust deadlines for reclassified areas under CAA section 182(i).

CAA section 179(d)(1) requires the state containing a nonattainment area to submit within 12 months of the CAA section 179(c) determination that the area failed to attain by its attainment date, a revision to their SIP that meets the requirements of CAA section 110 and CAA section 172 and any additional measures that the Administrator may reasonably prescribe. This final action establishes deadlines for states containing areas for which the EPA has made a determination that an area failed to attain under CAA section 181(b)(2), not CAA section 179(c). We therefore do not agree with commenters who allege that CAA section 179(d) ''dictates the outer bound of the EPA's authority'' to establish deadlines for the SIP revisions that are required pursuant to ozone determinations and reclassifications made under CAA section 181(b)(2). Rather, the authority to establish subpart 2 deadlines for areas reclassified pursuant to CAA section 181(b)(2) is explicitly granted in CAA section 182(i), which contains no reference to CAA section 179(d) as establishing an outside limit to the EPA's authority.

CAA section 110(k)(5) states that ''[w]henever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS], to mitigate adequately the interstate pollutant transport described in section 7506a of . . . or section 7511c of [the CAA], or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.'' The CAA section 181(b)(2) determinations that ozone nonattainment areas have failed to attain by their attainment dates are not, unless otherwise specified, the findings of inadequacy that the EPA issues under CAA section 110(k)(5). Therefore the authority to establish deadlines for SIP revisions to address SIP inadequacies identified under CAA section 110(k)(5)—*i.e.,* the authority that provides that the EPA ''may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions''—does not apply to the SIP revisions that are required as a result of the EPA's determinations under CAA section 181(b)(2) that ozone nonattainment areas have failed to attain or the EPA's reclassifications of areas voluntarily requested by air agencies under CAA section 181(b)(3). The commenter who asserted that the 18-month timeframe is an ''overt prescription'' that dictates what the EPA must finalize as a deadline in this rule is therefore plainly incorrect.

Rather, as the EPA stated in the proposal, the Agency's choice to refer to CAA sections 179(d) and 110(k)(5) were for the purpose of informing its exercise of discretion under CAA section 182(i). We do not agree with commenters who assert that Congress' establishment of deadlines in those two provisions somehow created substantive thresholds for the EPA's adjustment of deadlines under CAA section 182(i) such that the EPA must ''justify'' divergence from either. We continue to think it is a permissible exercise of the EPA's discretion under CAA section 182(i) to adjust deadlines to establish a default deadline of no more than 18 months, where the available time before the next attainment deadline permits. Commenters who assert that 18-months should be the minimum timeframe for reclassified areas to revise SIPs because revising a SIP per CAA section 110(k)(5) is not the same as ''starting a SIP from the beginning,'' ignore the fact that any reclassified areas subject to the deadlines in this rule will have already been designated nonattainment for at least 3 years, and for classifications beyond Marginal, many more than three. Because the subpart 2 requirements are cumulative and build on each classification, reclassified areas revising their SIPs to address the requirements of their new classification will also not be starting from scratch. States containing these areas will not only have been subject to the general infrastructure SIP requirements that all states are required to submit after promulgation of a NAAQS, but they will also have been subject to any lower subpart 2 classification requirements that have applied since areas were designated nonattainment. Moreover, the assertion that Congress would have intended states to be entitled to a minimum of 18 months to revise SIPs is contrary to the similar provisions the EPA alluded to in CAA sections 110(k)(5) and CAA section 179(d).[7] CAA section 110(k)(5) on its face defines a reasonable deadline as ''not to exceed 18 months.'' And CAA section 179(d), which as some commenters point out is the Act's default deadline for non-ozone areas that have failed to timely attain establishes an outer boundary of 12 months to revise a SIP. So, we do not agree that there is statutory support for commenters' contention that a deadline of anything less than 18 months is unreasonable, unworkable, or contrary to the Act, when the Act plainly identifies less than 18 months as the routine expectation for a SIP revision in similar situations.

[7] *See* also schedules for plan submissions for areas designated nonattainment for particulate matter in CAA section 189(a)(2)(B) (providing a maximum of 18 months to submit a nonattainment plan after initial designation to nonattainment) and section 189(b)(2) (providing a maximum of 18 months to submit a revised nonattainment plan for particulate matter areas reclassified as a result of failure to attain by the attainment date).

With respect to commenters who suggest the EPA should look to CAA section 110(a)(1)'s provision of up to 3 years to submit SIP revisions after a NAAQS promulgation or revision as guidance for its establishment of subpart 2 deadlines for reclassified areas, the EPA does not agree that this timeframe is appropriate. As an initial matter, CAA section 110(a)(1)'s provision of 3 years after the promulgation of a NAAQS is a generally applicable requirement that was not directed at nonattainment areas.[8] That deadline of 3 years, which in any case the Administrator is permitted to shorten,[9] is untethered from the more-specific statutory purpose of achieving attainment by an attainment deadline, and therefore does not have direct relevance to the issue facing reclassified areas, which are not only nonattainment areas, but specifically nonattainment areas that have either already failed to attain by an attainment date or whose states have recognized are unlikely to do so and have therefore requested to be reclassified.

The EPA also explained at proposal why the attainment deadlines and stringency of requirements under subpart 2 cannot accommodate a long deadline such as the 3 years requested by the commenter. *See* 89 FR 80838–39 (October 4, 2024). CAA section 181(a)(1) establishes the timeframes for maximum attainment deadlines under the Act, and those timeframes are based on the number of years from area designations. Marginal areas have no more than 3 years to attain, Moderate areas 6 years, Serious areas 9 years, Severe areas 15 years, and Extreme areas 20 years. For many of the reclassified areas to which this rule would apply, the time between the attainment deadlines is only 3 years to begin with. For example, a Marginal area that failed to attain by its maximum attainment deadline of August 3, 2021, and is reclassified to Moderate has only until August 3, 2024, to attain. And, as discussed in the proposal and elsewhere in this final action, per the CAA's explicit language in 181(b)(2), the determination of whether that Moderate area attains by August 3, 2024, will be based on the area's design value as of that date, *i.e.,* monitoring data from 2021, 2022, and 2023. Even if the EPA issued the finding that the area failed to attain immediately after the August 3, 2021, attainment date, providing the area 3 years to submit a new SIP for the reclassified Moderate requirements, or until August 3, 2024, would necessarily mean that any new emissions controls required by that SIP would have no impact on the area's likelihood of attaining by the next attainment date. We therefore think that for SIP deadlines associated with these reclassifications—Marginal to Moderate, and Moderate to Serious—the commenter's suggestion that the EPA look to section 110(a)'s provision of 3 years is plainly unworkable. Even for areas reclassified as Severe, which will likely have a longer interval between reclassification to Severe and the Severe area attainment date, the EPA explained at proposal why for these areas that have failed to timely attain multiple times, the 18-month deadline for SIP submissions would benefit such areas, including that control measures contributing to attainment could be implemented for multiple ozone seasons prior to the maximum attainment date. *See* 89 FR 80841(October 4, 2024). The commenter has not explained why the EPA's reasoning for maintaining a consistent deadline under CAA section 182(i) for these areas is unreasonable.

We are finalizing a default SIP submission deadline with an outer bound of 18 months from the effective date of reclassification. We are finalizing this more extended timeframe for submitting new area requirements triggered by reclassification (as opposed to 12 months, which was also contemplated in the proposal), because we acknowledge, as raised by many commenters, the general complexity in developing and implementing effective emission reductions for ozone nonattainment areas, and the opportunity a longer timeframe provides for more attainment demonstration plans that are likely to meet applicable CAA requirements.

b. SIP Submittal Deadline for All Elements, Except for the CAA Section 185 Fee Program Element

Comment: One commenter (0042) recommends that the EPA should not finalize its proposal for areas that request voluntary reclassification with existing submittal deadlines that are 18 months or more from the effective date of reclassification. The commenter notes that the EPA presumes that existing deadlines associated with a higher classification that have not passed will always be practicable for states to meet without adjustment, but provides no rationale in support of such assumption. The commenter believes that the EPA should neither prejudge, nor foreclose, longer submission deadlines.

Response: The EPA's authority to establish deadlines for areas that have voluntarily requested reclassification under CAA section 181(b)(3) is governed by CAA section 301(a). *See* 89 FR 80837 (October 4, 2024) n.12. That provision states, ''The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.'' CAA section 301(a). In proposing to establish default deadlines for areas requesting a reclassification, the EPA elected to apply such deadlines only where an existing deadline has passed *or* there is less than 18 months until the deadline. The commenter is therefore incorrect that the EPA presumed that any deadline associated with a higher classification that had not passed would be practicable for a state to meet; on the contrary, the EPA proposed that if the existing deadline was less than 18 months away, that there was a presumption that it would be necessary to adjust the deadline. The EPA also explained its rationale in support of retaining existing deadlines that were 18 months or more from the reclassification. 89 FR 80837(October 4, 2024) . Where that period of time remained prior to an existing deadline, we stated that we did not find it ''necessary'' under CAA section 301(a) to prescribe a different deadline than what the statute had provided for initially designated and classified areas. To make that adjustment, we believed we needed to provide a reason for doing so—that it would assure expeditious attainment of the NAAQS or ensure that the required submissions would be implemented consistently with the Act's structure—and we did not find a reason to do so where a state still had 18 months before an existing deadline. We also pointed out that the CAA's establishment of 18 months as an outer boundary for a ''reasonable deadline'' for a SIP revision to address an inadequacy (per CAA section 110(k)(5)) indicates that Congress judged that this timeframe would be sufficient for states to identify and develop control measures, to draft revisions to address attainment plans and other requirements, complete the required

[8] *Cf.* Stephen D. Page, Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), September 13, 2013, at 52, available at *https://www.epa.gov/sites/default/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf* (explaining that the submission deadline for infrastructure SIPs under CAA section 110(a) do not apply to nonattainment areas, because SIP submissions for designated nonattainment areas ''are subject to a different submission schedule than those for section 110 infrastructure elements'').

[9] CAA section 110(a)(1) (''Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years *(or such shorter period as the Administrator may prescribe)* after the promulgation of a national primary ambient air quality standard (or any revision thereof) . . .'') (emphasis added).

public notice process, adopt such revisions, and submit them to the EPA.

Comment: One commenter (0042) urges the EPA to set default SIP submittal deadlines no sooner than January 1 of the applicable attainment year for all classifications. The commenter asserts that, in the case of voluntary reclassifications, a SIP submittal deadline of 18 months may be sooner than those given to states that are reclassified as a result of failing to attain, and the EPA provides no rationale to support such earlier deadline. The commenter further provides that states requesting voluntary reclassification do so due to the need for additional time to develop and implement control measures, and reducing the possible additional time available ignores the statutory principle supporting the need for such additional time. In addition, the commenter urges the EPA to update the RACT SIP submittal deadline in the CFR to reflect a general default RACT submittal deadline for reclassified areas of no sooner than January 1 of the applicable attainment year, for all Moderate and higher classifications.

Similarly, another commenter (0039) recommends that the proposed default submission deadline not apply to areas for which a state has voluntarily sought reclassification. The commenter notes that states asking for voluntary reclassification of an area will, in many cases, have more time before the attainment date to plan and implement a SIP than will a state with an area that has been involuntarily reclassified upon failure to attain. The commenter claims that default submission deadlines should not unnecessarily constrain the planning timeline for areas that states have voluntarily reclassified because states that voluntarily reclassify an area often do so to afford them additional time to plan for SIPs and implement the associated control measures to bring the area into attainment.

Conversely, one commenter (0044) agrees with the EPA that under no circumstance should nonattainment SIP submittals be due later than January 1 of the applicable attainment year.

Response: We do not agree with the commenters' requests to establish SIP submittal deadlines as no sooner than January 1 of the attainment year or not to establish any default deadlines at all for areas that voluntarily request to be reclassified. With respect to the commenter who stated that establishing a deadline of 18 months for a voluntarily reclassified area might render that deadline sooner than the deadline that would apply to an area that failed to attain and was reclassified, the EPA agrees that this might be the practical outcome. However, we do not agree with commenter's insinuation that there would be anything unreasonable or inappropriate about this result. A state that early on recognizes that its area is unlikely to timely attain and seeks additional time for planning and development of control measures can time its request for voluntary reclassification in order to ensure that existing deadlines that are further out than 18 months apply *or* that the state can at least have the full default 18 months to develop its SIP. In most mandatory reclassifications due to failure to timely attain, those states and areas will not have the benefit of 18 months of SIP development time, because of how compressed the CAA's attainment deadlines are for the lower classifications. So while a voluntary reclassification area might have a ''sooner'' deadline than an area that is mandatorily reclassified, the area that requests reclassification early enough to obtain the 18 month default deadline (or early enough to have more than 18 months until an existing SIP deadline) will ultimately have *more time, i.e.,* more months, to develop its SIP than the area that is mandatorily classified and subject to the January 1 of the attainment year default deadline. The area that early requests voluntary reclassification will also have the benefit of having control measures in its SIP revisions in place for longer before the next attainment date, increasing the likelihood that it will expeditiously attain the NAAQS by that next date. Finally, commenter asserts that there is a ''statutory principle supporting the need for such additional time'' for states requesting voluntary reclassification, but the commenter does not identify any statutory provision to support its statement. The CAA does not provide any explicit authority for the EPA to establish new SIP submittal deadlines for areas that request to be voluntarily reclassified. The EPA has exercised its discretion under CAA section 301(a), in the context of implementing subpart 2 requirements, to establish such deadlines where it has determined that doing so is necessary, but we do not agree that there is any statutory support for commenter's request to provide states requesting voluntary reclassification the absolute latest possible deadline to submit a new SIP, with the minimum timeframe for emission reductions that would influence timely attainment.

The EPA acknowledges, and to some extent agrees, with the comments that states might request voluntary reclassifications due to the need for additional time to develop and implement control measures than would be afforded to them if they were to wait to be mandatorily reclassified under CAA section 181(b)(2) for failing to attain by the applicable attainment date. However, as noted in the proposal, for any states that seek a voluntary reclassification to a higher classification early in the planning cycle, the existing SIP submittal and implementation deadlines for the higher classification would apply, which could result in SIP submittal deadlines longer than 18 months. On the other hand, any states that seek a voluntary reclassification to a higher classification after the original deadlines have passed or are in the near future (*i.e.,* less than 18 months from the effective date of reclassification), they will be subject to a SIP submittal deadline of 18 months from the effective date of reclassification or January 1 of the applicable attainment year, whichever is sooner. In either case, the codification of these default deadlines will provide states with advance notice and certainty of the applicable SIP submittal and implementation deadlines for any reclassified ozone areas such that they can begin developing, adopting, submitting, and implementing their SIPs as soon as possible. We therefore do not agree with the commenter who suggested that areas requesting reclassification should not be subject to the default deadlines; establishing a default framework for when and how deadlines will apply to such areas will allow states with implementation obligations for these areas to plan with more certainty than under the existing regime, where states requesting reclassification have had to wait for the EPA's notice-and-comment rulemakings to establish final SIP submission deadlines for reclassified areas.

As to the comment about establishing a RACT SIP submittal deadline of no sooner than January 1 of the applicable attainment year for all Moderate and higher classifications, the commenter did not provide a rationale in support of this recommendation. Therefore, the EPA declines at this time to establish such a deadline for RACT SIP revisions.

Comment: One commenter (0044) asserts that the EPA's proposal to establish default SIP submittal deadlines based on the effective date of reclassification is legally and practically flawed for two reasons: (1) it is arbitrary and irrational for the EPA to key dates for nonattainment SIP deadlines to the effective date of reclassification rather than the attainment date; and (2) even if the SIP submittal deadline could

lawfully be tethered to the timing of final action on the reclassification, the EPA has not provided a justification for tethering the SIP submittal deadline to the effective date (rather than date of publication). The commenter recommends that the EPA key SIP submittal deadlines to attainment dates rather than the date by which the EPA acts on states' failure to timely attain because states know whether they have failed to attain and failed to qualify for an extension of the attainment date well before the area's attainment date, let alone the date by which the EPA finalizes a reclassification or makes it effective. This is because attainment is based on ozone season monitor data from the 3 years preceding the attainment year. Because states are on notice from before their attainment date that they are going to fail to attain and be reclassified, it is appropriate for the EPA to base SIP submittal deadlines on the expectations that states will begin working on these submittals prior to the EPA's finalization of reclassifications. This commenter points out that the EPA has historically failed to timely issue determinations that areas failed to attain (with the accompanying reclassifications), and suggests that adding 18 months to those late determinations would have resulted in SIP submittal deadlines many months after all relevant ozone seasons for the next applicable attainment date had already passed.

Another commenter (0045) expresses that the proposal does not enforce a uniform deadline for all nonattainment areas and asserts that the deadline for SIP submittal is relative to the effective date of the rule establishing area designations. The proposed relativity of the SIP submittal deadline is unclear, and the proposal does not include a fixed period for nonattainment areas to develop and submit SIPs. Congress' 18-month period has been nullified in this proposed rulemaking, as states will not be entitled to that time, yet there is no range of time provided in the proposal that reveals how long it should take for states to develop and submit SIPs.

Response: Commenters have presented other potential ways of structuring the adjustments in deadlines for reclassified areas, but we do not agree that the EPA's proposal to require new SIP submittals 18 months from the effective date of reclassification but in any case no later than January 1 of the attainment year is either barred by the CAA or arbitrary or irrational. CAA section 182(i) contains no indication that the grant of authority to the EPA to adjust deadlines in that provision is cabined by a requirement to ''key'' those deadlines to attainment dates, nor that the adjusted deadline must be 18 months, as one commenter suggests.

With respect to the commenter's argument that it is irrational for the EPA to base SIP submittal dates on the effective date of reclassification rather than attainment dates, it is not clear what alternative framework the commenter is advocating for. The commenter does not explain whether they believe that the Act requires the EPA's adjusted deadlines under CAA section 182(i) to be a certain number of months from the preceding attainment date or a certain number of months prior to the new attainment date. The suggestion of ''keying'' SIP submittal deadlines to attainment dates, with no explanation of how to do so, is odd given the commenter's invocation of CAA section 179(d) as a model, since CAA section 179(d) ''keys'' new SIP submittals to the EPA's determinations that areas failed to timely attain, rather than past or future attainment dates. Nor does the commenter's reference to the EPA's historically tardy determinations under CAA section 181(b)(2) explain how any alternative framework would result in more expeditious attainment of the NAAQS. The EPA acknowledges that its historical determinations under CAA section 181(b)(2) have not met the statutory deadline. The EPA proposed and is finalizing these default SIP deadlines that would apply to prospective determinations and reclassifications, in part to streamline the issuance of those mandatory attainment determinations by removing the need to conduct a new rulemaking to adjust applicable deadlines each time areas are reclassified as a result of those determinations. To the extent the commenter is advocating for a system of deadlines that encourage states to begin working early on attainment planning for the next attainment date, we believe the default deadlines in this final action accomplish this policy goal as effectively as the commenter's suggestion. The default schedule for reclassified areas creates certainty for states regarding when SIP submittals for higher classifications will be due, such that they can begin to plan for the next attainment date.

We also do not agree with the commenter's hypothetical application of the proposed default deadlines to the EPA's past tardy determinations. The commenter suggests that under the EPA's proposed default deadlines, the SIP submittal deadline would have been several ozone seasons *after* the relevant attainment date. But the EPA's proposal, and final action, explicitly accounts for the compressed timeframe that can occur by establishing SIP submittal deadlines that are the *earlier of* 18 months from the reclassification action or January 1 of the attainment year. In the example posited by commenter, therefore, the EPA's proposed default deadline framework would result in a SIP submittal deadline of January 1 of the attainment year, *not* 18 months from the reclassification action. In fact, as explained in the proposal, the EPA was cognizant that the default deadlines in this action are consistent with how it has historically established deadlines for reclassified areas, *i.e.,* by no later than the beginning of the attainment year ozone season to ensure that emission reductions would influence attainment by the attainment date. 89 FR 80839 (October 4, 2024) n.17, 18.

Finally, we do not agree that CAA section 179(d)'s establishment of a deadline triggered off of publication of a determination rather than the effective date of a determination mandates that the EPA's adjusted deadlines under CAA section 182(i) must also be structured in the same way, even if the EPA could structure its adjusted deadlines in that way. Nothing in CAA section 182(i) suggests that Congress intended to require the EPA's adjusted deadlines to be triggered off of the publication of its determination rather than the effective date of its determination. We also note that the practical difference between the commenter's suggestion and the EPA's action is small; the only time a difference would come into play is where there is sufficient time between the EPA's determination and the next attainment date such that the 18-month deadline (rather than January 1 of the attainment year) would apply. In such situations, the difference between commenter's suggested deadlines and the EPA's default deadlines would be 30 days, *i.e.,* 18 months from publication (commenter's suggestion) and 19 months (the EPA's deadlines). As noted in the proposal, the EPA has historically established deadlines for submission and implementation of plan revisions based on the effective date of a reclassification action, and we do not agree that the Agency is prohibited from doing so here. For example, in its implementation rule for the 2015 ozone NAAQS, the EPA finalized a default submission deadline for RACT SIP revisions of ''no later than 24 months after the *effective date of reclassification,* or by an alternative deadline established by the Administrator as part of the action reclassifying an area'' (emphasis

added).[10] The EPA has also, on numerous occasions, established SIP submittal and implementation deadlines triggered by the effective date of reclassification as part of actions granting voluntary reclassification requests [11] and actions making determinations of attainment by the attainment date.[12]

We also disagree that the other commenter's assertion that the CAA requires the EPA's adjusted deadlines under CAA section 182(i) (or section 301(a) for voluntarily reclassified areas) to be 18 months from the EPA's determination. Nothing in section 182(i) or any other provision of the CAA suggests that such deadlines must be at least 18 months. We also do not agree that the Act requires that there be a uniform or fixed amount of time for states to revise their SIPs after areas are reclassified, and the commenter has provided no statutory support for its contention.

The EPA is therefore finalizing its proposed schedule for states to revise their SIPs to address applicable subpart 2 requirements after ozone nonattainment areas are reclassified, which is the earlier of 18 months from the effective date of reclassification or January 1 of the applicable attainment year.

Comment: One commenter (0039) recommends that the proposed default submission deadlines align with the start of the ozone season to provide states with ozone seasons that start later in the year additional planning flexibility. Conversely, one commenter (0032) expresses that the EPA's proposed alternative deadline that aligns with the beginning of an area's attainment year ozone season is inadequate. The commenter notes that, historically, the EPA has provided states 3 years to submit attainment demonstration SIPs and modeling, and 2 years to submit RACT and reasonable available control measure (RACM) SIPs. The commenter requests that the states be afforded this amount of time to submit their SIPs.

Response: We are finalizing a default SIP submission deadline of 18 months from the effective date of reclassification or January 1 of the applicable attainment year, whichever is earlier. As discussed in the proposal, in some historical instances, the EPA has established the SIP submittal deadline for reclassified areas as the beginning of the attainment year ozone season, rather than January 1 of the attainment year. Given that the beginning of the attainment year ozone season is January 1 for many ozone nonattainment areas, we are setting the maximum default SIP submission deadline as no later than January 1 of the applicable attainment year ozone season to assure consistency among all SIP submissions for ozone nonattainment areas reclassified as Moderate, Serious, and Severe as well as to promote expeditious attainment of the ozone NAAQS.

The EPA declines the request to provide states 3 years to submit attainment demonstration SIPs and modeling, and 2 years to submit RACT/RACM SIPs. While it is true that the CAA provides submission deadlines that range between 2 and 4 years for some requirements, these schedules are based on the effective date of the rule establishing initial area designations. In the case of reclassifications, these initial SIP submittal and implementation timelines have already been established and, in many cases, are in the past or the near future (*i.e.,* less than 18 months away) at the time of reclassification. Because reclassified nonattainment areas typically face limited time to submit and implement required SIP revisions prior to the next attainment date, it is impossible to establish default deadlines after an attainment date that would afford states 2 or 3 years to submit their SIPs, if those SIPs are to have any impact on the area's ability to attain by the next attainment date.

c. SIP Submittal Deadline for the CAA Section 185 Fee Program Element

Comment: One commenter (0037) claims that the CAA does not support requiring CAA section 185 fee program SIP submittals any sooner than 36 months after the effective date of reclassification to Severe. In CAA section 185, the attainment year is expressly identified as the year in which the attainment date falls. When setting a deadline in relation to CAA section 185, it is not necessary or practical that there be a submittal more than a year before the attainment date. It is entirely reasonable that states could submit those programs later consistently with the implementation of any potential CAA section 185 fee program because the fee payment does not arise until the year after the year in which the attainment date falls.

One commenter (0044) urges the EPA to require states to develop CAA section 185 SIPs on the same timeline as contingency measures for failing to attain. The commenter believes that, just like attainment contingency measures, section 185 penalty fees only kick in after an area fails to timely attain. The EPA properly requires states to submit contingency measure SIPs in well under 3 years and provides no rational explanation for treating the two submissions differently. The commenter notes that a section 185 SIP should be fairly straightforward, requiring no assessment of control methodologies, and states therefore should be able to develop it quickly. The commenter further provides that, given the EPA's and the states' history of missing CAA deadlines, the 36 months or January 1 attainment year deadline would very likely mean that a final section 185 rule would not be in place until after an area failed to attain, which is inconsistent with the CAA.

Response: The EPA disagrees with the comment claiming that the CAA does not support a submission deadline any sooner than 36 months after the effective date of reclassification to Severe. We are finalizing the default deadline for CAA section 185 fee program element as proposed. The CAA and the EPA's implementing regulations for the 2008 and 2015 ozone NAAQS permit states with ozone nonattainment areas initially classified as Severe to submit a SIP revision that meets the requirements of CAA section 185 within 10 years of the effective date of an area's nonattainment designation. Given that nonattainment areas initially classified as Severe have 15 years to attain the NAAQS after the effective date of designation, states with nonattainment areas initially classified as Severe must submit their CAA section 185 fee program SIPs at least 5 years before the attainment date. Therefore, the EPA disagrees with the comment that it is inconsistent with the CAA for states to submit these SIPs more than a year before the attainment date, and given the Act's structure for initially designated and classified areas, which requires the section 185 fee SIP to be submitted at least 5 years before the attainment date, the commenters have failed to explain why the EPA's default deadline of 36 months after reclassification (but no later than January 1 of the attainment year), is not practical or necessary. As noted in the proposal, the EPA has established a 36-month SIP submission deadline for CAA

[10] 83 FR 62998, 63013 (December 6, 2018).

[11] *See, e.g.,* Clean Air Act Reclassification of the San Antonio, Dallas-Fort Worth, and Houston-Galveston-Brazoria Ozone Nonattainment Areas, TX, Final Rule, 89 FR 51829 (June 20, 2024).

[12] *See, e.g.,* Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, Finale Rule, 81 FR 26697 (May 4, 2016); Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards, Final Rule, 87 FR 60897 (October 7, 2022).

section 185 SIPs in the past. Such an extended deadline is supported by the fact that the CAA specifically sets a later SIP submission deadline for the CAA section 185 fee program than for any other elements.[13] In addition, an extended deadline of 36 months after the effective date of reclassification will still typically be more than 18 months before the attainment date, which will still ensure that CAA section 185 fee programs for reclassified areas will be in place ahead of when they are needed. The EPA agrees that the development of the CAA section 185 program should not pose an undue burden on states. However, as noted in the proposal, we believe that providing states with more time for the CAA section 185 fee program SIP submission could allow more focused attention to be spent on other Severe SIP elements in the first 18 months following reclassification.

The EPA likewise disagrees with the comment suggesting that states must develop CAA section 185 SIPs on the same timeline as contingency measures for failing to attain. The commenter is incorrect in claiming that there is no difference between contingency measures and section 185 fee programs. While section 185 fee programs only kick in after an area fails to timely attain, contingency measures may be triggered as a result of an area's failure to meet RFP or a failure to attain by the attainment date. *See* CAA section 172(c)(9). The later deadline finalized in this action for the CAA section 185 SIP for areas reclassified to Severe mirrors the different, later deadline that CAA section 182(d)(3) provides for the section 185 fee program element for initially designated and classified Severe areas, which it does not do for any other element, including contingency measures.[14] To the degree that states want to take advantage of the administrative efficiency of adopting the CAA section 185 fee program element along with other required Severe area SIP elements, which was a benefit the EPA noted at proposal, they would still have the option to submit their CAA section 185 programs earlier.

In addition, we have previously stated that the EPA retains the ability to set an alternative deadline for CAA section 185 SIP submissions, if appropriate, for nonattainment areas reclassified as Severe and that such an adjustment ''could be appropriate in situations where the reclassification action occurs on a date that is unreasonably near to or past the 10-year deadline applicable to areas initially designated Severe or Extreme.'' [15] The appropriateness of such adjustment applies here. The deadlines that we are finalizing as part of this rule would be applicable to any reclassified Severe areas only if the original 10-year deadline established for nonattainment areas initially classified as Severe has passed or is less than 18 months away from the effective date of reclassification. In either case, a deadline of the earlier of 36 months after the effective date of reclassification or January 1 of the applicable attainment year is reasonable because either date would provide states with adequate time to develop and submit their SIP revisions, while still ensuring that approved CAA section 185 fee programs for reclassified areas will be in place ahead of when they are needed.

Regarding the comment about the EPA and states' history of missing CAA deadlines, we disagree that a default deadline of the earlier of 36 months or January 1 of the attainment year would mean that a state's CAA section 185 program would not be in place until after an area failed to attain. This is unlikely because the CAA provides up to 6 years between the Serious and Severe attainment dates, in contrast to the 3-year intervals for Marginal, Moderate, and Serious classifications. Even with the additional time allowed to develop section 185 fee programs, there will be sufficient time to get such programs in place before the Severe attainment date. Moreover, as noted in the proposal, the purpose of the default deadlines that would apply to reclassified Moderate, Serious, and Severe nonattainment areas is to provide advance notice and certainty to any states with nonattainment areas that may fail to attain an ozone NAAQS by the applicable attainment date as well as any nonattainment areas for which a state requests a voluntary reclassification to a higher classification. The default SIP submission and implementation deadlines that we are finalizing as part of this rule will help streamline the reclassification process and help the EPA, as well as states, meet CAA deadlines in the future. As acknowledged elsewhere in this document, the EPA has routinely adjusted SIP submission and implementation deadlines as part of actions granting voluntary reclassification requests and actions making determinations of attainment by the attainment date. This rule will remove that step from the reclassification process, thereby simplifying and advancing the nonattainment planning cycle for states and the EPA. We expect that the default deadlines finalized as part of this rule will promote efficiency, allowing states and the EPA to continue working towards CAA goals in a timely manner.

d. Deadline for RACT Implementation

Comment: Two commenters (0039, 0042)) recommend that the proposed default RACT implementation deadlines align with the start of the ozone season. One of these commenters (0039) states that this will provide states with ozone seasons that start later in the year additional implementation flexibility. The other commenter (0042) notes that this will allow affected entities to comply with RACT on a timeline that considers sources' ability to control emissions based on technological and economic feasibility, which are primary factors in determining RACT.

Conversely, one commenter (0032) expresses that the EPA's proposed alternative deadline that aligns with the beginning of an area's attainment year ozone season is inadequate. The commenter notes that the CAA requires states to implement RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation. The commenter requests that the states be afforded this amount of time to implement RACT.

Response: We are finalizing the default RACT implementation deadlines as proposed. While the EPA agrees with the comments asserting that aligning the RACT implementation deadline with the attainment year ozone season will provide states with additional implementation flexibility, the beginning of the attainment year ozone season will not always be the most expeditious deadline for RACT implementation. In those instances, it may be more expeditious for RACT to be implemented earlier (*i.e.,* EPA's proposed 18 months after the date in which RACT SIPs are due). As with other RACT implementation deadlines that the EPA has established for reclassified areas, an underlying consideration is that, consistent with the CAA, the RACT deadline should, where possible, provide at least one full ozone season in advance of an area's maximum attainment date for implemented controls to achieve emission reductions and positively influence an area's monitored design value.[16] In recognition of this, the EPA is finalizing a default RACT implementation deadline of as expeditiously as practicable but no later

[13] *See* CAA section 182(d)(3).

[14] *See* CAA section 182(d)(3).

[15] 83 FR 62998, 63009 (December 6, 2018).

[16] 89 FR 80833, 80839 (October 4, 2024).

than the earlier of 18 months from the SIP submittal deadline or the beginning of the attainment year ozone season.

The EPA disagrees with the comment that the EPA should establish a RACT implementation deadline that requires states to implement RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation.[17] In reclassification scenarios, it is often the case that the RACT implementation deadlines established for areas initially classified as Moderate, Serious, and Severe have already passed or will occur shortly after the effective date of reclassification, thereby making it impossible or unreasonable for a state to comply with the implementation schedules that initially classified areas must comply with. As such, the EPA is finalizing a default RACT implementation deadline that accommodates the need for additional time to develop SIPs and implement controls, while also establishing that deadline in time to influence attainment by the attainment date. In general, this deadline would provide states with a 36-month schedule for SIP submission and controls implementation for reclassified areas (*i.e.,* 18 months to develop and submit required SIP revisions and an additional 18 months to implement controls). Should fact-specific-circumstances arise that would necessitate a further adjustment of deadlines for a particular nonattainment area, the EPA is reserving the right to establish different implementation deadlines for reclassified areas in separate notice-and-comment rulemakings.

Comment: One commenter (0037) believes that there is no basis in the CAA for the EPA to require implementation of controls any sooner than 18 months after the proposed SIP submittal deadline in any given instance of reclassification. The commenter notes that the EPA provides no statutory basis for triggering obligations in advance of a full calendar ''attainment year'' before the year in which the attainment date falls. The commenter claims that the EPA risks upending a state's due consideration of controls and its overall discretion to implement controls to attain the NAAQS consistent with the state's overall economic and air quality priorities by rushing states to implement controls.

Another commenter (0044) believes that the EPA's proposal impermissibly fails to provide states adequate time to fully implement RACT, thereby undermining long-term attainment and maintenance of the ozone NAAQS. This commenter urges the EPA to clarify that, while interim RACT must be implemented as expeditiously as practicable, and no later than prior to the beginning of the applicable attainment year ozone season, RACT must nevertheless be fully implemented even if this necessitates that some components of RACT are implemented subsequent to that attainment year date. By requiring RACT to be fully implemented by deadlines that are already only slightly more than a year out, the commenter claims that the EPA unlawfully precludes states from implementing the full suite of controls that meet the definition of RACT.

Similarly, another commenter (0032) recommends that the EPA should extend the deadline for newly implemented RACT, just as it does for I/M programs. The commenter asserts that the EPA proposed to allow newly required Basic and Enhanced I/M programs to be fully implemented no later than 4 years after the effective date of reclassification, so long as states do not intend to rely upon emission reductions from their newly required Basic or Enhanced I/M program in attainment or RFP SIPs. The commenter believes that this more flexible timeframe should also extend to RACT because states will not be able to rely on RACT for their reclassified 2015 ozone Serious areas by including reductions from it by January 1, 2026, if they cannot practically implement by that date. The commenter asserts that states will be forced to exclude newly implemented RACT from modeling and RFP demonstrations when performing 2026 attainment year modeling and projections.

Response: We are finalizing the default RACT implementation deadline as proposed. As an initial matter, we disagree with the commenter's contention that EPA lacks a statutory basis for establishing a default deadline for RACT implementation in advance of the full calendar ''attainment year'' (*i.e.,* the year before the year in which the attainment date falls). CAA section 182(i) delegates to EPA the authority to ''adjust *any* applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions'' (emphasis added). Commenter points to no limitation on the EPA's authority contained in the relevant statutory language to support the commenter's position. We also disagree with the commenter's contention that the RACT implementation deadline fails to provide states adequate time to fully implement RACT and unlawfully precludes states from implementing the full suite of controls that meet the definition of RACT. Nothing in this rule reopens or alters the EPA's longstanding definition of RACT [18] as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The EPA always has, and will continue to, evaluate state RACT SIP submittals against this definition, and states remain obligated to implement RACT-level controls in nonattainment areas by any applicable implementation deadline. We acknowledge that timely RACT implementation may be difficult. However, we note that the implementation of controls is intended to help states expeditiously attain the NAAQS no later than the attainment date. If a state adopts new or additional control measures as RACT and relies on the emission reductions caused by those control measures to demonstrate RFP and/or attainment, those states must implement such RACT as expeditiously as practicable, but no later than a date by which the state can achieve emissions reductions that positively influence an area's monitored design value (*e.g.,* the earlier of 18 months from the applicable SIP due date or the beginning of the attainment year ozone season). Further, it is important to establish a generic RACT implementation deadline to provide advance notice and certainty to states so that they can undertake preparation and advanced planning, as appropriate, to timely implement any applicable RACT controls. Given these considerations, in establishing a generic default timeline

[17] To the extent that the commenter is suggesting that the EPA establish the default RACT implementation deadline as January 1 of the 5th year after reclassification, we decline to establish the generic default RACT deadline in this manner. For further discussion, *see* the EPA's response to commenter (0044) in this section seeking a default RACT implementation deadline beyond the attainment deadline.

[18] *See* State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas—Supplement (on Control Techniques Guidelines), Proposed Rule, 44 FR 53761, 53762 (September 17, 1979) (defining RACT as ''The lowest emission limitation that a particular source is capable of meeting by the applicable of control technology that is reasonably available consider technological and economic feasibility'') (citing memorandum from Roger Strelow to Regional Administrators, Regions I–X, Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas (December 9, 1976). *See also, Keystone-Conemaugh Projects* v. *EPA* (3rd Cir.) No. 22–3026, May 2, 2024 (noting that ''EPA has repeatedly interpreted [RACT] to mean 'the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available consider technological and economic feasibility'').

in this rule, the EPA is setting the RACT implementation deadline to provide at least one full ozone season in advance of an area's maximum attainment date for implemented controls to achieve emission reductions and positively influence an area's monitored design value.[19] Delays in implementing RACT controls associated with reclassification would delay related air quality improvements and human health benefits for residents across reclassified areas. However, the regulations being finalized here preserve flexibility for the EPA in future individual actions to take a different approach to the RACT implementation deadline for specific areas following notice-and-comment rulemaking.

With respect to commenter's suggestion that the EPA establish a longer implementation horizon for RACT, including beyond the attainment date, we appreciate these comments and will take them under advisement for potential future notice and comment rulemaking. As noted in the proposal and in other portions of this final action, the EPA has long taken the position that the statutory requirement for states to assess and adopt RACT for sources in ozone nonattainment areas classified Moderate and higher is independent from the attainment demonstration for such areas and is not directly linked to the attainment date.[20] The EPA acknowledges that the Agency could, where appropriate, afford additional flexibility in the timeline for implementing RACT. Accordingly, as with the other default deadlines finalized as part of this rule, the EPA is reserving the right to establish a different RACT implementation deadline for reclassified areas in a separate notice-and-comment rulemaking, consistent with its authority under CAA section 182(i) and the CAA's requirements that areas expeditiously attain the NAAQS.

e. Deadline for I/M Implementation

Comment: One commenter (0030) recommends that the EPA should align the deadlines for I/M programs with the deadlines for control measure implementation, within 18 months of SIP submission or before the beginning of the ozone season. The commenter notes that this will ensure consistent submission deadlines, which support the goal of the proposed ruling. The commenter cited studies asserting that mobile sources are a major cause of health impacts because they are one of the largest contributors to ozone-forming emissions in the U.S., and therefore the commenter believes that I/M programs must be integrated in a timely manner to reduce negative health impacts. They also state that because the EPA emphasized that some SIPs rely on ozone emission reductions via I/M programs, it would be counterintuitive to allow I/M programs to be implemented up to 4 years after the effective date of reclassification despite other control measures being implemented within 18 months.

Response: We agree with the commenter that, for SIPs that rely on emission reductions from I/M programs, it would be counterintuitive to allow any new or revised I/M programs to be fully implemented beyond the beginning of the attaining ozone season. We explained at proposal that an I/M implementation deadline of as expeditiously as practicable, but no later than the beginning of the attainment year ozone season applies to reclassified areas relying on emission reductions from their newly required Basic or Enhanced I/M programs for attainment or RFP purposes:

> With respect to the default implementation deadlines for Basic and Enhanced I/M programs required as the result of a mandatory reclassification, states wishing to use emission reductions from their newly required I/M programs for the ozone NAAQS would need to have such programs fully established and start testing as expeditiously as practicable, but no later than the beginning of the applicable attainment year ozone season, consistent with the CAA principle (and logic) that measures that are needed to demonstrate attainment by the attainment date must be in place early enough to impact the air quality design value that will be used to determine whether the area attained by that date.[21]

The EPA's requirement in this action that states relying on I/M emission reductions in their attainment or RFP SIPs is consistent with the 2015 ozone implementation rule which requires all control measures in the attainment plan and demonstration to be implemented no later than the beginning of the attainment year ozone season.[22] However, for states that do not intend to rely upon emission reductions from their newly required Basic or Enhanced I/M programs in attainment or RFP SIPs, we maintain, as proposed, that it is reasonable to allow these newly required Basic or Enhanced I/M programs to be fully implemented no later than 4 years after the effective date of reclassification considering the numerous challenges and milestones necessary in establishing a new or revised I/M program. While mobile sources can be a significant source of ozone-forming emissions, I/M is not the only CAA program that generates emission reductions from mobile sources.

Comment: One commenter (0032) believes that the EPA is promulgating a rule that ensures new I/M programs could not be relied on for SIP planning because there is no practical way to start a new I/M program in the proposed timeframe of the beginning of the applicable attainment year ozone season.

Response: We respectfully note that the commenter offered no evidence to support a finding that there is no practical way to start a new I/M program in the proposed timeframe of the beginning of the applicable attainment year ozone season.

In practice, many areas where new Basic I/M or Enhanced I/M SIP revisions are required as the result of a reclassification for a new ozone NAAQS may already be operating I/M programs for a variety of reasons, including to satisfy requirements from designation as nonattainment and classification as Moderate or above under a prior ozone NAAQS. Such areas may use emissions reductions from these programs in attainment SIPs if they have also submitted a new I/M SIP revision for such NAAQS that meets the applicable Basic or Enhanced I/M requirements for the new classification.

For areas that might need to start a new I/M program or revise their existing program as the result of a reclassification, we realize that implementing a new or revised I/M program on an accelerated timeline may be difficult given the unique nature of I/M programs, and many challenges, tasks, and milestones that must be met. However, as discussed in other responses to comments in this document, an I/M implementation deadline, for reclassified areas intending to rely on emission reductions from their newly required Basic or Enhanced I/M program in attainment or RFP SIPs, as expeditiously as practicable but no later than the beginning of the attainment ozone season is consistent with the CAA and is pursuant to the existing implementing regulations for the 2008 and 2015 ozone NAAQS.

Comment: One commenter (0044) urges the EPA to require states to implement I/M programs as expeditiously as practicable, and no later than a timeline that can influence attainment year air quality. The commenter asserts that the EPA's proposal to allow I/M program implementation after the attainment

[19] 89 FR 80833, 80839 (October 4, 2024).

[20] 89 FR 80833, 80847 (October 4, 2024).

[21] 89 FR 80833, 80840 (October 4, 2024).

[22] 40 CFR 51.1308(d)

deadline is unlawful and arbitrary. First, the commenter asserts that the EPA's proposed timeline is contrary to the express indications of Congressional intent, which stipulates that pollution control requirements for nonattainment areas are to take effect before the attainment deadline. In the case of Enhanced I/M programs, Congress's intent was that they take effect on the same timeline as plans for their submission. Second, the commenter states that the EPA's reading undermines the limits on its discretion regarding subpart 2 of the Act, contrary to governing precedent. Third, the commenter claims that the EPA wrongly reads 40 CFR 51.373(d) as allowing implementation to take 4 years from the date of reclassification. Instead, the commenter notes that the regulation provides that the required Enhanced I/M Program ''shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.'' The commenter believes that ''the effective date of designation and classification'' is not the same as the effective date of ''reclassification'' because designation and reclassification did not occur on the same date. The commenter notes that the same is true for Basic I/M. Finally, the commenter asserts that it is inherently unreasonable, arbitrary, and capricious for the EPA to allow an implementation deadline for I/M Programs that is later than the relevant area attainment dates because mobile source emission reductions are so important for reducing ambient ozone levels.

Response: We agree with the commenter that the I/M rule at 40 CFR 51.373(d) regarding the I/M implementation deadline is directly applicable only for areas initially designated and classified. But we do not agree that the EPA cannot consider that regulatory timeframe in adjusting schedules for implementation of newly applicable I/M programs following an area reclassification under CAA sections 182(i) and 301(a). While as a general matter, we agree that expeditious attainment of the NAAQS is best served by implementing control measures in advance of area attainment dates, and ideally in time to influence attainment by the attainment date, we are also cognizant that many, if not all, of the components of an I/M program permit consideration of feasibility within a given time frame. A list of these items that must be included in an I/M SIP is enumerated in 40 CFR 51.372(a). For example, establishment of the inspection network, the request for proposal process to select an inspection hardware/software service provider, inspector recruitment, training and licensing, changes to the state's vehicle registration process, as well as public notification, outreach and education are components to an I/M program that, based on the experience of the EPA and implementing states, we know to be time-intensive and difficult to feasibly accomplish on an accelerated timeframe.

As discussed in the proposal, CAA section 182(i) specifically provides authority to the EPA to adjust applicable deadlines (other than attainment dates) for areas that are reclassified as a result of failure to attain under CAA section 182(b)(2), to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions. The EPA is establishing the same default I/M implementation deadline under its general rulemaking authority in CAA section 301(a), in the context of implementing subpart 2 planning requirements, for voluntarily reclassified areas. We acknowledge that for initially designated and classified areas, all of the submission and implementation deadlines in subpart 2 occur prior to the attainment deadline, and that ideally, states would similarly address all newly applicable subpart 2 requirements for reclassified areas in time to influence an area's air quality by the next attainment date. This is in large part why all of the other default deadlines for reclassified ozone areas in this action have been adjusted consistent with that approach.

We do not agree, however, that CAA section 182(i), or subpart 2 generally, explicitly prohibits the establishment of any deadline beyond the attainment date. Section 182(i) states that states containing reclassified areas shall meet the applicable subpart 2 requirements ''according to the schedules prescribed in connection with such requirements'' in granting the EPA discretion to adjust such deadlines other than the attainment date. The EPA's establishment of the default I/M implementation deadline of no later than 4 years after the effective date of reclassification is a limited exercise of its discretion under CAA section 182(i) to provide one deadline that extends beyond the attainment date. The Agency has a longstanding position that the statutory requirement for states to implement I/M in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas, and specifically the attainment date.[23] We note that the same commenter taking issue with the EPA's post-attainment date implementation deadline for I/M elsewhere argues that the EPA should establish RACT implementation deadlines ''even if compliance timeframes extend beyond the applicable attainment year ozone season.'' [24]

We agree that given section 182(i)'s requirement that the EPA assure consistency among required submissions and the Act's overall emphasis that areas expeditiously attain the NAAQS, it would be unlawful for the EPA to adjust all submission and implementation deadlines for reclassified areas such that those deadlines fell after the newly applicable attainment dates. But the EPA's action here with respect to providing this limited I/M implementation extension for states that do not intend to rely upon emission reductions from their newly required Basic or Enhanced I/M program in attainment or RFP SIPs is not inconsistent with the Act's goal of attainment of the NAAQS; under the EPA's default deadlines, areas must still submit and implement all control measures necessary to achieve attainment by the attainment date no later than the beginning of the attainment year ozone season. The EPA's final action providing this limited extended I/M implementation deadline for certain reclassified ozone nonattainment areas also aligns with past practice for both mandatorily and voluntarily reclassified areas.[25] We do not dispute that mobile source emission reductions are an important component to reducing ambient ozone levels, but we do not agree with commenter that this fact necessarily renders the final default I/M implementation deadline of 4 years from the effective date of reclassification (for areas not relying on I/M reductions in attainment or RFP SIPs) to be ''inherently unreasonable, arbitrary, and capricious.'' Emissions from mobile sources can be and are addressed under the CAA in other programs besides I/M, including Federal

[23] John S. Seitz, Memo, Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, May 10, 1995, at 4.

[24] EPA–HQ–OAR–2024–0333–0044 commenter letter at 13.

[25] *See, e.g.,* 87 FR 60897 (October 7, 2022) (establishing Basic I/M implementation deadlines for areas reclassified from Marginal to Moderate for the 2015 ozone NAAQS); 89 FR 51829 (June 20, 2024) (establishing Enhanced I/M implementation deadlines for certain Texas areas that were voluntarily reclassified from Moderate to Serious for the 2015 ozone NAAQS).

vehicle standards, and states may also seek ways to reduce and mitigate mobile source emissions consistent with the CAA in their plans to attain by the attainment date.

B. Status of Certain Requirements of Former Classification

1. Summary of Proposal

The EPA proposed regulations to codify its existing interpretation that, following reclassification to Moderate, Serious, or Severe, certain ozone SIP requirements for the lower, former classification will still be required. Specifically, the EPA restated its interpretation that ozone nonattainment area planning requirements continue to apply following a change in an area's classification level, except where the EPA has specifically determined that the planning requirement is no longer applicable. A state is no longer required to submit SIP revisions addressing the following requirements related to the prior classification level for an ozone nonattainment area: (1) for areas that are mandatorily or voluntarily reclassified, a demonstration of attainment by the prior attainment date; (2) for areas that are mandatorily or voluntarily reclassified, a RACM analysis tied to the prior attainment date; and (3) for areas that are voluntarily reclassified before the lower classification's attainment date, contingency measures specifically related to the area's failure to attain by the attainment date associated with the prior classification.

2. Final Rule

The EPA is finalizing regulatory text in line with the Agency's position as described in the proposal. Planning requirements applicable to the lower, former classification for the ozone NAAQS [26] continue to be legally required following a change in an area's classification level, except: (1) the attainment demonstration; (2) RACM; and (3) for areas that are voluntarily reclassified, contingency measures to address failure to attain by the attainment date associated with the prior classification. Although the EPA's position is unchanged from proposal, the final regulatory text reflects minor changes from the proposed text. This includes minor changes based on comments, as noted in the next section. We also made minor revisions to the definitions of ''former attainment date'' and ''former classification'' to ensure clarity that former attainment dates and former classifications include every classification assigned to an area before it was reclassified, not exclusively the immediately preceding classification (*e.g.,* an area initially classified as Moderate that was subsequently reclassified as Serious and then reclassified again as Severe remains legally responsible for requirements associated with Moderate and Serious classifications as outlined in this rule, in addition to the new requirements for Severe).

3. Comments and Responses

Comment: Two commenters (0036, 0044) generally support the EPA's policy on leftover SIP requirements. One of these commenters (0036) believes that the EPA should finalize its proposal that most SIP requirements from an area's prior classification continue to apply following reclassification because these requirements include important, CAA-required ozone reduction programs, as well as requirements to demonstrate progress towards attainment. The commenter emphasizes that it is critical that states implement these programs in general, and implement these programs on the original deadlines. The other commenter (0044) states that the CAA does not allow reclassification to result in the elimination of unmet SIP requirements that do not depend on the superseded attainment deadline. The commenter believes that the proposed approach is not only reasonable, but compelled by the CAA's carefully constructed statutory scheme, which does not contemplate fewer or different requirements for reclassified areas when compared to those areas initially given that same classification when designated nonattainment. To arrive at the contrary conclusion would allow areas struggling with ozone air pollution to skirt otherwise applicable SIP requirements, which would be unreconcilable with Congress's discretion-limiting intent in enacting the ozone nonattainment requirements.

Response: The EPA agrees with the commenters and is finalizing the deadlines as proposed with minor clarifications as discussed elsewhere in this document.

Comment: Two commenters (0041, 0042) assert that the EPA's policy on leftover SIP requirements is neither required nor supported by statutory provisions that the EPA cites in the proposed rule, and requests that the EPA reconsider the policy. One commenter (0041) states that the CAA section 182(i) does not give the EPA ''gap filling'' authority to specify what requirements apply to an area that has been reclassified, and legislative history indicates that Congress did not intend for requirements of a former classification to apply upon reclassification to a higher classification. The commenter notes that the reference to submissions under CAA sections 182(b) and (c) contained in sections 182(c) and (d) make no mention of the situation where an area has been reclassified (and thus should not be interpreted to apply to a reclassification). Instead, the commenter believes that these provisions should be read to mean classifications under subpart 2 impose cumulative, but not what the commenter considers duplicative, requirements.

Two commenters (0037, 0042) believe that all requirements associated with an area's prior classification are superseded, and no longer due, with more stringent requirements upon reclassification to a higher classification. One of these commenters (0042) claims that requiring a state to submit and have the EPA act on superseded prior classification elements would make no logical or practical sense.

One commenter (0041) believes that the EPA's proposed distinction between SIP elements ''inherently tied'' to an attainment date and SIP elements ''independent'' of an attainment date is not supported by statute. The commenter asserts that, under the EPA's proposed statutory interpretation, requirements that are tied to attainment dates are transitory requirements that are supplanted if an area is reclassified to a higher level of nonattainment, while other requirements in CAA section 182 are effectively immutable and are not affected by a change in an area's classification. The commenter disagrees with the EPA's assertion that the SIP elements associated with an area's CAA section 181 classification are ''generally cumulative from Marginal up to Extreme'' and that ''[t]he requirement to submit such elements remains applicable, and the submittal and implementation deadlines are unchanged.'' The commenter believes that a more rational reading of the statute is that reclassification resets not only the timing of attainment, but also which SIP requirements are applicable and the timeframe under which states and localities must satisfy such requirements. The commenter states that it is difficult to reconcile why an area initially designated as being in Moderate nonattainment (and then reclassified to Serious nonattainment) would be treated differently from an area initially designated as being in Serious nonattainment. The commenter

[26] The EPA's interpretation regarding leftover SIP requirements when an area has been reclassified is specific to the ozone NAAQS, and as codified in this final rule, does not apply to any other NAAQS.

further asserts that a straightforward reading of the provision indicates that: (1) reclassified areas are only subject to requirements that apply to them under a new classification (*i.e.,* requirements ''as may be applicable to the area as reclassified''); and (2) the EPA's Administrator's authority pursuant to CAA section 182(i) is constrained to adjusting ''applicable *deadlines*'' and not ''applicable *requirements.*'' The commenter asserts that this reading gives full force to the increasing burden placed on reclassified areas pursuant to subpart 2 but CAA section 182(i) does not grant the EPA Administrator authority to continue to impose requirements that have been superseded by more stringent requirements. Additionally, the commenter asserts that because reclassification (voluntary or mandatory) effectively increases the obligations imposed on states and localities to meet RFP and provide sufficient contingency measures, the commenter believes that the EPA's interpretation adds to that burden without appreciable benefit.

One commenter (0037) urges the EPA to conclude that a voluntary reclassification moots all leftover SIP elements from the previous classification and any sanctions, where applicable, associated with the failure to submit those elements for approval. The commenter believes that the CAA recognizes that a state can exercise its authority to request a voluntary reclassification, and therefore moot all elements required under the prior classification, because the purpose of the reclassification is to permit a state to take the most effective steps to achieve the NAAQS on the timeline laid out for the new classification. In addition, the commenter states that, even if the EPA holds to its position that these previous classification elements are not tied to the attainment deadline, the elements remain tied to the classification itself and change alongside it. The commenter further believes it is arbitrary and contrary to the CAA to impose requirements, or to continue potential sanctions where applicable, when the purported elements are associated with deadlines that have already passed for an area that will be subject to a more stringent classification. In addition, the commenter asserts that continuing to require elements associated with a lower classification places unnecessary burdens upon states and diverts resources from focusing on the requirements of the more stringent classification.

Response: The EPA disagrees with the commenters. The EPA's interpretation of the CAA regarding what SIP requirements remain due following reclassification is supported by and consistent with the relevant statutory provisions and is the best interpretation of relevant CAA provisions. Subsections (b) through (d) of CAA section 182 cover the required SIP revisions for Moderate (182(b)), Serious (182(c)), and Severe (182(d)), and those requirements are generally cumulative. *See, e.g.,* CAA section 182(b) (requiring Moderate areas to make submissions relating to Marginal areas in addition to the revisions for the Moderate classification). In CAA section 182(i), the statutory language also indicates that the requirements of each classification are cumulative. The EPA interprets the provision ''shall meet such requirements of subsections (b) through (d) . . . as may be applicable to the area reclassified'' to require from a state any and all of the elements contained in subsections (b) through (d) that apply, not only the elements from subsection (b) or subsection (c) or subsection (d) in isolation. The state must meet requirements of subsections (b) through (d)—*i.e.,* subsection b, subsection c, *and* subsection d rather than subsection b, subsection c, *or* subsection d—that apply, and elements of multiple classifications may be applicable at any given point to the area being reclassified.

The commenter's characterization of the EPA's action as using section 182(i) to justify adjusting the requirements is misplaced. The EPA is not adjusting the requirements but rather providing clarity on what the requirements are. The EPA interprets the CAA such that when areas are reclassified to a higher classification of nonattainment, those areas will become responsible for the statutory duties imposed under the new classification and *remain* responsible for the statutory duties imposed under any prior, lower classifications that it was classified as, except for such elements inherently tied to the attainment date of the lower classification. The EPA disagrees with the commenter's claim that the CAA does not support the EPA's distinction between SIP elements ''inherently tied'' to an attainment date and SIP elements ''independent'' of an attainment date. To give sensible construction to the terms of the CAA and avoid an absurd result, common sense necessitates an exception for elements inherently tied to a date in the past. There is only one attainment date that applies at any given time to a singular nonattainment area for a given ozone NAAQS, and the CAA does not require attainment demonstrations for attainment dates that are not applicable to the area. Because the former classification's attainment date is no longer applicable, it is therefore no longer relevant—and is indeed, impossible—for the area to demonstrate attainment with respect to it. As explained in more detail in a later comment response, this same logic applies to RACM. Similarly, there are no requirements to have contingency measures tied to the prior classification's attainment date in a situation where an area can never be found to have failed to attain by a no longer relevant attainment date.

The EPA does not entirely disagree with the commenter's characterization of the elements inherently tied to the attainment date as ''transitory'' but notes that these elements are time-bound in a manner unique to them in that once the attainment date has passed, those elements are, as a matter of logic, impossible to fulfill. No reading of the statute can alter the practical reality that once the attainment date has passed and an area has failed to attain, no steps can be taken by any State nor the EPA to demonstrate that an area would meet a factual scenario that did not come to pass, *i.e.,* attain the ozone NAAQS by the attainment date, when the area failed to attain by the attainment date. Similarly, after the attainment date, a RACM analysis can only be a null set of measures because it is impossible to advance an area's attainment by a year earlier than the attainment date after that attainment date has come and gone. With respect to voluntary reclassification, there is no purpose in requiring a state to have contingency measures that could never be triggered by failure to attain by an attainment date that no longer exists.[27] Similarly, a state cannot plan around meeting an attainment date that has been superseded. It is this characteristic—that these elements are impossible to fulfill—that distinguishes leftover SIP elements from the otherwise cumulative set of requirements enshrined in the CAA's ozone nonattainment classifications. It is an exception to avoid an absurd result.

[27] The term ''triggered'' for CMs refers to the EPA having made a final determination that requires implementation of the CMs, such as a final determination that a nonattainment area has failed to meet RFP or has failed to attain a NAAQS by the applicable attainment date. *See* Joseph Goffman, Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter, December 3, 2024, at 3, available at *https://www.epa.gov/air-quality-implementation-plans/final-contingency-measures-guidance.*

The EPA disagrees with the commenters that believe that all requirements associated with an area's prior classification should be superseded, or that by establishing the system of increasing levels of nonattainment (*i.e.,* classifications), Congress meant for the elements of the lower classification to become obsolete upon reclassification. The CAA provides no language suggesting that reclassification nullifies the statutory obligations imposed on a state under its former classification, and commenters provide no explanation of their perceived statutory argument to support a claim that the elements of the former classification are no longer required. Another commenter's assertion that because the EPA would not require elements of classifications lower than the area's initial classification (*e.g.,* for an area initially classified as Serious, requiring elements of Moderate areas), this means that continuing to require elements of lower classifications after an area has been reclassified imposes duplicative rather than cumulative requirements is similarly flawed. The mere fact that an area is reclassified is not a sufficient basis to determine that a CAA requirement imposed on the area under a prior classification no longer applies, and there is no language in the statute which necessitates or supports such a position. The commenters have not identified how the statutory language supports a finding that elements of each classification are additive yet not preserved upon reclassification.

Reclassification to a higher classification is not designed to halt progress toward achieving the NAAQS under the prior classification, but rather the opposite. Reclassification is an acknowledgment that an area needs additional time to attain the NAAQS, and that it needs to implement more stringent requirements and controls in order to attain. The cumulative requirements of each classification Congress specified in the Act—though necessitating a dedication of time and resources by states—provide an intentional, measurable pathway to attainment. The purpose of establishing plan requirements for ozone nonattainment areas is to establish and obligate states to take the most effective steps to achieve the NAAQS, which include all of those steps outlined in the sections of part D applicable to ozone from the least stringent associated with an area's initial classification to the most stringent associated with its highest classification.

While one commenter claims that requiring a state to submit and have the EPA act on superseded prior classification elements would make no logical or practical sense, to the contrary, Congress's choice to identify steps guiding states toward achieving attainment logically reflects its intent for each step to count. This is especially true given the requirement that EPA must reclassify areas with persistent nonattainment problems, with each successive reclassification resulting in requirements to adopt more rigorous SIP elements. Under the commenter's proposed reading, reclassification resets not only the timing of attainment and the degree of stringency of SIPs required, but also interrupts and resets—or in some cases cancels—the implementation of the requirements of the area's former classification. The steps Congress enshrined in the CAA as appropriate to achieve attainment would be obsolete, and areas that are further from achieving the CAA goal of maintaining ambient ozone levels below the threshold requisite to protect public health and welfare (*i.e.,* the primary and secondary ozone NAAQS) would be able to skip, or at least delay, steps that Congress directed them to take. For example, the Serious area RFP provisions begin in the 6th year after designation and establish milestones for 3 percent annual reductions for each 3-year period thereafter.[28] But the Moderate area RFP provisions require 15 percent reductions over the first 6 years after designation. Commenters' logic would make the Moderate requirement obsolete upon reclassification to Serious, resulting in an interpretation that 15% reductions were no longer required for the first 6 years the area was nonattainment; only the Serious area requirement would apply starting in the 7th year. Clearly this is not consistent with the language or purpose of the RFP provisions of the statute, which are intended to avoid this kind of delay in reductions, and this example demonstrates how the commenter's assertion that such submissions are ''duplicative'' is flawed.

Under such a reading, it would be fully possible for a state to elude duties imposed on them under the CAA by waiting until the attainment date has nearly passed, requesting a voluntary reclassification, and waiting for the next attainment date to request an additional voluntary reclassification without planning for, making, or demonstrating meaningful progress toward achieving the NAAQS. Congress could not have intended to render the NAAQS and the steps it prescribed to achieve the NAAQS wholly irrelevant with such a loophole. Introducing new requirements (*e.g.,* requiring an area initially classified as Serious to submit elements of Moderate areas) is clearly distinct from enforcing *existing* requirements. The CAA does not relieve a state of its existing requirements upon reclassification, with the exception of elements inherently tied to the attainment date for the reasons described elsewhere in this document. Under the EPA's interpretation, states remain obligated to address requirements associated with the lower classifications to which they were assigned even following voluntary reclassification, with the limited exception of elements directly tied to the attainment date. The consequences associated with failure to submit elements of a lower classification remain unchanged upon voluntary reclassification with the limited exception of elements directly tied to the attainment date.

With respect to the comment asserting that a voluntary reclassification should moot any sanctions associated with a failure to submit the SIP elements associated with a prior classification, the EPA agrees only with respect to the leftover SIP elements that we consider to no longer be required submissions after a voluntary or mandatory reclassification, as applicable. Pursuant to CAA section 179(a)(1)–(2), a finding of failure to submit or final disapproval of a SIP submission required under part D, title I of the CAA triggers the imposition of sanctions under CAA section 179(b). *See also* 40 CFR 52.31. Similarly, a finding of failure to submit or final disapproval of a required SIP submission triggers the EPA's obligation to promulgate a Federal Implementation Plan (FIP) under CAA section 110(c)(1)(B).

Accordingly, if there is currently a FIP and sanctions clock associated with either (1) a finding of failure to submit, or (2) a prior disapproval of, a SIP submission that is no longer considered to be a required submission due to an intervening reclassification, the EPA would consider the reclassification action to moot the FIP and sanctions clocks. Similarly, if the EPA disapproves a SIP submission that is no longer considered to be a required submission due to an intervening reclassification, there would be no FIP or sanctions clock associated with a disapproval of that submission.[29] In

[28] CAA section 182(c)(2)(B) for Serious area provisions and section 182(b)(1) for Moderate provisions.

[29] CAA section 110(k) requires that the EPA act on any submitted SIP revision, regardless of

Continued

other words, because a state no longer has a legal obligation to submit the relevant SIP submissions that are no longer required for the reasons described in this action, the failure to submit or disapproval of such submissions would not trigger imposition of mandatory sanctions under CAA section 179 and 40 CFR 52.31, or a FIP obligation under CAA section 110(c).

Comment: Four commenters (0036, 0037, 0038, 0039) agree with the EPA's position on leftover SIP requirements regarding attainment demonstrations and RACM. However, one commenter (0044) disagrees with the EPA's position on leftover SIP requirements related to RACM and urges the EPA not to finalize its proposal that reclassification of a nonattainment area, whether by mandatory or voluntary reclassification, excuses the states' obligation to adopt all RACM for the previous classification. The commenter claims that the plain language of the CAA establishes RACM as a mandatory part of each nonattainment plan, and expressly requires that each nonattainment plan implement all RACM. In addition, the commenter states that the text and structure of the CAA make clear that the requirement to adopt all RACM is in addition to, and independent from, the requirement to provide for timely attainment and there is nothing in the text of the statute suggesting that the requirement to impose all RACM is predicated on any particular attainment deadline. Furthermore, to the extent that the EPA believes that RACM is tied to an attainment date, or only relevant if such measures can ''advance attainment date by 1 year,'' the commenter believes that the EPA has failed to articulate how that rationale is consistent with the plain text of the CAA. Finally, the commenter claims that the CAA's paramount purpose of protecting public health supports ensuring that reclassified areas continue to implement all RACM as expeditiously as practicable, regardless of any new attainment deadline. Excusing reclassified areas from the CAA's RACM requirements creates a perverse incentive for states to simply request reclassification or run out the attainment deadline clock, thereby avoiding any need to evaluate or impose reasonable pollution reduction measures.

Response: The EPA agrees with the commenter that the states are required to submit SIPs addressing RACM for all nonattainment areas classified as Moderate and above. *See* 40 CFR 51.1312(c). The EPA further agrees that this requirement to adopt all RACM is in addition to, and independent from, the requirement to submit a SIP revision that includes a demonstration that the SIP will, as revised, provide for attainment of the NAAQS by the applicable attainment date. However, the EPA disagrees that there is nothing connecting the CAA requirement to impose all RACM with the relevant attainment deadline.

As explained in the proposal, in a RACM demonstration a state must show whether there are any reasonably available control measures that could advance an area's attainment date beyond the control strategy associated with the accompanying attainment demonstration. *See, e.g.,* 80 FR 12264, 12282 (March 6, 2015) (interpreting the Clean Air Act ''to require a demonstration that the state has adopted all reasonable measures . . . to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and thus that no additional measures that are reasonable available will advance the attainment date of contribute to RFP for the area.''). The Clean Air Act mandates that SIP submittals must ''provide for the implementation of all reasonably available control measures as expeditiously as practicable . . . and shall provide for attainment of the [NAAQS].'' 42 U.S.C. 7502(c)(1). Given this inextricable link to advancing attainment beyond what is included in the attainment demonstrations, the EPA's rules require that states address RACM as part of their SIP submittal demonstrating that the nonattainment area at issue will attain the ozone NAAQS no later than the applicable attainment date. *See, e.g.,* 40 CFR 51.1312(c) (requiring that ''the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.''). While the commenter possibly disagrees with the EPA's longstanding interpretation of RACM, in the current rulemaking, the EPA is not reopening its ozone implementation regulations or the interpretations of nonattainment planning requirements contained therein.

The EPA's interpretation of RACM is longstanding. For example, the EPA wrote in the General Preamble, dated April 16, 1992, that states should consider all candidate measures that are potentially available for the particular nonattainment area that could advance the attainment date by 1 year.[30] The EPA similarly explained in a 1979 rule the interpretation that RACM should be implemented ''insofar as necessary to assure reasonable further progress and attainment by the required date.'' [31]

Thus, when this interpretation of RACM is applied to the situation at issue in this rule, the outcomes are clear. For a mandatory reclassification, where the former classification's attainment date is in the past and was not met, it is not possible or meaningful for a state or the EPA to consider whether control measures could advance attainment earlier than the already past attainment date. Similarly, following voluntary reclassification of an area, there is no sense in assessing whether a former attainment date could have been met sooner. In either case, if a state were to submit a RACM analysis for the lower classification, that analysis would be tailored to the already-passed or former attainment deadline for the lower classification. When a state submits a SIP containing an attainment demonstration and RACM prior to the attainment date, the Act is clear about what the EPA must do. The EPA must determine whether the state has demonstrated that the area will attain by the *applicable* attainment date and whether the state has adopted all reasonable measures that would advance that date. However, this is not appropriate when the applicable attainment date has already come and gone—or has moved following a voluntary reclassification.

In this scenario, states are not avoiding being held accountable under the Clean Air Act. For areas that fail to attain and are mandatorily reclassified, states must implement contingency measures for failure to attain by the attainment date. In all situations, while reclassification allows states time to submit a RACM analysis with respect to the new classification level, the new classification imposes added, more stringent obligations on the state.

If the EPA were to require a state to submit a RACM analysis for the former classification after an area is reclassified, it would lead to one of two illogical outcomes. One possibility is that the state would be required to submit a RACM analysis pertaining to an already passed or already supplanted attainment date. Such submissions

whether the submission is considered to be required to meet applicable CAA requirements. A state may withdraw a SIP submission, and then EPA considers there to be no remaining obligation to act on that SIP revision.

[30] State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, Proposed Rule, 57 FR 13507 (April 16, 1992).

[31] 44 FR 20372, 20375 (April 4, 1979).

would not support the goals of the Act and would have no beneficial impact on nonattainment areas' success in attaining by or advancing the no longer relevant attainment date. As already discussed, a RACM analysis is intended to determine what measures can reasonably be adopted to advance the attainment date, but such an attainment date cannot be advanced once an area has failed to attain, or the attainment date no longer exists. The alternative is that a RACM analysis is required for the former classification level, but it would be an analysis conducted with respect to the new applicable attainment date for the higher classification level. This would then require the state to submit a RACM analysis with its lower classification plan, due by a lower classification deadline, but analyzing a brand-new attainment date. States are already required to submit a RACM analysis with respect to the higher classification level and for the higher classification attainment date. The EPA has declined to follow either of these approaches.

Accordingly, following reclassification, a RACM analysis must be done with respect to the new and currently applicable attainment date. The CAA does not require RACM analysis for attainment dates associated with any classification that is not currently applicable to the area.

Comment: One commenter (0042) disagrees with the EPA's assertion that RACT requirements are not tied to the attainment date and therefore are not mooted for a prior classification upon reclassification. The commenter contends that because CAA section 182(b)(2)(A) requires that states implement RACT for all categories of sources covered by a CTG document issued before the date of attainment, there is a clear statutory connection of the RACT review to the attainment date. The commenter argues that because the EPA sets RACT implementation deadlines based on the attainment year, this evidences that that EPA bases RACT requirements on the attainment deadline. The commenter also notes that because higher classification levels have a lower major source threshold for RACT, RACT SIP submissions for a higher classification level would necessarily cover RACT determinations for a lower classification level, thus eliminating the need for a submittal to address RACT for the prior classification.

Response: The EPA disagrees with the commenter. For reclassified areas, the RACT requirements at 40 CFR 51.1312(a)(2)(ii) and (3)(ii) obligate a state to conduct a new, individual RACT analysis for the new classification and implement any identified measures as necessary. Reclassification does not relieve the RACT obligation for the prior classification. The CAA requirement in section 182(b)(2) to implement RACT for specified categories of sources is implemented and assessed based on whether the RACT rules are implementing what is economically and technologically feasible and is not based on reductions needed to attain by the attainment deadline.

We disagree that CAA section 182(b)(2)(A) provides a statutory connection of RACT to the attainment date. Section 182(b)(2)(A) states that RACT requirements apply to each category of sources covered by a CTG document issued by the Administrator between November 15, 1990, ''and the date of attainment.'' This language establishes the sources covered by the RACT analysis that a Moderate or higher area must consider. The reference to the attainment date sets an outer bound of what CTGs will define the categories of sources that fall under the Moderate RACT requirement. It does not tie the substantive RACT analysis, and the level of controls required by the application of RACT, to the attainment date.

We also disagree that the stationary source threshold set by the classification level evidences a connection between RACT and the attainment date. Just as 182(b)(2)(A) defines the categories of sources that need to be covered by a RACT assessment so too the stationary source threshold associated with a classification level defines the sources that need to be covered in the state's RACT assessment. The stationary source threshold establishes the emission levels where RACT would be applied but does not define the substance or content of the RACT analysis. For example, for an area reclassified from Moderate to Serious, the prior Moderate classification would require evaluation of any sources in any category subject to a CTG and any non-CTG sources with a potential to emit more than 100 tons per year (tpy) of NO_X or VOCs. The commenter is correct in that the new Serious classification means the state needs to address RACT for additional sources, namely non-CTG sources with a potential to emit 50 tpy or more of NO_X. But the commenter has failed to explain why this fact—that RACT must be analyzed and implemented for additional smaller sources—should, upon reclassification, result in delayed implementation of RACT for the original set of sources covered by the prior classification. If the EPA were to adopt such an interpretation, it would delay the implementation of RACT for several years in an area that is not attaining the ozone NAAQS, as each successive reclassification halts the submission and/or implementation of (as well as EPA action on) the RACT requirement as it applied to the former classification. This would lead to a delay in required controls in areas that have air quality that exceeds levels protective of human health and the environment, particularly when compared to an area that was initially classified at the higher level, where technologically and economically feasible controls would be implemented by January 1 of the 5th year following designation as nonattainment. The commenter has not identified any language in the CAA that necessitates or even supports such a result.

Finally, the commenters point to the fact that the EPA has based RACT implementation deadlines on the timing required to influence attainment of the standard by the attainment date. This is a correct characterization of several, although not all, of the EPA's actions, but also does not inevitably lead to an interpretation that required SIP revisions and RACT implementation should be delayed by several years following an area's reclassification. As explained, the substantive analysis required in a RACT SIP, namely the implementation of controls that are economically and technologically feasible, does not hinge on what level of control is needed for the area's attainment by the attainment date (this is in contrast to, *e.g.,* the analysis required for RACM). A state's RACT SIP should be based on, and the EPA will review it for, imposition of reasonably available control technology, even if that imposition of reasonably available control technology is not nearly enough to get the area to attainment by the attainment date. At the same time, it is also true that implementation of RACT-level control should aid, at least in part, in getting an area to attainment by the attainment date. Accordingly, both of these things can be true: that RACT is not a requirement directly tied to the attainment date while also requiring that RACT SIPs be due and RACT-level controls be implemented in time to matter for the overall efforts to get an area to attainment.

Comment: Three commenters (0037, 0038, 0039) agree with the EPA's position on leftover SIP requirements regarding contingency measures for failure to attain. However, two commenters (0030, 0044) disagree with the EPA's proposal insofar as it does not require contingency measures for areas that request and receive voluntary

reclassification before the attainment date. They recommend that the EPA continue to require contingency measures for failure to attain for such areas, to be implemented when states request voluntary reclassifications prior to the attainment date.

One commenter (0030) notes that requiring contingency measures for failure to attain for states that request a voluntary reclassification will ensure they are not just extending their SIP submission and implementation deadlines, and claims that allowing such an extension would promote prolonged periods of nonattainment for ozone and negatively impact health. This commenter also cautions that the EPA should be wary of states who request a reclassification as a means to delay such deadlines.

Similarly, another commenter (0044) disagrees with the EPA's position that, for voluntary reclassifications that are effective before the attainment date, contingency measures are not triggered because the EPA is not required to make a determination of whether the area attained by its attainment date. The commenter asserts that the plain language of the CAA provides that contingency measures are triggered if the area did not attain by the attainment date, not whether the EPA made a finding of such, and the fact that the EPA will not make such a determination is not relevant. The commenter further asserts that, if a voluntary reclassification becomes effective after the attainment date, the EPA similarly has no authority to remove the requirement to have contingency measures because CAA sections 172(c)(9) and 182(c)(9) do not say that contingency measures are triggered after the EPA ''determines'' or ''makes a finding.'' The commenter also notes that if the reclassification occurs before but becomes effective after the attainment date, then the previous classification attainment date applied on the effective date because the area was still that previous classification on that date. The commenter recommends, at a minimum, that the EPA should change the word ''occurred'' to ''became effective'' in proposed 40 CFR 51.1403(a)(3) because before the rule granting the voluntary bump up request becomes effective, the applicable attainment date is for the lower classification. Lastly, the commenter takes issue with the EPA's statement in the proposal that ''Requiring a state to submit or the EPA to act on such SIP elements would make no logical or practical sense,'' and asserts that it is both practical and logical for the EPA to require contingency measures to be implemented following a reclassification.

On the contrary, one commenter (0036) urges the EPA to not require contingency measures for failure to attain as a leftover SIP requirement after any reclassification (voluntary or mandatory). The commenter believes that the EPA's justification for requiring these contingency measures only for mandatory reclassifications by attempting to draw a clear distinction between two scenarios is flawed. Under the first scenario, a state requests a voluntary reclassification after its attainment year, but before its attainment date, and, under the second scenario, a state waits to have the EPA take its mandatory action to reclassify the area, which occurs after the attainment date has passed. The commenter asserts that while these situations would appear to be very different, they are both based on the recognition that the area's attainment year ozone data shows that the area will not attain the NAAQS, which is publicly available in uncertified form no later than December 31 of the attainment year and, in certified form, by May 1 of the following year. Both the uncertified and certified data are available well in advance of the attainment dates of the 2015 ozone NAAQS. In other words, both situations are predicated on the recognition that the area will fail to attain the standard by its attainment date, whether this failure to attain has been officially acknowledged by the EPA through a mandatory finding, or not. The commenter claims that, because these situations are identical in practice, there should be no difference in how the contingency measure requirement for failure to attain applies.

Response: The EPA disagrees with the commenters' contention that the Agency should implement contingency measures for failure to attain when states request voluntary reclassifications before the prior classification's attainment date has passed. Considering the case where the state requests, and the EPA approves, a reclassification before the attainment date, there would be no trigger for the implementation of contingency measures where there is no finding of failure to attain because the applicable attainment date has changed. When the area is voluntarily reclassified before the attainment date, the EPA is no longer required to—and cannot—determine whether the area attained by the former attainment date. Once voluntarily reclassified, the area no longer has the attainment date associated with the prior classification level. Because the EPA would not—and could not—issue a finding of failure to attain with respect to the prior, no longer existing attainment date, requiring a state to submit contingency measures for failure to attain by the attainment date associated with the previous classification would no longer have logical significance because such measures could not be triggered. With respect to the commenter's related assertion that contingency measures should be triggered by something other than the EPA's issuance of a finding of failure to attain (*i.e.,* by the voluntary reclassification itself), this is contrary to the EPA's longstanding interpretation of what triggers the requirement to implement contingency measures.[32] As articulated in a number of finding of failure to attain actions, the EPA's determination of a failure to attain triggers the requirement to implement contingency measures.[33] States have full discretion to request voluntary reclassification for any reason, and there is no statutory basis to require states to implement contingency measures based on such a request. However, reclassification does trigger the requirement to submit new contingency measures for failure to attain by the new classification's attainment date. States are also still required to have contingency measures available to implement in the event the area fails to meet any RFP milestone associated with the current of former classification.

The EPA agrees with the commenter that the effective date of the voluntary reclassification is governing with respect to whether contingency measures for failure to attain by the previous attainment date are required. If a voluntary reclassification becomes effective after the attainment date associated with the lower classification level, the EPA would be obligated to determine whether the nonattainment area attained by the attainment date associated with the prior, lower classification. In such a case, states would be required to implement contingency measures for any failure to attain by the attainment date associated with the prior classification level. Therefore, the EPA has adjusted the regulations finalized herein as commenter suggested, specifically changing the word ''occurred'' to ''became effective'' in 40 CFR 51.1403(a)(3).

[32] *See* Joseph Goffman, Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter, December 3, 2024, at 3, available at *https://www.epa.gov/air-quality-implementation-plans/final-contingency-measures-guidance.*

[33] *See, e.g.,* 87 FR 21825, 21828 (April 13, 2022).

The EPA disagrees with the commenter that contingency measures for failure to attain should not be required for an area that has, in fact, failed to attain the ozone NAAQS by the applicable attainment date and was subsequently reclassified. Such a result is directly contrary to the plain text of the CAA. CAA section 172(c)(9) requires that states provide, as part of their SIPs, ''implementation of specific measures to be undertaken if the area fails . . . to attain the [primary NAAQS] by the attainment date.'' [34] It is the direct effect of the CAA text that states are required to have contingency measures that can be implemented when an area has failed to attain the NAAQS by the area's attainment date. It would be directly contrary to the statute to determine that such contingency measures are not required for an area that meets this exact fact pattern. The EPA disagrees with the commenter's premise that voluntary and mandatory reclassifications should be treated the same because they are situated the same factually, specifically that voluntary reclassifications are always requested based on data that shows an area will not attain by the applicable attainment date. Voluntary reclassifications are provided as a result of a state's request, and the state does not need to request reclassification based on data indicating an area may not attain by the applicable attainment date; it has full discretion to request such a reclassification at any time, including in advance of such data becoming available. CAA section 181(b)(3) states that ''[t]he Administrator shall grant the request of any State to reclassify a nonattainment area in that State . . . to a higher classification.'' The grant of voluntary reclassification is not premised upon any particular reasoning as to why the state may request reclassification, and there is no statutory basis for the EPA to require contingency measures tied to a failure to attain to be triggered based on such a request.

Comment: One commenter (0041) recommends that the EPA treat RFP requirements and contingency measures for RFP in the same manner as RACM and contingency measures related to a failure to attain because such requirements are related to attainment of the ozone NAAQS. The commenter states that RFP reductions are linked to attainment because CAA section 182(b)(1)(A) refers to RFP reductions as being ''necessary to attain the national primary ambient air quality standard.'' In addition, the commenter asserts that it would be entirely illogical for Congress to impose requirements on states through subpart 2 that were not, in some fashion, directly or indirectly linked to attainment of air quality standards.

Response: The EPA agrees that all subpart 2 requirements are related, in some fashion, to areas' attainment of the ozone NAAQS, but commenters' assertions that RFP is directly tied to the attainment date is inconsistent with the RFP requirements established in the implementing regulations for the 2015 ozone NAAQS and the EPA's longstanding interpretation of RFP for ozone nonattainment areas.

Moderate and higher ozone nonattainment areas are subject to the general requirements for nonattainment plans in CAA subpart 1 and the specific requirements for ozone areas in CAA subpart 2, including the requirements related to RFP and attainment. While CAA section 172(c)(2) of subpart 1 states only that nonattainment plans ''shall require reasonable further progress,'' CAA sections 182(b)(1) and 182(c)(2)(B) of subpart 2 provide specific percent reduction targets for ozone nonattainment areas to meet the RFP requirement. Put another way, subpart 2 defines RFP for ozone nonattainment areas by specifying the incremental amount of emissions reduction required by set dates for those areas.[35] Importantly, these set dates are independent of the attainment date. Although the dates may coincide with a particular attainment date, the required RFP date(s) associated with the lower classification do not change when the attainment date changes as a result of reclassification. For Moderate ozone nonattainment areas, CAA section 182(b)(1) defines RFP by setting a specific 15 percent VOC reduction requirement over the first 6 years of the plan. The 15 percent reduction is ''the base program that all Moderate and above areas must meet. This base program is necessary to ensure actual progress toward attainment in the face of uncertainties inherent with SIP planning.'' [36]

For Serious or higher ozone nonattainment areas, the 15 percent requirement still applies, and section 182(c)(2)(B) further requires specific annual percent reductions for the period following the first 6-year period and allows averaging over a 3-year period. With respect to the 1-hour ozone NAAQS, the EPA has stated that, by meeting the specific percent reduction requirements in CAA sections 182(b)(1) and 182(c)(2)(B), the state will also satisfy the general RFP requirements of section 172(c)(2) for the time period discussed.[37]

The EPA has adapted the RFP requirements under the CAA to implement the three 8-hour ozone NAAQS that have been promulgated since the 1990 CAA Amendments. In the ''Phase 2'' SIP Requirements Rule for the 1997 Ozone NAAQS (Phase 2 rule), *see* 70 FR 71612 (November 29, 2005), the EPA adapted the RFP requirements of CAA sections 172(c)(2) and 182(b)(1) to require plans to provide for the minimum required percent reductions and, for certain Moderate areas, to provide for the reductions as necessary for attainment.[38]

In 2015, the EPA replaced the regulations promulgated through the Phase 2 rule with the regulations promulgated through the 2008 Ozone SIP Requirements Rule (SRR). 80 FR 12264 (March 6, 2015).[39] In the 2008 Ozone SRR, the EPA established RFP requirements for the 2008 ozone NAAQS that are similar, in most respects, to those in the Phase 2 rule for the 1997 ozone NAAQS but that do not define RFP for certain Moderate areas in terms of the reductions needed for attainment by the attainment date.[40] More explicitly, in the 2008 Ozone SRR, the EPA defined RFP as meaning both the ''emissions reductions required under CAA section 172(c)(2) which the EPA interprets to be an average 3 percent per year emissions reductions of either VOC or NO_X and CAA sections 182(c)(2)(B) and (c)(2)(C) and the 15 percent reductions over the first 6 years of the plan and the following three percent per year average under 40 CFR 51.1110.'' *See* 40 CFR 51.1100(t). Thus, under the 2008 Ozone SRR, the RFP emissions reductions required for Serious or higher ozone nonattainment areas under CAA section 172(c)(2) are

[34] 42 U.S.C. 7502(c)(9).

[35] CAA section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' The words ''this part'' in the statutory definition of RFP refer to part D of title I of the CAA, which contains the general requirements in subpart 1 and the pollutant-specific requirements in subparts 2–5 (including the ozone-specific RFP requirements in CAA sections 182(b)(1) and 182(c)(2)(B) for Serious areas).

[36] 57 FR 13498, 13507 (April 16, 1992).

[37] *See* 57 FR 13498, 13510 (April 16, 1992) (for Moderate areas), 13518 (for Serious areas).

[38] *See, e.g.,* 40 CFR 51.910(a)(1)(ii)(A), (b)(2)(ii)(C).

[39] Under 40 CFR 51.919 and 51.1119, the regulations promulgated in the 2008 ozone SRR replaced the regulations promulgated in the Phase 2 rule, with certain exceptions not relevant here.

[40] Compare RFP requirements for the 1997 ozone NAAQS at 40 CFR 51.910(a)(1)(ii)(A) and (b)(2)(ii)(C) with the analogous provisions for the 2008 ozone NAAQS at 40 CFR 51.1110(a)(2)(i)(B).

based on a set annual percentage found in the CAA, not on the specific needs for the area to attain by the attainment date. In this regard, the EPA has been even more explicit in our SRR for the 2015 ozone NAAQS: ''Reasonable further progress (RFP) means the emissions reductions required under CAA sections 172(c)(2), 182(c)(2)(B), 182(c)(2)(C), and 40 CFR 51.1310. The EPA interprets RFP under CAA section 172(c)(2) to be an average 3 percent per year emissions reduction of either VOC or NO_X 40 CFR 51.1300(l).

Thus, the SRR for the 2015 ozone NAAQS defines RFP in terms of percent reduction from the area's emissions in the baseline year, not in terms of the reductions necessary for attainment by the attainment date. In other words, for the 2015 ozone NAAQS, the requirement to demonstrate RFP is independent of the requirement to demonstrate attainment by the attainment date. RFP for the 2015 ozone NAAQS represents the minimum progress that is required under the CAA and our regulations, and does not necessarily need to provide for the reductions necessary to achieve attainment of the ozone NAAQS by the attainment date, which could vary largely from one nonattainment area to another. For all of these reasons, the EPA disagrees with commenter's claim that RFP should be treated the same as the Moderate area attainment demonstration, RACM, and contingency measures for failure to attain. The EPA's explanation for why those three particular SIP elements are no longer required following a reclassification does not apply to the Moderate area RFP SIP element. Unlike the other three SIP elements, RFP is not directly tied to the applicable attainment deadline as explained earlier.

Moreover, the SRR for the 2015 ozone NAAQS lists RFP and ROP as distinct provisions for implementation.[41] These provisions clearly demonstrate the necessity for RFP reductions during the first 6 years of the plan, regardless of the area's initial classification, or whether it was Moderate before being reclassified as Serious, whether voluntarily, or mandatorily.

Because it is not appropriate after an area reclassification to treat RFP the same as the attainment demonstration, RACM, and contingency measures for failure to attain, it necessarily follows that contingency measures for failure to make RFP would also still be required for a failure to meet an RFP target associated with the lower classification after reclassification. If it is appropriate to still require SIP submissions addressing RFP for the prior classification, then it follows that the EPA will require states to have contingency measures in place that would be triggered for failure to meet those RFP milestones.

Comment: One commenter (0042) urges the EPA to update its proposal to note that if states can demonstrate their RFP targets have been met for reclassified areas, the requirement to submit RFP contingency measures for the prior classification would be unnecessary.

Response: The EPA acknowledges that there may be certain unideal situations where the state has not yet submitted, or the EPA has not yet approved, contingency measures for the prior classification, but the state has nonetheless demonstrated that all RFP milestones associated with the prior classification have been met. Where the EPA has determined that demonstration to be adequate, the question of whether the state has adequate contingency measures for failure to meet RFP with respect to that milestone can be moot. This situation is unideal because the CAA is not designed to operate this way with respect to timing, and these situations typically arise because the state is overdue for submitting approvable contingency measures. Under normal CAA timelines, the contingency measures submittal and the EPA approval should occur before the RFP milestone arrives so that the contingency measures could be triggered if the area fails to meet RFP. States should not delay submittal of required contingency submittals in the hopes that they may become moot at a later time. Such an approach contravenes the statutory timelines established by the CAA, and the intent of the contingency measures requirement. If this situation arises and the RFP milestone is not met, the CAA requires implementation of contingency measures without further action by the state or the EPA. That requirement cannot be met on time if the contingency measures submittal is delayed.

However, under the unusual circumstances in which the EPA determines the prior classification's RFP reduction targets were met before the state makes its overdue submittal to satisfy the prior classification's requirement for contingency measures for failure to meet RFP, the EPA believes that no submittal of contingency measures for a potential failure to meet the prior classification's RFP targets would be necessary.[42]

As discussed elsewhere in this document, with a voluntary reclassification there will be no possibility of failure to attain by the attainment date associated with the previous classification, and so the voluntary reclassification negates the need for contingency measures for failure to attain. Further, if a state has provided any applicable RFP demonstration(s) associated with the previous classification and the EPA has determined those demonstrations to be adequate, this would negate the need to submit the contingency measures for failure to meet the RFP milestones associated with the previous classification, thus resulting in mooting the previous classification's contingency measures requirement entirely.

Comment: One commenter (0036) recommends that the requirement to continue to address leftover SIP requirements from prior classifications should apply no matter if the reclassification is voluntary or mandatory. The commenter notes that, in this context, the method of reclassification makes no difference. The commenter claims that a state must also be prevented from repeatedly requesting a voluntary reclassification right before each attainment date, a strategy that would delay indefinitely, at least until Extreme classification is reached, the need for the state to submit any ozone SIP or implement any ozone control program. The commenter claims that this outcome is clearly contrary to the CAA and undermines the very purpose of having defined regulatory requirements for nonattainment areas.

Response: The EPA generally agrees with the commenter, and the EPA's interpretation regarding which SIP elements remain due related to a prior, lower classification level is largely consistent for voluntary and mandatory reclassifications. The only distinction between requirements that remain due for a voluntary versus mandatory reclassification is with respect to contingency measures to failure to attain. As explained in more detail in a prior response to comments, the EPA's distinction for the contingency measure requirement is appropriate given that in the context of a mandatory reclassification, a nonattainment area

[41] *See,* 40 CFR 51.1300(l), 51.1300(m), 51.1310(a)(2)(i) and 51.1310(a)(4)(i).

[42] The EPA notes that we articulated this position in a recent action. *See* 87 FR 67957, 67960 (October 3, 2023) (''EPA agrees with TCEQ that there is no longer a need for contingency measures triggered by failure to meet RFP for the DFW and HGB Serious nonattainment plan for purposes of the 2008 8-hour ozone NAAQS, because these areas met RFP for this specific classification.'').

has failed to attain by the attainment date, thereby triggering contingency measures for that failure to attain. This is completely distinguishable from a voluntary reclassification that becomes effective prior to a nonattainment area's attainment date, where that date is superseded and replaced by the new attainment date related to the new classification level.

The issue of how often and when a state may request a voluntary reclassification for a nonattainment area is beyond the scope of this action. The EPA takes separate actions, independent from this rule, in response to states' requests for voluntary reclassifications. The commenter may look to those actions for the EPA's position on the issue, and has the opportunity to seek judicial review of those actions if it disagrees with the EPA's approach.

Comment: One commenter (0042) asserts that, in cases where States satisfy certain required elements with the submittal of certification statements noting that the requirements have already been addressed (which is commonly used for addressing I/M and NNSR requirements), it is illogical to hold areas under a finding of failure to submit for elements that have already been submitted and approved under previous classifications or standards. The commenter feels that submittal of a certification statement is not legally necessary for the EPA to know that an element, upon which the EPA has already acted and approved, has been addressed, as the EPA's SIP approval actions legally stand on their own merit. In addition, the commenter notes that the infrastructure SIP submittal requirements for each NAAQS already provide certification from the state that existing regulations are adequate to meet the applicable nonattainment area planning requirements.

Response: The EPA understands the commenter as arguing that states should not be required to provide a SIP submission in instances where a state has previously provided, and the EPA approved, a SIP submittal addressing a SIP requirement for a lower classification or earlier ozone NAAQS. This comment is outside the scope of the rulemaking and therefore the comment is not substantively adverse to the action taken herein. As a result, a response to this comment is not required. Although this issue was not discussed in the proposal for this rule, the Agency notes that this issue has been addressed at length in previous rulemakings, including recently with relation to the 2015 ozone NAAQS. *See, e.g.,* 83 FR 62998, 63002. The Agency further notes that the commenter's characterization that infrastructure SIP submittal requirements relate to nonattainment area planning requirements is incorrect. *See* Stephen D. Page, Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), September 13, 2013, at 52, available at *https://www.epa.gov/sites/default/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf* (explaining that the submission deadline for infrastructure SIPs under CAA section 110(a) do not apply to nonattainment areas, because SIP submissions for designated nonattainment areas ''are subject to a different submission schedule than those for section 110 infrastructure elements'').

Comment: One commenter (0044) notes that proposed 40 CFR 51.1403(a) mistakenly contains two paragraph 2's. The second, which begins ''If the reclassification occurred prior to the former attainment date,'' should be adjusted to be paragraph 3.

Response: The EPA agrees with the commenter that the cited proposed regulatory text was a mistake, and the EPA has modified the final regulations to reflect the corrected numbering.

C. Serious Area SIP Revisions for the 2015 Ozone NAAQS

1. Summary of Proposal

The EPA proposed to apply its default deadlines to states with newly reclassified Serious areas under the 2015 ozone NAAQS. Those default deadlines, as applied to reclassified Serious areas under the 2015 ozone NAAQS, require such states to submit SIP revisions for those areas, including revisions for RACT needed to achieve attainment of the standards by the attainment date, no later than 18 months after the effective date of the relevant reclassification notice or January 1, 2026, whichever is sooner. The EPA also proposed that the default implementation deadlines for RACT and Enhanced I/M would apply to reclassified Serious areas under the 2015 ozone NAAQS. Thus, such areas would be required to implement RACT by no later than 18 months from the RACT submittal deadline or the beginning of the 2026 attainment year ozone season for that area, whichever is earlier. In addition, for states that do not intend to rely upon emission reductions from their Enhanced I/M program in attainment or RFP SIPs, we proposed to allow Enhanced I/M programs to be fully implemented no later than 4 years after the effective date of reclassification.[43]

2. Final Rule

The EPA is finalizing the default SIP submittal and implementation deadlines for reclassified ozone nonattainment areas as proposed, and thus such deadlines would apply to areas reclassified as Serious under the 2015 ozone NAAQS. Below we address comments regarding the proposed deadlines insofar as they specifically concerned the application of those deadlines to reclassified Serious areas under the 2015 ozone NAAQS.

3. Comments and Responses

a. Due Date for Serious Area SIP Revisions and RACT Implementation

Comment: One commenter (0032) believes that the EPA's proposed default SIP submission deadlines are insufficient for nonattainment areas reclassified as Serious under the 2015 ozone NAAQS. The commenter notes that rulemaking to lower thresholds from 100 tpy to 50 tpy takes a substantial amount of time, and it is unreasonable to expect that newly regulated entities will be able to prepare a RACT SIP submittal, install controls, and come into compliance by January 1, 2026. In addition, the commenter believes that the proposed RACT implementation deadline is not realistic. Even if states currently have regulations ready, only a reclassification could trigger the requirement for RACT implementation, which the commenter believes will not occur until December 31, 2024, providing only 1 year to prepare a RACT study, install controls, and implement RACT. The commenter further provides that the EPA has not reclassified the areas, and many states have no authority to begin the arduous process of rulemaking until a Federal action triggers that requirement.

Response: The EPA acknowledges that the new Serious source threshold may present difficulties for some states in developing a RACT SIP submittal by January 1, 2026. However, as stated in the proposal, a SIP submission deadline of the earlier of 18 months from the effective date of reclassification or January 1, 2026 (January 1 of the attainment year) will allow Serious area control measures to influence attainment by the Serious area attainment date while also balancing the need for a consistent submission

[43] The EPA did not propose any changes to the implementation of any new Basic I/M programs, which are still required by the prior rule that reclassified certain nonattainment areas as Moderate for the 2015 ozone NAAQS. *See* 87 FR 60897, October 7, 2022, at 60900.

deadline among the various Serious area SIP requirements per CAA section 182(i). The outer boundary of January 1, 2026, for states to submit their Serious area SIP revisions applies equally across areas for which an 18-month deadline is not possible and ensures that the newly applicable subpart 2 requirements will be addressed consistent with part D's purpose of achieving expeditious attainment by the attainment date.

To the extent the commenter is concerned that regulated entities will not be able to install controls and come into compliance prior to January 1, 2026, the EPA notes that we proposed, and are finalizing, a RACT implementation deadline for any nonattainment areas reclassified as Serious under the 2015 NAAQS that provides for implementation as expeditiously as possible, but no later than 18 months from the RACT submission deadline or the beginning of the 2026 ozone season, whichever is earlier. For some nonattainment areas that will be reclassified as Serious in separate actions, the last ozone season that can impact air quality before the areas' attainment date begins in January of the attainment year and for other areas it begins in March of the attainment year. *See* 40 CFR part 58, appendix D, section 4.1, table D–3. By structuring the default deadlines as ''the earlier of'' an outside timeframe (*e.g.,* 18 months) or a specific date (*e.g.,* the beginning of the 2026 ozone season), the EPA is maximizing time for SIP development, adoption, and submission, while still ensuring that controls are adopted into the SIP and implemented in time to influence attainment of the NAAQS by the attainment date.

We acknowledge again that meeting this SIP submission deadline will be challenging for many states. However, to the extent that commenters suggested that states can only initiate SIP development activities only after the EPA finalizes its area reclassifications, we disagree. There are proactive and voluntary pathways by which states can anticipate and manage the tight timeframes to develop required SIP revisions for reclassified nonattainment areas, including early planning and voluntary reclassification. The EPA is aware that many states with areas affected by this current action may be constrained in finalizing rulemakings that require additional emissions controls unless the state air agency can demonstrate such controls were mandated by an underlying Federal requirement (*e.g.,* required pursuant to a mandatory area reclassification). However, to our knowledge, most states with affected areas are not prohibited from starting their SIP development activities before the EPA finalizes this current action, particularly because all of those areas are already required under the CAA to attain the 2015 ozone NAAQS. As we noted in prior attainment determination and reclassification actions for the 2008 and 2015 ozone NAAQS, states with nonattainment areas that were proposed for reclassification had known with a reasonable amount of certainty that revised SIPs would be due in the near future to provide for expeditious attainment of the 2008 and 2015 ozone NAAQS, and had the opportunity to make progress on plan development activities before issuance of the final actions.[44] That remains true for this current action, where states with affected Moderate areas have been aware of preliminary 2021–2023 DVs since at least December 2023 and certified 2021–2023 DVs since May 2024, showing that the areas were not going to timely attain and would be reclassified under the CAA. These states, therefore, could have reasonably anticipated that SIP revisions for reclassified Serious areas would be due in the near future, consistent with the CAA and previous EPA determination and reclassification actions. Nonetheless, the EPA recognizes the challenges posed by the SIP submission and RACT implementation deadlines being finalized as part of this rule, and is committed to working closely with states to help them as they prepare SIP revisions in a timely manner.

Comment: One commenter (0036) recommends that the deadlines and requirements set by the EPA for 2015 ozone NAAQS areas reclassified to Serious should be consistent with those established by the EPA in its June 2024 Texas area reclassification rule (89 FR 51829, June 20, 2024). The commenter notes that many of the same issues and options in this proposed rule were also contemplated in the June 2024 rulemaking. The commenter further provides that aligning SIP deadlines and requirements would also benefit state attainment planning efforts by facilitating the use of area-agnostic technical products (such as attainment modeling and control measure analyses) and encouraging interstate attainment planning coordination.

Response: As commenter notes in its letter, the deadlines and requirements that the EPA is finalizing are consistent with those the EPA finalized in its June 2024 rule reclassifying three Texas areas from Moderate to Serious under the 2015 ozone NAAQS.[45]

Comment: One commenter from Delaware (0033) requests that the EPA finalize a SIP submittal deadline of March 1, 2026, for Delaware's 2015 ozone NAAQS Serious attainment plan SIP. March 1, 2026, marks the beginning of Delaware's attainment year ozone season, and establishing a SIP submittal deadline that aligns with the attainment year ozone season will allow Delaware sufficient time to research and prepare a thorough and comprehensive SIP revision as well as time to complete the required SIP revision submittal process. The commenter further provides that March 1, 2026, is a more reasonable time frame because of Delaware's complex and lengthy regulatory process, lack of feedback from the EPA on contingency measures, and absence of resources available for Delaware to calculate contingency measure reductions.

Another commenter from Colorado (0040) requests that the EPA grant Colorado the flexibility to submit its Serious SIP revision sometime after February 15, 2026, or, in the alternative, allow Colorado to submit it as a provisional and non-binding submission that will automatically be converted to a final submission for final approval after February 15, 2026. The commenter notes that the EPA granted Colorado's request for voluntary reclassification from Moderate to Serious on July 24, 2024. The EPA's proposed default SIP submittal deadlines would require Colorado to submit its Serious SIP for the 2015 ozone NAAQS to the EPA no later than January 24, 2026. However, due to Colorado's legislative process and the late timing of the EPA's rule, the commenter will be unable to submit the necessary SIP revisions by the EPA's proposed deadline.

Response: In Section II.A. of the proposal, the EPA articulated that, ''if these default deadlines are finalized as proposed, they will apply to any nonattainment areas that are reclassified as Serious under the 2015 ozone NAAQS for failing to attain the standard by the Moderate attainment date of August 3, 2024, *unless otherwise established in a separate notice-and-comment rulemaking*'' (emphasis added). 89 FR 80833, 80834 (October 4, 2024). The EPA did not propose to establish different SIP submittal or implementation deadlines for any specific nonattainment areas. Any such adjustment would need to be done in a separate notice-and-comment rulemaking. Therefore, the SIP

[44] *See,* 84 FR 44238, 44246 (August 23, 2019); 87 FR 60897, 60909 (October 7, 2022).

[45] 89 FR 51829 (June 20, 2024).

submission deadline that will apply to all nonattainment areas reclassified as Serious under the 2015 ozone NAAQS, including areas within Delaware and Colorado, will be the earlier of 18 months from the effective date of reclassification or January 1, 2026, unless otherwise established in a future notice-and-comment rulemaking.

In the case of Delaware, the EPA granted the state's request for a voluntary reclassification of the Philadelphia-Wilmington-Atlantic City, Pennsylvania-New Jersey-Maryland-Delaware 2015 ozone nonattainment area to Serious, which became effective on July 30, 2024. In applying the ''earlier of'' structure of the default deadlines finalized in this rule, January 1, 2026 (*i.e.,* January 1 of the attainment year) will be the SIP submission deadline for the states in which the Philadelphia-Wilmington-Atlantic City nonattainment area lies because that date occurs before the 18-month timeframe established by the effective date of the reclassification notice (*i.e.,* January 30, 2026).

Likewise, in the case of Colorado, the SIP submission deadline will be January 1, 2026. The EPA granted the state's request for voluntary reclassification of the Denver Metro/North Front Range 2015 ozone nonattainment area to Serious, which became effective on July 24, 2024. In applying the ''earlier of'' structure of the default deadlines finalized in this rulemaking, January 1, 2026 (*i.e.,* January 1 of the attainment year) will be the SIP submission deadline for Colorado because that date occurs before the 18-month timeframe established by the effective date of the reclassification notice (*i.e.,* January 24, 2026).

b. Deadline for Serious Area I/M Implementation

Comment: One commenter (0042) disagrees with the EPA's proposal that it is necessary to establish an implementation date at the beginning of the attainment year ozone season for an Enhanced I/M program under the Serious classification to use the emissions reductions toward meeting Serious classification attainment demonstration and RFP requirements. The commenter believes that the EPA has not provided a rationale for why newly required Enhanced I/M programs for the 2015 ozone standard would have to be fully implemented by no later than the beginning of the Serious attainment year ozone season. The commenter asserts that implementation should not be required by the start date of the attainment year ozone season for the area for the reductions to be used, particularly since emissions reductions from I/M programs are variable, depend on the number of vehicles tested in each month, as well as the vehicles' emissions profiles and state of repair.

Response: We disagree with the commenter's position that the EPA has not provided a rationale for why Enhanced I/M program emission reductions that will be relied upon by the states for attainment demonstration or RFP requirements must be implemented by the beginning of the attainment year ozone season. For Serious areas that intend to rely upon emission reductions from their newly required Enhanced I/M program for attainment and RFP purposes, the implementation deadline is already prescribed by the 2015 ozone implementation rule which requires all control measures (including I/M) in the attainment plan and demonstration to be implemented no later than the beginning of the attainment year ozone season.[46] As the EPA explained in the preamble, EPA's proposal and solicitation of comments as to reclassified Serious areas was limited to the deadline for implementation of Enhanced I/M for areas that were not intending to rely on reductions from those programs in attainment or RFP SIPs. *See* 89 FR 80850 (October 4, 2024).

IV. Environmental Justice Considerations

In this action, the EPA is stablishing default SIP deadlines for submission of SIP revisions and implementation of the related control requirements for nonattainment areas reclassified as Moderate, Serious, and Severe for current and future ozone NAAQS. In addition, the EPA is codifying its existing interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing certain requirements related to the prior classification level for an ozone nonattainment area. The EPA is also articulating how the default deadlines and codification of applicable requirements following reclassification would apply to nonattainment areas reclassified as Serious under the 2015 ozone NAAQS. This action is intended to comply with the CAA program to ensure that affected air agencies comply with CAA obligations for the applicable nonattainment areas.

As explained in the proposal, it is difficult to assess the environmental justice (EJ) implications of this action because the EPA cannot geographically identify or quantify resulting source-specific emission reductions. However, due to the nature of this action, the EPA believes that it will likely have no adverse impact on any existing disproportionate and adverse effects on communities with EJ concerns. At a minimum, the EPA believes that this action will not worsen any existing air quality and is expected to ensure that the areas affected by the rulemaking will meet applicable requirements to attain and/or maintain national air quality standards.

The EPA reiterates, however, that states have flexibility and discretion under the CAA in implementing their attainment strategies to focus resources on controlling those sources of emissions that directly and adversely affect communities with EJ concerns. As stated in the proposal, the EPA strongly urges states to consider the EJ aspects of any control measures in order to provide health protection for communities with EJ concerns. In addition, the EPA strongly encourages states to work with communities experiencing EJ concerns to develop ozone-related control strategies that most effectively reduce emissions contributing to elevated ozone levels. One way to do this would be for states to increase opportunities for meaningful involvement of community groups during their SIP development processes.

The EPA has resources available to help air agencies consider aspects of EJ in their SIP development processes. The EPA released *EPA Legal Tools to Advance Environmental Justice (EJ Legal Tools)* in 2022 to highlight the various environmental and civil rights law authorities available to the EPA that authorize or address consideration of EJ in its decision-making process as it pertains to environmental laws, including the CAA.[47] *EJ Legal Tools* is also intended to promote meaningful engagement among the EPA and communities.[48] In addition, on September 5, 2024, the EPA announced the release of the final policy, ''*Achieving Health and Environmental Protection Through EPA's Meaningful Engagement Policy.*''[49] This final policy updates the EPA's 2003 Public Involvement Policy that guides the EPA's staff to provide meaningful public involvement in all its programs and regions.[50]

[46] 40 CFR 51.1308(d).

[47] U.S. EPA, EPA Legal Tools to Advance Environmental Justice (May 2022).

[48] *Id.*

[49] U.S. EPA, Achieving Health and Environmental Protection Through EPA's Meaningful Engagement Policy (August 2024).

[50] *See* U.S. EPA, Public Involvement Policy of the U.S. Environmental Protection Agency (May 2003).

V. Judicial Review

The CAA regulations promulgated herein may be challenged in the United States Court of Appeals for the District of Columbia Circuit. Pursuant to section 307(b)(1) of the CAA, petitions for judicial review of the CAA regulations must be filed in that court within 60 days after the date notice of this final action is published in the **Federal Register**. Section 307(b)(1) of the CAA provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect.''

The CAA regulations promulgated herein are ''nationally applicable regulations'' within the meaning of CAA section 307(b)(1). These regulations establish regulatory requirements for all applicable areas across the entire United States to implement provisions of the CAA, including regulations establishing SIP submission and implementation deadlines for all newly reclassified ozone nonattainment areas nationwide, and. regulations codifying which requirements related to the prior classification level for an ozone nonattainment area are no longer applicable after an area's reclassification. Accordingly, under section 307(b)(1) of the CAA, petitions for judicial review of these CAA regulations must be filed in the United States Court of Appeals for the District of Columbia by March 18, 2025.

VI. Severability

This final rule includes new and revised requirements for numerous provisions under the implementation regulations for the national ambient air quality standards for ozone, including deadlines for revisions of implementation plans addressing different statutory requirements of the CAA, deadlines for implementation of different control measures required under different provisions of the CAA, and regulations clarifying statutory provisions associated with an area's former classification that are no longer applicable to that area after the effective date of an area's reclassification. Therefore, this final rule is a multifaceted rule that addresses many separate things for independent reasons, as detailed in each respective portion of this preamble. We intend each portion of this rule to be severable from each other, though we took the approach of including all the parts in one rulemaking rather than promulgating multiple rules to ensure the changes are properly coordinated, even though the changes are not interdependent.

For example, although we address both deadlines for newly applicable requirements for reclassified areas and clarifications regarding which statutory requirements are no longer applicable for reclassified areas, these two sets of regulatory provisions are not interdependent and were issued concurrently in this action for administrative efficiency and clarity to impacted jurisdictions (*i.e.,* states) because both sets of provisions pertain to reclassified ozone nonattainment areas. Furthermore, the deadlines established under each regulatory provision are severable from the others because each deadline is set with consideration of the separate statutory authority governing the applicable requirement. Therefore, the EPA's rationale for establishing the deadline for revisions addressing a penalty fee program for Severe areas is distinct from its rationale for establishing the deadline for revisions addressing other newly applicable requirements. Similarly, the considerations of particular statutory programs provide the foundation for control measure implementation deadlines such that these deadlines are severable from one another. Finally, the provisions codifying the EPA's position regarding which requirements remain due following a reclassification are independent in statutory basis and reasoning from all other provisions in this rule, and therefore are severable from the remaining provisions in this rule. Further, the basis upon which the EPA determined whether each element remained due (*e.g.,* RACT, RFP) or no longer due (attainment demonstrations, RACM, and some contingency measures in some instances) was based on reasoning individualized to the SIP requirement, and therefore any judicial determination of the status of an individual SIP requirement is severable for a determination of any other planning element.

Thus, the EPA has independently considered and adopted each of these portions of the final rule and each is severable should there be judicial review. If a court were to invalidate any one of these elements of the final rule, we intend the remainder of this action to remain effective, as we have designed these regulations to function concurrently but independently from one another even if one or more other parts of the rule has been set aside. For example, if a reviewing court were to invalidate any of the deadlines governing newly applicable requirements for reclassified ozone areas, we intend other regulatory amendments, including non-related deadlines and clarifications about requirements that are no longer applicable, to remain effective. Moreover, this list is not intended to be exhaustive, and should not be viewed as an intention by the EPA to consider other parts of the rule not explicitly listed here as not severable from other parts of the rule.

VII. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action as defined by Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This final rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget (OMB). This action establishes deadlines for submission of required SIP revisions and implementation of the related control requirements for newly reclassified Moderate, Serious, and Severe ozone nonattainment areas. This action also codifies the EPA's existing interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing certain requirements related to the prior classification level for an ozone nonattainment area. Thus, the final action does not impose any new information collection burden under the PRA. OMB has previously approved the EPA's information collection activities contained in the existing regulations and has assigned OMB control number 2060–0695.[51]

[51] On April 30, 2018, the OMB approved the EPA's request for renewal of the previously approved information collection request (ICR). The renewed request expired on April 30, 2021, 3 years after the approval date (*see* OMB Control Number 2060–0695 and ICR Reference Number 201801–2060–003 for EPA ICR No. 2347.03). On April 30, 2021, the OMB published the final 30-day document (86 FR 22959) for the ICR renewal titled ''Implementation of the 8-Hour National Ambient Air Quality Standards for Ozone (Renewal)'' (*see* OMB Control Number 2060–0695 and ICR Reference No: 202104–2060–004 for EPA ICR Number 2347.04). The ICR renewal was approved on February 1, 2022, and the renewed request expires on January 31, 2025.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The SIP submittal and implementation deadlines, and the policy discussion outlining the EPA's interpretation of the status of certain requirements for prior nonattainment classifications following reclassification, do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rule is administrative in nature, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the States for purposes of implementing the NAAQS is established under the CAA.

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

This action does not have Tribal implications, as specified in Executive Order 13175. This action will not impose substantial direct costs upon the Tribes, nor will it preempt Tribal law. The CAA requires SIP revisions for all nonattainment areas that are reclassified from a lower classification to a higher classification. For nonattainment areas that include portions of Indian reservation lands, the implementation plan deadlines that apply to States do not directly apply to Tribes. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not directly concern an environmental health risk or safety risk. Since this action does not directly concern human health, the EPA's policy on Children's Health also does not apply.

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

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

I. National Technology Transfer Advancement Act (NTTAA)

This rule does not involve technical standards.

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

The EPA believes that the human health or environmental conditions that exist prior to this action have the potential to result in disproportionate and adverse human health or environmental effects on communities with EJ concerns. The EPA believes that this action is not likely to change existing disproportionate and adverse effects on communities with EJ concerns. The areas impacted by this action are designated as nonattainment for one or more ozone NAAQS and this action is intended to comply with the CAA program to ensure attainment and maintenance of the NAAQS. From a programmatic perspective, this action is intended to ensure that affected air agencies comply with CAA obligations for the applicable nonattainment areas.

The EPA did not perform an EJ analysis and did not consider EJ as a basis for this action. While it is difficult to assess the EJ implications of this action because the EPA cannot geographically identify or quantify resulting source-specific emission reductions that are ultimately determined by air agencies, the EPA believes that this action is likely to have no impact on any existing disproportionate and adverse effects on communities with EJ concerns. Further, there is no information in the record inconsistent with the stated goals of Executive Orders 12898 or 14096.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

For the reasons stated in the preamble, the EPA is amending Title 40, Chapter I of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards

§ 51.1312 [Amended]

■ 2. Amend § 51.1312 by removing and reserving paragraphs (a)(2)(ii) and (a)(3)(ii).

■ 3. Add subpart DD consisting of §§ 51.1400 through 51.1403 to part 51 to read as follows:

Subpart DD–Requirements for Reclassified Ozone Nonattainment Areas

Sec.

51.1400 Definitions.
51.1401 Applicability of part 51.
51.1402 SIP submission and control measure implementation deadlines for reclassified ozone nonattainment areas.
51.1403 Applicability of ozone SIP requirements for former classification after reclassification.

§ 51.1400 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in § 51.100.

Attainment year means the calendar year in which the attainment year ozone season occurs.

Attainment year ozone season means the full ozone season immediately preceding a nonattainment area's maximum attainment date.

CAA means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2010).

Former attainment date means any attainment date associated with the classification under subpart 2 of part D of title I of the CAA preceding reclassification from a lower classification to a higher classification.

Former classification means any classification under subpart 2 of part D of title I of the CAA preceding reclassification from a lower classification to a higher classification.

Higher classification/lower classification means for purposes of determining which classifications are higher or lower, the classifications are ranked from lowest to highest as follows: Marginal; Moderate; Serious; Severe-15; Severe-17; and Extreme.

I/M refers to the inspection and maintenance programs for in-use vehicles required under the 1990 CAA Amendments and defined by subpart S of 40 CFR part 51.

Initially classified means the first nonattainment classification that becomes effective for an area for a specific ozone NAAQS and does not include reclassification to another classification for that specific NAAQS.

Initially designated means the first designation to nonattainment that becomes effective for an area for a specific ozone NAAQS.

Ozone season means for each state (or portion of a state), the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1(i) for that state (or portion of a state).

§ 51.1401 Applicability of part 51.

The provisions in subparts A through Y, AA, and CC of this part apply to reclassified nonattainment areas for purposes of the ozone NAAQS to the extent they are not inconsistent with the provisions of this subpart.

§ 51.1402 SIP submission and control measure implementation deadlines for reclassified ozone nonattainment areas.

(a) Deadlines for applicable requirements pursuant to a reclassification as Moderate, Serious, or Severe that are 18 months or more after the effective date of reclassification will apply to such reclassified area as though the area were initially designated at that classification.

(b) Deadlines for applicable requirements pursuant to a reclassification as Moderate, Serious, or Severe, where the deadline that would have applied had the area been initially classified at the new classification level at the time of initial nonattainment area designations is less than 18 months after the effective date of reclassification.

(1) *SIP submission deadlines.* (i) For all SIP revisions required pursuant to reclassification (except SIPs addressing CAA section 185 fee programs), the SIP revision deadline is 18 months after the effective date of the relevant reclassification or January 1 of the attainment year, whichever is earlier, unless the Administrator establishes a different deadline in a separate action.

(ii) For SIP revisions addressing CAA section 185 fee programs required pursuant to reclassification, the SIP revision deadline is 36 months after the effective date of the relevant reclassification or January 1 of the attainment year, whichever is earlier, unless the Administrator establishes a different deadline in a separate action.

(2) *Control measure implementation deadlines.* (i) For RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than 18 months after the RACT SIP submittal deadline or the beginning of the attainment year ozone season associated with the area's new attainment deadline, whichever is earlier, unless the Administrator establishes a different deadline in a separate action.

(ii) For the required I/M program pursuant to reclassification, the state shall provide for full implementation of such I/M program as expeditiously as practicable, but no later than 4 years after the effective date of the relevant reclassification, unless the I/M program is needed for attainment by the attainment date or RFP, in which case the state shall provide for full implementation of such I/M program no later than the beginning of the attainment year ozone season.

§ 51.1403 Applicability of ozone SIP requirements for former classification after reclassification.

(a) Upon the effective date of reclassification, the requirements of any subpart of this part with respect to ozone nonattainment planning applicable to the area for the former classification shall apply as follows:

(1) Unless specified in paragraph (a)(2) or (3) of this section, the requirement is unaffected by reclassification and continues to be required for the former classification.

(2) The following requirements are no longer applicable with respect to the former attainment date:

(i) A SIP revision to demonstrate attainment by such date.

(ii) A SIP revision demonstrating adoption of all RACM necessary to demonstrate attainment with respect to such date.

(3) If the reclassification became effective prior to the former attainment date pursuant to CAA section 181(b)(3), the plan requirement for contingency measures for failure to attain by such date is no longer applicable with respect to the former attainment date.

(b) Nothing in this section shall affect the requirements applicable to the nonattainment area under its currently applicable classification and attainment date.

[FR Doc. 2025–00336 Filed 1–16–25; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0511; FRL–12384–01–R10]

Air Plan Approval; AK; Updates to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Alaska State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State of Alaska and approved by the EPA. In this final rule, the EPA is also notifying the public of corrections and clarifying changes in the Code of Federal Regulations tables that identify the materials incorporated by reference into the Alaska SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration and the EPA Regional Office.

DATES: Effective January 17, 2025.

ADDRESSES: The SIP materials for which incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101; and *www.regulations.gov.* To view the materials at the Region 10 Office, the EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional

Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–6357, or *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each State has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each State must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to the EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally approved SIP and are identified in part 52, ''Approval and Promulgation of Implementation Plans,'' of title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the State regulation approved by the EPA is not reproduced in its entirety in 40 CFR part 52 but is ''incorporated by reference.'' This means that the EPA has approved a given State regulation or specified changes to the given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows the EPA and the public to monitor the extent to which a State implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, the EPA from time to time must take action on proposed revisions containing new or revised State regulations. A submission from a State can revise one or more rules in their entirety, or portions of rules. The State indicates the changes in the submission (such as by using redline/strikethrough text) and the EPA then takes action on the requested changes. The EPA establishes a docket for its actions using a unique Docket Identification Number, which is listed in each action. These dockets and the complete submission are available for viewing on *www.regulations.gov.*

On May 22, 1997 (62 FR 27968), the EPA revised the procedures for incorporating by reference, into the CFR, materials approved by the EPA into each SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing the EPA approval of revisions to a SIP, and streamlined the mechanisms for the EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for the EPA to maintain ''SIP Compilations'' that contain the federally approved regulations and source-specific permits submitted by each State agency.

The EPA generally updates these SIP Compilations every few years. Under the revised procedures, the EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular State. The EPA began applying the 1997 revised procedures to the Alaska SIP on April 10, 2014 (79 FR 19820). The EPA subsequently published updates to the IBR materials for Alaska on December 8, 2017 (82 FR 57836) and December 12, 2022 (87 FR 75932).

A. Approved and Incorporated by Reference Regulatory Materials

Since the last IBR update, the EPA approved and incorporated by reference regulatory materials into the Alaska SIP at 40 CFR 52.70(c):

1. Action on March 22, 2023 (88 FR 2873):

- 18 AAC 50.035 (documents, procedures, and methods adopted by reference), except (a)(6), (a)(9), and (b)(4) (State effective 4/16/2022);
- 18 AAC 50.040 (Federal standards adopted by reference), except (a), (b), (c), (d), (e), (g), (j), and (k) (State effective 4/16/2022);
- 18 AAC 50.270 (electronic submission requirements) (State effective 9/7/2022);
- 18 AAC 50.275 (consistency of reporting methodologies) (State effective 9/7/2022); and
- 18 AAC 50.400 (permit administration fees), except (a), (b), (c), and (i) (State effective 9/7/2022).

2. Action on August 9, 2023 (88 FR 53793):

- 18 AAC 50.025 (establishing geographic areas that may need additional pollution control because of special circumstances) (State effective 4/16/2022);
- 18 AAC 50.502 (establishing which types of stationary sources must obtain minor construction and/or operating permits) (State effective 4/14/2022);
- 18 AAC 50.540 (outlining the required contents of an application for a minor construction and/or operating permit) State effective 4/14/2022); and
- 18 AAC 50.542 (establishing the process the state uses to review permit applications from sources, conduct public notice and comment, and issue permits) (State effective 4/14/2022).

3. Action on December 5, 2023 (88 FR 84626):

- 18 AAC 50.075 (solid fuel-fired heating device visible emission standards), except (d)(2) (State effective 11/18/2020).

B. Regulatory Materials Removed From Incorporation by Reference

Since the last IBR update, the EPA also removed the following regulatory materials from the Alaska SIP at 40 CFR 52.70(c):

1. Action on August 9, 2023 (88 FR 53793):

- 18 AAC 50.080 (regulating water vapor emissions from industrial sources that may form ice fog) (State effective 1/18/1997).

II. EPA Action

In this action, the EPA is providing notification of an update to the materials incorporated by reference into the Alaska SIP as of October 1, 2024, and identified in 40 CFR 52.70(c). This update includes SIP materials submitted by Alaska and approved by the EPA since the last IBR update. *See* 87 FR 75932 (December 12, 2022).

III. Good Cause Exemption

The EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs, makes corrections and clarifying changes to the tables in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553 of the APA, an

agency may find good cause where procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and corrections) only reflect existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notification of the updated Alaska SIP Compilation and notification of corrections to the Alaska ''Identification of Plan'' portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP Compilation and the CFR ''Identification of plan'' section (which includes table entry corrections).

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of regulations promulgated by Alaska, previously approved by the EPA and federally effective before October 1, 2024, contained in 40 CFR 52.70(c), *EPA approved laws and regulations,* described in section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, The EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely addresses administrative requirements related to previously approved State law found to meet Federal requirements and does not impose additional requirements beyond those previously imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is an administrative action related to State program approval;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and it will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.'' The CAA and applicable implementing regulations neither prohibit nor require an EJ evaluation. This CAA administrative action to update the incorporation by reference of previously submitted and approved State regulatory materials, the EPA did not consider EJ in this action.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small

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

The EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the Alaska SIP Compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA believes judicial review of this action under section 307(b)(1) is not available.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 13, 2025.

Casey Sixkiller,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart C—Alaska

■ 2. Section 52.70 is amended by revising paragraphs (b) through (e) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section with an EPA approval date prior to October 1, 2024, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notification of any change in the material will be published in the **Federal Register**. Entries in paragraph (c) of this section with EPA approval dates after October 1, 2024, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 10 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 10 EPA Office at 1200 Sixth Avenue, Suite 155, Seattle, WA 98101. To obtain the material, please call (206) 553–6357. You may inspect the material with an EPA approval date prior to October 1, 2024, for Alaska at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.*

(c) *EPA approved laws and regulations.*

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALASKA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Alaska Administrative Code Title 18—Environmental Conservation, Chapter 50—Air Quality Control (18 AAC 50)				
18 AAC 50—Article 1. Ambient Air Quality Management				
18 AAC 50.005	Purpose and Applicability of Chapter	10/1/2004	8/14/2007, 72 FR 45378	
18 AAC 50.007	Local Government Powers or Obligations Under a Local Air Quality Control Program.	2/28/2015	9/8/2017, 82 FR 42457	
18 AAC 50.010	Ambient Air Quality Standards	8/20/2016	8/28/2017, 82 FR 40712	Except (8).
18 AAC 50.015	Air Quality Designations, Classifications, and Control Regions.	11/7/2020	2/10/2022, 87 FR 7722	
18 AAC 50.020	Baseline Dates and Maximum Allowable Increases.	8/20/2016	8/28/2017, 82 FR 40712	
18 AAC 50.025	Visibility and Other Special Protection Areas.	5/16/2022	8/9/2023, 88 FR 53793	
18 AAC 50.030	State Air Quality Control Plan	11/7/2020	2/10/2022, 87 FR 7722	Except (a).
18 AAC 50.035	Documents, Procedures and Methods Adopted by Reference.	4/16/2022	3/22/2023, 88 FR 17159	Except (a)(6), (a)(9), and (b)(4).
18 AAC 50.040	Federal Standards Adopted by Reference	4/16/2022	3/22/2023, 88 FR 17159	Except (a), (b), (c), (d), (e), (g), (j) and (k).
18 AAC 50.045	Prohibitions	10/1/2004	8/14/2007, 72 FR 45378	
18 AAC 50.050	Incinerator Emission Standards	7/25/2008	9/19/2014, 79 FR 56268	
18 AAC 50.055	Industrial Processes and Fuel-Burning Equipment.	9/15/2018	8/29/2019, 84 FR 45419	Except (d)(2)(B).
18 AAC 50.065	Open Burning	3/2/2016	9/8/2017, 82 FR 42457	
18 AAC 50.070	Marine Vessel Visible Emission Standards.	6/21/1998	8/14/2007, 72 FR 45378	
18 AAC 50.075	Solid Fuel-Fired Heating Device Visible Emission Standards.	1/8/2020	9/24/2021, 86 FR 52997	Except (d)(2).
18 AAC 50.076	Solid Fuel-Fired Heating Device Fuel Requirements; Requirements for Wood Sellers.	1/8/2020	9/24/2021, 86 FR 52997	Except (g)(11).
18 AAC 50.077	Standards for Wood-Fired Heating Devices.	11/7/2020	2/10/2022, 87 FR 7722	Except (g).
18 AAC 50.078	Additional Control Measures for a Serious PM–2.5 Nonattainment Area.	1/8/2020	9/24/2021, 86 FR 52997	Except (c) and (d).
18 AAC 50.079	Provisions for Coal-Fired Heating Devices	1/8/2020	9/24/2021, 86 FR 52997	Except (e).
18 AAC 50.100	Nonroad Engines	10/1/2004	8/14/2007, 72 FR 45378	
18 AAC 50.110	Air Pollution Prohibited	5/26/1972	5/31/1972, 37 FR 10842	
18 AAC 50—Article 2. Program Administration				
18 AAC 50.200	Information Requests	10/1/2004	8/14/2007, 72 FR 45378	
18 AAC 50.201	Ambient Air Quality Investigation	10/1/2004	8/14/2007, 72 FR 45378	
18 AAC 50.205	Certification	11/7/2020	2/10/2022, 87 FR 7722	
18 AAC 50.215	Ambient Air Quality Analysis Methods	9/15/2018	8/29/2019, 84 FR 45419	Except (a)(4).
18 AAC 50.220	Enforceable Test Methods	9/15/2018	8/29/2019, 84 FR 45419	Except (c)(1)(A), (B), (C), and (c)(2).
18 AAC 50.225	Owner-Requested Limits	9/15/2018	8/29/2019, 84 FR 45419	
18 AAC 50.230	Preapproved Emission Limits	11/7/2020	2/10/2022, 87 FR 7722	Except (d).
18 AAC 50.245	Air Quality Episodes and Advisories for Air Pollutants Other than PM–2.5.	2/28/2015	9/8/2017, 82 FR 42457	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALASKA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
18 AAC 50.246	Air Quality Episodes and Advisories for PM–2.5.	2/28/2015	9/8/2017, 82 FR 42457	
18 AAC 50.250	Procedures and Criteria for Revising Air Quality Classifications.	11/7/2020	2/10/2022, 87 FR 7722	
18 AAC 50.260	Guidelines for Best Available Retrofit Technology under the Regional Haze Rule.	9/15/2018	8/29/2019, 84 FR 45419	
18 AAC 50.270	Electronic Submission Requirements	9/7/2022	3/22/2023, 88 FR 17159	
18 AAC 50.275	Consistency of Reporting Methodologies	9/7/2022	3/22/2023, 88 FR 17159	
18 AAC 50—Article 3. Major Stationary Source Permits				
18 AAC 50.301	Permit Continuity	10/1/2004	8/14/2007, 72 FR 45378	
18 AAC 50.302	Construction Permits	9/14/2012	9/19/2014, 79 FR 56268	Except (a)(3).
18 AAC 50.306	Prevention of Significant Deterioration (PSD) Permits.	1/4/2013	9/19/2014, 79 FR 56268	
18 AAC 50.311	Nonattainment Area Major Stationary Source Permits.	11/7/2020	2/10/2022, 87 FR 7722	
18 AAC 50.345	Construction, Minor and Operating Permits: Standard Permit Conditions.	9/15/2018	8/29/2019, 84 FR 45419	Except (b), (c)(3), and (l).
18 AAC 50—Article 4. User Fees				
18 AAC 50.400	Permit Administration Fees	9/7/2022	3/22/2023, 88 FR 45419	Except (a), (b), (c), and (i).
18 AAC 50—Article 5. Minor Permits				
18 AAC 50.502	Minor Permits for Air Quality Protection	5/16/2022	8/9/2023, 88 FR 53793	
18 AAC 50.508	Minor Permits Requested by the Owner or Operator.	12/9/2010	9/19/2014, 79 FR 56268	
18 AAC 50.510	Minor Permit—Title V Permit Interface	12/9/2010	9/19/2014, 79 FR 56268	
18 AAC 50.540	Minor Permit: Application	5/16/2022	8/9/2023, 88 FR 53793	
18 AAC 50.542	Minor Permit: Review and Issuance	5/16/2022	8/9/2023, 88 FR 53793	
18 AAC 50.544	Minor Permits: Content	12/9/2010	9/19/2014, 79 FR 56268	
18 AAC 50.546	Minor Permits: Revisions	7/15/2008	9/19/2014, 79 FR 56268	Except (b).
18 AAC 50.560	General Minor Permits	9/15/2018	8/29/2019, 84 FR 45419	
18 AAC 50—Article 7. Transportation Conformity				
18 AAC 50.700	Purpose	4/17/2015	9/8/2015; 80 FR 53735	
18 AAC 50.705	Applicability	4/17/2015	9/8/2015; 80 FR 53735	
18 AAC 50.712	Agency Responsibilities	4/17/2015	9/8/2015; 80 FR 53735	
18 AAC 50.715	Interagency Consultation Procedures	3/2/2016	8/28/2017, 82 FR 40712	
18 AAC 50.720	Public Involvement	3/2/2016	8/28/2017, 82 FR 40712	
18 AAC 50.740	Written Comments	4/17/2015	9/8/2015, 80 FR 53735	
18 AAC 50.745	Resolving Conflicts	4/17/2015	9/8/2015, 80 FR 53735	
18 AAC 50.750	Exempt Projects	4/17/2015	9/8/2015, 80 FR 53735	
18 AAC 50—Article 9. General Provisions				
18 AAC 50.900	Small Business Assistance Program	10/1/2004	8/14/2007, 72 FR 45378	
18 AAC 50.990	Definitions	11/7/2020	2/10/2022, 87 FR 7722	
Alaska Administrative Code Title 18—Environmental Conservation, Chapter 52 Emissions Inspection and Maintenance Requirements (18 AAC 52)				
18 AAC 52—Article 1. Emissions Inspection and Maintenance Requirements				
18 AAC 52.005	Applicability and General Requirements	5/17/2008	3/22/2010, 75 FR 13436	
18 AAC 52.007	Suspension and Reestablishment of I/M Requirements.	5/17/2008	3/22/2010, 75 FR 13436	
18 AAC 52.010	I/M Program Administration Office	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.015	Motor Vehicle Maintenance Requirements	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.020	Certificate of Inspection Requirements	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.025	Visual Identification of Certificate of Inspection, Waivers, and Exempt Vehicles.	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.030	Department-Administered I/M Program	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52.035	I/M Program Administered by an Implementing Agency.	3/27/2002	3/22/2010, 75 FR 13436	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALASKA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
18 AAC 52.037	Reporting Requirements for an I/M Program Administered by an Implementing Agency.	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.040	Centralized Inspection Program	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52.045	Decentralized Inspection Program	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52.050	Emissions Standards	3/27/2002	3/22/2010, 75 FR 13436	
18 AAC 52.055	Alternative Requirements, Standards and Test Procedures.	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.060	Waivers	5/17/2008	3/22/2010, 75 FR 13436	
18 AAC 52.065	Emissions-Related Repair Cost Minimum	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.070	Referee Facility	3/27/2002	3/22/2010, 75 FR 13436	
18 AAC 52.075	Kit Cars and Custom-Manufactured Vehicles.	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52.080	Grey Market Vehicles	3/27/2002	3/22/2010, 75 FR 13436	
18 AAC 52.085	Vehicle Modifications	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.090	Repair of Nonconforming Vehicles	1/1/1998	12/29/1999, 64 FR 72940	
18 AAC 52.095	Minimum Certification Requirements	1/1/1998	12/29/1999, 64 FR 72940	
18 AAC 52.100	Enforcement Procedures for Violations by Motorists.	12/14/2006	3/22/2010, 75 FR 13436	
18 AAC 52.105	Enforcement Procedures for Violations by Certified Mechanics or Stations.	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52—Article 4. Certification Requirements				
18 AAC 52.400	Mechanic Certification	1/1/1998	12/29/1999, 64 FR 72940	
18 AAC 52.405	Certified Mechanic Examinations	3/27/2002	3/22/2010, 75 FR 13436	
18 AAC 52.410	Training Course Certification	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.415	I/M Station Certification	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.420	Equipment Certification	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.425	Renewal of Certification	1/1/1998	12/29/1999, 64 FR 72940	
18 AAC 52.430	Duty to Report Change in Status	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52.440	Monitoring of Certified Mechanics and Stations.	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.445	Suspension or Revocation of Certification	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52—Article 5. Certified Station Requirements				
18 AAC 52.500	General Operating Requirements	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.505	Display of Certified Station Sign	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52.510	Display of Certificates	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.515	Inspection Charges	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.520	Required Tools and Equipment	2/18/2006	3/22/2010, 75 FR 13436	
18 AAC 52.525	Remote Station Operation	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.527	Prescreening Prohibited	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.530	Preliminary Inspection	1/1/2000	1/8/2002, 67 FR 822	
18 AAC 52.535	Test Abort Conditions	3/27/2002	3/22/2010, 75 FR 13436	
18 AAC 52.540	Official I/M Testing	3/27/2002	3/22/2010, 75 FR 13436	
18 AAC 52.545	Parts on Order	1/1/1998	12/29/1999, 64 FR 72940	
18 AAC 52.546	Unavailable Parts	1/1/1998	12/29/1999, 64 FR 72940	
18 AAC 52.550	Recordkeeping Requirements	2/1/1994	4/5/1995, 60 FR 17232	
18 AAC 52—Article 9. General Provisions				
18 AAC 52.990	Definitions	2/18/2006	3/22/2010, 75 FR 13436	
Alaska Administrative Code Title 18—Environmental Conservation, Chapter 53 Fuel Requirements for Motor Vehicles (18 AAC 53)				
18 AAC 53—Article 1. Oxygenated Gasoline Requirements				
18 AAC 53.005	Purpose and Applicability; General Requirements.	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.007	Dispenser Labeling	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.010	Control Periods and Control Areas	2/20/2004	6/23/2004, 69 FR 34935	
18 AAC 53.020	Required Oxygen Content	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.030	Sampling, Testing and Oxygen Content Calculations.	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.035	Per Gallon Method of Compliance	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.040	Averaging Oxygen Content Method of Compliance.	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.045	Oxygen Credits and Debits	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.060	Oxygenated Gasoline Blending	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.070	Registration and Permit	10/31/1997	12/29/1999, 64 FR 72940	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALASKA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
18 AAC 53.080	Car Fees	12/30/2000	1/08/2002, 67 FR 822	
18 AAC 53.090	Recordkeeping	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.100	Reporting	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.105	Product Transfer Document	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.120	Inspection and Sampling	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.130	Liability for Violation	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.140	Defenses for Violation	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.150	Temporary Variances	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.160	Quality Assurance Program	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.170	Attest Engagements	10/31/1997	12/29/1999, 64 FR 72940	
18 AAC 53.190	Suspension and Reestablishment of Control Period.	2/20/2004	6/23/2004, 69 FR 34935	
18 AAC 53—Article 9. General Provisions				
18 AAC 53.990	Definitions	10/31/1997	12/29/1999, 64 FR 72940	

TABLE 2 TO PARAGRAPH (c)—ALASKA STATE STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Title 45—Trade and Commerce, Chapter 45.45. Trade Practices				
Sec. 45.45.400	Prohibited Transfer of Used Cars	6/25/1993	11/18/1998, 63 FR 63983	Except (b).
Title 46—Water, Air, Energy, and Environmental Conservation, Chapter 46.14. Air Quality Control				
Sec. 46.14.550	Responsibilities of Owner and Operator; Agent for Service.	1/4/2013	9/19/2014, 79 FR 56268	
Sec. 46.14.560	Unavoidable Malfunctions and Emergencies.	6/25/1993	11/18/1998, 63 FR 63983	
Sec. 46.14.990	Definitions	1/4/2013	9/19/2014, 79 FR 56268	Except (1) through (3), (6), (7), (9) through (14), (19) through (26), and (28).

TABLE 3 TO PARAGRAPH (c)—CITY AND BOROUGH CODES AND ORDINANCES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Anchorage Municipal Code and Ordinances				
Anchorage Municipal Code 21.85.030.	Improvement Requirements by Improvement Area.	1/16/1987 (city effective date)	8/13/1993, 58 FR 43084	Eagle River PM Plan—Contingency Plan.
Anchorage Municipal Code 21.45.080.W.7.	Paving	9/24/1991 (city effective date)	8/13/1993, 58 FR 43084	Section W.7. Eagle River PM Plan—Contingency Plan.
Anchorage Ordinance 2006–13.	An ordinance amending the Anchorage Municipal Code, Chapters 15.80 and 15.85 to comply with State I/M regulations and to comply with DMV Electronic Procedures.	2/14/2006 (city approval date)	3/22/2010, 75 FR 13436	Anchorage Transportation Control Program—Carbon Monoxide.
City and Borough of Juneau Ordinances				
Ordinance of the City and Borough of Juneau, No. 91–53.	An Ordinance amending the wood smoke control fine schedule to increase the fines for violations of the wood smoke control code.	1/6/1992 (city adoption date)	3/24/1994, 59 FR 13884	Mendenhall Valley PM Plan.
Ordinance of the City and Borough of Juneau No. 93–01.	Setting boundaries for regrading and surfacing.	2/8/1993 (city adoption date)	3/24/1994, 59 FR 13884	Mendenhall Valley PM Plan.

TABLE 3 TO PARAGRAPH (c)—CITY AND BOROUGH CODES AND ORDINANCES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Ordinance of the City and Borough of Juneau, No. 93–06.	Setting boundaries for regrading and surfacing.	4/5/1993 (city adoption date)	3/24/1994, 59 FR 13884	Mendenhall Valley PM Plan.
Ordinance of the City and Borough of Juneau, No. 93–39am.	An Ordinance creating Local Improvement District No. 77 of the City and Borough, setting boundaries for drainage and paving of streets in the Mendenhall Valley.	11/17/1993 (city adoption date)	3/24/1994, 59 FR 13884	Mendenhall Valley PM Plan.
Ordinance of the City and Borough of Juneau, Serial No. 2008–28.	An Ordinance Amending the Woodsmoke Control Program Regarding Solid Fuel-Fired Burning Devices.	9/8/2008 (city adoption date)	5/9/2013, 78 FR 27071	Mendenhall Valley PM Limited Maintenance Plan.
Fairbanks North Star Borough Ordinances and Code				
Fairbanks North Star Borough Ordinance No. 2001–17.	Mandating a Fairbanks North Star Borough Motor Vehicle Plug-in Program.	4/12/2001 (borough adoption date)	2/4/2002, 67 FR 5064	Fairbanks Transportation Control Program—Carbon Monoxide.
Fairbanks North Star Borough Ordinance No. 2003–71.	An Ordinance amending the Carbon Monoxide Emergency Episode Prevention Plan including implementing a Woodstove Control Ordinance.	10/30/2003 (borough adoption date)	7/27/2004, 69 FR 44601	Fairbanks Carbon Monoxide Maintenance Plan.
Chapter 21.28—$PM^{2.5}$ Air Quality Control Program				
21.28.010	Definitions	3/2/2015 (borough effective date)	9/8/2017, 82 FR 42457	
21.28.020	Borough listed appliances	1/15/2016 (borough effective date)	9/8/2017, 82 FR 42457	
21.28.030	Prohibited acts	10/1/2016 (borough effective date)	9/8/2017, 82 FR 42457	Except H and J.
21.28.050	Forecasting exceedances and restrictions in the air quality control zone during an alert.	6/26/2015 (borough effective date)	9/8/2017, 82 FR 42457	
21.28.060	No other adequate source of heat determination.	8/12/2016 (borough effective date)	9/8/2017, 82 FR 42457	

(d) *EPA approved state source-specific requirements.*

TABLE 4 TO PARAGRAPH (d)—EPA-APPROVED ALASKA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Order/permit number	State effective date	EPA approval date	Explanations
None.				

(e) *EPA approved nonregulatory provisions and quasi-regulatory measures.*

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
State of Alaska Air Quality Control Plan: Volume II. Analysis of Problems, Control Actions				
Section I. Background				
II.I.A. Introduction	Statewide	1/8/1997	12/29/1999, 64 FR 72940.	
II.I.B. Air Quality Control Regions	Statewide	1/8/1997	12/29/1999, 64 FR 72940.	
II.I.C. Attainment/nonattainment Designations	Statewide	1/8/1997	12/29/1999, 64 FR 72940.	
II.I.D. Prevention of Significant Deterioration Designations.	Statewide	1/8/1997	12/29/1999, 64 FR 72940.	
II.I.E. New Source Review	Statewide	1/8/1997	12/29/1999, 64 FR 72940.	
Section II. State Air Quality Control Program				
II.II. State Air Quality Control Program	Statewide	7/9/2012	10/22/2012, 77 FR 64425.	
Section III. Areawide Pollutant Control Program				
II.III.A. Statewide Carbon Monoxide Control Program.	Statewide	6/5/2008	3/22/2010, 75 FR 13436.	
II.III.B. Anchorage Transportation Control Program.	Anchorage	1/4/2002	9/18/2002, 67 FR 58711.	
II.III.B.11. Anchorage Carbon Monoxide Maintenance Plan.	Anchorage	9/20/2011	3/3/2014, 79 FR 11707.	
II.III.B.12. Anchorage Second 10-year Carbon Monoxide Limited Maintenance Plan.	Anchorage	4/22/2013	3/3/2014, 79 FR 11707.	
II.III.C. Fairbanks Transportation Control Program.	Fairbanks	8/30/2001	2/4/2002, 67 FR 5064.	
II.III.C.11. Fairbanks Carbon Monoxide Redesignation and Maintenance Plan.	Fairbanks	9/15/2009	3/22/2010, 75 FR 13436.	
II.III.C.12. Fairbanks Second 10-year Carbon Monoxide Limited Maintenance Plan.	Fairbanks	4/22/2013	8/9/2013, 78 FR 48611.	
II.III.D. Particulate Matter	Statewide	10/15/1991	8/13/1993, 58 FR 43084.	
II.III.D.2. Eagle River PM_{10} Control Plan	Eagle River	10/15/1991	8/13/1993, 58 FR 43084.	
II.III.D.2.a. Eagle River PM_{10} Limited Maintenance Plan.	Eagle River	9/29/2010	1/7/2013, 78 FR 900.	
II.III.D.2.b. Second 10-year PM_{10} Limited Maintenance Plan.	Eagle River	11/10/2020	11/9/2021, 86 FR 62096.	
II.III.D.3. Mendenhall Valley PM_{10} Control Plan	Mendenhall Valley	6/22/1993	3/24/1994, 59 FR 13884.	
II.III.D.3.a. Mendenhall Valley PM_{10} Limited Maintenance Plan.	Mendenhall Valley	5/14/2009	5/9/2013, 78 FR 27071.	
II.III.D.3.b. Mendenhall Valley Second 10-year Limited Maintenance Plan.	Mendenhall Valley	11/10/2020	10/25/2021, 86 FR 58807.	
II.III.D.4. Interstate Transport of Particulate Matter.	Statewide	2/7/2008	10/15/2008, 73 FR 60955.	
II.III.D.5. Fairbanks North Star Borough $PM_{2.5}$ Control Plan.	Fairbanks North Star Borough.	11/23/2016	9/8/2017, 82 FR 42457	Fairbanks North Star Borough $PM_{2.5}$ Moderate Area Plan.
II.III.E. Ice Fog	Statewide	1/18/1980	7/5/1983, 48 FR 30623.	
II.III.F. Open Burning	Statewide	4/4/2011	2/14/2013, 78 FR 10546.	
II.III.F.1. In Situ Burning Guidelines for Alaska	Statewide	4/4/2011	2/14/2013, 78 FR 10546.	Revision 1, August 2008.
II.III.G. Wood Smoke Pollution Control	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
II.III.H. Lead Pollution Control	Statewide	11/15/1983	1/3/1984, 49 FR 67.	
II.III.I. Transportation Conformity	Statewide	4/17/2015	9/8/2015, 80 FR 53735.	
II.III.I.1. Transportation Conformity Supplement	Statewide	7/29/2015	9/8/2015, 80 FR 53735	Clarification re: access to public records: AS 40.25.110, AS 40.25.115, and 2 AAC 96.

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
II.III.J. General Conformity	Statewide	12/05/1994	9/27/1995, 60 FR 49765.	
II.III.K. Area Wide Pollutant Control Program for Regional Haze.	Statewide	4/4/2011	2/14/2013, 78 FR 10546.	
Section IV. Point Source Control Program				
II.IV.A. Summary	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
II.IV.B. State Air Quality Regulations	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
II.IV.C. Local Programs	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
II.IV.D. Description of Source Categories and Pollutants.	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
II.IV.E. Point Source Control	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
II.IV.F. Facility Review Procedures	Statewide	9/12/1988	7/31/1989, 54 FR 31522.	
II.IV.G. Application Review and Permit Development.	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
II.IV.H. Permit Issuance Requirements	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
Section V. Ambient Air Monitoring				
II.V.A. Purpose	Statewide	1/18/1980	4/15/1981, 46 FR 21994.	
II.V.B. Completed Air Monitoring Projects	Statewide	1/18/1980	4/15/1981, 46 FR 21994.	
II.V.C. Air Monitoring Network	Statewide	1/18/1980; 7/11/1994	4/15/1981, 46 FR 21994; 4/5/1995, 60 FR 17237.	
II.V.E. Annual Review	Statewide	1/18/1980	4/15/1981, 46 FR 21994.	
State of Alaska Air Quality Control Plan: Volume III. Appendices				
Section II. State Air Quality Control Program				
III.II.A. State Air Statutes	Statewide	12/11/2006	3/22/2010, 75 FR 13436.	Except 46.03.170.
III.II.A.1. State Attorney General Opinions on Legal Authority.	Statewide	12/11/2006	3/22/2010, 75 FR 13436.	
III.II.B. Municipality of Anchorage and ADEC Agreements.	Anchorage	4/22/2013	3/3/2014, 79 FR 11707.	
III.II.C. Fairbanks North Star Borough and ADEC Agreements.	Fairbanks	12/11/2006	3/22/2010, 75 FR 13436.	
III.II.D. CAA Section 110 Infrastructure Certification Documentation and Supporting Documents.	Statewide	10/25/2018	12/23/2019, 84 FR 70428.	
III.II.D.1. Attachment 1—Public Official Financial Disclosure (2 AAC 50.010 through 2 AAC 50.200).	Statewide	7/9/2012	10/22/2012, 77 FR 64425.	Approved for purposes of CAA section 128.
III.II.D.2. Attachment 2—Executive Branch Code of Ethics (9 AAC 52.010 through 9 AAC 52.990).	Statewide	7/9/2012	10/22/2012, 77 FR 64425.	Approved for purposes of CAA section 128.
Section III. Area Wide Pollutant Control Program				
III.III.A. I/M Program Manual	Statewide	6/5/2008	3/22/2010, 75 FR 13436.	
III.III.B. Municipality of Anchorage	Anchorage	4/22/2013	3/3/2014, 79 FR 11707.	
III.III.C. Fairbanks	Fairbanks	4/22/2013	8/9/2013, 78 FR 48611.	
III.III.D. Particulate Matter	Statewide	10/15/1991	8/13/1993, 58 FR 43084.	
III.III.D.2. Eagle River PM_{10} Control Plan	Eagle River	11/10/2020	11/9/2021, 86 FR 62096.	
III.III.D.3. Control Plan for the Mendenhall Valley of Juneau.	Mendenhall Valley	11/10/2020	10/25/2021, 86 FR 58807.	

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
III.III.D.5. Fairbanks North Star Borough $PM_{2.5}$ Control Plan.	Fairbanks North Star Borough.	11/23/2016	9/8/2017, 82 FR 42457	Only with respect to the Fairbanks North Star Borough $PM_{2.5}$ Moderate Area Plan.
III.III.G. Ordinance of the City and Borough of Juneau.	Juneau	11/15/1983	4/24/1984, 49 FR 17497.	
III.III.H. Support Documents for Lead Plan	Statewide	11/15/1983	1/3/1984, 49 FR 67.	
III.III.K. Area wide Pollutant Control Program for Regional Haze.	Statewide	4/4/2011	2/14/2013, 78 FR 10546.	
Section IV. Point Source Control Program				
III.IV. Point Source Control Program	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
III.IV.1. PSD Area Classification and Reclassification.	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
III.IV.2. Compliance Assurance	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
III.IV.3. Testing Procedures	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
Section V. Ambient Air Monitoring				
III.V. Ambient Air Monitoring	Statewide	11/15/1983	4/24/1984, 49 FR 17497.	
Section VI. Small Business Assistance Program				
III.VI. Small Business Assistance Program	Statewide	4/18/1994	9/5/1995, 60 FR 46021.	
Infrastructure and Interstate Transport				
Interstate Transport Requirements—1997 Ozone and 1997 $PM_{2.5}$ NAAQS.	Statewide	2/7/2008	10/15/2008, 73 FR 60955.	Approved SIP for purposes of CAA section 110(a)(2)(D)(i) for the 1997 Ozone and 1997 $PM_{2.5}$ NAAQS.
Infrastructure Requirements—1997 Ozone NAAQS.	Statewide	7/9/2012	10/22/2012, 77 FR 64425.	Approved SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 1997 Ozone NAAQS.
Interstate Transport Requirements—2008 Ozone and 2006 $PM_{2.5}$ NAAQS.	Statewide	3/29/2011	8/4/2014, 79 FR 45103	Approved SIP for purposes of CAA section 110(a)(2)(D)(i)(I) for the 2008 Ozone and 2006 $PM_{2.5}$ NAAQS.
Interstate Transport Requirements—2008 Lead NAAQS.	Statewide	7/9/2012	8/4/2014, 79 FR 45103	Approved SIP for purposes of CAA section 110(a)(2)(D)(i)(I) for the 2008 Lead NAAQS.
Infrastructure Requirements—1997 $PM_{2.5}$ NAAQS.	Statewide	7/9/2012	11/10/2014, 79 FR 66651.	Approved SIP for purposes of CAA section 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (H), (J), (K), (L), and (M) for the 1997 $PM_{2.5}$ NAAQS.
Infrastructure Requirements—2006 $PM_{2.5}$ NAAQS.	Statewide	7/9/2012, 3/29/2011	11/10/2014, 79 FR 66651.	Approved SIP for purposes of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (H), (J), (K), (L), and (M) for the 2006 $PM_{2.5}$ NAAQS.

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Infrastructure Requirements—2008 Ozone NAAQS.	Statewide	7/9/2012, 3/29/2011	11/10/2014, 79 FR 66651.	Approved SIP for purposes of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2008 Ozone NAAQS.
Infrastructure Requirements—2010 NO_2 NAAQS	Statewide	5/12/2015	5/12/2017, 82 FR 22081.	Approved SIP for purposes of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 NO_2 NAAQS.
Infrastructure Requirements—2010 SO_2 NAAQS	Statewide	5/12/2015	5/12/2017, 82 FR 22081.	Approved SIP for purposes of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 SO_2 NAAQS.
Interstate Transport Requirements—2015 Ozone NAAQS.	Statewide	10/25/2018	12/18/2019, 84 FR 69331.	Approved SIP for purposes of CAA section 110(a)(2)(D)(i)(I) for the 2015 Ozone NAAQS.
Infrastructure Requirements—2015 Ozone NAAQS.	Statewide	10/25/2018	12/23/2019, 84 FR 70428.	Approved SIP for purposes of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 Ozone NAAQS.
Regulations Approved but not Incorporated by Reference				
18 AAC 50.076(g)(11) Solid Fuel-fired Heating Device Fuel Requirements; Registration of Commercial Wood Sellers.	Statewide	11/26/2016	9/8/2017, 82 FR 42457.	
21.28.030.J Prohibited Acts. Penalties	Fairbanks North Star Borough.	10/1/2016 (borough effective date)	9/8/2017, 82 FR 42457	FNSB Code Chapter 21.28 $PM_{2.5}$ Air Quality Control Program.
21.28.040 Enhanced voluntary removal, replacement and repair program.	Fairbanks North Star Borough.	1/15/2016 (borough effective date)	9/8/2017, 82 FR 42457	FNSB Code Chapter 21.28 $PM_{2.5}$ Air Quality Control Program.
21.28.070 Voluntary burn cessation program	Fairbanks North Star Borough.	4/24/2015 (borough effective date)	9/8/2017, 82 FR 42457	FNSB Code Chapter 21.28 $PM_{2.5}$ Air Quality Control Program.
Recently Approved Plans				
II.III.D.5.11 Fairbanks Emergency Episode Plan	Fairbanks North Star Borough.	11/28/2018	6/5/2019, 84 FR 26019	Revision to II.III.D.5.
III.III.D.5.12 Appendix to Volume II. Section III.D.5.	Fairbanks North Star Borough.	11/28/2018	6/5/2019, 84 FR 26019	Revision to pages 68 through 84 of III.III.D.5.
II.III.D.7.06 Fairbanks Emissions Inventory Data	Fairbanks North Star Borough.	12/13/2019	9/24/2021, 86 FR 52997.	Approved for purposes of the Fairbanks Serious Plan 2013 base year emissions inventory.
III.III.D.7.06 Appendix to Fairbanks Emissions Inventory Data.	Fairbanks North Star Borough.	12/13/2019	9/24/2021, 86 FR 52997.	Approved for purposes of the Fairbanks Serious Plan 2013 base year emissions inventory.

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
II.III.D.7.08 Fairbanks Modeling	Fairbanks North Star Borough.	12/13/2019	9/24/2021, 86 FR 52997.	Approved for purposes of the Fairbanks Serious Plan $PM_{2.5}$ precursor demonstration for NO_X and VOC emissions as it relates to BACM/BACT control measure requirements.
II.III.D.7.12 Fairbanks Emergency Episode Plan	Fairbanks North Star Borough.	12/15/2020	9/24/2021, 86 FR 52997.	
II.III.D.7.01 Executive Summary	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	
II.III.D.7.02 Background and Overview of $PM_{2.5}$ Rule.	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	
III.III.D.7.02 Appendix to Background and Overview of $PM_{2.5}$ Rule.	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	
II.III.D.7.03 Nonattainment Area Boundary and Design Episode Selection.	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	
III.III.D.7.03 Appendix to Nonattainment Area Boundary and Design Episode Selection.	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	
II.III.D.7.04 Ambient Air Quality and Trends	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	
II.III.D.7.05 $PM_{2.5}$ Network and Monitoring Program.	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	
III.III.D.7.05 Appendix to $PM_{2.5}$ Network and Monitoring Program.	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	
II.III.D.7.06 Fairbanks Emissions Inventory Data	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	Approved for purposes of the Fairbanks 189(d) Plan 2019 base year emissions inventory.
III.III.D.7.06 Appendix to Fairbanks Emissions Inventory Data.	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	Approved for purposes of the Fairbanks 189(d) Plan 2019 base year emissions inventory.

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
II.III.D.7.07 Control Strategies	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	Approved for purposes of the Fairbanks Serious Plan and Fairbanks 189(d) Plan for the following emission source categories: solid fuel home heating device; residential and commercial fuel oil combustion; charbroiler; used oil burner; incinerator; $PM_{2.5}$ and NH_3 BACT determination for Doyon-Fort Wainwright Central Heating and Power Plant; $PM_{2.5}$ and NH_3 BACT determination for the University of Alaska Fairbanks Campus Power Plant except for the $PM_{2.5}$ BACT determination for the three small diesel fired engines (EUs 23, 26 and 27); $PM_{2.5}$ and NH_3 BACT determinations for Golden Valley Electric Association Zehnder Power Plant; $PM_{2.5}$ and NH_3 BACT Determinations for the Golden Valley Electric Association North Pole Power Plant; and Nonattainment New Source Review Requirements.

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
III.III.D.7.07 Appendix to Control Strategies	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	Approved for purposes of the Fairbanks Serious Plan and Fairbanks 189(d) Plan for the following emission source categories: solid fuel home heating device; residential and commercial fuel oil combustion; charbroiler; used oil burner; incinerator; $PM_{2.5}$ and NH_3 BACT determination for Doyon-Fort Wainwright Central Heating and Power Plant; $PM_{2.5}$ and NH_3 BACT determination for the University of Alaska Fairbanks Campus Power Plant except for the $PM_{2.5}$ BACT determination for the three small diesel fired engines (EUs 23, 26 and 27); $PM_{2.5}$ and NH_3 BACT determinations for Golden Valley Electric Association Zehnder Power Plant; $PM_{2.5}$ and NH_3 BACT Determinations for the Golden Valley Electric Association North Pole Power Plant; and Nonattainment New Source Review Requirements.
II.III.D.7.08 Modeling	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	Approved for purposes of the Fairbanks 189(d) Plan for the $PM_{2.5}$ precursor demonstration for NO_X and VOC emissions as it relates to BACM/BACT control measure requirements and control strategy requirements for areas subject to CAA section 189(d).
III.III.D.7.08 Appendix to Modeling	Fairbanks North Star Borough.	12/15/2020	12/5/2023; 88 FR 84626.	Approved for purposes of the Fairbanks 189(d) Plan for the $PM_{2.5}$ precursor demonstration for NO_X and VOC emissions as it relates to BACM/BACT control measure requirements and control strategy requirements for areas subject to CAA section 189(d).

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
II.III.D.7.13 Assurance of Adequacy	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	
III.III.D.7.13 Appendix to Assurance of Adequacy	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	
II.III.D.7.15 Acronyms and Abbreviations	Fairbanks North Star Borough.	12/13/2019	12/5/2023; 88 FR 84626.	

[FR Doc. 2025–01120 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0430, FRL–12243–02–R10]

Air Plan Approval; Washington; Olympic Region Clean Air Agency, Recreational Fires

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Washington State Implementation Plan (SIP) that was submitted by the Department of Ecology (Ecology) in coordination with the Olympic Region Clean Air Agency (ORCAA). In 2013, Ecology and ORCAA inadvertently submitted for incorporation into the SIP a ban on small, recreational fires in Thurston County. These fires are defined as having a maximum pile size of three feet in diameter by two feet high using seasoned firewood or charcoal, generally associated with backyard, summer campfires. Ecology and ORCAA provided a review of the historical record to demonstrate that the ban on recreational fires was not relied upon for attainment, maintenance, or reasonable further progress in the Thurston County area. Ecology and ORCAA also provided data to demonstrate that removing the ban on recreational fires would not interfere with maintenance of the national ambient air quality standards. Therefore, we are approving the request by Ecology and ORCAA to remove this provision from the SIP.

DATES: This final rule is effective February 18, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2024–0430. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–0256 or *hunt.jeff@epa.gov.*

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

I. Background

On October 24, 2024, the EPA proposed to approve revisions to the Washington SIP to remove a ban on small, recreational fires in Thurston County (89 FR 84842). The reasons for our proposed action are included in the proposal and will not be restated here. The public comment period closed on November 25, 2024. We received two comments from members of the public. The full text of the comments may be found in the docket for this action. We have summarized the comments in the following section II. of this preamble.

II. Comments

The first commenter conveyed overall support for our proposed action. The EPA acknowledges the commenter's support.

The second commenter expressed concern about air emissions from cannabis plants and stated there is a need to study volatile organic compound (VOC) emissions from the plants and how such emissions may contribute to ozone formation. This comment is outside the scope of this action. The revisions to Washington's SIP do not relate to cannabis production in general or VOC emissions from cannabis production in particular. Rather, the revisions to Washington's SIP remove a ban on small, recreational fires using seasoned firewood or charcoal. In addition, the commenter did not indicate that EPA approval of the SIP submissions is inconsistent with the Clean Air Act.

Therefore, for the reasons stated in this preamble and our proposed action on October 24, 2024, we are finalizing our action as proposed (89 FR 84842).

III. Final Action

The EPA is approving ORCAA regulation 6.2.7, State effective March 6, 2023, and incorporating it by reference into the Washington SIP at 40 CFR 52.2470(c)—*Table 6—Additional Regulations Approved for the Olympic Region Clean Air Agency (ORCAA) Jurisdiction.* This action repeals a ban on recreational fires within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries of these cities. Based on the demonstration provided by Ecology and ORCAA, we determined that the revision will not interfere with maintenance of the national ambient air quality standards or other applicable requirements of the Clean Air Act.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of ORCAA regulation 6.2.7, State effective March 6, 2023, as described in section III of this preamble and set forth in the amendments to 40 CFR part 52 in this document. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The air agency did not evaluate environmental justice considerations as part of its SIP submission; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898/14096 of achieving environmental justice for communities with EJ concerns.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and it will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 18, 2025.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 7, 2025.

Daniel Opalski,

Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. In § 52.2470, amend paragraph (c), table 6 by revising the entry ''6.2.7'' to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

[1] 62 FR 27968 (May 22, 1997).

TABLE 6—ADDITIONAL REGULATIONS APPROVED FOR THE OLYMPIC REGION CLEAN AIR AGENCY (ORCAA) JURISDICTION

[Applicable in Clallam, Grays Harbor, Jefferson, Mason, Pacific, and Thurston counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations; any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Olympic Region Clean Air Agency Regulations Rule 6.2 Outdoor Burning				
*	*	*	*	*
6.2.7	Recreational Burning	3/6/23	1/17/2025, [INSERT FIRST PAGE OF **Federal Register** CITATION].	
*	*	*	*	*

* * * * *

[FR Doc. 2025–00559 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0587; FRL–11571–02–R8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This rule is effective on February 18, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2023–0587. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air and Radiation Division, EPA, Region 8, Mail code 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–7104, email address: *clark.adam@epa.gov*.

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

I. Background

The background for this action is discussed in detail in our October 15, 2024, proposal (89 FR 82948). In that document we proposed to revise the 2008 Billings/Laurel SO_2 FIP by removing the portion of the FIP found at 40 CFR 52.1392(i), titled ''Affirmative defense provisions for exceedances of flare emission limits during malfunctions, startups, and shutdowns.'' We received one comment on this proposal.

II. Response to Comments

Comment: The EPA received one comment on this proposal from an individual commenter. The commenter expressed support for the EPA's proposed action, noting the harms of SO_2 pollution and the importance of protecting the communities near impacted sources.

Response: The EPA acknowledges this supportive comment.

III. Final Action

The EPA is revising the 2008 Billings/Laurel SO_2 FIP by removing section 52.1392(i) and all of the provisions therein, including paragraphs sections 52.1392 (i)(1)–(3).

IV. Environmental Justice Considerations

The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [1] The EPA further defines the term ''fair treatment'' to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [2] Recognizing the importance of these considerations to local communities, the EPA conducted an EJ screening analysis around the location of the facilities associated with this action to evaluate environmental and demographic indicators for the areas impacted by this final action. However, the EPA is providing the information associated with this analysis for informational purposes only. The information provided herein is not a basis of this action.

The EPA conducted the screening analyses using EJScreen, an EJ mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic

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

[2] Id.

indicators.[3] The EJScreen tool presents these indicators at a census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[4] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJScreen is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[5] For informational purposes, we have summarized EJScreen data within larger ''buffer'' areas covering multiple block groups and representing the average resident within the buffer areas surrounding the facilities. EJScreen environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[6] EJScreen also provides information on demographic indicators, including percent of low-income, communities of color, linguistic isolation, and less than high school education.

The EPA prepared EJScreen reports covering buffer areas of approximately five kilometers around the four facilities subject to the 2008 Billings/Laurel SO_2 FIP. From those reports, no facilities showed EJ indices greater than the 80th national percentiles.[7] The full, detailed EJScreen reports are provided in the docket for this rulemaking.

V. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act (RFA)

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

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

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

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

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

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

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

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

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

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

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

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

K. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it promulgates a FIP under CAA section 110(c).

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Jane Nishida,

Acting Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart BB—Montana

§ 52.1392 [Amended]

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

[FR Doc. 2025–00220 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ–OAR–2006–0971; FRL–7966–03–OAR]

RIN 2060–AU94

National Volatile Organic Compound Emission Standards for Aerosol Coatings Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the National Volatile Organic Compound Emission Standards for Aerosol Coatings. This action revises national emission standards for the aerosol coatings (aerosol spray paints) category under the Clean Air Act (CAA), which requires control of volatile organic compound (VOC) emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions contributing to ozone formation and ozone nonattainment. The regulation employs a relative reactivity-based approach to control aerosol coating products' contribution to ozone formation by encouraging the use of less reactive VOC ingredients in formulations. In this final rule, the EPA is updating coating category product-weighted reactivity (PWR) limits, adding new compounds and reactivity factors, updating existing reactivity factors, revising the rule's default reactivity factor, amending thresholds for VOC regulated by the rule, amending reporting requirements, updating test methods to reflect more recent versions, adding a new compliance date, and making clarifying edits.

DATES: *Effective date.* The effective date of this final rule is January 17, 2025. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of January 17, 2025. The incorporation by reference of certain other material listed in this rule was approved by the Director of the Federal Register as of March 24, 2008.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0971. All documents in the dockets are listed on the *www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information about the National Volatile Organic Compound Emission Standards for Aerosol Coatings, contact Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Minerals and Manufacturing Group (D243–02), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number (919) 541–4991; and email address: *whitfield.kaye@epa.gov.* For questions related to enforcement, contact John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, U.S. EPA WJC South Building (2221A), Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1395 and email address: *cox.john@epa.gov.* For questions related to reporting, contact the EPA Regional Office where the regulated entity is located. For a complete list, see Addresses of EPA regional offices in 40 CFR 59.512.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this document the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACA American Coatings Association
ASTM American Society for Testing and Materials
CARB California Air Resources Board
CAA Clean Air Act
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CRA Congressional Review Act
EJ Environmental Justice
EPA Environmental Protection Agency

FR **Federal Register**
g 0_3/g product grams of ozone per grams of product
IBR incorporation by reference
ICR Information Collection Request
MIR maximum incremental reactivity
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PRA Paperwork Reduction Act
PWR product-weighted reactivity
RF reactivity factor
RFA Regulatory Flexibility Act
UMRA Unfunded Mandates Reform Act
VOC volatile organic compound

Background information. The EPA promulgated ''The National Volatile Organic Compound Emission Standards for Aerosol Coatings,'' on March 24, 2008 (73 FR 15604) and codified the action at 40 CFR part 59, subpart E (§§ 59.500 through 59.516). The rule establishes nationwide VOC reactivity-based standards for the aerosol coatings source category under the statutory authority of section 183(e) of the CAA (42 U.S.C. 7401 *et seq.*). Section 183(e) requires the EPA to control VOC emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions that contribute to ozone formation and nonattainment of the ozone national ambient air quality standards (NAAQS).

The EPA has amended the original aerosol coatings rule several times to respond to petitions and to make rule clarifications. Many of the amendments were in accordance with a provision in 40 CFR 59.511(j) that allows regulated entities who elect not to use the default reactivity factors (RF) to calculate PWR to ''. . . petition the Administrator to add a compound to table 2A, 2B, or 2C of this subpart. Petitions must include the chemical name, [Chemical Abstract Services] (CAS) number, a statement certifying the intent to use the compound in an aerosol coatings product, and adequate information for the Administrator to evaluate the reactivity of the compound and assign a RF . . .'' Accordingly, the EPA has amended the aerosol coatings rule to add 131 compounds, corresponding RFs, and CAS numbers for each compound or class of compounds listed in 40 CFR part 59, table 2 (79 FR 29604). As for rule clarifications, the EPA has made revisions that clarify which VOC are to be quantified in compliance determinations (79 FR 29604); to inform regulated entities that VOC normally exempt by definition under 40 CFR 51.100(s)(1) and (s)(5) must be counted as VOC for the purposes determining compliance with the aerosol coatings rule (74 FR 29595); and, to ensure that both the certifying entity and the regulated entity have full knowledge of responsibilities assumed by the certifying entity (74 FR 29595).

More recently, on September 17, 2021, in response to petitions from American Coatings Association (ACA), the EPA proposed amendments to the aerosol coatings rule that promote consistency and uniformity between the California Air Resources Board (CARB) aerosol coating product regulation and the national aerosol coatings emission limitations, where appropriate (86 FR 51851).

This action finalizes the Agency's response to the ACA petitions and makes additional revisions based on public comments the EPA received on the proposed action. For more information, see the docket for this action, Docket ID No. EPA–HQ–OAR–2006–0971, and section IV. of this preamble.

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Entities Potentially Affected by This Action

The entities potentially affected by this regulation encompass those engaged in many aspects of the manufacture and sale of aerosol coatings. This includes manufacturers, processors, wholesale distributors, or importers of aerosol coating products for sale or distribution in interstate commerce in the United States, or manufacturers, processors, wholesale distributors, or importers who supply the entities listed above with aerosol coatings for sale or distribution in interstate commerce in the United States. In addition, affected entities include those listed in the North American Industry Classification System codes 32551 and 325998. This list is not intended to be exhaustive, but rather provides a guide for entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2006–0971. All documents in the dockets are listed in *www.regulations.gov.* In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission.* Following publication in the **Federal Register**, the

EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 18, 2025. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements. Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What amendments have been made since promulgation of the original rule?

The EPA has amended the original aerosol coatings rule several times to respond to petitions and to make rule clarifications. Many of the amendments were in accordance with a provision in 40 CFR 59.511(j) that allows regulated entities who elect not to use the default RF to calculate PWR to ''. . . petition the Administrator to add a compound to table 2A, 2B, or 2C of this subpart. Petitions must include the chemical name, [Chemical Abstract Services] (CAS) number, a statement certifying the intent to use the compound in an aerosol coatings product, and adequate information for the Administrator to evaluate the reactivity of the compound and assign a RF . . .'' As such, the EPA has amended the rule to add 131 compounds, corresponding reactivity factors, and CAS numbers for each compound or class of compounds listed in 40 CFR part 59 table 2 (79 FR 29604). As for rule clarifications, the EPA has made revisions to clarify which volatile organic compounds must be quantified in compliance determinations (79 FR 29604); to inform regulated entities that VOC normally exempt by definition under 40 CFR 51.100(s)(1) and (s)(5) are to be counted as VOC for the purposes determining compliance with this rule (74 FR 29595); and to ensure that both the certifying entity and the regulated entity have full knowledge of responsibilities assumed by the certifying entity (74 FR 29595).

B. What changes did we propose for the National Volatile Organic Compound Emission Standards for Aerosol Coatings source category on September 21, 2021?

On September 17, 2021, in response to petitions from ACA, the EPA proposed amendments to the standards that promote consistency and uniformity between the CARB aerosol coating product regulation and the EPA aerosol coatings rule emission limitations, where appropriate (86 FR 51851). This action finalizes the Agency's response to the ACA petitions and makes additional revisions based on public comments received on the proposal. For more information, see the docket for this action, Docket ID No. EPA–HQ–OAR–2006–0971, and section IV. of this preamble.

III. Summary of the Final Standards and Changes Since Proposal

A. Table 1 to Subpart E of Part 59: Product-Weighted Reactivity Limits by Coatings Category

This final rule updates the PWR limits for the coating categories listed in table 1 of 40 CFR part 59, subpart E. The changes, which are based on updates to the relative reactivity scale that underlies both the reactivity factors and limits, will further decrease the contribution of aerosol coatings to ozone formation.

In addition, the EPA is adopting identical category names and limits as those in CARB's aerosol coating product regulation and, where possible, including them in the EPA's national aerosol coatings rule in table 1 of 40 CFR part 59, subpart E. This amendment also led to the Agency combining two sets of coatings subcategories into two main categories and adding corresponding limits for those categories, as follows:

- The subcategories ''enamel,'' ''lacquer,'' and ''clear or metallic'' coatings are now subsumed under the category heading, ''Hobby/Model/Craft Coatings,'' with a category limit of 1.6 grams of ozone per gram of VOC (g O_3/g VOC); and
- The subcategories ''clear'' and ''pigmented'' coatings are now subsumed under the category heading, ''Shellac Sealers,'' with a category limit of1.00 g O_3/g VOC.

The EPA also is adding six new specialty coating categories and imposing corresponding emission limitations for consistency with CARB's aerosol coating product regulation, as follows:

- ''Electrical/Electronic/Conformal Coatings,'' with a category limit of 2.00 O_3/g VOC;
- ''Flexible Coatings,'' with a category limit of 1.60 O_3/g VOC;
- ''Mold Release Coatings,'' with a category limit of 1.10 O_3/g VOC;
- ''Rust Converter,'' with a category limit of 1.10 O_3/g VOC;
- ''Two Component Coating,'' with a category of 1.20 O_3/g VOC; and
- ''Uniform Finish Coating,'' with a category limit of 1.30 O_3/g VOC.

B. Table 2A, 2B, and 2C to Subpart E of Part 59: Reactivity Factors, Aliphatic Hydrocarbon Solvent Mixtures, and Aromatic Hydrocarbon Solvent Mixtures

The EPA is finalizing amendments to 40 CFR part 59 subpart E, tables 2A, 2B, and 2C by adding 17 new compounds and corresponding RF to table 2A, and by updating the RF of one existing compound mixture to table 2B. Of the 17 new compound additions to table 2A, 15 have an assigned maximum incremental reactivity (MIR) value in CARB's aerosol coatings regulation, which the Agency is adopting as RF values in this final action. The EPA is also finalizing the addition of two remaining compounds to table 2A: trans-1-chloro-3,3,3-trifluoropropene (HFO–1233zdE), CAS 102687–65–0, and diethyl carbonate, CAS 105–58–8, with RFs of 0.04 g O_3/g VOC and 0.71 g O_3/g VOC, respectively. The RFs that the EPA has assigned to these two compounds are based on MIR values

derived by Venecek [1] and Carter,[2] respectively.

One of the compounds the EPA is adding, dipropylene glycol monomethyl ether, CAS 34590–94–8, is a mixture of isomers. Another compound, 2-[2-methoxypropoxy]-1-propanol, CAS 13588–28–8, is an isomer of dipropylene glycol monomethyl ether, which is already on table 2A; and the EPA is assigning both of those compounds an RF of 2.58 g O_3/g VOC.

In addition to adding the new compounds listed above, the EPA is updating reactivity factors in tables 2A, 2B, and 2C for other compounds already addressed in the EPA's aerosol coatings rule to align with the MIR values in the current CARB aerosol coating product regulation.[3] This will maintain the internal consistency of the relative reactivity scale and changes to the limits finalized in 40 CFR part 59 subpart E, table 1. The updates to the existing RFs listed in tables 2A, 2B, and 2C will take effect on January 17, 2025. Regulated entities who are already formulating their products to meet CARB's aerosol coating product regulation may elect to use the new RFs and meet the new category emission limitations of the EPA's aerosol coatings rule upon the effective date of this action. However, regulated entities must use the new RFs and meet the new emission limitations by the compliance date. All regulated entities must come into compliance with all provisions in this final rule by July 17, 2025.

C. The Default Reactivity Factor

In the EPA's original national aerosol coatings rule, if a regulated entity used a VOC in an aerosol coating formulation that was not listed in tables 2A, 2B, or 2C, it was assigned a default RF of 22.04 g O_3/g VOC (see 40 CFR 59.505(e)(4) and 59.511(j)). In this final action, we reset the default RF for VOCs of unknown reactivity consistent with the methodology used in the original aerosol coatings rule, whereby we identified the VOC with the maximum RF value in table 2A, and then assigned that value as the default RF for any VOC that is not listed with a specific RF (73 FR 15610). Therefore, the EPA is resetting the default RF to 18.50 g O_3/g VOC, the highest value in table 2A of this final action. Furthermore, the EPA is finalizing two additional requirements related to the default RF. First, regulated entities shall include the name and CAS number of all VOCs for which they are using the default RF, as specified in the reporting requirements in 40 CFR 59.511. Second, if a regulated entity uses a VOC in a product that is not listed in table 2A, but its isomer is listed in table 2A, then the regulated entity shall use the RF of the isomer. If more than one isomer of that VOC, or mixtures of the isomers of that VOC, is listed in table 2A, then the regulated entity shall use the highest RF associated with the listed isomers or isomer mixtures.

D. VOC Regulated by the Rule

The EPA is not making changes to the current definition of VOC in 40 CFR 51.100(s)(7) in this final action. However, it is important to note that in the original aerosol coatings rule, the EPA amended the regulatory definition of VOC to remove the exemption of specific organic compounds identified in 40 CFR 51.100(s)(1) and (s)(5) for purposes of determining compliance with the reactivity-based emission limitations in the aerosol coatings rule. Thus, 40 CFR 51.100(s)(7) provides that ''any organic compound in the volatile portion of an aerosol coating is counted towards the product's reactivity-based limit, as provided in part 59, subpart E. Therefore, the compounds that are used in aerosol coating products and that are identified in paragraph (s) of this section as negligibly reactive and excluded from the EPA's definition of VOC are to be counted towards a product's reactivity limit for the purposes of determining compliance with the EPA's aerosol coatings reactivity-based national regulation, as provided in part 59, subpart E.'' To eliminate consideration of VOC that make *de minimis* contributions to a product's overall reactivity in the original aerosol coatings rule, the EPA also excluded from the applicable emission limitations those compounds that: (a) contribute less than 0.1 percent of the product weight (regardless of their RF); and (b) have reactivities less than ethane and comprise less than 7.3 percent of product weight. We explained the basis for the derivation of the 7.3 percent threshold and its relationship to the RF for ethane and the default RF in the original rulemaking (see 73 FR 15604). In this action, the EPA is finalizing amendments to the aerosol coatings rule to retain part (a), where compounds that comprise less than 0.1 percent of the product weight are excluded from the product's mass-weighted reactivity, but eliminate part (b), the exclusion of low reactivity compounds that comprise more than 0.3 percent but less than 7.3 percent of the product weight.

E. Electronic Reporting of Notifications and Reports

The EPA is also finalizing the revision to the aerosol coatings rule to require that regulated entities submit electronic copies of required notifications and reports in template format through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI), instead of the current hard copy submission requirement. A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. For the nine notifications and reports in the aerosol coatings rule, (*i.e.,* Temporary Variances, Initial Notification, Change to Information in Initial Notification, Response to Written Notification, Exemption Claim Initial Notification, Exemption Claim Annual Report, Notice of Certifying Entity to Maintain Records, Notice Rescinding Certification and Triennial Report), this final rule requires that regulated entities use the appropriate spreadsheet template to submit information to CEDRI. A final version of the spreadsheet template for these notifications and reports is included in the docket and on the CEDRI web page.[4] The EPA has also updated the spreadsheet in response to the comments received on the proposal.

Furthermore, the EPA is finalizing revisions to the aerosol coatings rule that provide owners and operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.,* for a possible outage in the CDX or CEDRI or for a force majeure event, in the time just prior to a report's due date, as well as the process to assert such a claim.

F. Test Methods

Regulated entities may use formulation data to demonstrate compliance with the emission limitations in the aerosol coatings rule. However, it is also necessary to have test methods in place that can be used

[1] Venecek, Melissa (2020). *Estimating Maximum Incremental Reactivity for Diethyl Carbonate.* Final Report. Sacramento, California: Technical Development Section, Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, California Air Resources Board.

[2] Carter, William (2009). *Investigation of Atmospheric Ozone Impacts of Trans 1-Chloro-3,3,3—Trifluoropropene,* Final Report. Riverside, California: Center for Environmental Research and Technology, University of California.

[3] Title 17, CCR, Sections 94700–94701.

[4] *www.epa.gov/electronic-reporting-air-emissions/cedri.*

by regulated entities, the EPA, or others to verify the accuracy of formulation data and determine compliance with the reactivity limits. In this final action, we are not requiring new test methods; instead, the EPA is amending the aerosol coatings rule to require use of the updated version of CARB Method 310, ''Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products,'' May 25, 2018, when verifying compliance using test methods. For measurement of specular gloss, the EPA will continue to require regulated entities to use, ''Standard Test Method for Specular Gloss,'' ASTM Method D523–08 (2008), formerly ASTM D523–89 (1999). As noted in section IV.A. of this preamble, regulated entities may elect to use the updated RFs and meet the revised emission limitations in this final rule in advance of the compliance date, but if they do so they must use the updated test methods.

IV. Response to Significant Comments

The EPA received a total of eight letters commenting on the September 17, 2021, proposed rule. Significant comments and the EPA's responses appear in this preamble; however, a summary of all public comments and the EPA's responses are contained in the document titled, ''Summary of Public Comments and Responses for the National Volatile Organic Compound Emissions for Aerosol Coatings—Amendments,'' located in the docket for this action, Docket ID No. EPA–HQ–OAR–2006–0971. Copies of all the comment letters are available at the EPA docket Center Public Reading Room and electronically through *www.regulations.gov* by searching Docket ID No. EPA–HQ–OAR–2006–0971.

A. Compliance Date of the Rule

Four commenters requested that the EPA establish a 2-year compliance date for the revisions being made to the aerosol coatings rule in this final action. The commenters argue that sufficient time will be needed for manufacturers to comply with the new VOC MIR emission limitations if they do not already manufacture aerosol coating products for sale in California. In addition, one of the commenters asserts that a two-year compliance date will ensure that industry has sufficient time to reformulate their products and adapt their distribution methods to implement the amended rule's requirements effectively and efficiently. According to the commenter, when a rule is amended, industry requires a reasonable amount of lead time to adjust formulations and supply chain processes to ensure compliance with VOC limits, labeling, and reporting requirements. Additionally, commenters state that manufacturers will need sufficient time to properly communicate these changes to their distributors and retail customers to ensure compliance with amended VOC emission limitations. Therefore, the commenters assert, a compliance date of two years after publication of a final rule would give industry enough time to reformulate with the updated/added compounds and ensure compliance with the new coatings category limits.

The EPA agrees that, especially for regulated entities that do not manufacture or sell products in California, additional time may be needed to come into compliance with the amendments to the aerosol coatings rule. However, the EPA has determined that the two-year compliance period requested by commenters is not warranted, because based upon information available to the agency most, if not all, manufacturers of aerosol coatings already manufacture products that meet the CARB emission limitations, either for themselves or for others. Commenters did not identify any specific manufacturers of aerosol coatings who do not do so. Nevertheless, in this final action, the EPA is providing additional time for manufactures to make any necessary adjustments by finalizing a six-month compliance date for the revised aerosol coatings rule requirements.

It is important to note that the effective date of this rule is the date of publication in the **Federal Register**, or January 17, 2025. In the intervening six months, all regulated entities are subject to the aerosol coatings rule in its current form but may elect to start complying with the amended aerosol coatings rule. This means that regulated entities, including those that are currently in compliance with the CARB aerosol coating product regulation on the effective date of this rule, may elect to begin complying immediately. However, all regulated entities shall come into compliance with all the provisions in this final action by July 17, 2025. The original tables with values for the PWR emission limits by coatings category and the reactivity factors are in appendix A—table 1 and tables 2A, 2B and 2C of this final action.

B. Effective Date of the Final Rule

Several commenters recommend that the EPA allow industry to use the new and updated RF values immediately, once they are finalized and published in the **Federal Register**. The commenters assert that this would allow industry to use the new and updated reactivity values in their formulations to come into compliance with the new coatings category limits in table 1 sooner.

The EPA agrees that this is appropriate. We note that the effective date of this rule indicates when regulated entities may elect to begin meeting the new aerosol coatings product-weighted coating category emission limitations in 40 CFR part 59, subpart E—table 1 using the corresponding reactivity factors in 40 CFR part 59, subpart E—table 2. The Agency directs the commenters to 40 CFR 59.502 and the **DATES** section of this preamble, where the effective date of the rule is the date of publication in the **Federal Register**, or January 17, 2025. Therefore, regulated entities may begin meeting the new emission limitations and using corresponding reactivity factors immediately upon publication of this final rule. The EPA emphasizes that all regulated entities must do so by the compliance date. Also note that, although regulated entities may elect to begin to use the new RF values immediately on January 17, 2025, the EPA is granting a six-month compliance date.

In summary, the EPA has added a provision to 40 CFR 59.502 to clarify that regulated entities may elect to begin meeting the new coating category product-weighted limits in 40 CFR part 59, subpart E—table 1 and use the corresponding reactivity factors in 40 CFR part 59, subpart E—table 2 upon the effective date of the rule, or January 17, 2025. However, all regulated entities must come into compliance with all the revised provisions in the amended aerosol coatings rule by July 17, 2025.

For the reasons discussed above, this final rule is effective immediately upon publication. Section 553(d)(3) of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for

the effective date of its ruling.'' Gavrilovic, 551 F.2d at 1105. The EPA has determined that there is good cause for making this final rule effective immediately because, as noted above, regulated entities do not need to come into compliance with the revised provisions for another 181 days—that is, by July 17, 2025.

C. Definitions

Several commenters requested changes, additions, or deletions to the list of definitions included in the aerosol coatings rule. When CARB amended its aerosol coating product regulation in 2013, one commenter stated that they worked diligently with CARB staff to update the definitions so that they correctly characterized industry's products. The commenter noted that further alignment with the definitions in CARB's aerosol coatings regulation is critical and will assist with industry compliance.

The EPA evaluated the commenters' suggestions and has revised some definitions in the updated aerosol coatings rule. Where appropriate, we have amended definitions in the EPA aerosol coatings rule to be consistent with the CARB's definitions. For example, for consistency, we have eliminated the use of the word ''paint'' in both category names and in definitions and replaced it with the more correct term ''coating.'' We have removed words from definitions that needlessly limited a definition, as suggested by commenters. The EPA has removed the term ''synthetic'' from the definition of slip-resistant coatings because it is possible that such a product could use non-synthetic material. We have also removed the term ''elemental'' from the definition of metallic coating, as recommended by a commenter.

In several cases, we are unable to make the changes suggested by the commenters. The EPA does not agree that a claim made by a regulated entity on a label, or on a ''principal display panel'' as specified in CARB's rule, is sufficient to define a category. Our definitions are based solely on the function of the coating and not on the printed claims. Therefore, we will not add a sentence to coatings that defer to a ''principal display panel,'' nor will we include a definition of that term in this final rule. In addition, we will not include definitions of several terms recommended by the commenter but are not used in the EPA's aerosol coatings rule. For example, the term ''Reactivity Limit'' is the term used by CARB in its aerosol coating product regulation, while ''Product-Weighted Reactivity (PWR) limit'' is the term that the EPA uses in the national aerosol coatings rule. The EPA is not adding a definition for the term ''Reactivity Limit'' to the list of definitions because the Agency does not use this term in the aerosol coatings rule.

A more complete discussion of the individual changes to definitions is included in the ''Summary of Public Comments and Responses for the National Volatile Organic Compound Emissions for Aerosol Coatings—Amendments,'' Docket ID No. EPA–HQ–OAR–2006–0971.

D. VOC Regulated by the Rule

The EPA proposed to retain a provision that excludes from the applicable limits those compounds that contribute less than 0.1 percent of the product weight (regardless of their RF) and eliminate a provision from 40 CFR 59.505 that excludes low reactivity compounds that comprise more than 0.1 percent but less than 7.3 percent of the product weight. The EPA received several comments supporting this revision and one that opposed it, based upon concerns that the exclusion of compounds could have unintended adverse impacts. The EPA has concluded that it is appropriate to make the proposed revisions and thus, we are amending 40 CFR 59.505 of this final rule, accordingly. We respond to the adverse comment in more detail in response to comment document titled, ''Summary of Public Comments and Responses for the National Volatile Organic Compound Emissions for Aerosol Coatings—Amendments,'' Docket ID No. EPA–HQ–OAR–2006–0971.

E. Default Reactivity Factor

Five commenters suggested that the EPA adopt a default RF of 11.97 g O_3/g VOC to align with CARB's default MIR value.

The EPA considered whether to adopt CARB's default MIR value as the EPA's default RF in the amended national aerosol coatings rule but is declining to do so. The EPA's methodology for setting a default RF value in the original aerosol coatings rule was to require regulated entities to use the maximum RF value for the compounds specified in table 2. The EPA has used this conservative methodology for setting the default RF to help to ensure the protection of public health by reducing ozone that may result from new and/or previously unstudied VOCs. Consistent with this preferred methodology and considering the updates to RF values in table 2, the EPA is resetting the default RF to 18.50 g O_3/g VOC in this final action.

V. Summary of Impacts

A. Environmental Impacts

There are no anticipated environmental impacts from compliance with this final rule. The revisions to the aerosol coatings rule in this final action are minor and not expected to result in net changes to an aerosol coating product's potential to form ozone because the overall average changes to the values used to measure reactivity of a given regulated product, *i.e.,* category emission limitations and RFs, are small compared to the values in the original rule. The final action is, however, expected to improve upon the original aerosol coatings rule by making updates (*e.g.,* adding new compounds, updating reactivity factors, and adding electronic reporting) that promote consistency and uniformity between State and national regulations. The EPA anticipates that this final action will maintain the level of environmental protection to populations in affected ozone nonattainment areas without having any disproportionately high and adverse human health or environmental effects on any populations, including communities with environmental justice (EJ) concerns.

B. Energy Impacts

There are no adverse energy impacts anticipated from compliance with this final rule.

C. Cost and Economic Impacts

There are no adverse economic impacts anticipated from compliance with this final rule. This action primarily updates reactivity tables and factors and adds electronic reporting provisions.

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this final rule have been

submitted for approval to OMB under the PRA. The information collection request (ICR) document that the EPA prepared for this action has been assigned OMB control number 2060–0617, EPA ICR Number 2289.06. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them. There is no increase in burden associated with this action because the rule primarily adds compounds and reactivity factors, updates category limits and reactivity factors, and adds electronic reporting provisions. The burden associated with the change from paper to electronic reporting in this final action will not increase significantly because of this action, and results in a slight decrease in the annual average burden for reporters. In the short term, regulated entities will need time to become familiar with the new reporting scheme and template. In the long term, however, the Agency anticipates that electronic reporting will reduce the burden as regulated entities become more familiar with the electronic reporting process. Additionally, there is a decrease in burden due to a decrease in respondents, which is due to updated information on the number of sources.

Respondents/affected entities: Manufacturers, distributors, and importers of aerosol coatings.

Respondent's obligation to respond: Mandatory (40 CFR part 59, subpart E).

Estimated number of respondents: 47.

Frequency of response: Initially, triennially, and occasionally.

Total estimated burden: 9,562 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $740,520 (per year), includes no annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net increase in burden on the small entities subject to the rule. The EPA has determined that small entities will incur a reduction in burden over the long term because the primary revisions to the aerosol coatings rule include updating coating categories in table 1, adding compounds to table 2, and adding an electronic reporting provision, where the method of reporting from paper to electronic is the only change. The burden associated with the change from paper to electronic reporting will not increase significantly because of this action, at least in the long term. Small entities will need time to become familiar with the new reporting scheme and template. However, in the long term, the Agency anticipates that, because electronic reporting is more efficient than paper reporting, the burden will be reduced as small entities become more familiar with the electronic reporting process. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This final action does not contain an unfunded mandate of $100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The costs involved in this action are estimated not to exceed $183 million in 2023 dollars ($100 million in 1995 dollars adjusted for inflation using the GDP implicit price deflator) or more in any one year.

E. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications as specified in Executive Order 13175. The final regulatory action does not have a substantial direct effect on one or more Indian Tribes, in that this action imposes no regulatory burdens on Tribes. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this final action is not subject to Executive Order 13045 because it does not concern an increase in an adverse or environmental health risk or safety risk. Since this action does not concern human health, the EPA's Policy on Children's Health does not apply.

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

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

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

The national VOC emission standards for aerosol coatings involves technical standards; however, no new technical standards are being finalized in this action. Instead, the EPA is amending this final rule to require that regulated entities use an updated version of an existing test method. As such, we conducted searches for the national VOC standards for aerosol coatings through the Enhanced NSSN Database managed by the American National Standards Institute. We also contacted VCS organizations and accessed and searched their databases. Searches were conducted for EPA Method 311 of 40 CFR part 63, appendix A. During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are like the EPA's reference method, the EPA considered it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for this final rule. This review requires significant method validation data which meets the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in EPA reference methods. The EPA may

reconsider determinations of impracticality when additional information is available for particular VCS. One voluntary consensus standard was identified as an acceptable alternative to the EPA test method for the purposes of this rule. The voluntary consensus standard, CARB Method 310, ''Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products'' amended May 25, 2018 is an acceptable alternative to EPA Method 311 for determining speciated ingredients and weight percentage of each ingredient of each aerosol coating product. This method is used to determine the weight percent of VOC in consumer products and reactive organic compounds in aerosol coating products and is available from the California Air Resources Board (CARB), 1001 I Street, Sacramento, CA 95814. See *ww2.arb.ca.gov.* In addition, the EPA is incorporating by reference the ASTM D523–08, Standard Test Method for Specular Gloss. This test method is used to measure light reflectiveness of paints, coatings and smooth surface materials and is referenced in CARB Method 310. It covers the measurement of the specular gloss of nonmetallic specimens for glossmeter geometries of 60, 20 and 85 degrees and is available at ASTM, International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See *www.astm.org.*

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

The EPA believes that the human health and environmental conditions that existed prior to this action do not result in disproportionate and adverse effects on communities with environmental justice concerns. As stated in section V.A. of the preamble of this action, there are no anticipated adverse environmental impacts and no adverse economic impacts anticipated from compliance with this final rule.

The EPA believes that this action is not likely to result in new disproportionate and adverse effects on communities with environmental justice concerns. As stated in section I. of this action, section 183(e) of the CAA requires the control of VOC emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions contributing to ozone formation and nonattainment of the ozone NAAQS. The health and environmental risks associated with ozone were considered in the establishment of the ozone NAAQS. The level is designed to be protective of the public with an adequate margin of safety. Accordingly, these actions would help increase the level of environmental protection to populations in affected ozone nonattainment areas without having any disproportionately high and adverse human health or environmental effects on any populations, including communities with environmental justice concerns.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 59

Environmental protection, Administrative practice and procedure, Aerosol coatings, Air pollution control, Coatings, Incorporation by reference, Reactivity.

Jane Nishida,

Acting Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending part 59 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 59—NATIONAL VOLATILE ORGANIC COMPOUND EMISSION STANDARDS FOR CONSUMER AND COMMERCIAL PRODUCTS

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 7414 and 7511b(e).

Subpart E—National Volatile Organic Compound Emission Standards for Aerosol Coatings

■ 2. Amend § 59.502 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 59.502 When do I have to comply with this subpart?

(a) Except as provided in § 59.509 and paragraphs (b) and (c) of this section, you must be in compliance with all provisions of this subpart by July 17, 2025.

* * * * *

(d) Until July 17, 2025 appendix A—table 1, appendix A—table 2A, appendix A—table 2B, appendix A—table 2C and the test methods listed in appendix A table 3 to subpart E of part 59 are applicable to this subpart. Prior to July 17, 2025 regulated entities may elect to use tables 1, 2A, 2B, and 2C. If a regulated entity elects to do so, it shall use the test methods specified in § 59.508 of this subpart. After July 17, 2025 tables 1, 2A, 2B, and 2C, and the test methods specified in § 59.508 of this subpart are applicable.

■ 3. Revise § 59.503 to read as follows:

§ 59.503 What definitions apply to this subpart?

The following terms are defined for the purposes of this subpart only.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative.

Aerosol coating product means a pressurized coating product containing pigments or resins that is dispensed by means of a propellant and is packaged in a disposable container for hand-held application, or for use in specialized equipment for ground traffic/marking applications. For this regulation, applicable aerosol coatings categories are listed in table 1 of this subpart.

Art fixative or sealant means a clear coating, including art varnish, workable art fixative and ceramic coating, which is designed and labeled exclusively for application to paintings, pencil, chalk, or pastel drawings, ceramic art pieces or other closely related art uses, in order to provide a final protective coating or to fix preliminary stages of artwork while providing a workable surface for subsequent revisions.

ASTM means ASTM International.

Autobody primer means an automotive primer or primer surfacer coating designed and labeled exclusively to be applied to a vehicle body substrate for the purposes of corrosion resistance, increased intercoat adhesion, or building a repair area to a condition in which, after drying, it can be sanded to a smooth surface.

Automotive bumper and trim product means a product, including adhesion promoters and chip sealants, designed, and labeled exclusively to repair and refinish automotive bumpers and plastic trim parts.

Aviation or marine primer means a coating designed and labeled exclusively to meet federal specification TT–P–1757.

Aviation propeller coating means a coating designed and labeled exclusively to provide abrasion resistance and corrosion protection for aircraft propellers.

Clear coating means a coating which is colorless or transparent, containing resins but no pigments except flatting agents, and is designed and labeled to form a transparent or translucent solid film.

Coating means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes.

Coating solids means the nonvolatile portion of an aerosol coating product, consisting of the film-forming ingredients, including pigments and resins.

Commercial application means the use of aerosol coating products in the production of goods, or the providing of services for profit, including touch-up and repair.

Corrosion resistant brass, bronze, or copper coating means a clear coating designed and labeled exclusively to prevent tarnish and corrosion of uncoated brass, bronze, or copper metal surfaces.

Distributor means any person who purchases or is supplied aerosol coating product for the purposes of resale or distribution in commerce. Retailers who fall within this definition are distributors. Importers are not distributors.

Electrical/electronic/conformal coating means a coating designed and labeled exclusively to coat electrical or electronic components or devices.

Enamel means a coating which cures by chemical cross-linking of its base resin and is not resoluble in its original solvent.

Engine paint means a coating designed and labeled exclusively to coat engines and their components.

Exact match finish, automotive means a topcoat which meets all of the following criteria:

(1) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied automotive coating during the touch-up of automobile finishes;

(2) The product is labeled with the manufacturer's name for which it is formulated; and

(3) The product is labeled with one of the following:

(i) The original equipment manufacturer's (O.E.M.) color code number;

(ii) The color name; or

(iii) Other designation identifying the specific O.E.M. color to the purchaser.

Notwithstanding the foregoing, automotive clear coatings designed and labeled exclusively for use over automotive exact match finishes to replicate the original factory-applied finish shall be considered to be automotive exact match finishes.

Exact match finish, engine enamel coating means an enamel coating which meets all of the following criteria:

(1) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied engine paint;

(2) The product is labeled with the manufacturer's name for which it is formulated; and

(3) The product is labeled with one of the following:

(i) The O.E.M. color code number;

(ii) The color name; or

(iii) Other designation identifying the specific O.E.M. color to the purchaser.

Exact match finish, industrial means a coating which meets all of the following criteria:

(1) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied industrial coating during the touch-up of manufactured products;

(2) The product is labeled with the manufacturer's name for which it is formulated;

and

(3) The product is labeled with one of the following:

(i) O.E.M. color code number;

(ii) The color name; or

(iii) Other designation identifying the specific O.E.M. color to the purchaser.

Extender means an ingredient added to an ''Aerosol Coating Product'' to increase coating solids.

Flat coating means a coating which, when fully dry, registers specular gloss less than or equal to 15 on an 85° gloss meter, or less than or equal to 5 on a 60° gloss meter, or which is labeled as a flat coating.

Flatting agent means a compound added to a coating to reduce the gloss of the coating without adding color to the coating.

Flexible coating means a coating including, but not limited to, rubberized, mastic, or asphaltic products designed and labeled exclusively to protect surfaces.

Floral spray means a coating designed and labeled exclusively for use on fresh flowers, dried flowers, or other items in a floral arrangement for the purpose of coloring, preserving, or protecting their appearance.

Fluorescent coating means a coating labeled as such, which converts absorbed incident light energy into emitted light of a different hue.

Formulation data, unless otherwise specified, means the recipe used to formulate or manufacture a coating product in terms of the weight fraction (g compound/g product) of each individual VOC in the product.

General coating means the following aerosol coating products: ''Clear Coating,'' ''Flat Coating,'' ''Fluorescent Coating,'' ''Metallic Coating,'' ''Non-flat Coating,'' or ''Primer.''

Glass coating means a coating designed and labeled exclusively for use on glass or other transparent material to create a soft, translucent light effect, or to create a tinted or darkened color while retaining transparency.

Ground traffic/marking coating means a coating designed and labeled exclusively to be applied to dirt, gravel, grass, concrete, asphalt, warehouse floors, or parking lots. Such coatings must be in a container equipped with a valve and spray head designed to direct the spray toward the surface when the can is held in an inverted vertical position.

High temperature coating means a coating, excluding engine coating, which is designed and labeled exclusively for use on substrates which will, in normal use, be subjected to temperatures in excess of 400 °F.

Hobby/model/craft coating means a coating which is designed and labeled exclusively for hobby applications and is sold in aerosol containers of 6 ounces by weight or less.

Importer means any person who brings an aerosol coating product that was manufactured, filled, or packaged at a location outside of the United States into the United States for sale or distribution in the United States.

Impurity means an individual chemical compound present in a raw material which is incorporated in the final aerosol coatings formulation, if the compound is present in amounts below the following in the raw material:

(1) For individual compounds that are carcinogens, each compound must be present in an amount less than 0.1 percent by weight;

(2) For all other compounds present in a raw material, a compound must be present in an amount less than 1 percent by weight.

Ingredient means a component of an aerosol coating product.

Label means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

Manufacturer means any person who manufactures or processes an aerosol coating product for sale or distribution within the United States. Manufacturers include:

(1) Processors who blend and mix aerosol coatings;

(2) Contract fillers who develop formulas and package these formulations under a distributor's name; and

(3) Contract fillers who manufacture products using formulations provided by a distributor.

Marine spar varnish means a coating designed and labeled exclusively to provide a protective sealant for marine wood products.

Metallic coating means a topcoat which contains at least 0.5 percent by weight metallic pigment in the formulation, including propellant, and is labeled as ''metallic,'' or with the name of a specific metallic finish such as ''gold,'' ''silver,'' or ''bronze.''

Mold release coating means a coating designed and labeled exclusively to be applied to molds to prevent products from sticking to the surfaces of the mold.

Multi-component kit means an aerosol spray paint system that requires the application of more than one component, *e.g.,* foundation coat and topcoat, where both components are sold together in one package.

Non-flat coating means a coating that, when fully dry, registers a specular gloss greater than 15 on an 85° gloss meter or greater than five on a 60° gloss meter.

Ozone means a colorless gas with a pungent odor, having the molecular form O_3.

Person means an individual, corporation, partnership, association, State, any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

Photographic coating means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image, changes in gloss level, or to cover fingerprints.

Pigment means either a natural or synthetic insoluble material added to a coating to provide color, opacity, or corrosion inhibition to a coating film.

Plasticizer means an ingredient added to an aerosol coating product to aid in flexibility.

Pleasure craft means privately owned vessels used for noncommercial purposes.

Pleasure craft finish primer/surfacer/undercoater means a coating designed and labeled exclusively to be applied prior to the application of a pleasure craft topcoat for the purpose of corrosion resistance and adhesion of the topcoat, and which promotes a uniform surface by filling in surface imperfections.

Pleasure craft topcoat means a coating designed and labeled exclusively to be applied to a pleasure craft as a final coat above the waterline, and below the waterline when stored out of water. This category does not include clear coatings.

Polyolefin adhesion promoter means a coating designed and labeled exclusively to be applied to a polyolefin or polyolefin copolymer surface of vehicular body parts, bumpers, or trim parts to provide a bond between the surface and subsequent coats.

Primer means a coating labeled as such, which is designed to be applied to a surface to provide a bond between that surface and subsequent coats.

Product-Weighted Reactivity (PWR) Limit means the maximum allowed ''product- weighted reactivity,'' as calculated in § 59.505, of an aerosol coating product that is subject to the limits specified in § 59.504 for a specific category, expressed as grams of ozone per gram of product (g O_3/g product).

Propellant means a liquefied or compressed gas that is used in whole or in part to expel a liquid or any other material from the same self-pressurized container or from a separate container.

Reactivity Factor (RF) is a measure of the change in mass of ozone formed by adding a gram of a VOC to the ambient atmosphere, expressed to hundredths of a gram of ozone per gram of VOC (g O3/g VOC). The RF values for individual compounds and hydrocarbon solvent mixtures are specified in tables 2A, 2B, and 2C to this subpart.

Resin means a substance that comprises the film-forming ingredients in an aerosol coating product. Examples of resin ingredients include acrylic, alkyd, enamel, epoxy, lacquer, polyurethane, polyvinyl chloride, shellac, silicone, and polystyrene.

Retailer means any person who sells, supplies, or offers aerosol coating products for sale directly to consumers. Retailers who fall within the definition of ''distributor'' in this section are distributors.

Retail outlet means any establishment where consumer products are sold, supplied, or offered for sale, directly to consumers.

Rust converter means a coating designed and labeled exclusively to convert rust to an inert material and which contains a minimum acid content of 1.0 percent by weight, and a maximum coating solids content of 6.0 percent by weight.

Shellac sealer means a clear or pigmented coating formulated solely with the resinous secretion of the lac beetle (*Laccifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Slip-resistant coating means a coating designed and labeled exclusively as such, which is formulated with grit and used as a safety coating.

Small quantity manufacturer means a manufacturer whose total VOC by mass included in all aerosol coatings manufactured at all facilities in a given calendar year, in the aggregate, is less than 7,500 kilograms.

Spatter coating/multicolor coating/stucco coating means a coating labeled exclusively as such, wherein spots, globules, or spatters of contrasting colors appear on or within the surface of a contrasting or similar background.

Specialty coating means any aerosol coating product that is not a ''General Coating'' unless specifically exempted. An aerosol coating that does not meet all the criteria for a specific ''Specialty Coating'' or an aerosol coating that is not defined in this section is a ''General Coating.''

Stain means a coating which is designed and labeled to change the color of a surface but not conceal the surface.

Two-component coating means a coating packaged in an aerosol container with a separate integrated chamber for a hardener or activator.

Uniform finish coating means a coating designed and labeled exclusively for application to the area adjacent to a spot repair for the purpose of blending the spot repair's color or clear coating to match the appearance of an adjacent area's existing coating. For the purpose of this rule, ''spot repair'' means repair of an area of less than 1 square foot (929 square centimeters).

United States means the United States of America, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Vinyl/fabric/leather/polycarbonate coating means a coating designed and labeled exclusively to coat vinyl, fabric, leather, or plastic substrates or to coat flexible substrates including rubber or thermoplastic substrates.

Volatile Organic Compound (VOC) means any organic compound as defined in § 51.100(s) of this chapter. As provided in 40 CFR 51.100(s)(7), exemptions from the definition of VOC in 40 CFR 51.100(s) for certain compounds that are used in aerosol coatings are inapplicable for purposes of this subpart.

Webbing/veiling coating means a coating designed and labeled exclusively to provide a stranded or spider webbed appearance when applied.

Weight fraction means the weight of an ingredient divided by the total net

weight of the product, expressed to thousandths of a gram of ingredient per gram of product (excluding container and packaging).

Weld-through primer means a coating designed and labeled exclusively to provide a bridging or conducting effect for corrosion protection following welding.

Wood stain means a coating which is designed and labeled exclusively as a wood stain and is used to change the color of a wood surface but not conceal the grain pattern or texture.

Wood touch-up/repair/restoration means a coating designed and labeled exclusively to provide an exact color or sheen match on finished wood products.

Working day means any day from Monday through Friday, inclusive, except for days that are Federal holidays.

■ 4. Amend § 59.505 by revising paragraphs (c) through (e) and adding paragraph (h) to read as follows:

§ 59.505 How do I demonstrate compliance with the reactivity limits?

* * * * *

(c) You may use either formulation data (including information for both the liquid and propellant phases), CARB Method 310 (2018) (incorporated by reference, see § 59.515), or EPA's Method 311 (40 CFR part 63, appendix A), to calculate the PWR. However, if there are inconsistencies between the formulation data and the CARB Method 310 (2018) or EPA Method 311 results, the CARB Method 310 (2018) or EPA Method 311 results will govern.

(d) If you manufacture a coating containing either an aromatic or aliphatic hydrocarbon solvent mixture, you must use the appropriate RF for that mixture provided in table 2B or 2C to this subpart when calculating the PWR using formulation data. However, when calculating the PWR for a coating containing these mixtures using data from CARB Method 310 (2018) (incorporated by reference, see § 59.515), or EPA Method 311—(40 CFR part 63, appendix A), you must identify the individual compounds that are present in the solvent mixture and use the weight fraction of those individual compounds and their RF from table 2A to this subpart in the calculation.

(e) The Reactivity Factor (RF) is assigned according to paragraphs (e)(1) through (4):

(1) If a VOC is used in a product and listed in table 2A, 2B, or 2C to this subpart, then the assigned RF shall be used;

(2) If a product contains a mixture and/or multiple isomers of a VOC, the highest RF of the mixture or multiple isomers from table 2A to this subpart shall be used;

(3) If a VOC is used in a product but not listed in table 2A to this subpart, but more than one isomer or mixtures of isomers of the VOC is listed in table 2A to this subpart, then the highest RF associated with the listed isomers or isomer mixtures shall be used; and

(4) If a VOC is used in a product but not listed in table 2A to this subpart, the assigned default RF of 18.50 g O_3 /g VOC shall be used.

* * * * *

(h) Until July 17, 2025 the test methods listed in table 3 of appendix A to subpart E of part 59 are applicable to this subpart.

■ 5. Revise § 59.508 to read as follows:

§ 59.508 What test methods must I use?

(a) Except as provided in § 59.505(c), you must use the procedures in CARB Method 310 (2018) (incorporated by reference, see § 59.515) or EPA's Method 311 (40 CFR part 63, appendix A) to determine the speciated ingredients and weight percentage of each ingredient of each aerosol coating product. EPA Method 311 (40 CFR part 63, appendix A) must be used in conjunction with ASTM Method D3063–94 or D3074–94 for analysis of the propellant portion of the coating. Those choosing to use CARB Method 310 (2018) must follow the procedures specified in section 5.0 of that method with the exception of section 5.3.1, which requires the analysis of the VOC content of the coating. For the purposes of this subpart, you are not required to determine the VOC content of the aerosol coating. For both CARB Method 310 (2018) and EPA Method 311 (40 CFR part 63, appendix A), you must have a listing of the VOC ingredients in the coating before conducting the analysis.

(b) To determine the metal content of metallic aerosol coating products, you must use SCAQMD Method 318–95 (incorporated by reference, see § 59.515).

(c) To determine the specular gloss of flat and non-flat coatings, you must use ASTM Method D523–08 (incorporated by reference, see § 59.515).

■ 6. Amend § 59.509 by revising paragraph (a) introductory text and adding paragraphs (a)(6) and (g) to read as follows:

§ 59.509 Can I get a variance?

(a) Any regulated entity that cannot comply with the requirements of this subpart because of circumstances beyond its reasonable control may apply in writing to the Administrator for a temporary variance. The variance application must include the information specified in paragraphs (a)(1) through (6) of this section.

* * * * *

(6) All identification information included in § 59.511(b)(1) and (2).

* * * * *

(g) Beginning on July 17, 2025, or once the notification/report template for this subpart has been available on the CEDRI website for six months, whichever date is later, submit the request for a variance with the information in paragraphs (a)(1) through (6) following the procedure specified in § 59.511(1).

■ 7. Amend § 59.511 by:

■ a. Removing and reserving paragraph (b)(8);

■ b. Revising paragraphs (b)(9), (c), (d) introductory text, and (d)(5);

■ c. Adding paragraph (d)(6);

■ d. Revising paragraphs (i)(2) and (j); and

■ e. Adding paragraphs (k), (l), (m), and (n).

The revisions and additions read as follows:

§ 59.511 What notifications and reports must I submit?

* * * * *

(b) * * *

(8) [Reserved]

(9) For each product category, VOC formulation data for each formulation that you anticipate manufacturing, importing, or distributing for calendar year 2009 or for the first year that includes your compliance date, if different than 2009. If a regulated entity can certify that the reporting is being completed by another regulated entity for any product, no second report is required. The formulation data must include the weight fraction (g compound/g product) for each VOC ingredient used in the product in an amount greater than or equal to 0.1 percent. For each VOC ingredient reported, the formulation data must also include the information in either paragraph (b)(9)(i), (ii), or (iii) of this section.

(i) For compounds listed in table 2A to this subpart, the chemical name, CAS number, and the applicable reactivity factor;

(ii) For the hydrocarbon solvent mixtures listed in either table 2B or 2C to this subpart, the trade name, solvent mixture manufacturer, bin number, and the applicable reactivity factor; or

(iii) For compounds not listed in table 2A to this subpart, the chemical name,

CAS number, and the default RF in § 59.505(e).

* * * * *

(c) If you change any information included in the initial notification required by paragraph (b) of this section, including the list of aerosol categories, contact information, records location, the category or date coding system, you must notify the Administrator of such changes within 30 days following the change. You are not required to notify the Administrator within 30 days of changes to the information provided as required by paragraph (b)(9) of this section. Changes in formulation are to be reported in the triennial reporting required by paragraph (i) of this section.

(d) Upon 60 days written notice, you must submit to the Administrator a written report with all the information in paragraphs (d)(1) through (6) of this section for each product you manufacture, distribute, or import under your name or another company's name.

* * * * *

(5) For each product, formulation data for each formulation that manufactured, imported, or distributed in the requested time period. The formulation data must include the weight fraction (g compound/g product) for each VOC ingredient used in the product in an amount greater than or equal to 0.1 percent, plus the weight fraction of all other ingredients, including: Water, total solids, and any other compounds assigned an RF of zero. The formulation data must also include the information in either paragraph (d)(5)(i), (ii), or (iii) of this section.

(i) For compounds listed in table 2A to this subpart, the chemical name, CAS number, and the applicable reactivity factor;

(ii) For the hydrocarbon solvent mixtures listed in either table 2B or 2C to this subpart, the trade name, solvent mixture manufacturer, bin number, and the applicable reactivity factor; or

(iii) For compounds not listed in table 2A to this subpart, the chemical name, CAS number, and the default RF in § 59.505(e).

(6) All identification information included in paragraphs (b)(1) and (2) of this section.

* * * * *

(i) * * *

(2) For each product category, VOC formulation data for each formulation that was manufactured, imported, or distributed in the reporting year. If a regulated entity can certify that the reporting is being completed by another regulated entity for any product, no second report is required. The formulation data must include the weight fraction (g compound/g product) for each VOC ingredient used in the product in an amount greater than or equal to 0.1 percent. For each VOC ingredient reported, the formulation data must include the information in paragraph (i)(2)(i), (ii), or (iii) of this section.

(i) For compounds listed in table 2A to this subpart, the chemical name, CAS number, and the applicable reactivity factor;

(ii) For the hydrocarbon solvent mixtures listed in either table 2B or 2C to this subpart, the trade name, solvent mixture manufacturer, bin number, and the applicable reactivity factor; or

(iii) For compounds not listed in table 2A to this subpart, the chemical name, CAS number, and the default RF in § 59.505(e).

* * * * *

(j) If a regulated entity identifies a VOC that is needed for an aerosol formulation that is not listed in table 2A to this subpart, it is assigned a default RF of 18.50 g O_3/g VOC. Regulated entities may petition the Administrator to add a compound to table 2A, 2B, or 2C to this subpart. Petitions must include the chemical name, CAS number, a statement certifying the intent to use the compound in an aerosol coatings product, and adequate information for the Administrator to evaluate the reactivity of the compound and assign an RF consistent with the values for the other compounds listed in table 2A to this subpart. Any requests submitted to EPA on or before June 1, 2008, will be considered and, if appropriate, incorporated into table 2A, 2B, or 2C to this subpart on or before January 1, 2009.

(k) Beginning on July 17, 2025, or once the notification/report template for this subpart has been available on the CEDRI website for six months, whichever date is later, regulated entities shall submit all notifications, reports, and other information required in § 59.511 (b) through (j) following the procedure specified in paragraph (l) of this section.

(l) If you are required to submit notifications or reports following the procedure specified in this paragraph (l), you must submit reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Anything submitted using CEDRI cannot later be claimed CBI. You must use the appropriate electronic report template on the CEDRI website (*www.epa.gov/electronic-reporting-air-emissions/cedri*) for this subpart. The date in which the report template becomes available will be listed on the CEDRI website. Unless the Administrator or delegated State agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate template on the CEDRI website. The preferred method for CBI submittal is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services. Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address: *oaqpscbi@epa.gov* and should include clear CBI markings and be flagged to the attention of the Group Leader, Measurement Policy Group. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If you cannot transmit the file electronically, you may mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Aerosol Coatings Sector Lead, (C404–02), Research Triangle Park, North Carolina 27711. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (l). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(m) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (m)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the

time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed, and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(n) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (n)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the regulated entity, its contractors, or any entity controlled by the regulated entity that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the regulated entity (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 8. Revise § 59.512 to read as follows:

§ 59.512 Addresses of EPA Regional Offices.

(a) All requests (including variance requests), reports, submittals, and other communications to the Administrator pursuant to this regulation shall be submitted to the Regional Office of the EPA through CEDRI which serves the State or territory for the address that is listed on the aerosol coating product in question. These areas are indicated in the following list of EPA Regional Offices:

(1) EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

(2) EPA Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Division of Enforcement and Compliance Assistance, 290 Broadway, New York, NY 10007–1866.

(3) EPA Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Chief, Air Section, Enforcement & Compliance Assurance Division, Air, RCRA and Toxics Branch, U.S. EPA Region 3, 1650 Arch Street—3ED21, Philadelphia, PA 19103.

(4) EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air and Radiation Division, 61 Forsyth Street SW, Atlanta, GA 30303–3104.

(5) EPA Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.

(6) EPA Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Chief, Air Enforcement Branch, Enforcement and Compliance Assurance Division, Mail Code ECDA, 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.

(7) EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.

(8) EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Chief, Air and Toxics Enforcement Branch, 1595 Wynkoop Street, Denver, CO 80202–1129.

(9) EPA Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Chief, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

(10) EPA Region X (Alaska, Oregon, Idaho, Washington), Chief, Air Permits and Toxics Branch, Air and Radiation Division, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101.

(b) Beginning on July 17, 2025, or once the notification/report template for this subpart has been available on the CEDRI website for six months, whichever date is later, regulated entities shall submit all notifications, reports, and other information required in § 59.511(b) through (j) following the procedure specified in § 59.511(l).

■ 9. Revise § 59.515 to read as follows:

§ 59.515 Incorporations by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the U.S. Environmental Protection Agency (EPA) and at the National Archives and Records Administration (NARA). Contact the EPA at: EPA Docket Center, Public Reading Room, EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC; phone: (202) 566–1744. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*. The material may be obtained from the following sources:

(a) ASTM, International (ASTM), 100 Barr Harbor Drive, P.O. Box CB700,

West Conshohocken, Pennsylvania 19428–2959; phone: (800) 262–1373; website: *www.astm.org.*

(1) ASTM Method D523–08, Standard Test Method for Specular Gloss (June 1, 2008), IBR approved for § 59.508(c).

(2) ASTM Method D523–89 (Reapproved 1999), Standard Test Method for Specular Gloss (May 10, 1999), IBR approved for table 3 of appendix A to subpart E of part 59.

(b) California Air Resources Board (CARB), 1001 I Street, P.O. Box 2815, Sacramento, CA 95812–2815, Telephone (916) 327–0900, *www.arb.ca.gov.*

(1) California Air Resources Board Method 310—Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (May 25, 2018) (CARB Method 310 (2018)), IBR approved for §§ 59.505(c) and 59.508(a).

(2) California Air Resources Board Method 310—Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (May 5, 2005) (CARB Method 310 (2005)), IBR approved for table 3 of appendix A to subpart E of part 59.

(c) South Coast Air Quality Management District (SCAQMD), 21865 Copley Dr, Diamond Bar, CA 91765, Telephone (909–396–2000), *www.aqmd.gov.*

(1) South Coast Air Quality Management District Test Method 318–95, Determination of Weight Percent Elemental Metal in Coatings by X-ray Diffraction, (July, 1996) (SCAQMD Test Method 318–95), IBR approved for § 59.508(b) and table 3 of appendix A to subpart E of part 59.

(2) [Reserved]

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■ 10. Revise tables 1, 2A, 2B, and 2C to subpart E of part 59 to read as follows:

TABLE 1 TO SUBPART E OF PART 59—PRODUCT-WEIGHTED REACTIVITY LIMITS BY COATING CATEGORY

Coating category	Category code [a]	Reactivity limit (g O_3/g product)
Art Fixatives or Sealants	AFS	1.75
Auto Body Primers	ABP	0.95
Automotive Bumper and Trim Products	ABT	1.70
Aviation or Marine Primers	AMP	1.25
Aviation Propeller Coatings	APC	1.40
Clear Coatings	CCP	0.85
Corrosion Resistant Brass, Bronze, or Copper Coatings	CRB	1.80
Electrical/Electronic/Conformal Coatings	ECC	2.00
Exact Match Finish—Automotive	EFA	0.95
Exact Match Finish—Engine Enamel	EEE	0.95
Exact Match Finish—Industrial	EFI	1.20
Flat Coatings	FCP	0.80
Flexible Coatings	FCC	1.60
Floral Sprays	FSP	0.85
Fluorescent Coatings	FLP	1.30
Glass Coatings	GCP	1.35
Ground Traffic/Marking	GTM	0.85
High Temperature Coatings	HTC	1.85
Hobby/Model/Craft Coatings	HMC	1.60
Marine Spar Varnishes	MSV	0.90
Metallic Coatings	MCP	1.25
Mold Release Coating	MRC	1.10
Non-Flat Coatings	NFP	0.95
Photograph Coatings	PHC	0.75
Pleasure Craft Primers, Surfacers or Undercoaters	PCS	0.90
Pleasure Craft Topcoats	PCT	0.60
Polyolefin Adhesion Promoters	PAP	2.50
Primers	PCP	0.70
Rust Converter Coating	RCC	1.10
Shellac Sealers	SSC	1.00
Slip-Resistant Coatings	SRC	2.10
Spatter/Multicolor Coatings	SMC	1.05
Two Component Coating	TWC	1.20
Uniform Finish Coating	UFC	1.30
Vinyl/Fabric/Leather/Polycarbonate Coatings	VFL	1.45
Webbing/Veiling Coatings	WFC	0.75
Weld-Through Primers	WTP	1.00
Wood Stains	WSP	0.90
Wood Touch-up/Repair or Restoration Coatings	WTR	1.45

[a] Regulated entities may use these category codes or define their own in accordance with § 59.511(b)(6).

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS

Compound	CAS No.	Reactivity factor (g O_3/g VOC)
Formaldehyde	50–00–0	9.46
Glycerol (1,2,3-Propanetriol)	56–81–5	3.15
Propylene Glycol	57–55–6	2.58
Ethanol	64–17–5	1.53
Formic Acid	64–18–6	0.06

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

Compound	CAS No.	Reactivity factor (g O_3/g VOC)
Acetic Acid	64–19–7	0.68
Methanol	67–56–1	0.67
Isopropyl Alcohol (2-Propanol)	67–63–0	0.61
Acetone (Propanone)	67–64–1	0.36
n-Propanol (n-Propyl Alcohol)	71–23–8	2.50
n-Butyl Alcohol (Butanol)	71–36–3	2.88
n-Pentanol (Amyl Alcohol)	71–41–0	2.83
Benzene	71–43–2	0.72
1,1,1-Trichloroethane	71–55–6	0.01
Propane	74–98–6	0.49
Vinyl Chloride	75–01–4	2.83
Acetaldehyde	75–07–0	6.54
Methylene Chloride (Dichloromethane)	75–09–2	0.04
Ethylene Oxide	75–21–8	0.03
Isobutane	75–28–5	1.23
HFC–152A (1,1-Difluoroethane)	75–37–6	0.02
Propylene Oxide	75–56–9	0.29
t-Butyl Alcohol	75–65–0	0.41
Methyl t-Butyl Ketone	75–97–8	0.65
Isophorone (3,5,5-Trimethyl-2-Cyclohexenone)	78–59–1	4.63
Isopentane	78–78–4	1.45
Isobutanol	78–83–1	2.51
2-Butanol (s-butyl alcohol)	78–92–2	1.36
Methyl Ethyl Ketone (2-Butanone)	78–93–3	1.48
Monoisopropanol Amine (1-Amino-2-Propanol)	78–96–6	5.42
Trichloroethylene	79–01–6	0.64
Propionic Acid	79–09–4	1.22
Acrylic Acid	79–10–7	11.38
Methyl Acetate	79–20–9	0.07
Nitroethane	79–24–3	0.06
Methacrylic Acid	79–41–4	18.50
2-Nitropropane	79–46–9	0.11
a-Pinene (Pine Oil)	80–56–8	4.51
Methyl Methacrylate	80–62–6	15.61
Diethyl Phthalate	84–66–2	1.62
Dibutyl Phthalate	84–74–2	1.25
Naphthalene	91–20–3	3.34
2-Ethyl-1,3-hexanediol	94–96–2	2.05
Xylene, ortho-	95–47–6	7.64
o-Cresol	95–48–7	2.40
1,2,4-Trimethylbenzene	95–63–6	8.87
3-Pentanone	96–22–0	1.24
Methyl Ethyl Ketoxime (Ethyl Methyl Ketone Oxime)	96–29–7	1.58
gamma-Butyrolactone	96–48–0	0.96
Ethyl Lactate	97–64–3	2.48
Isobutyl Isobutyrate	97–85–8	0.60
Isobutyl Methacrylate	97–86–9	8.62
Butyl Methacrylate	97–88–1	8.70
Tert-butyl benzene	98–06–6	1.95
Benzotrifluoride	98–08–8	0.29
PCBTF (p-Trifluoromethyl-Cl-Benzene)	98–56–6	0.13
Cumene (Isopropyl Benzene)	98–82–8	2.52
a-Methyl Styrene	98–83–9	1.53
Ethyl Benzene	100–41–4	3.04
Styrene	100–42–5	1.73
Benzyl Alcohol	100–51–6	5.11
Benzaldehyde	100–52–7	0.00
Triethanolamine	102–71–6	4.21
2-Ethyl-Hexyl Acetate	103–09–3	0.66
2-Ethyl-Hexyl Acrylate	103–11–7	2.52
2-Ethyl-1-Hexanol (Ethyl Hexyl Alcohol)	104–76–7	2.00
Ethyl Propionate	105–37–3	0.77
s-Butyl Acetate	105–46–4	1.32
Diethyl Carbonate	105–58–8	0.71
n-Propyl Propionate	106–36–5	0.84
Xylene, para-	106–42–3	5.84
p-Dichlorobenzene	106–46–7	0.18
Dimethyl Succinate	106–65–0	0.23
1,2-Epoxybutane (Ethyl Oxirane)	106–88–7	0.91
n-Propyl Bromide	106–94–5	0.42
Butane	106–97–8	1.15

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

Compound	CAS No.	Reactivity factor (g O_3/g VOC)
1,3-Butadiene	106–99–0	12.61
Ethylene Glycol	107–21–1	3.13
2-Methyl-2,4-Pentanediol	107–41–5	1.45
Hexamethyldisiloxane	107–46–0	0.00
Isohexane Isomers	107–83–5	1.50
Methyl n-Propyl Ketone (2-Pentanone)	107–87–9	2.81
Propylene Glycol Monomethyl Ether (1-Methoxy-2-Propanol)	107–98–2	2.44
n,n-Dimethylethanolamine	108–01–0	5.62
1-Nitropropane	108–03–2	0.22
Vinyl Acetate	108–05–4	3.20
Methyl Isobutyl Ketone	108–10–1	3.88
Isopropyl Acetate	108–21–4	1.07
Propylene Carbonate (4-Methyl-1,3-Dioxolan-2one)	108–32–7	0.28
Xylene, meta-	108–38–3	9.75
Propylene Glycol Monomethyl Ether Acetate (1-Methoxy-2-Propyl Acetate)	108–65–6	1.70
1,3,5-Trimethyl Benzene	108–67–8	11.76
Di-Isobutyl Ketone (2,6-Dimethyl-4-Heptanone)	108–83–8	2.68
Methylcyclohexane	108–87–2	1.70
Toluene	108–88–3	4.00
Monochlorobenzene	108–90–7	0.32
Cyclohexanol	108–93–0	1.95
Cyclohexanone	108–94–1	1.35
n-Butyl Butyrate	109–21–7	1.08
Propyl Acetate	109–60–4	0.78
Pentane	109–66–0	1.31
Ethylene Glycol Monomethyl Ether (2-Methoxyethanol)	109–86–4	2.93
Dimethoxy Methane	109–87–5	0.94
Tetrahydrofuran	109–99–9	4.31
Methyl Isoamyl Ketone (5-Methyl-2-Hexanone)	110–12–3	2.41
Isobutyl Acetate	110–19–0	0.62
Methyl Amyl Ketone	110–43–0	2.36
Hexane	110–54–3	1.24
n-Propyl Formate	110–74–7	0.78
2-Ethoxyethanol	110–80–5	3.71
Cyclohexane	110–82–7	1.25
Morpholine	110–91–8	1.98
Dipropylene Glycol	110–98–5	2.31
Ethylene Glycol Monoethyl Ether Acetate (2-Ethoxyethyl Acetate)	111–15–9	1.84
Diethylenetriamine	111–40–0	15.53
Diethanolamine	111–42–2	2.47
Diethylene Glycol	111–46–6	3.35
n-Octane	111–65–9	0.90
2-Butoxy-1-Ethanol (Ethylene Glycol Monobutyl Ether)	111–76–2	2.90
Diethylene Glycol Methyl Ether (2-(2-Methoxyethoxy) Ethanol)	111–77–3	2.66
n-Nonane	111–84–2	0.78
2-(2-Ethoxyethoxy) Ethanol	111–90–0	3.26
Ethylene Glycol Monobutyl Ether Acetate (2-Butoxyethyl Acetate)	112–07–2	1.62
2-(2-Ethoxyethoxy) Ethyl Acetate	112–15–2	1.48
2-(2-Butoxyethoxy)-Ethanol	112–34–5	2.39
Dimethyl Ether	115–10–6	0.81
Triethylamine	121–44–8	3.84
2-Phenoxyethanol; Ethylene Glycol Phenyl Ether	122–99–6	4.49
Diacetone Alcohol	123–42–2	0.60
2,4-Pentanedione	123–54–6	1.01
Butanal	123–72–8	5.97
Butyl Acetate, n	123–86–4	0.83
3-Methyl-Butyl Acetate	123–92–2	1.09
2-(2-Butoxyethoxy) Ethyl Acetate	124–17–4	1.38
2-Amino-2-Methyl-1-Propanol	124–68–5	0.25
Perchloroethylene	127–18–4	0.03
Ethanolamine	141–43–5	6.81
Ethyl acetate	141–78–6	0.63
Heptane	142–82–5	1.07
n-Hexyl Acetate (Hexyl Acetate)	142–92–7	0.69
2-Ethyl Hexanoic Acid	149–57–5	3.32
trans-1,2-Dichloroethene	156–60–5	1.70
1,2,3-Trimethyl Benzene	526–73–8	11.97
t-Butyl Acetate	540–88–5	0.18
Methyl Isobutyrate	547–63–7	0.61
Methyl Lactate	547–64–8	2.67
Methyl Propionate	554–12–1	0.66

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

Compound	CAS No.	Reactivity factor (g O_3/g VOC)
1,2-Butanediol	584–03–2	2.52
n-Butyl Propionate	590–01–2	0.84
Methyl n-Butyl Ketone (2-Hexanone)	591–78–6	3.14
Dimethyl carbonate	616–38–6	0.06
2-Methyl-1-Butyl Acetate	624–41–9	1.08
n-Pentyl Propionate	624–54–4	0.71
Ethyl Isopropyl Ether	625–54–7	3.74
Dimethyl Adipate	627–93–0	1.80
Methyl n-Butyl Ether	628–28–4	3.15
Amyl Acetate (Pentyl Ethanoate, Pentyl Acetate)	628–63–7	0.84
Ethyl n-Butyl Ether	628–81–9	3.48
Ethyl t-Butyl Ether	637–92–3	2.01
1,3-Dioxolane	646–06–0	4.96
Ethyl-3-Ethoxypropionate	763–69–9	3.58
Methyl Pyrrolidone (n-Methyl-2-Pyrrolidone)	872–50–4	2.41
Dimethyl Gluterate	1119–40–0	0.42
C8 Disubstituted Benzenes	1330–20–7	7.76
Ethylene Glycol 2-Ethylhexyl Ether [2-(2-Ethylhexyloxy) Ethanol]	1559–35–9	1.55
Propylene Glycol Monopropyl Ether (1-Propoxy-2-Propanol)	1569–01–3	2.68
Propylene Glycol Monoethyl Ether (1-Ethoxy-2-Propanol)	1569–02–4	3.09
2-Methoxy-1-Propanol	1589–47–5	3.01
Methyl t-Butyl Ether	1634–04–4	0.73
trans-1,3,3,3-tetrafluoropropene (HFO–1234ze)	1645–83–6	0.10
Ethylcyclohexane	1678–91–7	1.47
Isoamyl Isobutyrate	2050–01–3	0.82
2-Propoxy-ethanol (Ethylene Glycol Monopropyl Ether)	2807–30–9	3.30
n-Butoxy-2-Propanol	5131–66–8	2.72
d-Limonene (Dipentene or Orange Terpene)	5989–27–5	4.55
2,2,4-trimethyl-1,3-pentanediol diisobutyrate	6846–50–0	0.38
Dipropylene Glycol Methyl Ether Isomer (2-[2Methoxypropoxy]-1-Propanol)	13588–28–8	2.58
C9 Styrenes	25013–15–4	1.53
Texanol (1,3 Pentanediol, 2,2,4-Trimethyl, 1-Isobutyrate)	25265–77–4	0.81
Isodecyl Alcohol (8-Methyl-1-Nonanol)	25339–17–7	1.06
Tripropylene Glycol Monomethyl Ether	25498–49–1	1.92
Glycol Ether DPNB (1-(2-Butoxy-1-Methylethoxy) 2-Propanol)	29911–28–2	1.83
Dipropylene Glycol Monomethyl Ether (mixture of isomers)	34590–94–8	2.58
Propylene Glycol t-Butyl Ether (1-tert-Butoxy-2-Propanol)	57018–52–7	1.61
2-Methoxy-1-Propyl Acetate	70657–70–4	1.12
Dipropylene Glycol Methyl Ether Acetate Isomers	88917–22–0	1.45
Oxo-Heptyl Acetate	90438–79–2	0.83
2-tert-Butoxy-1-Propanol	94023–15–1	1.81
trans-1-chloro-3,3,3-trifluoropropene (HFO–1233zdE)	102687–65–0	0.04
Oxo-Octyl Acetate	108419–32–5	0.81

TABLE 2B TO SUBPART E OF PART 59—REACTIVITY FACTORS FOR ALIPHATIC HYDROCARBON SOLVENT MIXTURES

Bin	Average boiling point* (degrees F)	Criteria	Reactivity factor (g O_3/g VOC)
1	80–205	Alkanes (<2% Aromatics)	1.42
2	80–205	N- & Iso-Alkanes (≥90% and <2% Aromatics)	1.31
3	80–205	Cyclo-Alkanes (≥90% and <2% Aromatics)	1.63
4	80–205	Alkanes (2 to <8% Aromatics)	1.47
5	80–205	Alkanes (8 to 22% Aromatics)	1.56
6	>205–340	Alkanes (<2% Aromatics)	1.17
7	>205–340	N- & Iso-Alkanes (≥90% and <2% Aromatics)	1.03
8	>205–340	Cyclo-Alkanes (≥90% and <2% Aromatics)	1.44
9	>205–340	Alkanes (2 to <8% Aromatics)	1.44
10	>205–340	Alkanes (8 to 22% Aromatics)	1.98
11	>340–460	Alkanes (<2% Aromatics)	0.70
12	>340–460	N- & Iso-Alkanes (≥90% and <2% Aromatics	0.62
13	>340–460	Cyclo-Alkanes (≥90% and <2% Aromatics)	0.86
14	>340–460	Alkanes (2 to <8% Aromatics)	0.99
15	>340–460	Alkanes (8 to 22% Aromatics)	1.57
16	>460–580	Alkanes (<2% Aromatics)	0.52
17	>460–580	N- & Iso-Alkanes (≥90% and <2% Aromatics)	0.48
18	>460–580	Cyclo-Alkanes (≥90% and <2% Aromatics)	0.60
19	>460–580	Alkanes (2 to <8% Aromatics)	0.66

TABLE 2B TO SUBPART E OF PART 59—REACTIVITY FACTORS FOR ALIPHATIC HYDROCARBON SOLVENT MIXTURES—Continued

Bin	Average boiling point * (degrees F)	Criteria	Reactivity factor (g O_3/g VOC)
20	>460–580	Alkanes (8 to 22% Aromatics)	0.95

TABLE 2C TO SUBPART E OF PART 59—REACTIVITY FACTORS FOR AROMATIC HYDROCARBON SOLVENT MIXTURES

Bin	Boiling range (degrees F)	Criteria	Reactivity factor (g O_3/g VOC
21	280–290	Aromatic Content (≥98%)	7.64
22	320–350	Aromatic Content (≥98%)	7.60
23	355–420	Aromatic Content (≥98%)	6.85
24	450–535	Aromatic Content (≥98%)	3.82

■ 11. Add appendix A to subpart E of part 59 to read as follows:

Appendix A to Subpart E of Part 59—In compliance with 40 CFR Part 59, Subpart E, the following standards will remain applicable prior to July 17, 2025.

I. Appendix A—Table 1 Under 40 CFR Part 59, Subpart E

APPENDIX A—TABLE 1 TO SUBPART E OF PART 59—PRODUCT-WEIGHTED REACTIVITY LIMITS BY COATING CATEGORY—APPLICABLE PRIOR TO JULY 17, 2025

Coating category	Category code [a]	Reactivity limit (g O_3/g product)
Clear Coatings	CCP	1.50
Flat Coatings	FCP	1.20
Fluorescent Coatings	FLP	1.75
Metallic Coatings	MCP	1.90
Non-Flat Coatings	NFP	1.40
Primers	PCP	1.20
Ground Traffic/Marking	GTM	1.20
Art Fixatives or Sealants	AFS	1.80
Auto Body Primers	ABP	1.55
Automotive Bumper and Trim Products	ABT	1.75
Aviation or Marine Primers	AMP	2.00
Aviation Propellor Coatings	APC	2.50
Corrosion Resistant Brass, Bronze, or Copper Coatings	CRB	1.80
Exact Match Finish—Engine Enamel	EEE	1.70
Exact Match Finish—Automotive	EFA	1.50
Exact Match Finish—Industrial	EFI	2.05
Floral Sprays	FSP	1.70
Glass Coatings	GCP	1.40
High Temperature Coatings	HTC	1.85
Hobby/Model/Craft Coatings, Enamel	HME	1.45
Hobby/Model/Craft Coatings, Lacquer	HML	2.70
Hobby/Model/Craft Coatings, Clear or Metallic	HMC	1.60
Marine Spar Varnishes	MSV	0.90
Photograph Coatings	PHC	1.00
Pleasure Craft Primers, Surfacers or Undercoaters	PCS	1.05
Pleasure Craft Topcoats	PCT	0.60
Polyolefin Adhesion Promoters	PAP	2.50
Shellac Sealers, Clear	SSC	1.00
Shellac Sealers, Pigmented	SSP	0.95
Slip-Resistant Coatings	SRC	2.45
Spatter/Multicolor Coatings	SMC	1.05
Vinyl/Fabric/Leather/Polycarbonate Coatings	VFL	1.55
Webbing/Veiling Coatings	WFC	0.85
Weld-Through Primers	WTP	1.00
Wood Stains	WSP	1.40
Wood Touch-up/Repair or Restoration Coatings	WTR	1.50

[a] Regulated entities may use these category codes or define their own in accordance with § 59.511(b)(6).

II. Appendix A—Table 2A Under 40 CFR Part 59, Subpart E

APPENDIX A—TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—APPLICABLE PRIOR TO JULY 17, 2025

Compound	CAS No.	Reactivity factor (g O_3/g VOC)
Formaldehyde	50–00–0	8.97
Glycerol (1,2,3-Propanetriol)	56–81–5	3.27
Propylene Glycol	57–55–6	2.75
Ethanol	64–17–5	1.69
Formic Acid	64–18–6	0.08
Acetic Acid	64–19–7	0.71
Methanol	67–56–1	0.71
Isopropyl Alcohol (2-Propanol)	67–63–0	0.71
Acetone (Propanone)	67–64–1	0.43
n-Propanol (n-Propyl Alcohol)	71–23–8	2.74
n-Butyl Alcohol (Butanol)	71–36–3	3.34
n-Pentanol (Amyl Alcohol)	71–41–0	3.35
Benzene	71–43–2	0.81
1,1,1-Trichloroethane	71–55–6	0.00
Propane	74–98–6	0.56
Vinyl Chloride	75–01–4	2.92
Acetaldehyde	75–07–0	6.84
Methylene Chloride (Dichloromethane)	75–09–2	0.07
Ethylene Oxide	75–21–8	0.05
Isobutane	75–28–5	1.35
HFC–152A (1,1-Difluoroethane)	75–37–6	0.00
Propylene Oxide	75–56–9	0.32
t-Butyl Alcohol	75–65–0	0.45
Methyl t-Butyl Ketone	75–97–8	0.78
Isophorone (3,5,5-Trimethyl-2-Cyclohexenone)	78–59–1	10.58
Isopentane	78–78–4	1.68
Isobutanol	78–83–1	2.24
2-Butanol (s-Butyl Alcohol)	78–92–2	1.60
Methyl Ethyl Ketone (2-Butanone)	78–93–3	1.49
Monoisopropanol Amine (1-Amino-2-Propanol)	78–96–6	13.42
Trichloroethylene	79–01–6	0.60
Propionic Acid	79–09–4	1.16
Acrylic Acid	79–10–7	11.66
Methyl Acetate	79–20–9	0.07
Nitroethane	79–24–3	12.79
Methacrylic Acid	79–41–4	18.78
a-Pinene (Pine Oil)	80–56–8	4.29
Methyl Methacrylate	80–62–6	15.84
Naphthalene	91–20–3	3.26
Xylene, ortho-	95–47–6	7.49
o-Cresol	95–48–7	2.34
1,2,4-Trimethylbenzene	95–63–6	7.18
3-Pentanone	96–22–0	1.45
Methyl Ethyl Ketoxime (Ethyl Methyl Ketone Oxime)	96–29–7	22.04
gamma-Butyrolactone	96–48–0	1.15
Ethyl Lactate	97–64–3	2.71
Isobutyl Isobutyrate	97–85–8	0.61
Isobutyl Methacrylate	97–86–9	8.99
Butyl Methacrylate	97–88–1	9.09
Benzotrifluoride	98–08–8	0.26
PCBTF (p-Trifluoromethyl-Cl-Benzene)	98–56–6	0.11
Cumene (Isopropyl Benzene)	98–82–8	2.32
a-Methyl Styrene	98–83–9	1.72
Ethyl Benzene	100–41–4	2.79
Styrene	100–42–5	1.95
Benzaldehyde	100–52–7	0.00
Triethanolamine	102–71–6	2.76
2-Ethyl-Hexyl Acetate	103–09–3	0.79
2-Ethyl-Hexyl Acrylate	103–11–7	2.42
2-Ethyl-1-Hexanol (Ethyl Hexyl Alcohol)	104–76–7	2.20
Ethyl Propionate	105–37–3	0.79
s-Butyl Acetate	105–46–4	1.43
n-Propyl Propionate	106–36–5	0.93
Xylene, para-	106–42–3	4.25
p-Dichlorobenzene	106–46–7	0.20
Dimethyl Succinate	106–65–0	0.23
1,2-Epoxybutane (Ethyl Oxirane)	106–88–7	1.02
n-Propyl Bromide	106–94–5	0.35

APPENDIX A—TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—APPLICABLE PRIOR TO JULY 17, 2025—Continued

Compound	CAS No.	Reactivity factor (g O_3/g VOC)
Butane	106–97–8	1.33
1,3-Butadiene	106–99–0	13.58
Ethylene Glycol	107–21–1	3.36
2-Methyl-2,4-Pentanediol	107–41–5	1.04
Hexamethyldisiloxane	107–46–0	0.00
Isohexane Isomers	107–83–5	1.80
Methyl n-Propyl Ketone (2-Pentanone)	107–87–9	3.07
Propylene Glycol Monmethyl Ether (1-Methoxy-2-Propanol)	107–98–2	2.62
n,n-Dimethylethanolamine	108–01–0	4.76
1-Nitropropane	108–03–2	16.16
Vinyl Acetate	108–05–4	3.26
Methyl Isobutyl Ketone	108–10–1	4.31
Isopropyl Acetate	108–21–4	1.12
Propylene Carbonate	107–46–0	0.00
(4-Methyl-1,3-Dioxolan-2one)	108–32–7	0.25
Xylene, meta-	108–38–3	10.61
Propylene Glycol Monomethyl Ether Acetate (1-Methoxy-2-Propyl Acetate)	108–65–6	1.71
1,3,5-Trimethyl Benzene	108–67–8	11.22
Di-Isobutyl Ketone (2,6-Dimethyl-4-Heptanone)	108–83–8	2.94
Methylcyclohexane	108–87–2	1.99
Toluene	108–88–3	3.97
Monochlorobenzene	108–90–7	0.36
Cyclohexanol	108–93–0	2.25
Cyclohexanone	108–94–1	1.61
n-Butyl Butyrate	109–21–7	1.12
Propyl Acetate	109–60–4	0.87
Pentane	109–66–0	1.54
Ethylene Glycol Monomethyl Ether (2-Methoxyethanol)	109–86–4	2.98
Tetrahydrofuran	109–99–9	4.95
Methyl Isoamyl Ketone (5-Methyl-2-Hexanone)	110–12–3	2.10
Isobutyl Acetate	110–19–0	0.67
Methyl Amyl Ketone	110–43–0	2.80
Hexane	110–54–3	1.45
n-Propyl Formate	110–74–7	0.93
2-Ethoxyethanol	110–80–5	3.78
Cyclohexane	110–82–7	1.46
Morpholine	110–91–8	15.43
Dipropylene Glycol	110–98–5	2.48
Ethylene Glycol Monoethyl Ether Acetate (2-Ethoxyethyl Acetate)	111–15–9	1.90
Diethylenetriamine	111–40–0	13.03
Diethanolamine	111–42–2	4.05
Diethylene Glycol	111–46–6	3.55
n-Octane	111–65–9	1.11
2-Butoxy-1-Ethanol (Ethylene Glycol Monobutyl Ether)	111–76–2	2.90
Diethylene Glycol Methyl Ether (2-(2-Methoxyethoxy) Ethanol)	111–77–3	2.90
n-Nonane	111–84–2	0.95
2-(2-Ethoxyethoxy) Ethanol	111–90–0	3.19
Ethylene Glycol Monobutyl Ether Acetate (2-Butoxyethyl Acetate)	112–07–2	1.67
2-(2-Ethoxyethoxy) Ethyl Acetate	112–15–2	1.50
2-(2-Butoxyethoxy)-Ethanol	112–34–5	2.70
Dimethyl Ether	115–10–6	0.93
Triethylamine	121–44–8	16.60
2-Phenoxyethanol; Ethylene Glycol Phenyl Ether	122–99–6	3.61
Diacetone Alcohol	123–42–2	0.68
2,4-Pentanedione	123–54–6	1.02
Butanal	123–72–8	6.74
Butyl Acetate, n	123–86–4	0.89
2-(2-Butoxyethoxy) Ethyl Acetate	124–17–4	1.38
2-Amino-2-Methyl-1-Propanol	124–68–5	15.08
Perchloroethylene	127–18–4	0.04
Ethanolamine	141–43–5	5.97
Ethyl acetate	141–78–6	0.64
Heptane	142–82–5	1.28
n-Hexyl Acetate (Hexyl Acetate)	142–92–7	0.87
2-Ethyl Hexanoic Acid	149–57–5	4.41
1,2,3-Trimethyl Benzene	526–73–8	11.26
t-Butyl Acetate	540–88–5	0.20
Methyl Isobutyrate	547–63–7	0.70
Methyl Lactate	547–64–8	2.75
Methyl Propionate	554–12–1	0.71

APPENDIX A—TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—APPLICABLE PRIOR TO JULY 17, 2025—Continued

Compound	CAS No.	Reactivity factor (g O_3/g VOC)
1,2 Butanediol	584–03–2	2.21
n-Butyl Propionate	590–01–2	0.89
Methyl n-Butyl Ketone (2-Hexanone)	591–78–6	3.55
Dimethyl carbonate	616–38–6	0.06
Ethyl Isopropyl Ether	625–54–7	3.86
Dimethyl Adipate	627–93–0	1.95
Methy n-Butyl Ether	628–28–4	3.66
Amyl Acetate (Pentyl Ethanoate, Pentyl Acetate)	628–63–7	0.96
Ethyl n-Butyl Ether	628–81–9	3.86
Ethyl t-Butyl Ether	637–92–3	2.11
1,3-Dioxolane	646–06–0	5.47
Ethyl-3-Ethoxypropionate	763–69–9	3.61
Methyl Pyrrolidone (n-Methyl-2-Pyrrolidone)	872–50–4	2.56
Dimethyl Gluterate	1119–40–0	0.51
Ethylene Glycol 2-Ethylhexyl Ether [2-(2-Ethylhexyloxy) Ethanol]	1559–35–9	1.71
Propylene Glycol Monopropyl Ether (1-Propoxy-2-Propanol)	1569–01–3	2.86
Propylene Glycol Monoethyl Ether (1-Ethoxy-2-Propanol)	1569–02–4	3.25
2-Methoxy-1-Propanol	1589–47–5	3.01
Methyl t-Butyl Ether	1634–04–4	0.78
Ethylcyclohexane	1678–91–7	1.75
Isoamyl Isobutyrate	2050–01–3	0.89
2-Propoxyethanol (Ethylene Glycol Monopropyl Ether)	2807–30–9	3.52
n-Butoxy-2-Propanol	5131–66–8	2.70
d-Limonene (Dipentene or Orange Terpene)	5989–27–5	3.99
Dipropylene Glycol Methyl Ether Isomer (2-[2Methoxypropoxy]-1-Propanol)	13588–28–8	3.02
Texanol (1,3 Pentanediol, 2,2,4-Trimethyl, 1-Isobutyrate)	25265–77–4	0.89
Isodecyl Alcohol (8-Methyl-1-Nonanol)	25339–17–7	1.23
Tripropylene Glycol Monomethyl Ether	25498–49–1	1.90
Glycol Ether DPNB (1-(2-Butoxy-1-Methylethoxy) 2-Propanol)	29911–28–2	1.96
Propylene Glycol t-Butyl Ether (1-tert-Butoxy-2-Propanol)	57018–52–7	1.71
2-Methoxy-1-Propyl Acetate	70657–70–4	1.12
Oxo-Heptyl Acetate	90438–79–2	0.97
2-tert-Butoxy-1-Propanol	94023–15–1	1.81
Oxo-Octyl Acetate	108419–32–5	0.96
C8 Disubstituted Benzenes	na	7.48
C9 Styrenes	na	1.72

III. Appendix A—Table 2B Under 40 CFR Part 59, Subpart E

APPENDIX A—TABLE 2B TO SUBPART E OF PART 59—REACTIVITY FACTORS FOR ALIPHATIC HYDROCARBON SOLVENT MIXTURES—APPLICABLE PRIOR TO JULY 17, 2025

Bin	Average boiling point * (degrees F)	Criteria	Reactivity factor (g O_3/g VOC)
1	80–205	Alkanes (<2% Aromatics)	2.08
2	80–205	N- & Iso-Alkanes (≥90% and <2% Aromatics)	1.59
3	80–205	Cyclo-Alkanes (≥90% and <2% Aromatics)	2.52
4	80–205	Alkanes (2 to <8% Aromatics)	2.24
5	80–205	Alkanes (8 to 22% Aromatics)	2.56
6	>205–340	Alkanes (<2% Aromatics)	1.41
7	>205–340	N- & Iso-Alkanes (≥90% and <2% Aromatics)	1.17
8	>205–340	Cyclo-Alkanes (≥90% and <2% Aromatics)	1.65
9	>205–340	Alkanes (2 to <8% Aromatics)	1.62
10	>205–340	Alkanes (8 to 22% Aromatics)	2.03
11	>340–460	Alkanes (<2% Aromatics)	0.91
12	>340–460	N- & Iso-Alkanes (≥90% and <2% Aromatics)	0.81
13	>340–460	Cyclo-Alkanes (≥90% and <2% Aromatics)	1.01
14	>340–460	Alkanes (2 to <8% Aromatics)	1.21
15	>340–460	Alkanes (8 to 22% Aromatics)	1.82
16	>460–580	Alkanes (<2% Aromatics)	0.57
17	>460–580	N- & Iso-Alkanes (≥90% and <2% Aromatics)	0.51
18	>460–580	Cyclo-Alkanes (≥90% and <2% Aromatics)	0.63
19	>460–580	Alkanes (2 to <8% Aromatics)	0.88

APPENDIX A—TABLE 2B TO SUBPART E OF PART 59—REACTIVITY FACTORS FOR ALIPHATIC HYDROCARBON SOLVENT MIXTURES—APPLICABLE PRIOR TO JULY 17, 2025—Continued

Bin	Average boiling point* (degrees F)	Criteria	Reactivity factor (g O_3/g VOC)
20	>460–580	Alkanes (8 to 22% Aromatics)	1.49

* Average Boiling Point = (Initial Boiling Point + Dry Point)/2(b) Aromatic Hydrocarbon Solvents.

IV. Appendix A—Table 2C Under 40 CFR Part 59, Subpart E

APPENDIX A—TABLE 2C TO SUBPART E OF PART 59—REACTIVITY FACTORS FOR AROMATIC HYDROCARBON SOLVENT MIXTURES—APPLICABLE PRIOR TO JULY 17, 2025

Bin	Boiling range (degrees F)	Criteria	Reactivity factor (g O_3/g VOC)
21	280–290	Aromatic Content (≥98%)	7.37
22	320–350	Aromatic Content (≥98%)	7.51
23	355–420	Aromatic Content (≥98%)	8.07
24	450–535	Aromatic Content (≥98%)	5.00

V. Appendix A—Table 3 Under 40 CFR Part 59, Subpart E

APPENDIX A—TABLE 3 TO SUBPART E OF PART 59—METHODS—APPLICABLE PRIOR TO JULY 17, 2025

Method name	Description
CARB 310 (2005) or	Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (May 5, 2005), (incorporated by reference, see § 59.515) or
Method EPA 311	Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph;
SCAQMD Method 318–95	Determination of Weight Percent Elemental Metal in Coatings by X-ray Diffraction, July, 1996, (incorporated by reference, see § 59.515).
ASTM Method D523–89 (Reapproved 1999)	Standard Test Method for Specular Gloss, (incorporated by reference, see § 59.515).

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

43 CFR Part 9230

[PO4820000251]

RIN 1004–AF00

Onshore Oil and Gas Operations and Coal Trespass—Annual Civil Penalties Inflation Adjustments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the amounts of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations and coal trespass. This final rule is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and is consistent with applicable Office of Management and Budget (OMB) guidance. The adjustments made by this final rule constitute the 2025 annual inflation adjustments and account for one year of inflation spanning the period from October 2023 through October 2024.

DATES: This rule is effective on January 17, 2025.

FOR FURTHER INFORMATION CONTACT: For information regarding the BLM's Fluid Minerals Program, please contact John Ajak, Acting Division Chief, Fluid Minerals Division, telephone: 505–549–9654; email: *jajak@blm.gov*. For information regarding the BLM's Solid Minerals Program, please contact Matthew Marsh, Acting Division Chief, Solid Minerals Division, telephone: 307–431–1113; email: *mmarsh@blm.gov*.

For questions relating to the regulatory process, please contact Stephen Pollard, Division of Regulatory Affairs, email: *spollard@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Background
II. Calculation of 2024 Adjustments
III. Procedural Requirements
A. Administrative Procedure Act
B. Regulatory Planning and Review (Executive Orders 12866 and 13563)
C. Regulatory Flexibility Act
D. Congressional Review Act
E. Unfunded Mandates Reform Act
F. Takings (E.O. 12630)

G. Federalism (E.O. 13132)
H. Civil Justice Reform (E.O. 12988)
I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)
J. Paperwork Reduction Act
K. National Environmental Policy Act
L. Effects on the Energy Supply (E.O. 13211)

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701, Pub. L. 114–74) (the 2015 Act) became law, amending the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410).

On an annual basis, the 2015 Act requires agencies to:

1. Adjust the level of civil monetary penalties for inflation; and

2. Report inflation adjustments in the Agency Financial Reports as directed by OMB Circular A–136, or any successor thereto.

The purpose of these adjustments is to maintain the deterrent effect of civil monetary penalties and promote compliance with the law (*see* Sec 1, Pub. L. 101–410).

As required by the 2015 Act, on June 28, 2016, the BLM issued an interim final rule that adjusted the level of civil monetary penalties in BLM regulations with the initial ''catch-up'' adjustment (RIN 1004–AE46, 81 FR 41860). In subsequent years, the BLM has issued final rules, adjusting the level of civil monetary penalties for inflation, as appropriate for 2017 to 2024.

On December 17, 2024, OMB issued Memorandum M–25–02, which explains agency responsibilities for identifying applicable penalties and calculating the annual adjustment for 2025 in accordance with the 2015 Act.

II. Calculation of 2024 Adjustments

In accordance with the 2015 Act and OMB Memorandum M–25–02, the BLM has identified applicable civil monetary penalties in its regulations and calculated the annual adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, nor does it include fees for services, licenses, permits, or other regulatory review. The calculated annual inflation adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the October preceding the date of the adjustment and the prior year's October CPI–U. Consistent with guidance in OMB Memorandum M–25–02, the BLM divided the October 2024 CPI–U by the October 2023 CPI–U to calculate the multiplier. In this case, October 2024 CPI–U (315.66)/October 2023 CPI–U (306.671) = 1.02598. OMB Memorandum M–25–02 confirms that this is the proper multiplier. (OMB Memorandum M–25–02 at 2.)

The 2015 Act requires the BLM to adjust the civil penalty amounts in 43 CFR 3163.2 and 9239.5–3(f)(1). To accomplish this, the BLM multiplied the current penalty amounts in those paragraphs by the multiplier set forth in OMB Memorandum M–25–02 (1.02598) to obtain the adjusted penalty amounts. The 2015 Act requires that the resulting amounts be rounded to the nearest $1.00 at the end of the calculation process.

The adjusted penalty amounts will take effect immediately upon publication of this rule. Pursuant to the 2015 Act, the adjusted civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates such increase.

This final rule adjusts the following civil penalties:

CFR citation	Description of the penalty	Current penalty	Adjusted penalty
43 CFR 3163.2(b)(1)	Failure to comply	$1,333	$1,368
43 CFR 3163.2(b)(2)	If corrective action is not taken	13,343	13,690
43 CFR 3163.2(d)	If transporter fails to permit inspection for documentation.	1,333	1,368
43 CFR 3163.2(e)	Failure to permit inspection, failure to notify	26,685	27,378
43 CFR 3163.2(f)	False or inaccurate documents; unlawful transfer or purchase.	66,712	68,445
43 CFR 9239.5–3(f)(1)	Coal exploration for commercial purposes without an exploration license.	4,995	5,125

III. Procedural Requirements

A. Administrative Procedure Act

In accordance with the 2015 Act, agencies must adjust civil monetary penalties ''notwithstanding Section 553 of the Administrative Procedure Act'' (Sec. 4(b)(2), 2015 Act). The BLM is promulgating this 2024 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the 2015 Act and OMB guidance. A proposed rule is not required because the 2015 Act expressly exempts the annual inflation adjustments from the notice and comment requirements of the Administrative Procedure Act. In addition, the 2015 Act does not give the BLM any discretion to vary the amount of the annual inflation adjustment for any given penalty to reflect any views or suggestions provided by commenters. Accordingly, the BLM will not provide an opportunity for public comment on this rule.

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

Executive Order (E.O.) 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M–25–02 at 4).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability and to reduce uncertainty and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science, and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner that is consistent with these requirements to the extent permitted by the 2015 Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a

regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The 2015 Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment (*see* sec. 4(b)(2), 2015 Act). Because the final rule in this case does not include publication of a proposed rule, the RFA does not apply to this final rule.

D. Congressional Review Act

This rule is not a major rule under the Congressional Review Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have federalism implications that warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required.

J. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act (NEPA)

This rule does not constitute a major federal action because of the non-discretionary nature of the civil penalty adjustment as required by law (see 40 CFR 1508.1(q)(1)(ii)). The Department of Labor's Consumer Price Index sets the amount of the annual civil penalty adjustment to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Accordingly, BLM has no discretion in the execution of the civil penalty adjustments. Even if this were a discretionary action, which it is not, a detailed statement under NEPA would also not be required because, as a regulation of an administrative nature, this rule would otherwise be covered by a categorical exclusion. See 43 CFR 46.210(i). BLM has determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would prevent reliance on the categorical exclusion. Because this rule is not a major federal action, it is therefore not subject to the requirements of NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

43 CFR Part 3160

Administrative practice and procedure; Government contracts; Indians-lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands-mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 9230

Penalties, Public lands.

For the reasons given in the preamble, the BLM amends Chapter II of Title 43 of the Code of Federal Regulations as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

Subpart 3163—Noncompliance, Assessments, and Penalties

§ 3163.2 [Amended]

■ 2. In § 3163.2:

■ a. In paragraph (b)(1), remove ''$1,333'' and add in its place ''$1,368''.

■ b. In paragraph (b)(2), remove ''$13,343'' and add in its place ''$13,690''.

■ c. In paragraph (d), remove ''$1,333'' and add in its place ''$1,368''.

■ d. In paragraph (e) introductory text, remove ''$26,685'' and add in its place ''$27,378''.

■ e. In paragraph (f) introductory text, remove ''$66,712'' and add in its place ''$68,445''.

Part 9230—TRESPASS

■ 3.The authority citation for part 9230 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201

Subpart 9239—Kinds of Trespass

§ 9239.5–3 [Amended]

■ 4. In § 9239.5–3(f)(1), remove ''$4,995'' and add in its place ''$5,125''.

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2025–01073 Filed 1–16–25; 8:45 am]

BILLING CODE 4331–29–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2522

RIN 3045–AA84

AmeriCorps State and National Updates

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) is revising regulations governing the number of terms for which AmeriCorps will fund living allowances and other benefits for AmeriCorps State and National members. Specifically, this rule increases the flexibility of the current rule by providing that AmeriCorps funding may be used for living allowances and other benefits for members for as long as it takes the members to either earn the aggregate value of two full-time Segal Education Awards or four terms, whichever is longer.

DATES: This rule is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Jennifer Bastress Tahmasebi, Deputy Director, AmeriCorps State and National, at *JBastressTahmasebi@americorps.gov,* (202) 606–6667; or Elizabeth Appel, Associate General Counsel, at *EAppel@americorps.gov,* (202) 967–5070.

SUPPLEMENTARY INFORMATION:

I. Background
II. Overview of Final Rule (§ 2522.235)
III. Response to Public Comments
A. Comments in Support of Proposed Rule
B. Comments in Opposition to Proposed Rule
C. Comments Requesting Changes to Proposed Rule
IV. Regulatory Analyses
A. Executive Orders 12866 and 13563
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act (SBREFA)
D. Unfunded Mandates Reform Act of 1995
E. Paperwork Reduction Act
F. Executive Order 13132, Federalism
G. Takings (Executive Order 12630)
H. Civil Justice Reform (Executive Order 12988)
I. Consultation with Indian Tribes (Executive Order 13175)
I. Good Cause for Immediate Effective Date

I. Background

The National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 *et seq.,* aims to encourage United States citizens to engage in national service and to expand education opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education. Specifically, the Act establishes the National Service Trust and authorizes AmeriCorps to use funds from that Trust to provide education awards to eligible individuals who have fulfilled a term of service in an approved national service position and meet other applicable requirements. The Act also requires AmeriCorps State and National programs to provide living allowances and certain other benefits to full-time national service program participants. Notices of funding opportunity specify that programs may to choose to provide living allowances with AmeriCorps funding to members who serve less than full-time.

The ''term of service'' that members serve in AmeriCorps State and National can be of different lengths, depending on the needs of the program. Full-time service is defined as 1,700 hours of service during a period of not more than one year. *See* 45 CFR 2522.220(a)(1). Part-time service is defined as 900 hours of service during a period of not more than two years. *See* 45 CFR 2522.220(a)(2). Reduced part-time terms of service may include terms at a reduced number of hours for categories of participants in certain approved AmeriCorps programs and on a case-by-case basis. *See* 45 CFR 2522.220(a)(3). Summer program terms are considered part-time programs and members serve less than 1,700 hours. *See* 45 CFR 2522.220(a)(4).

Under 45 CFR 2525.50, AmeriCorps State and National members can earn up to the value of two full-time education awards. Because full-time and less than full-time (*e.g.,* part-time, reduced part-time, summer) terms of service have different hour requirements, each takes a different number of terms to reach the aggregate value of the two full-time education awards. 45 CFR 2522.220; 2525.100.

During the period that AmeriCorps State and National members are serving and earning Segal Education awards, AmeriCorps funds living allowances and other member benefits (*e.g.,* financial benefits during an extended term of disaster-related service, childcare, health care). The current regulation, which took effect October 1, 2024, allows members to serve as many terms as necessary to earn the value of two full-time education awards, regardless of whether those terms are served on a full-time or less than full-time time basis. The prior regulation allowed AmeriCorps funding to support members' living allowances and benefits for up to four terms of service.

II. Overview of Final Rule

Overall, this final rule is intended to increase the flexibility of AmeriCorps State and National regulations that removed the four-term limit on AmeriCorps funding for AmeriCorps State and National members' living allowances and other benefits. *See* 89 FR 46024 (May 28, 2024).

The final rule, which appears at 45 CFR 2522.235, retains the current provision that allows AmeriCorps funding for living allowances and other member benefits for the number of terms it takes to earn the aggregate value of two full-time education awards and also reinstates the former provision that allowed AmeriCorps funding for up to four terms. Thus, living allowances and other benefits for members who serve less than full time may continue to be funded for however many terms it takes those members to earn the aggregate value of two education awards, while living allowances and other benefits for members who have earned the aggregate value of two full-time education awards in fewer than four terms may continue to be funded up to four terms.

III. Response to Public Comments

AmeriCorps published a proposed rule on August 28, 2024, at 89 FR 68845 and received 46 public comments in response by the September 27, 2024, comment deadline. Summaries of the points raised in those comments, and AmeriCorps' responses, are provided here. No changes to the proposed regulatory text were made in response to these comments or otherwise, as explained in the response to comments.

A. Comments in Support of Proposed Rule

Several commenters stated their general support for providing AmeriCorps funding for members' living allowances and other benefits for service in AmeriCorps State and National programs for either four terms or as many terms needed to attain the aggregate value of two-full time education awards, whichever is longer. The commenters highlighted that the flexibility in term limits supports members, grantees, and the communities served by, for example:

protecting members' opportunity to serve; offering the necessary support for members to complete their service; supporting members' personal and professional growth; enabling members to earn the statutorily allotted two Segal Education awards; benefiting the grantee organizations through members' institutional knowledge and providing organizations with the ability to better determine recruitment and funding needs; creating a value-added benefit for communities and people served; and ensuring continuity of service in rural and remote communities.

Other commenters specifically noted that allowing continued service into third and fourth terms, after two education awards have been attained, is beneficial. For example, one commenter described the importance of her experience as a member who continued to serve a third term of service after earning the aggregate value of two full-time education awards and credited her third term of service as contributing to her growth as a leader, allowing her to earn her teaching certification, and changing the trajectory of her life. A commenter speaking from the perspective of a grantee stated that third- and fourth-year full-time members contribute institutional knowledge and expertise to programs, a ''spirit of service,'' efficacy, and continuity at service sites. Another commenter noted that consecutive terms of service translate into professional development and leadership opportunities for AmeriCorps members. Several commenters expressed the importance of allowing up to four terms for programs in rural and remote communities where members typically serve full-time and it can be difficult to recruit members due to smaller applicant pools.

Some commenters emphasized their support for continuing to allow members to serve beyond four terms until they have earned the value of two full-time education awards. One commenter noted that some members serve only during summers and require more than four terms to earn the value of two full-time education awards. Another commenter stated that the major issue their organization encountered was that members reached the four-term limit (under the prior rule) before they earned the maximum education award and that allowing them to continue to serve to earn the education award addresses this issue.

Response: This final rule carries forward the proposal that allows AmeriCorps funding to be used for living allowances and other benefits for as long as it takes members to either earn the aggregate value of two Segal Education Awards or four terms, whichever is longer. AmeriCorps agrees that the flexibility provides the benefits noted by the commenters above.

B. Comments in Opposition to the Proposed Rule

A few commenters expressed opposition to the rule in general. Several expressed opposition to the regulation's imposition of any limit on the use of AmeriCorps funding for member benefits. Some of these commenters suggested that imposing a term limit on members' service is an effort to fix an issue that does not exist. The commenters stated that only a minute percentage of members serve for third and fourth terms in AmeriCorps State and National programs, and that assumptions that members will serve indefinitely, or that extended terms prevent others from engaging in service, are unwarranted. These commenters stated that any limit presents a barrier to service and discourages service at different stages of life.

Response: AmeriCorps declines to remove all limits to the time during which it will fund members' living allowances and other benefits because such limits are necessary to safeguard taxpayer funds and encourage and support members' transition to higher education or the workforce.

One commenter opposed the four-term limit prong of the rule, suggesting that the four-term timeframe is too long. They stated that after their third and fourth years, members no longer actively gain new skills and should instead transition from AmeriCorps into the workforce.

Response: The final rule reinstates the four-term limit that previously existed to account for situations described by other commenters whereby members may want to continue serving after earning the value of two education awards and the organization and community benefit from their continued service.

Several commenters from AmeriCorps State and National sponsor/grantee organizations criticized the Agency's statements that terms are ''unlimited'' as misleading because the organizations rely on the AmeriCorps funding for members' living allowances and other benefits and would have to absorb the living allowance and benefit costs for members serving beyond the AmeriCorps-funded limit (when the member earns the value of two full-time education awards or four terms, whichever is longer) in order to truly allow for ''unlimited'' terms. These commenters stated that the financial burden would lead to reduced capacity of organizations—particularly in rural and remote areas—fewer serving members, diminished community impacts, and programmatic struggles to maintain ongoing efforts.

Response: AmeriCorps is not changing its approach to limiting funding of living allowances and other benefits for members after a certain point, it is only changing the point at which the limit occurs—that is, when the member earns the value of two full-time education awards or has served four terms, whichever is longer. The final rule makes clear, as the proposed rule did, that programs may choose to fund or not to fund additional member terms. Programs may base their decisions on their financial capacity and the potential effects cited by the commenters.

One commenter expressed criticism of the either/or nature of the rule. The commenter highlighted the potential for members who struggle to meet expectations and are engaged under an improvement plan to continue to be eligible for continued terms and benefits.

Response: Organizations can hold AmeriCorps State and National members to performance standards and may decline continued service by a member who fails to meet their performance standards.

C. Comments Requesting Changes to the Proposed Rule

A handful of commenters suggested incorporating a waiver option that allows programs to request an extension on the number of terms supported by AmeriCorps. These commenters stated that some members, such as individuals with disabilities or members serving in rural communities where recruiting is difficult, may benefit from serving beyond four full-time terms.

Response: The final rule does not include a waiver option but AmeriCorps may consider incorporating one in the future.

Some commenters suggested that AmeriCorps State and National align the member term limits to that of the Volunteers in Service to America (VISTA) program. Commenters stated that the proposed term limit should be increased to five years, equivalent to the current term limit of VISTA members, to provide consistency across streams of service.

Response: The five-year term limit that applies to VISTA members reflects that VISTA terms are by their nature full-time, such that each term is roughly equivalent to a year. In contrast, AmeriCorps State and National

members may serve summer, part-time, or reduced part-time terms in lieu of full-time terms. Imposing a limit based on years rather than terms would prevent members who serve less than full-time from earning the maximum education award value.

Several commenters sought clarification on how term limits and education award limits are tracked. Commenters noted that a program's access to how many terms a member has served is only available once that member's enrollment is pending, which creates a significant recruitment burden, as few members know with precision how many terms they have served.

Response: AmeriCorps will keep this tracking challenge in mind as it develops its new online member system.

Similarly, a few commenters asked for clarification on whether AmeriCorps will fund a member's entire term if they earn the maximum education award mid-way through a term.

Response: If a member earns the maximum education award mid-way through a term (and has already served four terms), AmeriCorps will continue to fund the member's service through the completion of that term.

One commenter requested clarification on how incomplete terms will be considered in calculating a member's progress toward a term limit.

Response: AmeriCorps' online member management system tracks an individual's number of terms.

One commenter proposed changing the four-term limitation to the equivalent of four terms of full-time service. Among the reasons the commenter provided for this suggestion were that it would clarify what terms count toward the limit and ensure less-than-full-time members do not ''term out'' before accessing the same opportunities and education award value as full-time members.

Response: The commenter's suggestion is a novel approach. If AmeriCorps considers adopting this suggestion in the future, it will do so through a new proposed rulemaking.

Two commenters suggested that, in anticipation of Congressional legislation that proposes an increase in the number of education awards a member is eligible for, the regulatory language should be broadened in an effort to provide flexibility. They suggested updating the language from ''two full-time education awards'' to the ''statutorily allowed maximum education awards.''

Response: The final rule retains the language specifying two full-time education awards because that language reflects the current statute. Should Congress change that statutorily allowed maximum, AmeriCorps will undertake a separate rulemaking to update the regulation to reflect that change.

IV. Regulatory Analyses

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a significant regulatory action, and therefore is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), AmeriCorps certifies that this rule will not have a significant economic impact on a substantial number of small entities. Most AmeriCorps State and National grantees are State Commissions and organizations that do not meet the definition of a small entity. Therefore, AmeriCorps has not performed the regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for rules that are expected to have such results.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804(2) because this rule: (1) does not have an annual effect on the economy of $100 million or more; (2) will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and (3) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Unfunded Mandates Reform Act of 1995

For purposes of title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in Federal, State, local, or Tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

E. Paperwork Reduction Act

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information display valid control numbers. This rule does not include any information collection.

F. Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rulemaking does not have any federalism implications, as described above.

G. Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this proposed rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

H. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rulemaking: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (Executive Order 13175)

AmeriCorps recognizes the inherent sovereignty of Indian Tribes and their right to self-governance. We have evaluated this rulemaking under our consultation policy and the criteria in Executive Order 13175 and determined

that this rule does not impose substantial direct effects on federally recognized Tribes.

J. Good Cause for Immediate Effective Date

AmeriCorps has determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication, because this rule relieves a restriction by increasing the amount of time AmeriCorps will fund members' living allowances and other benefits beyond the point when the member attains the value of two full-time education awards, up to the point the member has served four terms, so long as the member has not already served four terms by the time the member attains the value of two full-time education awards. In other words, the final rule increases flexibility by providing AmeriCorps funding for the longer of the service time it takes a member to attain the value of two full-time education awards or serve four terms. The primary purpose of a delayed effective date is unnecessary for this rule because there is no time needed to prepare to comply with, or take other action to comply with, this rule. The four-term limit preexisted the October 1, 2024, rule that replaced that limit with the amount of time it takes a member to earn the value of two full-time education awards, and this final rule reinstates that four-term limit when it exceeds the time it takes a member to earn the value of two full-time education awards.

List of Subjects in 45 CFR Part 2522

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

For the reasons stated in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b-12651d; E.O. 13331, 69 FR 9911, Sec. 1612, Pub. L. 111–13.

■ 2. Revise § 2522.235 to read as follows:

§ 2522.235 Is there a limit on the number of terms an individual may serve in an AmeriCorps State and National program?

The number of terms an individual may serve in an AmeriCorps State and National program is not limited, but the limitations in paragraphs (a) and (b) of this section apply.

(a) An individual may attain only the aggregate value of two full-time education awards.

(b) AmeriCorps will fund the benefits described in §§ 2522.240 through 2522.250 only for the number of terms needed to attain the aggregate value of two full-time education awards or for four terms, whichever is longer. Grantees may choose to fund benefits for any additional terms.

Andrea Grill,

Acting General Counsel.

[FR Doc. 2025–00984 Filed 1–16–25; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 90, 95, and 97

[ET Docket No. 19–138; FCC 24–123; FR ID 272367]

Use of the 5.850–5.925 GHz Band; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) is correcting a final rule that appeared in the **Federal Register** on December 13, 2024. The document addressed the transition of 5.9 GHz Intelligent Transportation System (ITS) operations from Dedicated Short Range Communications (DSRC)-based technology to cellular-vehicle-to-everything (C–V2X)-based technology.

DATES: Effective February 11, 2025.

FOR FURTHER INFORMATION CONTACT: Jamie Coleman of the Office of Engineering and Technology, at *Jamie.Coleman@fcc.gov* or 202–418–2705.

SUPPLEMENTARY INFORMATION: In FR Doc. 2024–28980 appearing on page 100838 in the **Federal Register** of Friday, December 13, 2024, the following corrections are made:

1. On page 100838, in the second column, correct the **DATES** caption to read as follows:

DATES: This final rule is effective February 11, 2025, except for the amendments to 47 CFR 90.7 (instruction 5), 47 CFR 90.149(b) (instruction 9), 47 CFR 90.155(i) (instruction 11), 47 CFR 90.179(f) (instruction 14), 47 CFR 90.210 (instruction 15), 47 CFR 90.213 (instruction 16), 47 CFR 90.350 (instruction 18), the removal of 47 CFR 90.370 through 90.384 (instruction 22), and the removal of a center heading and 47 CFR 95.3105 through 95.3189 (instruction 32), which are effective December 14, 2026.

§ 1.907 [Corrected]

■ 2. On page 100850, in the third column, in § 1.907, the definition of *Covered geographic licenses* is corrected to read as follows:

* * * * *

Covered geographic licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I, of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G, of this chapter); 218–219 MHz Service (part 95, subpart F, of this chapter); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T, of this chapter); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Broadband Service (part 27, subpart P); 3.45 GHz Service (part 27, subpart Q); 3.7 GHz Service (part 27, subpart O); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G, of this chapter); Broadband Personal Communications Service (part 24, subpart E, of this chapter); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Citizens Broadband Radio Service (part 96, subpart C, of this chapter); Intelligent Transportation Systems Radio Service in the 5895–5925 MHz band, excluding public safety licenses (part 90, subpart M); Educational Broadband Service (part 27, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J, of this chapter); Space Launch Services (part 26 of this chapter); Upper Microwave Flexible Use Service (part 30

of this chapter); and Wireless Communications Service (part 27, subpart D).

* * * * *

§ 90.7 [Corrected]

■ 3. On page 100851, in the second column, in the last line of instruction 5 amending § 90.7, remove ''*Roadside Units (RSU)*'' and add in its place ''*Roadside Unit (RSU)*''.

§ 90.35 [Corrected]

■ 4. On page 100851, in the second column, instruction 7 ''Amend § 90.35 by revising paragraph (b)(91) to read as follows:'' is corrected to read ''Amend § 90.35 by revising paragraph (c)(91) to read as follows:''.

■ 5. On page 100851, in the second column, correct the amendment text for § 90.35 by redesignating paragraph (b)(91) as paragraph (c)(91).

§ 90.390 [Corrected]

■ 6. On page 100854, spanning all columns, correct table 1 to paragraph (a) in § 90.390 to read as follows:

* * * * *

TABLE 1 TO PARAGRAPH (a)

10-megahertz channels:	20-megahertz channels:	30-megahertz channel:
5895–5905 MHz 5905–5915 MHz 5915–5925 MHz.	5895–5915 MHz 5905–5925 MHz.	5895–5925 MHz.

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2025–00642 Filed 1–16–25; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 215, 234, 242, 244, 245, and 252

[Docket DARS–2024–0020]

RIN 0750–AL25

Defense Federal Acquisition Regulation Supplement: Definition of Material Weakness (DFARS Case 2021–D006)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Year 2021 that defines the term ''material weakness'' for Government evaluation of contractor business systems. The term ''material weakness'' replaces the term ''significant deficiency.''

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Snyder, telephone 703–945–5341.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 89 FR 53561 on June 27, 2024, to implement section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–383), which amends section 893 of the NDAA for FY 2011 (Pub. L. 111–383). Section 893 of the NDAA for FY 2011 requires a program for the improvement of contractor business systems and provides for DoD approval or disapproval of contractor business systems. Section 806 of the NDAA for FY 2021 defines the term ''material weakness'', which replaces the term ''significant deficiency.'' Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

Comment: A respondent recommended DoD add experience requirements for administrative contracting officers that issue decisions related to business system deficiencies. The respondent also recommended clarifying that, although the terminology has changed, a warranted official is required to make the determination of findings of the audit or review.

Response: Federal Acquisition Regulation 1.603 establishes the requirements for the selection, appointment, and termination of appointment for contracting officers. Section 806 does not require administrative contracting officers that issue decisions related to business system deficiencies to have a certain amount of experience. DFARS 242.7502 specifies that the cognizant contracting officer, in consultation with the auditor or functional specialist, shall determine the acceptability of a contractor's accounting system and approve or disapprove the system and pursue correction of any deficiencies as required. As such, it is not necessary to make the recommended changes.

Comment: A respondent recommended adding a matrix at DFARS 242.7000 that aligns the types of Generally Accepted Accounting Systems internal control findings with the Defense Contract Management Agency (DCMA) corrective action request levels.

Response: The creation of a reference matrix to pre-establish a particular level of a corrective action request would constrain the cognizant contracting officer's ability to administer and oversee contracts. Therefore, this recommendation is not implemented in the final rule.

Comment: A respondent recommended that DoD discontinue the use of or replace earned value management with a ''cash on delivery'' payment system. A respondent recommended that DoD consider a small business exemption from the DFARS business system clauses because they are complex systems that most small businesses cannot afford to invest the human and financial capital into supporting. A respondent recommended that DoD implement an inflation adjustment for each business system for fiscal year 2025 to mitigate the impacts of inflation on small businesses.

Response: These comments are outside the scope of this rule. Section 806 does not authorize DoD to discontinue the use of or replace earned value management, nor does it authorize DoD to establish a small business

exemption or an inflation adjustment. Inflation adjustments are made in accordance with 41 U.S.C. 1908.

C. Other Changes

The clause at DFARS 252.245–7003, Contractor Property Management System Administration, is amended to update the paragraph references to align with the changes made to the clause. At DFARS 242.7203(c)(2)(ii)(A) ''deficiency'' is changed to ''weakness or deficiency''. In addition, at DFARS 215.407–5–70(d)(1) and 244.305–70(c)(1) ''weakness and deficiencies'' is changed to ''weakness or deficiencies''.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule amends the clauses at DFARS 252.215–7002, Cost Estimating System Requirements; 252.234–7002, Earned Value Management System; 252.242–7004, Material Management and Accounting System; 252.242–7005, Contractor Business Systems; 252.242–7006, Accounting System Administration; 252.244–7001, Contractor Purchasing System Administration—Basic and Alternate I; and 252.245–7003, Contractor Property Management System Administration. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products, including COTS items, or for commercial services. Applicability of the clauses to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services remains unchanged.

IV. Expected Impact of the Rule

Presently, the DFARS includes a definition of ''significant deficiency'' in the context of DoD evaluation of contractor business systems. ''Significant deficiency'' is defined as ''a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.'' This final rule replaces the term ''significant deficiency'' in the DFARS with the term ''material weakness,'' defined as a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is probable or more than remote but less than likely.

This definition of ''material weakness'' provides more detail and clarity both to DoD and to industry in the context of evaluating contractor business systems compared to the definition of ''significant deficiency.'' This definition of ''material weakness'' also aligns with generally accepted auditing standards. Therefore, this rule will both create consistency with generally accepted auditing standards and minimize confusion about the seriousness of deficiencies, which will aid both DoD and industry.

V. Executive Orders 12866 and 13563

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

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. and is summarized as follows:

This rule is necessary to implement section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 806 amends section 893 of the NDAA for FY 2011 (Pub. L. 111–383), which requires a program for the improvement of contractor business systems and provides for DoD approval or disapproval of contractor business systems. Section 806 of the NDAA for FY 2021 replaces the term ''significant deficiency'' with ''material weakness'' and defines the term ''material weakness.''

The objective of the rule is to introduce the term ''material weakness'' for Government evaluation of contractor business systems, replacing the term ''significant deficiency.'' The definition of ''material weakness'' aligns with generally accepted auditing standards. This rule will help DoD maintain appropriate oversight over contractor business systems by enabling clear classification of deficiencies according to severity.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

The rule may impact small entities that are awarded DoD contracts. Based on data from the Federal Procurement Data System and the Electronic Data Access for fiscal years 2021, 2022, and 2023, DoD estimates that an average of 5,134 unique small entities are awarded an average of 22,263 contract actions annually that include one or more relevant clauses.

This rule does not impose any new reporting, recordkeeping or other compliance requirements.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

VIII. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 202, 215, 234, 242, 244, 245, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 202, 215, 234, 242, 244, 245, and 252 as follows:

■ 1. The authority citation for 48 CFR 202, 215, 234, 242, 244, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding in alphabetical order the definition of ''Material weakness'' to read as follows:

202.101 Definitions.

* * * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

■ 3. Amend section 215.407–5–70 by:

■ a. Revising paragraph (a);

■ b. In paragraph (c)(2)(ii) removing ''any deficiencies'' and adding ''any weaknesses or deficiencies'' in its place;

■ c. Revising and republishing paragraph (d); and

■ d. In paragraph (e) removing ''significant deficiencies'' and adding ''material weaknesses'' in its place.

The revisions and republications read as follows:

215.407–5–70 Disclosure, maintenance, and review requirements.

(a) *Definitions.* As used in this section—

Acceptable estimating system means an estimating system that complies with the system criteria in paragraph (d) of 252.215–7002, Cost Estimating System Requirements, and provides for a system that—

(i) Is maintained, reliable, and consistently applied;

(ii) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(iii) Is consistent with and integrated with the contractor's related management systems; and

(iv) Is subject to applicable financial control systems.

Contractor means a business unit as defined in FAR 2.101.

Estimating system means the contractor's policies, procedures, and practices for budgeting and planning controls and for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the contractor's—

(i) Organizational structure;

(ii) Established lines of authority, duties, and responsibilities;

(iii) Internal controls and managerial reviews;

(iv) Flow of work, coordination, and communication; and

(v) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

* * * * *

(d) *Disposition of findings*—(1) *Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor's estimating system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the estimating system criteria in the clause at 252.215–7002, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the deficiency (see PGI 215.407–5–70(d)(2));

(B) Request the contractor to respond in writing to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's responses to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor in writing that—

(A) The contractor's estimating system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*2*) Disapprove the system in accordance with the clause at 252.215–7002; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 215.407–5–70(d)(3).

* * * * *

PART 234—MAJOR SYSTEM ACQUISITION

234.001 [Redesignated as 234.001–70]

■ 4. Redesignate section 234.001 as section 234.001–70.

■ 5. Revise newly redesignated section 234.001–70 to read as follows:

234.001–70 Definitions.

As used in this part—

Acceptable earned value management system means an earned value management system that generally complies with system criteria in paragraph (b) of 252.234–7002, Earned Value Management System.

Earned value management system means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA–748.

Production of major defense acquisition program means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or an activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

■ 6. Amend section 234.201—

■ a. In paragraph (5)(ii) by removing ''any deficiencies'' and adding ''any weaknesses or deficiencies'' in its place;

■ b. By revising and republishing paragraph (7); and

■ c. In paragraph (8) by removing ''significant deficiencies'' and adding ''material weaknesses'' in its place.

The revision and republication reads as follows:

234.201 Policy.

(7) *Disposition of findings*—(i) *Reporting of findings.* The functional specialist or auditor shall document findings and recommendations in a report to the contracting officer. If the functional specialist or auditor identifies any material weakness in the contractor's earned value management system, the report shall describe the

weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(ii) *Initial determination.* (A) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor's earned value management system is acceptable and approved; or

(B) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the earned value management system criteria in the clause at 252.234–7002, the contracting officer shall—

(*1*) Promptly make an initial written determination of any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weaknesses (see PGI 234.201(7)(ii));

(*2*) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(*3*) Evaluate the contractor's response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(iii) *Final determination.* (A) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(*1*) The contractor's earned value management system is acceptable and approved, and no material weaknesses remain; or

(*2*) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*i*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*ii*) Disapprove the system in accordance with the clause at 252.234–7002 when initial validation is not successfully completed within the timeframe approved by the contracting officer, or the contracting officer determines that the existing earned value management system contains one or more material weaknesses in high-risk guidelines in ANSI/EIA–748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the contracting officer determines that the existing earned value management system contains one or more material weaknesses in one or more of the remaining 16 guidelines in ANSI/EIA–748 standards, the contracting officer shall use discretion to disapprove the system based on input received from functional specialists and the auditor; and

(*iii*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(B) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses at PGI 234.201(7)(iii).

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.302 [Amended]

■ 7. Amend section 242.302 in paragraph (a)(7) by removing ''deficiencies'' and adding ''weaknesses or deficiencies'' in its place.

■ 8. Revise and republish section 242.7000 to read as follows:

242.7000 Contractor business system deficiencies.

(a) *Definitions.* As used in this subpart—

Acceptable contractor business systems means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of ''contractor business systems'' in this section.

Contractor business systems means—

(i) Accounting system, if the contract includes the clause at 252.242–7006, Accounting System Administration;

(ii) Earned value management system, if the contract includes the clause at 252.234–7002, Earned Value Management System;

(iii) Estimating system, if the contract includes the clause at 252.215–7002, Cost Estimating System Requirements;

(iv) Material management and accounting system, if the contract includes the clause at 252.242–7004, Material Management and Accounting System;

(v) Property management system, if the contract includes the clause at 252.245–7003, Contractor Property Management System Administration; and

(vi) Purchasing system, if the contract includes the clause at 252.244–7001, Contractor Purchasing System Administration.

Covered contract means a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (10 U.S.C. 3841 note prec., as amended by section 816 of Pub. L. 112–81).

(b) *Determination to withhold payments.* If the contracting officer makes a final determination to disapprove a contractor's business system in accordance with the clause at 252.242–7005, Contractor Business Systems, the contracting officer shall—

(1) In accordance with agency procedures, identify one or more covered contracts containing the clause at 252.242–7005 from which payments will be withheld. When identifying the covered contracts from which to withhold payments, the contracting officer shall ensure that the total amount of payment withholding under 252.242–7005 does not exceed 10 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. Similarly, the contracting officer shall ensure that the total amount of payment withholding under the clause at 252.242–7005 for each business system does not exceed 5 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. The contracting officer has the sole discretion to identify the covered contracts from which to withhold payments.

(2) Promptly notify the contractor, in writing, of the contracting officer's determination to implement payment withholding in accordance with the clause at 252.242–7005. The notice of payment withholding shall be included in the contracting officer's written final determination for the contractor business system and shall inform the contractor that—

(i) Payments shall be withheld from the contract or contracts identified in the written determination in accordance with the clause at 252.242–7005, until the contracting officer determines that there are no remaining material weaknesses; and

(ii) The contracting officer reserves the right to take other actions within the terms and conditions of the contract.

(3) Provide a copy of the determination to all contracting officers administering the selected contracts from which payments will be withheld. The contracting officer shall also provide a copy of the determination to the auditor; payment office; affected contracting officers at the buying

activities; and cognizant contracting officers in contract administration activities.

(c) *Monitoring contractor's corrective action.* The contracting officer, in consultation with the auditor or functional specialist, shall monitor the contractor's progress in correcting the weaknesses. The contracting officer shall notify the contractor of any decision to decrease or increase the amount of payment withholding in accordance with the clause at 252.242–7005.

(d) *Correction of material weaknesses.* (1) If the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer shall request the auditor or functional specialist to review the correction to verify that the weaknesses have been corrected. If, after receipt of verification, the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer's final determination, the contracting officer shall discontinue the withholding of payments, release any payments previously withheld, and approve the system, unless other material weaknesses remain.

(2) Prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the material weaknesses have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the material weaknesses.

(3) Within 90 days of receipt of the contractor notification that the contractor has corrected the material weaknesses, the contracting officer shall—

(i) Make a determination that—

(A) The contractor has corrected all material weaknesses as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section;

(B) There is a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(C) The contractor has not corrected all material weaknesses as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section, or there is not a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(ii) Reduce withholding directly related to the material weaknesses covered under the corrective action plan by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the contractor, in writing, to reduce the percentage withheld on interim cost vouchers by at least 50 percent, until the contracting officer makes a determination in accordance with paragraph (d)(3)(i) of this section.

(4) If, at any time, the contracting officer determines that the contractor has failed to correct the material weaknesses identified in the contractor's notification, the contracting officer will continue, reinstate, or increase withholding from progress payments and performance-based payments, and direct the contractor, in writing, to continue, reinstate, or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer's final determination.

(e) *Sample formats.* For sample formats for written notifications of contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with the clause at 252.242–7005, see PGI 242.7000.

■ 9. Revise section 242.7201 to read as follows:

242.7201 Definitions.

As used in this subpart—

Acceptable material management and accounting system means a material management and accounting system that generally complies with the system criteria in paragraph (d) of the clause at 252.242–7004, Material Management and Accounting System.

Material management and accounting system (MMAS) means the contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems, or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

Valid time-phased requirements means material that is—

(1) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(2) Charged or billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

242.7202 [Amended]

■ 10. Amend section 242.7202 in paragraph (b)(2) by removing ''any deficiencies'' and adding ''any weaknesses or deficiencies'' in its place.

■ 11. Amend section 242.7203 by—

■ a. Revising and republishing paragraph (c); and

■ b. Revising paragraph (d).

The revisions and republication read as follows:

242.7203 Review procedures.

* * * * *

(c) *Disposition of findings*—(1) *Reporting of findings.* The auditor or functional specialist shall document findings and recommendations in a report to the contracting officer. If the auditor or functional specialist identifies any material weakness, the report shall describe the weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor's MMAS is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the MMAS system criteria in the clause at 252.242–7004, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness or deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination in consultation with the auditor or functional specialist, and make a final determination (see PGI 242.7203(c)(2)).

(3) *Final determination.* (i) The ACO shall make a final determination and notify the contractor that—

(A) The contractor's MMAS is acceptable and approved, and no deficiencies remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed

corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*2*) Disapprove the system in accordance with the clause at 252.242–7004; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 242.7203(c)(3).

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved MMAS and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

* * * * *

■ 12. Revise section 242.7501 to read as follows:

242.7501 Definitions.

As used in this subpart—

Acceptable accounting system means a system that complies with the system criteria in paragraph (c) of the clause at 252.242–7006, Accounting System Administration, to provide reasonable assurance that—

(1) Applicable laws and regulations are complied with;

(2) The accounting system and cost data are reliable;

(3) Risk of misallocations and mischarges are minimized; and

(4) Contract allocations and charges are consistent with billing procedures.

Accounting system means the contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

■ 13. Amend section 242.7502—

■ a. In paragraph (b)(2) by removing ''any deficiencies'' and adding ''any weaknesses or deficiencies'' in its place;

■ b. By revising and republishing paragraph (d);

■ c. By revising paragraph (e);

■ d. In the paragraph (g) heading and paragraphs (g)(1) and (g)(2)(i) by removing ''accounting system'';

■ e. In paragraph (g)(2)(iii) by removing ''accounting system's''; and

■ f. In paragraph (g)(3) introductory text by removing ''an accounting system deficiency'' and adding ''a deficiency'' in its place.

The revisions and republication read as follows:

242.7502 Policy.

* * * * *

(d) *Disposition of findings*—(1) *Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any material weakness, the report shall describe the weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies. Follow the procedures at PGI 242.7502 for reporting of deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor's accounting system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the accounting system criteria in the clause at 252.242–7006, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 242.7502(d)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's accounting system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*2*) Make a determination to disapprove the system in accordance with the clause at 252.242–7006; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 242.7502(d)(3).

(e) *System approval.* The contracting officer shall promptly approve a previously disapproved accounting system and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

* * * * *

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 14. Revise section 244.101 to read as follows:

244.101 Definitions.

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of the clause at 252.244–7001.

Purchasing system means the contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

■ 15. Amend section 244.305–70—

■ a. In the introductory text by removing ''subsection'' and adding ''section'' in its place;

■ b. By revising and republishing paragraph (c);

■ c. By revising paragraph (d); and

■ d. In the paragraph (f) heading and paragraphs (f)(1) and (f)(2)(i) by removing ''purchasing system'';

■ e. In paragraph (f)(2)(iii) by removing ''purchasing system's''; and

■ f. In paragraph (f)(3) introductory text by removing ''purchasing system''.

The revisions and republications read as follows:

244.305–70 Policy.

* * * * *

(c) *Disposition of findings*—(1) *Reporting of findings.* The purchasing system analyst or auditor shall document findings and recommendations in a report to the contracting officer. If the auditor or purchasing system analyst identifies any

material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor that the contractor's purchasing system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the purchasing system criteria in the clause at 252.244–7001, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 244.305–70(c)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Evaluate the contractor's response to the initial determination in consultation with the auditor or purchasing system analyst and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's purchasing system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*2*) Disapprove the system in accordance with the clause at 252.244–7001; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 244.305–70(c)(3).

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved purchasing system and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

* * * * *

PART 245—GOVERNMENT PROPERTY

■ 16. Amend section 245.105—
■ a. By revising paragraph (a);
■ b. In paragraph (b)(2) by removing ''any deficiencies'' and adding ''any weaknesses or deficiencies'' in its place;
■ c. By revising and republishing paragraph (d); and
■ d. In paragraph (e) by removing ''significant deficiencies'' and adding ''material weaknesses'' in its place.

The revisions and republication read as follows:

245.105 Contractors' property management system compliance.

(a) *Definitions.* As used in this subpart—

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of the clause at 252.245–7003, Contractor Property Management Administration.

Property management system means the contractor's system or systems for managing and controlling Government property.

* * * * *

(d) *Disposition of findings*—(1) *Reporting of findings.* The property administrator shall document findings and recommendations in a report to the contracting officer. If the property administrator identifies any material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor's property management system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor's failure to meet one or more of the property management system criteria in the clause at 252.245–7003, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 245.105(d)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days and;

(C) Evaluate the contractor's response to the initial determination, in consultation with the property administrator, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's property management system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*2*) Disapprove the system in accordance with the clause at 252.245–7003; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 245.105(d)(3).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 17. Amend section 252.215–7002—
■ a. By revising the section heading and clause date;
■ b. In paragraph (a) by—
■ i. Adding in alphabetical order the definition of ''Material weakness''; and
■ ii. Removing the definition of ''Significant deficiency'';
■ c. By revising and republishing paragraph (e); and
■ d. By revising paragraph (f).

The addition, revisions, and republication read as follows:

252.215–7002 Cost Estimating System Requirements.

* * * * *

Cost Estimating System Requirements (Jan 2025)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a

material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(e) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(f) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

■ 18. Amend section 252.234–7002—

■ a. By revising the clause date;

■ b. In paragraph (a) by—

■ i. Adding in alphabetical order the definition of ''Material weakness''; and

■ ii. Removing the definition of ''Significant deficiency'';

■ c. By revising and republishing paragraph (i); and

■ d. By adding a heading to paragraph (k).

The additions, revisions, and republication read as follows:

252.234–7002 Earned Value Management System

* * * * *

Earned Value Management System (Jan 2025)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(i) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA–748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more material weaknesses in high-risk guidelines in ANSI/EIA–748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more material weaknesses in one or more of the remaining 16 guidelines in ANSI/EIA–748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

(k) *Subcontracts.* * * *

* * * * *

■ 19. Amend section 252.242–7004—

■ a. Revising the clause date and paragraph (a);

■ b. Revising and republishing paragraph (e); and

■ c. Revising paragraph (f).

The revisions and republication read as follows:

252.242–7004 Material Management and Accounting System.

* * * * *

Material Management and Accounting System (Jan 2025)

(a) *Definitions.* As used in this clause—

Acceptable material management and accounting system means a material management and accounting system that generally complies with the system criteria in paragraph (d) of this clause.

Contractor means a business unit as defined in Federal Acquisition Regulation (FAR) 2.101.

Material management and accounting system (MMAS) means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems, or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

Valid time-phased requirements means material that is—

(1) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(2) Charged or billed to contracts or other cost objectives in a manner

consistent with the need to fulfill the production plan.

* * * * *

(e) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiencies in sufficient detail to allow the Contractor to understand the weaknesses or deficiencies.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's MMAS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval if the Contracting Officer determines that one or more material weaknesses remain.

(f) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

■ 20. Amend section 252.242–7005—

■ a. By revising the section heading and clause date;

■ b. In paragraph (b) by—

■ i. Adding in alphabetical order the definition of ''Material weakness''; and

■ ii. Removing the definition of ''Significant deficiency''; and

■ c. By revising paragraphs (d), (e)(1) and (2), (e)(3)(i), and (f).

The addition and revisions read as follows:

252.242–7005 Contractor Business Systems.

* * * * *

Contractor Business Systems (Jan 2025)

* * * * *

(b) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more material weaknesses in one or more of the Contractor's business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains material weaknesses. If the Contracting Officer determines that the Contractor's business system contains material weaknesses, the final determination will include a notice to withhold payments.

(e) * * *

(1) If the Contracting Officer issues the final determination with a notice to withhold payments for material weaknesses in a contractor business system required under this contract, the Contracting Officer will withhold 5 percent of amounts due from progress payments and performance-based payments, and direct the Contractor, in writing, to withhold 5 percent from its billings on interim cost vouchers on cost-reimbursement, labor-hour, and time-and-materials contracts until the Contracting Officer has determined that the Contractor has corrected all material weaknesses as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will reduce withholding directly related to the material weaknesses covered under the corrective action plan, to 2 percent from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the percentage withheld on interim cost vouchers to 2 percent until the Contracting Officer determines the Contractor has corrected all material weaknesses as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer's final determination.

(3) * * *

(i) The total percentage of payments withheld on amounts due under each progress payment, performance-based payment, or interim cost voucher on this contract shall not exceed—

(A) Five percent for one or more material weaknesses in any single contractor business system; and

(B) Ten percent for material weaknesses in multiple contractor business systems.

* * * * *

(f) *Correction of weaknesses.* (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's weaknesses.

(2) Once the Contractor has notified the Contracting Officer that all weaknesses have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer's final determination, the Contracting Officer will, as appropriate, discontinue the withholding of progress payments and performance-based payments, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other material weaknesses. Any payment withholding under this contract due to other material weaknesses will remain in effect until the Contracting Officer determines that those material weaknesses are corrected.

(ii) If the Contracting Officer determines that the Contractor still has material weaknesses, the Contracting Officer will continue the withholding of progress payments and performance-

based payments, and the Contractor shall continue withholding amounts from its billings on interim cost vouchers in accordance with paragraph (e) of this clause, and not bill for any monies previously withheld.

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the material weaknesses, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the material weaknesses identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the material weaknesses, the Contracting Officer has not made a determination in accordance with paragraph (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will reduce withholding directly related to the material weaknesses identified in the Contractor notification by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the payment withholding from billings on interim cost vouchers directly related to the material weaknesses identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraph (f)(2)(i), (ii), or (iii) of this clause.

(v) At any time after the Contracting Officer reduces or discontinues the withholding of progress payments and performance-based payments, or directs the Contractor to reduce or discontinue the payment withholding from billings on interim cost vouchers under this contract, if the Contracting Officer determines that the Contractor has failed to correct the material weaknesses identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to reinstate or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer's final determination.

* * * * *

■ 21. Amend section 252.242–7006—
■ a. Revising the section heading, clause date, and paragraph (a);
■ b. Revising and republishing paragraph (d); and
■ c. Revising paragraph (e).

The revisions and republication read as follows:

252.242–7006 Accounting System Administration.

* * * * *

Accounting System Administration (Jan 2025)

(a) *Definitions.* As used in this clause—

Acceptable accounting system means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

(1) Applicable laws and regulations are complied with;

(2) The accounting system and cost data are reliable;

(3) Risk of misallocations and mischarges are minimized; and

(4) Contract allocations and charges are consistent with billing procedures.

Accounting system means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

■ 22. Amend section 252.244–7001—
■ a. By revising the section heading and clause date;
■ b. In paragraph (a) by—
■ i. Adding in alphabetical order the definition of ''Material weakness''; and
■ ii. Removing the definition of ''Significant deficiency'';
■ c. By revising and republishing paragraph (d);
■ d. By revising paragraph (e); and
■ e. In Alternate I—
■ i. By revising the clause date;
■ ii. In paragraph (a) by—
■ A. Adding in alphabetical order the definition of ''Material weakness''; and
■ B. Removing the definition of ''Significant deficiency'';
■ iii. By revising and republishing paragraph (d); and
■ iv. By revising paragraph (e).

The additions, revisions, and republications read as follows:

252.244–7001 Contractor Purchasing System Administration.

* * * * *

Contractor Purchasing System Administration—Basic (Jan 2025)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a

material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

* * * * *

Alternate I. * * *

Contractor Purchasing System Administration—Alternate I (Jan 2025)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

* * * * *

■ 23. Amend section 252.245–7003—
■ a. By revising the clause date;
■ b. In paragraph (a) by—
■ i. Adding in alphabetical order the definition of ''Material weakness''; and
■ ii. Removing the definition of ''Significant deficiency'';
■ c. In paragraph (c), by removing ''paragraph (f)'' and adding ''paragraphs (b) and (f)'' in its place;
■ d. By revising and republishing paragraph (d); and
■ e. By revising paragraph (e).

The addition, revisions, and republication read as follows:

252.245–7003 Contractor Property Management System Administration.

* * * * *

Contractor Property Management System Administration (Jan 2025)

(a) * * *

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116–283).

* * * * *

(d) *Material weaknesses.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

* * * * *

[FR Doc. 2025–00721 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 217, 219, and 252

[Docket DARS–2024–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to make needed editorial changes to comply with DFARS drafting conventions.

List of Subjects in 48 CFR Parts 206, 217, 219, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 206, 217, 219, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 206, 217, 219, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 206—COMPETITION REQUIREMENTS

206.303–1 [Amended]

■ 2. Amend section 206.303–1 in paragraphs (b) introductory text and (b)(1) by removing ''sole source'' and adding ''sole-source'' in its place.

PART 217—SPECIAL CONTRACTING METHODS

■ 3. Amend section 217.172 by revising paragraph (f)(2) to read as follows:

217.172 Multiyear contracts for supplies.

* * * * *

(f) * * *

(2) In addition, for contracts equal to or greater than $750 million, the head of the contracting activity must determine that the conditions required by paragraphs (h)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (h)(2) of this section.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

219.808–1 [Amended]

■ 4. Amend section 219.808–1 in the introductory text by removing ''sole source'' and adding ''sole-source'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.225–7003—

■ a. By revising the provision heading and date;

■ b. In paragraphs (b) introductory text and (b)(2) introductory text, by removing ''offeror'' wherever it appears and adding ''Offeror'' in its place; and

■ c. In paragraphs (d) introductory text and (e), by removing ''offeror'' and adding ''Offeror'' in its place.

The revisions read as follows:

252.225–7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

* * * * *

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (JAN 2025)

* * * * *

[FR Doc. 2024–31569 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2022–0030]

RIN 0750–AL67

Defense Federal Acquisition Regulation Supplement: Update of Challenge Period for Validation of Asserted Restrictions on Technical Data and Computer Software (DFARS Case 2022–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012, which addresses the validation of proprietary data restrictions.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 89 FR 31686 on April 25, 2024, to implement section 815(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81). Section 815(b) amended 10 U.S.C. 2321 (currently 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction. Two respondents submitted public comments in response to the proposed rule. DoD also held a public meeting on May 17, 2024.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. Technical Data or Software Delivered, Furnished, or Otherwise Provided to the Government

Comment: The respondents suggested that the revisions to the clauses at DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, and 252.227–7037, Validation of Restrictive Markings on Technical Data, to consistently reference technical data and computer software ''delivered or otherwise provided to the Government'' should be removed from the final rule. The existing clause language already references technical data delivered, software delivered, technical data required to be delivered, and software required to be delivered. Respondents assert that the phrase ''otherwise provided to the Government'' is ambiguous and inconsistent with existing statutes. The respondents also asserted that this language may result in a potential chilling effect on the relationship between Government and contractors.

Response: References to technical data and computer software ''delivered or otherwise provided'' to the Government appear multiple times in the current contract clauses at DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and DFARS 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer

Software Documentation. These references cover technical data and computer software ''delivered or otherwise furnished'', ''delivered or otherwise provided'', and ''delivered, furnished, or otherwise provided'' to the Government, and both clauses reference the validation clauses. In addition, DFARS 252.227–7019(e) currently references ''software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract.'' Accordingly, these revisions ensure consistency with existing language in DFARS 252.227–7019, 252.227–7013, and 252.227–7014, and clearly signals the scope of the validation clauses. The Government therefore declines the suggestion to remove these revisions from the final rule.

2. Changes To Align With Statutory Language Related to Restrictions Asserted

Comment: A respondent suggested that the replacement in several places in the DFARS of the phrase ''restrictive markings'' with the phrase ''asserted restriction'' is unnecessary for statutory alignment and may result in confusion.

Response: The underlying statutes (10 U.S.C. 3781–3786) repeatedly reference challenge, justification, and validation of ''restriction[s] asserted'' and ''asserted restriction[s].'' The statutes do not refer to restrictive markings. The final rule aligns the clauses with the underlying statutory language, and it creates consistent nomenclature and syntax throughout the clauses. The final rule references validation of ''asserted restrictions'', rather than validation of restrictive markings (which is inconsistent with the statutory language and more likely to be confused with the separate procedures for ensuring conformity of those markings). Rather than the confusing syntax of ''striking'' an asserted restriction, the final rule references striking ''restrictive markings.''

3. Definition of Fraud

Comment: The respondents requested clarification with respect to when a use or release restriction would be considered ''fraudulently asserted.'' In addition, the respondents proposed specific requirements and limitations for the Government when invoking this exception to the six-year challenge period.

Response: As stated in the proposed rule, the statutory revisions being implemented in DFARS Case 2022–D016 do not establish a specialized definition of ''fraudulently asserted'' or a knowledge requirement. The respondents proposed requirements and limitations on this exception to the six-year challenge period. The respondents did not provide, and DoD is not aware of, either an existing statute, policy, or regulation that includes the proposed requirements or limitations, or evidence of congressional intent to impose the proposed requirements or limitations.

As with other instances of the term fraud in the Federal Acquisition Regulation and DFARS, DoD relies upon the common meaning of the terminology used in the statute and regulatory implementation, informed by applicable procurement statutes, other applicable statutes, and case precedent. In addition, the existing validation procedures require the Government to state the specific grounds for challenging the asserted restriction, which includes the grounds for invoking the exception to the six-year challenge period. Such grounds are subject to review by a court of competent jurisdiction or the Armed Services Board of Contract Appeals.

4. Applicability to Commercial Products or Commercial Services

Comment: One respondent recommended revisions to the proposed language in DFARS 252.227–7037(e)(1) to clarify whether sufficient information to reasonably demonstrate funding for the development of commercial products or commercial services must be provided with every challenge.

Response: The original language indicates that challenges will ''[s]tate the specific grounds for challenging the asserted restriction including, for commercial products or commercial services, sufficient information to reasonably demonstrate that the commercial product or commercial service was not developed exclusively at private expense.'' This requirement related to commercial products or commercial services is not optional, and the proposed revision was not intended to change this requirement. For the sake of clarity, the final rule reverts to the original language.

5. Question About Other Rulemaking Case

Comment: A respondent requested that DoD expedite the issuance of proposed rule for DFARS Case 2023–D022, Definition of Subcontract.

Response: This comment is outside the scope of this rule, which implements section 815(b) of the NDAA for FY 2012.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule amends the clauses at DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, and DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This final rule includes changes to lengthen the validation period for asserted restrictions from three years to six years. This final rule also provides an exception to the prescribed time limit for validation of asserted restrictions if the technical data or computer software involved are the subject of a fraudulently asserted restriction. Therefore, the final rule may increase the number of challenges to which contractors must respond. However, DoD cannot quantify the estimated number of the additional challenges at this time.

V. Executive Orders 12866 and 13563

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

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 815(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81), which addresses the period for validation of proprietary data restrictions. The objective of the rule is to implement section 815(b), which amended 10 U.S.C. 2321 (currently 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction. This rule will ensure that the Government has adequate opportunity to challenge discrepancies or inaccuracies in contractor assertions of data and software rights.

The public comments raised no significant issues in response to the initial regulatory flexibility analysis.

This rule applies to small entities that have contracts with DoD requiring delivery of data, including technical data and computer software. DoD obtained data for fiscal years 2020 through 2022 from the Procurement Business Intelligence Service for all contracts and modifications that include one or more of the following DFARS clauses: 252.227–7013, Rights in Technical Data—Other Than Commercial Products or Commercial Services; 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation; 252.227–7015, Technical Data—Commercial Products and Commercial Services; and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program. DoD awarded on average 54,255 contract actions per year that included one or more of the listed clauses to 9,550 unique entities, of which 28,657 contract awards (53 percent) were made to 6,033 unique small entities (63 percent).

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0369, entitled DFARS Subpart 227.71, Rights in Technical Data; and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 252 as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 252.227–7019—

■ a. By revising paragraph (b);

■ b. In paragraph (d)(2)(i)(B) by revising the second sentence;

■ c. In paragraph (e)(1) by revising the second sentence;

■ d. In paragraph (f)(1)(ii) by removing ''within 60 days'' and adding ''in writing within 60 days'' in its place;

■ e. In paragraph (g)(3)(i)(B) by removing ''government'' and adding ''Government'' in its place.

The revisions read as follows:

252.227–7019 Validation of Asserted Restrictions—Computer Software.

* * * * *

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any asserted restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered, required to be delivered, or otherwise provided to the Government under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a request for information under paragraph (d) of this clause or a challenge under paragraph (f) of this clause.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(B) * * * If the Contractor fails to correct or strike the unjustified marking and return the corrected software to the Contracting Officer within 60 days following receipt of the software, the Contracting Officer may correct or strike the marking at the Contractor's expense;

* * * * *

(e) * * *

(1) * * * Except for software that is publicly available, has been furnished to the Government without restrictions, has been otherwise made available without restrictions, or is the subject of a fraudulently asserted use or release restriction, the Government may exercise this right only within 6 years after the date(s) the software is delivered or otherwise furnished to the Government, or 6 years following final payment under this contract, whichever is later.

* * * * *

■ 3. Amend section 252.227–7037—

■ a. By revising the section heading and the clause heading and date;

■ b. By revising paragraphs (c), (d), (e)(1) introductory text, and (e)(1)(iii);

■ c. In paragraph (e)(4) by removing ''restrictive markings'' and adding ''asserted restrictions'' in its place;

■ d. By revising paragraph (g)(1);

■ e. In paragraph (g)(2)(i) by removing ''restrictive marking'' and ''In order to'' and adding ''asserted restriction'' and ''To'' in their places, respectively;

■ f. By revising paragraphs (g)(2)(ii) through (iv);

■ g. In paragraph (h)(1)(i) by removing ''marking'' and adding ''marking that is based on the asserted restriction'' in its place;

■ h. By revising paragraphs (h)(1)(ii) and (i); and

■ i. In paragraph (k) by removing ''restrictive markings'' and ''subcontractors'' and adding ''restrictions'' and ''subcontractor'' in their places, respectively.

The revisions read as follows:

252.227–7037 Validation of Asserted Restrictions on Technical Data.

* * * * *

VALIDATION OF ASSERTED RESTRICTIONS ON TECHNICAL DATA (JAN 2025)

* * * * *

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its asserted restrictions on the rights of the Government and others to use, duplicate, release, or disclose technical data delivered, required to be delivered, or otherwise provided to the Government under the contract or subcontract. Except as provided in paragraph (b) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any asserted restriction on the right of the United States or others to use, disclose, or release technical data. If, upon review of the explanation submitted, the Contracting Officer cannot determine the basis of the asserted restriction, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any asserted restriction on technical data delivered, to be delivered, or otherwise provided to the Government under the contract or subcontract (*e.g.,* a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that reasonable grounds exist to question the current validity of the asserted restriction and that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer will follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer may challenge the validity of the asserted restriction as described in paragraph (e) of this clause.

(e) * * *

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the asserted restriction is warranted, the Contracting Officer will send a written challenge notice to the Contractor or subcontractor making the asserted restriction. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will—

* * * * *

(iii) State that a Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a prior asserted restriction identical to the current asserted restriction, within the 3-year period preceding the current challenge, shall serve as justification for the current asserted restriction if the prior validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

* * * * *

(g) * * *

(1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the asserted restriction, the Contracting Officer will issue a final decision to the Contractor or subcontractor that sustains the validity of the asserted restriction and that states that the Government will continue to be bound by the asserted restriction. The Contracting Officer will issue this final decision within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice.

* * * * *

(2) * * *

(ii) The Government agrees that it will continue to be bound by the asserted restriction for a period of 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Court of Federal Claims, it will provide a notice of intent to file suit to the Contracting Officer within 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the 90-day period, the Government may cancel or ignore the restrictive markings that are based on the asserted restrictions, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the asserted restriction where a notice of intent to file suit in the United States Court of Federal Claims is provided to the Contracting Officer within 90 days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive marking that is based on the asserted restriction, if the Contractor or subcontractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the asserted restrictions where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Court of Federal Claims. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) * * *

(1) * * *

(ii) If the asserted restriction is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the asserted restriction, unless special circumstances would make such payment unjust.

* * * * *

(i) *Duration of right to challenge.* (1) The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within 6 years of final payment on a contract or within 6 years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data at any time if such technical data—

(i) Are publicly available;
(ii) Have been furnished to the United States without restriction;
(iii) Have been otherwise made available without restriction; or
(iv) Are the subject of a fraudulently asserted use or release restriction.
(2) Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes ''validation'' as addressed in 10 U.S.C. 3785(c).

* * * * *

[FR Doc. 2025–00722 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA–2024–0034]

RIN 2130–AC98

Accident/Incident Investigation Policy for Gathering Information and Consulting With Stakeholders

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; withdrawal.

SUMMARY: FRA is withdrawing the direct final rule titled ''Federal Railroad Administration Accident/Incident Investigation Policy for Gathering Information and Consulting with Stakeholders,'' (the Rule) which was published on October 1, 2024.

DATES: Effective on January 17, 2025, FRA withdraws the direct final rule published at 89 FR 79767 on October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Rick Huggins, Supervisory Railroad Security Specialist, Office of Railroad Safety, FRA, telephone: 202–465–6922 or email: *ricky.huggins@dot.gov;* or Senya Waas, Senior Attorney, Office of the Chief Counsel, FRA, telephone: 202–875–4158 or email: *senyaann.waas@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2024, FRA published the Rule in the **Federal Register** amending 49 Code of Federal Regulations (CFR) 225.31 to, in accordance with Section 22417 of the Infrastructure Investment and Jobs Act (IIJA), create a standard process for investigators to use during accident and incident investigations conducted under that section.[1] This process was to be used to determine when it was appropriate to collect information and the appropriate method for gathering that information about an accident or incident under investigation from railroad carriers, contractors or employees of railroad carriers, or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary. The process was also to be used to determine when it was appropriate to consult with railroad carriers, contractors or employees of railroad carriers, or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary, for technical expertise on the facts of the accident or incident under investigation. *See* Public Law 117–58, Section 22417, Nov. 15, 2021, 135 Stat. 748.

The Rule generated two adverse, substantive comments. Accordingly, as described in more detail below, FRA has decided to withdraw the Rule.

II. Reasons for Withdrawal

FRA is withdrawing the Rule, which took effect on November 15, 2024. FRA received two adverse, substantive comments which opposed the Rule. There were no comments submitted in support of the Rule.[2]

Commenters objecting to the Rule stated that the Rule was insufficient as it needed to be expanded to include the outside review of accidents/incidents by professionals, such as physicists or highly-qualified industrial engineers, as independent reviews of findings.

Commenters also alleged that FRA's outreach to the Class I railroads was limited and insufficient, and nonexistent to short line railroads. As such, it was the position of the commenters that FRA did not account for how the Rule would fully affect the railroad industry in the following ways: (1) FRA's ''catch-all'' provision for determining which accidents trigger the information gathering and stakeholder consultation requirements is vague and fails to properly implement the IIJA mandate; (2) FRA's description of ''stakeholders'' fails to properly implement the IIJA mandate; (3) FRA fails to explain substantive regulatory changes in 49 CFR 225.31(a); (4) loopholes allow for information to be shared with third parties during an investigation; (5) it is unclear how FRA's web-based document sharing site will protect against the disclosure of confidential information; (6) there are no protections against post-investigation disclosures of confidential information; (7) the identity of a stakeholder should not be kept confidential from other stakeholders; (8) FRA's investigation policy would create untenable conflicts with NTSB practice in situations where NTSB and FRA conduct overlapping investigations; (9) FRA improperly limits the basis for restricting stakeholder access to an accident site; (10) FRA does not have the authority to grant a stakeholder ''virtual'' access to railroad property; (11) the investigation policy will result in undue delays in clearing accident sites; (12) FRA adopts an incident command model but fails to provide details on its structure and tasks; and (13) FRA underestimates the cost of compliance of the new regulation.

Given the extent of the commenters' substantive issues with the Rule, FRA is withdrawing the Rule at this time in order to re-assess its components and work further with stakeholders to evaluate potential changes.

III. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094 and DOT Regulatory Policies and Procedures

This withdrawal is a non-significant regulatory action within the meaning of Executive Order (E.O.) 12866, as amended by E.O. 14094, ''Modernizing Regulatory Review [3]'' and DOT's Order, ''Rulemaking and Guidance Procedures,'' DOT 2100.6A (June 7, 2021).[4] FRA made this determination because the economic effects of this regulatory action will not exceed the $100 million annual threshold as defined by E.O. 12866.

[1] 89 FR 79767. A correction to the Rule was published on October 28, 2024 (89 FR 85450).

[2] As stated in the Rule: ''If FRA receives an adverse, substantive comment on any of the provisions, it will publish in the **Federal Register** a timely withdrawal, informing the public that the direct final rule will not take effect.'' 89 FR 79767 at 79768.

[3] 88 FR 21879 (Apr. 6, 2023) available at *https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review.*

[4] DOT–2100.6A-Rulemaking and Guidance (Jun. 7, 2021) available at *https://www.transportation.gov/sites/dot.gov/files/2021-08/Final-for-OST-C-210407-001-signed.pdf.*

FRA is amending its Accident/Incident Regulations, covering reporting, classification, and investigations, by withdrawing its regulation (*i.e.,* the Rule) for gathering information from and consulting with stakeholders during an accident/incident investigation. Through this withdrawal of the Rule, FRA is revising its accident investigation process by removing the changes made by the Rule that established procedures for stakeholder participation in investigation, including notifying stakeholders of an accident investigation; permitting the assistance of stakeholders in investigations; and allowing stakeholders to submit information to FRA to assist with the investigation.

FRA anticipates the primary benefit of withdrawing the Rule will be the ability to re-assess and ultimately re-issue a rule addressing Section 22417 of IIJA and concerns raised by commenters.

In the Rule, FRA estimated costs of approximately $1.0 million (Present Value (PV),[5] 2-percent) over the ten-year analysis. By withdrawing the Rule, FRA estimates this will now incur a cost savings. Table 1 displays the cost savings of withdrawing the Rule from the Accident/Incident regulations in 49 CFR part 225.

TABLE 1—TOTAL COST SAVINGS OF THE FINAL RULE

[2023 Dollars][6]

Year	Total stakeholder cost savings	Total government cost savings	Total cost savings	PV 7%	PV 3%	PV 2%
1	$ 97,922	$ 19,753	$ 117,675	$ 117,675	$ 117,675	$ 117,675
2	97,922	10,541	108,463	101,367	105,304	106,336
3	97,922	10,541	108,463	94,736	102,237	104,251
4	97,922	10,541	108,463	88,538	99,259	102,207
5	97,922	10,541	108,463	82,746	96,368	100,203
6	97,922	10,541	108,463	77,333	93,561	98,238
7	97,922	10,541	108,463	72,273	90,836	96,312
8	97,922	10,541	108,463	67,545	88,190	94,424
9	97,922	10,541	108,463	63,126	85,622	92,572
10	97,922	10,541	108,463	58,997	83,128	90,757
Total	979,220	114,622	1,093,842	824,336	962,180	1,002,975

Note: Table may not sum due to rounding.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ((RFA), 5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) require an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

C. Paperwork Reduction Act

There are no new or additional information collection requirements associated with this withdrawal. Therefore, FRA is not required to provide an estimate of a public reporting burden in this document.

D. Environmental Assessment

FRA has evaluated this withdrawal in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Council of Environmental Quality's NEPA implementing regulations (40 CFR parts 1500 through 1508), FRA's regulations implementing NEPA (23 CFR part 771), and other environmental statutes, executive orders, and related regulatory requirements. FRA has determined that this withdrawal is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. Specifically, FRA has determined that this withdrawal is categorically excluded from detailed environmental review.

This withdrawal would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. FRA has concluded that no such unusual circumstances exist with respect to this withdrawal and it meets the requirements for categorical exclusion.

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. FRA has also determined that this withdrawal does not approve a project resulting in a use of a resource protected by Section 4(f). Further, FRA reviewed this withdrawal and found it consistent with E.O. 14008, ''Tackling the Climate Crisis at Home and Abroad.''

E. Environmental Justice

Executive Order 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All,'' which expands on E.O. 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. DOT Order 5610.2C (''U.S. Department of

[5] The present value of costs are calculated in this analysis. Present value provides a way of converting future costs into equivalent DOT–2100.6A-Rulemaking and Guidance (Jun. 7, 2021) available at *https://www.transportation.gov/sites/dot.gov/files/2021-08/Final-for-OST-C-210407-001-signed.pdf.*

[6] All figures are presented in a 2023 base year unless otherwise noted.

Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') instructs DOT agencies to address compliance with E.O. 12898 and requirements within the DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.[7] FRA has evaluated this withdrawal under Executive Orders 12898, 14096, and DOT Order 5610.2C, and has determined it will not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

F. Federalism Implications

This withdrawal will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with E.O. 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

G. Unfunded Mandates Reform Act of 1995

This withdrawal will not result in the expenditure, in the aggregate, of $100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

H. Energy Impact

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). FRA has evaluated this withdrawal in accordance with E.O. 13211 and determined that this withdrawal is not a ''significant energy action'' within the meaning of E.O. 13211.

I. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this withdrawal in accordance with the principles and criteria contained in E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments,'' dated November 6, 2000. The withdrawal would not have a substantial direct effect on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a Tribal summary impact statement is not required.

J. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This withdrawal is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends 49 CFR part 225 as follows:

PART 225—RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATION

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 225.31 [Amended]

■ 2. Amend § 225.31 by removing the heading for paragraph (a), removing paragraph (b), and redesignating paragraphs (a)(1) through (a)(6) as paragraphs (a) through (f) respectively.

Issued in Washington, DC.

Allison Ishihara Fultz,

Chief Counsel.

[FR Doc. 2025–00998 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–06–P

[7] E.O. 14096 ''Revitalizing Our Nation's Commitment to Environmental Justice,'' issued on April 26, 2023, supplements E.O. 12898, but is not currently referenced in DOT Order 5610.2C.

Proposed Rules

Federal Register
Vol. 90, No. 11
Friday, January 17, 2025

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2024–0167]

Law Enforcement Response in Power Reactor Physical Protection Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed interpretive rule; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a notice of proposed interpretation of regulatory requirements to clarify that a power reactor applicant or licensee may, when designing or updating its physical protection program, incorporate law enforcement response into its site physical protection program through the implementation of a site-specific Security Bounding Time. This proposed interpretation would provide flexibility to applicants and licensees by allowing them to consider the assistance of law enforcement responders as part of the physical protection program. The NRC is requesting comment on the proposed interpretation and will hold a public meeting during the public comment period to address questions regarding the proposed interpretation and to facilitate public comments.

DATES: Submit comments on the proposed interpretation by March 3, 2025. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0167. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: *Helen.Chang@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. eastern time, Federal workdays; telephone: 301–415–1677.

You can read a plain language description of this proposed interpretation at *https://www.regulations.gov/docket/NRC-2024-0167.* For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Wellington Tejada, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1623; email: *Wellington.Tejada@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0167 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0167.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0167 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In the NRC's regulatory framework, power reactor licensees regulated under title 10 of the *Code of Federal Regulations* (10 CFR) part 50, ''Domestic Licensing of Production and Utilization Facilities, or 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' are required to provide physical protection sufficient to prevent radiological sabotage from a hostile adversary, the characteristics of which fall within a defined design basis threat (DBT). The DBT of radiological

sabotage has been part of the NRC's regulations in 10 CFR part 73, ''Physical Protection of Plants and Materials,'' since 1979. To date, the Commission has interpreted its regulatory requirements to mean that a licensee's defense against the DBT may not consider the assistance provided by local, State, or Federal law enforcement agencies.

In 2005, the NRC undertook a rulemaking to revise the DBT of radiological sabotage as directed by Section 651 of the Energy Policy Act of 2005. In the final rule, ''Design Basis Threat,'' the Commission set forth its views on the corresponding roles of licensee security forces and offsite Federal and State law enforcement agencies in protecting against the threats applicable to power reactors (72 FR 12705). As the Commission explained, the DBT reflects the Commission's determination of the composite set of adversary features against which private security forces should reasonably have to defend. Although the rule sets an upper limit on the threat that must be considered in the design of licensee security programs, the Commission noted that the defense of our Nation's critical infrastructure is a shared responsibility between the NRC, the Department of Defense, the Department of Homeland Security, Federal and State law enforcement, and other Federal agencies. The Commission also noted that, although licensees are not required to develop protective strategies to defend against beyond-DBT events, it should not be concluded that licensees can provide no defense against those threats. The Commission expressed its confidence that a licensee's security force would respond to any threat—no matter the size or capabilities—that may present itself, and the Commission stated that it expects that licensees and Federal and State authorities will use whatever resources are necessary in response to both DBT and beyond-DBT events.

In 2006, the Commission undertook a separate rulemaking effort to amend its security regulations in § 73.55 and add new security requirements pertaining to nuclear power reactors. As revised in the 2009 final rule, ''Power Reactor Security Requirements,'' the NRC regulations in § 73.55(b)(1) through (3) provide a general performance objective and requirements for a licensee to establish and maintain a physical protection program that must protect against the DBT of radiological sabotage (74 FR 13926). Specific requirements for the design and implementation of the physical protection program are provided in § 73.55(c) through (q). These regulatory requirements establish that the licensee has the ultimate responsibility for protecting an operating power reactor site against an adversary force up to and including the DBT of radiological sabotage. In the 2009 final rule, the Commission further stated that a licensee's ability to defend against the DBT of radiological sabotage is not dependent on the availability of offsite responders.

Taken together, the 2007 and 2009 final rules reflect an interpretation of the security regulations that required licensees to establish a physical protection program, including a private security organization, that is capable of defending against the DBT without the assistance of local, State, or Federal law enforcement. As currently implemented, licensee physical protection programs do not include credit for local, State, or Federal law enforcement response. While § 73.55(k)(9) and paragraph II.B.3.d in appendix C to 10 CFR part 73 require licensees to document and maintain response agreements with law enforcement agencies to the extent practicable, licensees do not recognize this law enforcement response as an essential contributor for how the site will defend against the DBT.

On October 9, 2018, the Commission issued Staff Requirements Memorandum (SRM) to SECY–17–0100, ''Staff Requirements—SECY–17–0100—Security Baseline Inspection Program Assessment Results and Recommendations for Program Efficiencies,'' and directed the staff to provide recommendations for providing credit for response by local, State, and Federal law enforcement in the NRC's security inspection program. On July 30, 2020, in SECY–20–0070, ''Technical Evaluation of the Security Bounding Time Concept for Operating Nuclear Power Plants,'' the NRC staff presented the Commission with a methodology for power reactor licensees to incorporate law enforcement response into their physical protection programs and leverage additional operator actions and equipment to further strengthen site capabilities to protect against the DBT of radiological sabotage through a site-specific Security Bounding Time (SBT). A redacted version of SECY–20–0070 is publicly available and describes how the SBT concept could be implemented at a power reactor site.

On June 6, 2024, the Commission issued SRM–SECY–20–0070, ''Staff Requirements—SECY–20–0070—Technical Evaluation of the Security Bounding Time Concept for Operating Nuclear Power Plants,'' approving the staff's recommendation to reinterpret existing security regulations through a notice of interpretation. This proposed interpretation of regulatory requirements would reinterpret § 73.1 and § 73.55 to allow a licensee to consider the assistance of law enforcement responders as part of its physical protection program through a site-specific SBT and revise its security plans and site procedures to reflect this reading of the regulations in part 73.

III. Proposed Interpretation

Under the regulatory requirements in § 3.55(b)(1) through (3), operating power reactor licensees are required to establish and maintain a physical protection program, to include a security organization, with the capabilities to detect, assess, interdict, and neutralize threats up to and including the DBT of radiological sabotage at all times. This proposed interpretation would allow operating power reactor licensees to establish a site-specific SBT that incorporates law enforcement response as a component of a physical protection program that meets the requirements of § 73.55(b)(1) through (3). The SBT concept would provide a methodology for developing robust tactical response plans with participating law enforcement agencies to preclude prolonged adversary interference with plant operator actions following the initiation of an attack. A site-specific SBT represents the amount of time, following the initiation of an attack, needed to execute this response plan, preclude adversary interference, and complete any planned operator actions to prevent damage to the reactor core or spent fuel. A more detailed description of the SBT concept is found in SECY–20–0070.

A licensee that chooses to develop an SBT, through the incorporation of law enforcement response as a component of its physical protection program, will be responsible for justifying its site-specific SBT and providing assurance that its overall physical protection program meets the requirements of § 73.55(b)(1) through (3). Licensees cannot compel law enforcement agencies to maintain the capabilities documented in any specific agreements they have with licensees, and the NRC does not have regulatory authority over law enforcement agencies. Nevertheless, the NRC has confidence that, when called upon, law enforcement agencies will honor their commitments. As stated in the 2007 DBT final rule, the Commission expects that licensees and State and Federal authorities will use whatever resources are necessary in response to both DBT and beyond-DBT events. Additionally, the Commission has recognized in its regulations, in the

emergency planning context, the reality that in an actual emergency, State and local government officials will exercise their best efforts to protect the health and safety of the public (§ 50.47(c)(1)(iii)(B)). The NRC expects that the exercising of best efforts would extend to law enforcement agencies responding to a security emergency, consistent with the existing agreements between licensees and those agencies. Accordingly, it is reasonable and prudent to allow licensees to consider the assistance of law enforcement responders when designing their physical protection programs.

The inclusion of law enforcement response in the licensee's physical protection program does not mean that law enforcement responders are subject to the same training requirements as members of the licensee's security organization. The NRC's regulations in § 73.55(d)(3) state that the licensee may not permit any individual to implement any part of the physical protection program unless the individual has been trained, equipped, and qualified to perform their assigned duties and responsibilities in accordance with section VI of appendix B to 10 CFR part 73 and the licensee's Training and Qualification Plan. Further, § 73.55(k)(1) states that the licensee shall establish and maintain, at all times, properly trained, qualified and equipped personnel required to interdict and neutralize threats up to and including the DBT of radiological sabotage, to prevent significant core damage and spent fuel sabotage. These provisions are properly applied solely to the licensee's own personnel (*i.e.,* employees or contractors), and not to any law enforcement responders who may be part of the law enforcement response that would be considered a component of the physical protection program through a site-specific SBT. Although law enforcement responders may be considered a part of the licensee's physical protection program, they should not be considered security personnel or members of the licensee's security organization required by § 73.55(d)(1), nor should they be considered among the individuals subject to the requirements of § 73.55(d)(3).

IV. Discussion

This proposed interpretation, if issued, would apply to any licensee of an operating power reactor or applicant for a power reactor license under 10 CFR part 50 or part 52. The NRC expects that the proposed interpretation would allow applicants and licensees to consider, when designing their physical protection programs, that law enforcement agencies will exercise their best efforts to protect the health and safety of the public.

The proposed interpretation would not supplant any physical protection strategies currently permitted under the NRC's regulations. Rather, the proposed interpretation explains that applicants and licensees could consider the expected law enforcement response, developed and documented in accordance with the SBT concept, as part of the physical protection program and revise their security plans and site procedures to reflect this consideration. The proposed interpretation would recognize how, following initiation of an attack, the security at a site evolves over time and additional support from law enforcement is expected to be provided to the licensee to continue to defend against the DBT. Recognizing the role of law enforcement support in a licensee's physical protection program does not reduce the NRC's confidence that licensees can maintain adequate physical protection of their sites against the DBT.

The NRC intends to issue regulatory guidance for developing acceptable site-specific SBTs and associated response plans with participating law enforcement agencies. This guidance will describe planning considerations and tactical response plan elements that should be included in a site-specific SBT. Additionally, the NRC intends to issue regulatory guidance to assist licensees in determining whether Commission approval would be required prior to implementing an SBT at an operating power reactor facility. In accordance with § 50.54(p)(1), licensees may not make a change which would decrease the effectiveness of a physical security plan without prior Commission approval. Prior Commission approval is not required if the changes do not decrease the safeguards effectiveness of the plan; however, these changes must be reported to the NRC within 2 months after the change is made. Implementing an SBT at a site would require a change to the site's security plans, and licensees would need to use existing site or fleet processes to assess the impact of SBT implementation on the effectiveness of the site security plans prior to implementation. The regulatory guidance would include a method that the NRC considers acceptable to determine whether a change would decrease the safeguards effectiveness of the plan, particularly as it relates to SBT implementation, to ensure the appropriate level of NRC review is completed. The NRC plans to solicit public comment on the proposed regulatory guidance in calendar year 2025.

V. Backfit and Issue Finality Considerations

Under § 50.109(a), backfitting is defined in part as the NRC's imposition of staff interpretations of its regulations on nuclear power reactor licensees or certain nuclear power reactor applicants. Provisions analogous to the backfitting requirements, referred to as issue finality provisions, appear in 10 CFR part 52.

The proposed interpretation of regulatory requirements would expand the options available for licensee physical protection programs to meet the NRC's regulatory requirements. Under the proposed interpretation, a licensee could continue to comply with the requirements of its current licensing basis or voluntarily choose to adopt an SBT by revising its security plans and site procedures to reflect the role of law enforcement in the site protective strategy. Because the NRC would not be imposing a staff interpretation of the regulations on nuclear power reactor licensees, this proposed interpretation would not meet the definition of backfitting under § 50.109 and, therefore, would not constitute a backfit or affect the issue finality of any approval issued under 10 CFR part 52.

VI. Request for Comments

The NRC is requesting comments on this proposed interpretation of regulatory requirements. The NRC will publish a document in the **Federal Register** containing an evaluation of the significant comments and any revisions to this proposed interpretation resulting from the comments and their evaluation.

VII. Availability of Documents

Document	ADAMS accession No./weblink/**Federal Register** citation
Design Basis Threat, Final Rule, March 19, 2007	72 FR 12705.
Power Reactor Security Requirements, Final Rule, March 27, 2009	74 FR 13926.

Document	ADAMS accession No./weblink/**Federal Register** citation
SRM–SECY–17–0100, ''Staff Requirements—SECY–17–0100—Security Baseline Inspection Program Assessment Results and Recommendations for Program Efficiencies,'' October 9, 2018.	ML18283A072.
SECY–20–0070, ''Technical Evaluation of the Security Bounding Time Concept for Operating Nuclear Power Plants'' (Redacted), November 8, 2021.	ML20126G265.
SRM–SECY–20–0070, ''Staff Requirements—SECY–20–0070—Technical Evaluation of the Security Bounding Time Concept for Operating Nuclear Power Plants,'' June 6, 2024.	ML24158A083.
Energy Policy Act of 2005 (Pub. L. 109–58)	*https://www.govinfo.gov/app/details/PLAW-109publ58.*

VIII. Paperwork Reduction Act

This proposed interpretation does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), approval numbers 3150–0002 and 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

IX. Public Meeting

The NRC plans to conduct a public meeting to address questions regarding the proposed interpretation. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders can monitor the NRC's public meeting website for information about the public meeting at *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Dated December 9, 2024.

For the Nuclear Regulatory Commission.

John McKirgan,

Director, Division of Physical and Cyber Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. 2025–00974 Filed 1–16–25; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0036]

RIN 1904–AE82

Energy Conservation Program: Energy Conservation Standards for Consumer Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a proposed rule that was published in the **Federal Register** on August 14, 2023. The proposed rule would have amended energy conservation standards for consumer boilers.

DATES: The proposed rule on Energy Conservation Standards for Consumer Boilers, published in the **Federal Register** on August 14, 2023, at 88 FR 55128 is withdrawn on January 17, 2025.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov/docket/EERE-2019-BT-STD-0036.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. All documents in the docket are listed in the *www.regulations.gov* index; however, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Uchechukwu ''Emeka'' Eze, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–4798. Email: *uchechukwu.eze@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On August 14, 2023, the Department of Energy (''DOE'') published in the **Federal Register** a notice of proposed rulemaking (''NOPR'') and public meeting announcement, in which DOE proposed to amend the energy conservation standards for certain consumer boilers. 88 FR 55128. Specifically, the proposed rule sought to establish more stringent AFUE standards for gas-fired and oil-fired boilers; maintain the current standards for electric steam and hot water boilers; and maintain the design requirements and exceptions to the minimum AFUE requirements established by statute and codified at 10 CFR 430.32(e)(2). After review of the proposed rule and public comments, DOE has decided to withdraw the proposed rule.

DOE received significant oral and written comments on its proposed rule and technical support document from individuals, manufacturers, trade associations, utilities, efficiency advocacy organizations, and other stakeholders. Some commenters opposed the rule, citing concerns about impacts on manufacturers and the analysis underlying the proposed standards. Other commenters supported the proposed rule and highlighted the proposed rule's energy savings, emission reductions, and consumer benefits. Although DOE continues to support the intent and purpose of the proposed energy conservation standards for consumer boilers, in light of the considerable feedback received through the public comment process, the forthcoming change in Administration, and the significant resources needed to review and consider all relevant matters presented in the public comments, DOE does not believe that finalizing the proposed energy conservation standards is an efficient use of its resources at this time.

For each of these independent reasons, DOE is exercising its discretion to withdraw the proposed standards and terminate this rulemaking. DOE does not intend for a final rule to be issued on this NOPR as it will be important for the Department to have updated data and public input to inform a future rule that re-examines these important issues and explores options that best implement the requirements of the Energy Policy and Conservation Act (EPCA). 42 U.S.C. 6291 *et seq.* However, this withdrawal action does not preclude DOE from proposing energy

conservation standards for consumer boilers in the future, including new standards that may be substantially identical or similar to those previously proposed. DOE notes that any future rulemaking it may undertake on this topic would similarly be subject to the notice and comment requirements of EPCA and the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule; withdrawal.

Signing Authority

This document of the Department of Energy was signed on January 10, 2025, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2025.

Treena V. Garrett,

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

[FR Doc. 2025–00964 Filed 1–16–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0013]

RIN 1904–AE50

Energy Conservation Program: Energy Conservation Standards for Battery Chargers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a proposed rule that was published in the **Federal Register** on March 15, 2023. The proposed rule would have established amended energy conservation standards for battery chargers.

DATES: The proposed rule on energy conservation standards for battery chargers, published in the **Federal Register** on March 15, 2023, at 88 FR 16112 is withdrawn on January 17, 2025.

ADDRESSES: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov/docket/EERE-2022-BT-STD-0002.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. All documents in the docket are listed in the *www.regulations.gov* index; however, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2023, the Department of Energy (''DOE'') published in the **Federal Register** a notice of proposed rulemaking (''NOPR'') and public meeting announcement, in which DOE proposed to amend energy conservation standards for battery chargers based on the multi-metric approach. 88 FR 16112. Specifically, DOE proposed maximum active charge energy, maximum standby, and maximum off mode power values, based on associated battery energy. 88 FR 16112, 16113. After review of the proposed rule and public comments, DOE has decided to withdraw the proposed rule.

DOE received significant oral and written comments on its proposed rule and technical support document from individuals, manufacturers, trade associations, utilities, efficiency advocacy organizations, and other stakeholders. Some commenters expressed concerns with the rule, citing concerns about impacts on manufacturers and the analysis underlying the proposed standards. Other commenters supported the proposed rule and highlighted the proposed rule's energy savings, emission reductions, and consumer benefits. Although DOE continues to support the intent and purpose of the proposed energy conservation standards for battery chargers, in light of the considerable feedback received through the public comment process, the forthcoming change in Administration, and the significant resources needed to review and consider all relevant matters presented in the public comments, DOE does not believe that finalizing the proposed energy conservation standards is an efficient use of its resources at this time.

For each of these independent reasons, DOE is exercising its discretion to withdraw the proposed standards and terminate this rulemaking. DOE does not intend for a final rule to be issued on this NOPR as it will be important for the Department to be informed by updated data and public input when it re-examines these important issues and explores options that best implement the requirements of the Energy Policy and Conservation Act (EPCA). 42 U.S.C. 6291 *et seq.* However, this withdrawal action does not preclude DOE from proposing energy conservation standards for battery chargers in the future, including new standards that may be substantially identical or similar to those previously proposed. DOE notes that any future rulemaking it may undertake on this topic would similarly be subject to the notice and comment requirements of EPCA and the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule; withdrawal.

Signing Authority

This document of the Department of Energy was signed on January 10, 2025, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2025.

Treena V. Garrett,

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

[FR Doc. 2025–00966 Filed 1–16–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0002]

RIN 1904–AF40

Energy Conservation Program: Energy Conservation Standards for Fans and Blowers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a proposed rule that was published in the **Federal Register** on January 19, 2024. The proposed rule would have established equipment classes and energy conservation standards for fans and blowers.

DATES: The proposed rule on energy conservation standards for fans and blowers, published in the **Federal Register** on January 19, 2024, at 89 FR 3714 is withdrawn on January 17, 2025.

ADDRESSES: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov/docket/EERE-2022-BT-STD-0002*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. All documents in the docket are listed in the *www.regulations.gov* index; however, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Laura Zuber, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–4798. Email: *Laura.Zuber@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 19, 2024, the Department of Energy (''DOE'') published in the **Federal Register** a notice of proposed rulemaking (''NOPR'') and public meeting announcement, in which DOE proposed to establish equipment classes and energy conservation standards for fans and blowers. 89 FR 3714. Specifically, the proposed rule sought to establish energy conservation standards for two categories of fans and blowers: air circulating fans (''ACFs'') and fans and blowers that are not air circulating fans, which DOE referred to as general fans and blowers (''GFBs''). DOE proposed standards for various equipment classes of GFBs and ACFs. After review of the proposed rule and public comments, DOE has decided to withdraw the proposed rule.

DOE received significant oral and written comments on its proposed rule and technical support document from individuals, manufacturers, trade associations, utilities, efficiency advocacy organizations, and other stakeholders. Some commenters opposed the rule, citing concerns about impacts on manufacturers and the analysis underlying the proposed standards. Other commenters supported the proposed rule and highlighted the proposed rule's energy savings, emission reductions, and consumer benefits. Although DOE continues to support the intent and purpose of the proposed energy conservation standards for fans and blowers, in light of the considerable feedback received through the public comment process, the forthcoming change in Administration, and the significant resources needed to review and consider all relevant matters presented in the public comments, DOE does not believe that finalizing the proposed energy conservation standards is an efficient use of its resources at this time.

For each of these independent reasons, DOE is exercising its discretion to withdraw the proposed standards and terminate this rulemaking. DOE does not intend for a final rule to be issued on this NOPR as it will be important for the Department to be informed by updated data and public input when it in re-examines these important issues and explores options that best implement the requirements of the Energy Policy and Conservation Act (EPCA). 42 U.S.C. 6291 *et seq.* However, this withdrawal action does not preclude DOE from proposing energy conservation standards for fans and blowers in the future, including new standards that may be substantially identical or similar to those previously proposed. DOE notes that any future rulemaking it may undertake on this topic would similarly be subject to the notice and comment requirements of EPCA and the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

States are not prohibited from adopting their own energy conservation standards, including the standards proposed by DOE. DOE notes that in proposing these standards, DOE estimated that the standards would save a significant amount of energy and have significant cost savings to consumers and the nation.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule; withdrawal.

Signing Authority

This document of the Department of Energy was signed on January 10, 2025, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2025.

Treena V. Garrett,

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

[FR Doc. 2025–00965 Filed 1–16–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0007; Project Identifier MCAI–2023–00998–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all

Airbus Helicopters Model SA341G and SA342J helicopters. This proposed AD was prompted by reports of corrosion on the contact surfaces of the tail rotor inclined and horizontal drive shaft flanges. This proposed AD would require repetitively inspecting the inclined and horizontal drive shaft flanges and, depending on the results, replacing the inclined or horizontal drive shaft. This proposed AD would also prohibit installing certain inclined and horizontal drive shafts unless certain requirements are met, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by March 3, 2025.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–0007; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulation.gov* under Docket No. FAA–2025–0007.

FOR FURTHER INFORMATION CONTACT: Evan Weaver, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4152; email: *Evan.P.Weaver@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2025–0007; Project Identifier MCAI–2023–00998–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Evan Weaver, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4152; email: *Evan.P.Weaver@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0168, dated August 31, 2023 (EASA AD 2023–0168) (also referred to as the MCAI), to correct an unsafe condition on all Airbus Helicopters Model SA 341 G and SA 342 J (Gazelle) helicopters. The MCAI states that there have been several reports of corrosion on the contact surfaces of the tail rotor inclined and horizontal drive shaft flanges. More detailed non-destructive testing indicated pitting corrosion on the mating faces of several flanges and further investigation revealed various regions of intergranular failure beneath the surface of corrosion pits. The unsafe condition, if not addressed, could result in the failure of the tail rotor drive and subsequent loss of control of the helicopter.

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

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2025–0007.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0168, which requires repetitively inspecting the flanges of certain part-numbered inclined and horizontal drive shafts for corrosion. If corrosion is found, EASA AD 2023–0168 requires replacing the affected inclined or horizontal drive shaft. EASA AD 2023–0168 also prohibits installing an affected inclined or horizontal drive shaft on any helicopter unless it is a serviceable part as defined within. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0168, described previously, as incorporated by reference, except for any differences

identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between This NPRM and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0168 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0168 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0168 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0168. Material required by EASA AD 2023–0168 for compliance will be available at *regulations.gov* under Docket No. FAA–2025–0007 after the FAA final rule is published.

Differences Between This NPRM and the MCAI

The material referenced in the MCAI specifies sending corroded parts to Airbus Helicopters, whereas this proposed AD would not require that action.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 63 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Visually inspecting the inclined and horizontal drive shaft flanges would take 4 work-hours for an estimated cost of $340 per helicopter and $21,420 for the U.S. fleet, per inspection cycle. If required, replacing the inclined or horizontal drive shaft would take 4 work-hours and parts would cost $17,900 (inclined drive shaft) or $35,500 (horizontal drive shaft), for an estimated cost of $18,240 or $35,840 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2025–0007; Project Identifier MCAI–2023–00998–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 3, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model SA341G and SA342J helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 6510, Tail Rotor Drive Shaft.

(e) Unsafe Condition

This AD was prompted by reports of corrosion on the contact surfaces of the tail rotor inclined and horizontal drive shaft flanges. The FAA is issuing this AD to detect and address corrosion on the inclined and horizontal drive shaft flanges. The unsafe condition, if not addressed, could result in the failure of the tail rotor drive and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2023–0168, dated August 31, 2023 (EASA AD 2023–0168).

(h) Exceptions to EASA AD 2023–0168

(1) Where EASA AD 2023–0168 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0168 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the material referenced in paragraph (2) of EASA 2023–0168 specifies sending corroded inclined or horizontal drive shaft to Airbus Helicopters, this AD does not require that action.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0168.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2023–0168 specifies to submit certain information to the manufacturer, this AD does not require that action.

(j) Special Flight Permits

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve

AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD and email to: *AMOC@faa.gov.*

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

(l) Additional Information

For more information about this AD, contact Evan Weaver, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4152; email: *Evan.P.Weaver@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0168, dated August 31, 2023.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on January 13, 2025.

Victor Wicklund,

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

[FR Doc. 2025–01100 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0004; Project Identifier AD–2024–00094–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, -700, -700C, -800, -900, and 900ER series airplanes. This proposed AD was prompted by a report that some passenger service unit (PSU)-mounted video monitors became detached from the PSU rails during a hard landing. This proposed AD would require replacing PSU-mounted video monitors that do not have secondary retention lanyards. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 3, 2025.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–0004; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the material identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2025–0004.

FOR FURTHER INFORMATION CONTACT: Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3584; email: *julie.linn@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2025–0004; Project Identifier AD–2024–00094–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th

St., Des Moines, WA 98198; phone: 206–231–3584; email: *julie.linn@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report that some PSU-mounted video monitors became detached from the PSU rails during a hard landing that did not exceed the emergency load requirements for the PSUs. PSU-mounted video monitors that become fully detached or are held at an unsafe height could result in injury to passengers and impede passenger and crew egress during emergency evacuation.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Requirements Bulletins 737–25–1851 RB and 737–25–1858 RB, both dated December 15, 2023. This material specifies procedures for replacing all PSU-mounted video monitors that do not have secondary retention lanyards with PSU-mounted video monitors that have secondary retention lanyards. The replacement includes making sure each inboard lanyard is attached to the inboard PSU rail. These documents are distinct since Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023, addresses airplanes with certain Burrana monitors, and Boeing Special Attention Requirements Bulletin 737–25–1858 RB, dated December 15, 2023, addresses airplanes with certain Panasonic monitors. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD, and except as described under ''Difference Between this Proposed AD and the Referenced Material.'' For information on the procedures and compliance times, see this material at regulations.gov under Docket No. FAA–2025–0004.

Difference Between This Proposed AD and the Referenced Material

The effectivity in Boeing Special Attention Requirements Bulletin 737–25–1851 RB, and Boeing Special Attention Requirements Bulletin 737–25–1858 RB, both dated December 15, 2023, is limited to certain line numbers, which address PSU-mounted video monitors installed in production. However, affected PSU-mounted video monitors may also be installed on airplanes modified in accordance with a supplemental type certificate. The applicability of this proposed AD, therefore, is expanded to specify The Boeing Company Model 737–600, -700, -700C, -800, -900, and -900ER series airplanes equipped with PSU-mounted video monitors to ensure that the unsafe condition is adequately addressed in the fleet.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 459 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per monitor	Cost on U.S. operators
Replacement (Burrana monitors—airplanes identified Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023).	2 work-hours × $85 per hour = $170, per monitor.	$2,734	$2,904	Up to $5,401,440* (62 airplanes).
Replacement (Panasonic monitors—airplanes identified in Boeing Special Attention Requirements Bulletin 737–25–1858 RB, dated December 15, 2023).	2 work-hours × $85 per hour = $170, per monitor.	$354	$524	Up to $5,376,240* (342 airplanes).
Replacement (monitors for airplanes not identified in the Boeing service information).	2 work-hours × $85 per hour = $170, per monitor.	Up to $2,734	Up to $2,904	Up to $4,791,600* (55 airplanes).

*An airplane may have up to 30 monitors.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2025–0004; Project Identifier AD–2024–00094–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 3, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, -700, -700C, -800, -900, and -900ER series airplanes, certificated in any category, equipped with passenger service unit (PSU)-mounted video monitors.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report that some PSU-mounted video monitors became detached from the PSU rails during a hard landing that did not exceed the emergency load requirements for the PSUs. The FAA is issuing this AD to address PSU-mounted video monitors that could become fully detached or be held at an unsafe height, which, if not addressed, could result in injury to passengers and impede passenger and crew egress during emergency evacuation.

(f) Compliance

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

(g) Required Actions

(1) For airplanes identified in Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023.

Note 1 to paragraph (g)(1): Guidance for accomplishing the actions required by paragraph (g)(1) of this AD can be found in Boeing Special Attention Service Bulletin 737–25–1851, dated December 15, 2023, which is referred to in Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023.

(2) For airplanes identified in Boeing Special Attention Requirements Bulletin 737–25–1858 RB, dated December 15, 2023: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1858 RB, dated December 15, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–25–1858 RB, dated December 15, 2023.

Note 2 to paragraph (g)(2): Guidance for accomplishing the actions required by paragraph (g)(2) of this AD can be found in Boeing Special Attention Service Bulletin 737–25–1858, dated December 15, 2023, which is referred to in Boeing Special Attention Requirements Bulletin 737–25–1858 RB, dated December 15, 2023.

(3) For airplanes not identified in paragraph (g)(1) or (2) of this AD: Within 60 months after the effective date of this AD, replace all PSU-mounted video monitors that do not have secondary retention lanyards with PSU-mounted video monitors that have secondary retention lanyards, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023, refers to the original issue date of Requirements Bulletin 737–25–1851 RB, this AD requires using the effective date of this AD.

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1858 RB, dated December 15, 2023, refers to the original issue date of Requirements Bulletin 737–25–1858 RB, this AD requires using the effective date of this AD.

(3) Where Boeing Special Attention Requirements Bulletins 737–25–1851 RB and 737–25–1858, both dated December 15, 2023, specify contacting Boeing for alternative installation instructions and doing the installation: This AD requires doing the installation using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3584; email: *julie.linn@faa.gov.*

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Requirements Bulletin 737–25–1851 RB, dated December 15, 2023.

(ii) Boeing Special Attention Requirements Bulletin 737–25–1858 RB dated December 15, 2023.

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on January 8, 2025.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025–00825 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0003; Project Identifier AD–2024–00110–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757–200 and –300 series airplanes. This proposed AD was prompted by a report that some passenger service unit (PSU)-mounted video monitors became detached from the PSU rails during a hard landing. This proposed AD would require replacing PSU-mounted video monitors that do not have secondary retention lanyards. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 3, 2025.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–0003; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the material, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2025–0003.

FOR FURTHER INFORMATION CONTACT: Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3584; email: *julie.linn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2025–0003; Project Identifier AD–2024–00110–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3584; email: *julie.linn@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report that some PSU-mounted video monitors became detached from the PSU rails during a hard landing that did not exceed the emergency load requirements for the PSUs. PSU-mounted video monitors that become fully detached or are held at an unsafe height could result in injury to passengers and impede passenger and crew egress during emergency evacuation.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Requirements Bulletins 757–25–0320 RB and 757–25–0321 RB, both dated January 19, 2024. This material specifies procedures for replacing all PSU-mounted video monitors that do not have secondary retention lanyards with PSU-mounted video monitors that have secondary retention lanyards. These documents are distinct since Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024, addresses airplanes with certain Burrana monitors, and Boeing Special Attention Requirements Bulletin 757–25–0321 RB, dated January 19, 2024, addresses airplanes with certain Panasonic monitors. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD, and except as described under ''Difference Between this Proposed AD and the Referenced Material.''. For information on the procedures and compliance times, see this material at *regulations.gov* under Docket No. FAA–2025–0003.

Difference Between This Proposed AD and the Referenced Material

The effectivity in Boeing Special Attention Requirements Bulletin 757–25–0320 RB, and Boeing Special Attention Requirements Bulletin 757–25–0321 RB, both dated January 19, 2024, is limited to certain line numbers, which address PSU-mounted video monitors installed in production. However, affected PSU-mounted video monitors may also be installed on airplanes modified in accordance with a supplemental type certificate. The applicability of this proposed AD, therefore, is expanded to specify The Boeing Company Model 757–200 and -300 series model airplanes equipped with PSU-mounted video monitors to ensure that the unsafe condition is adequately addressed in the fleet.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 85 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per monitor	Cost on U.S. operators
Replacement (Burrana monitors—airplanes identified in Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024).	2 work-hours × $85 per hour = $170, per monitor.	$2,734	$2,904	Up to $3,641,616* (38 airplanes).
Replacement (Panasonic monitors—airplanes identified in Boeing Special Attention Requirements Bulletin 757–25–0321 RB, dated January 19, 2024).	2 work-hours × $85 per hour = $170, per monitor.	$354	$524	Up to $639,804* (37 airplanes).
Replacement (monitors for airplanes not identified in the Boeing service information).	2 work-hours × $85 per hour = $170, per monitor.	Up to $2,734	Up to $2,904	Up to $958,320* (10 airplanes).

*An airplane may have up to 33 monitors.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2025–0003; Project Identifier AD–2024–00110–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 3, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200 and –300 series airplanes, certificated in any category, equipped with passenger service unit (PSU)-mounted video monitors.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report that some PSU-mounted video monitors became detached from the PSU rails during a hard landing that did not exceed the emergency load requirements for the PSUs. The FAA is issuing this AD to address PSU-mounted video monitors that could become fully detached or be held at an unsafe height, which, if not addressed, could result in injury to passengers and impede passenger and crew egress during emergency evacuation.

(f) Compliance

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

(g) Required Actions

(1) For airplanes identified in Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024: Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024.

Note 1 to paragraph (g)(1): Guidance for accomplishing the actions required by

paragraph (g)(1) of this AD can be found in Boeing Special Attention Service Bulletin 757–25–0320, dated January 19, 2024, which is referred to in Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024.

(2) For airplanes identified in Boeing Special Attention Requirements Bulletin 757–25–0321 RB, dated January 19, 2024: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 757–25–0321 RB, January 19, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 757–25–0321 RB, dated January 19, 2024.

Note 2 to paragraph (g)(2): Guidance for accomplishing the actions required by paragraph (g)(2) of this AD can be found in Boeing Special Attention Service Bulletin 757–25–0321, dated January 19, 2024, which is referred to in Boeing Special Attention Requirements Bulletin 757–25–0321 RB, dated January 19, 2024.

(3) For airplanes not identified in paragraph (g)(1) or (2) of this AD: Within 60 months after the effective date of this AD, replace all PSU-mounted video monitors that do not have secondary retention lanyards with PSU-mounted video monitors that have secondary retention lanyards, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024, refers to the original issue date of Requirements Bulletin 757–25–0320 RB, this AD requires using the effective date of this AD.

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 757–25–0321 RB, dated January 19, 2024, refers to the original issue date of Requirements Bulletin 757–25–0321 RB, this AD requires using the effective date of this AD.

(3) Where Boeing Special Attention Requirements Bulletins 757–25–0320 RB and 757–25–0321 RB, both dated January 19, 2024, specify contacting Boeing for alternative installation instructions and doing the installation: This AD requires doing the installation using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3584; email: *julie.linn@faa.gov.*

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Requirements Bulletin 757–25–0320 RB, dated January 19, 2024.

(ii) Boeing Special Attention Requirements Bulletin 757–25–0321 RB dated January 19, 2024.

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on January 8, 2025.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025–00826 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0005; Project Identifier AD–2024–00646–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by reports of multiple supplier notices of escapement (NOEs) indicating that seat track splice fittings were possibly manufactured with an incorrect titanium alloy material. This proposed AD would require an inspection of seat track splice fittings to determine the material and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 3, 2025.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–0005; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the Boeing material identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57,

Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2025–0005.

FOR FURTHER INFORMATION CONTACT: Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *Joseph.J.Hodgin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2025–0005; Project Identifier AD–2024–00646–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *Joseph.J.Hodgin@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received reports of multiple supplier NOEs indicating that seat track splice fittings were possibly manufactured with an incorrect titanium alloy material. The titanium material that was possibly used is a Grade 1 or 2 commercially pure unalloyed titanium, which has significantly reduced strength, fatigue, and damage tolerance properties compared to the type design Grade 5 Ti-6Al-4V alloy material. This condition, if not addressed, could result in failure of the seat track splice fittings, and could result in serious injury to seated occupants as a result of adverse effects on emergency egress and structural capability to react to emergency landing loads.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB530086–00 RB, Issue 001, dated October 18, 2024. This material specifies procedures for an X-ray fluorescence spectrometer inspection or a high frequency eddy current inspection of seat track splice fittings to determine the material and applicable on-condition actions. On-condition actions include replacing affected seat track splice fittings with new seat track splice fittings at affected locations.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this material at *regulations.gov* under Docket No. FAA–2025–0005.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 37 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	16 work-hours × $85 per hour = $1,360	$0	$1,360	$50,320

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 20 work-hours × $85 per hour = $1,700	Up to $4,140	Up to $5,840 (per location, up to 20 locations per airplane).

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2025–0005; Project Identifier AD–2024–00646–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 3, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin B787–81205–SB530086–00 RB, Issue 001, dated October 18, 2024.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of multiple supplier notices of escapement (NOEs) indicating that seat track splice fittings were possibly manufactured with an incorrect titanium alloy material. The unsafe condition, if not addressed, could result in failure of the seat track splice fittings, and could result in serious injury to seated occupants as a result of adverse effects on emergency egress and structural capability to react to emergency landing loads.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB530086–00 RB, Issue 001, dated October 18, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB530086–00 RB, Issue 001, dated October 18, 2024.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB530086–00, Issue 001, dated October 18, 2024, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB530086–00 RB, Issue 001, dated October 18, 2024.

(h) Exceptions to Requirements Bulletin Specifications

Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB530086–00 RB, Issue 001, dated October 18, 2024, refers to the Issue 001 date of Requirements Bulletin B787–81205–SB530086–00 RB, this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *Joseph.J.Hodgin@faa.gov.*

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB530086–00 RB, Issue 001, dated October 18, 2024.

(ii) [Reserved]

(3) For the material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the

availability of this material at the FAA, call 206–231–3195.

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

Issued on January 8, 2025.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025–00824 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0006; Project Identifier MCAI–2023–00803–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. This proposed AD was prompted by a report of a sliding door that was locked in the open position detaching from the helicopter during flight. This proposed AD would require modifying certain upper rail rollers, installing a label on each sliding door, and prohibit installing affected upper rail rollers or a door having an affected upper rail roller. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by March 3, 2025.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–0006; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2025–0006.

FOR FURTHER INFORMATION CONTACT: Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4116; email: *Adam.Hein@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2025–0006; Project Identifier MCAI–2023–00803–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4116; email: *Adam.Hein@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0131, dated July 3, 2023 (EASA AD 2023–0131) (also referred to as the MCAI), to correct an unsafe condition on Airbus Helicopters Model AS 350 B, AS 350 D, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355 NP helicopters if equipped with a left-hand (LH) and/or right-hand sliding door. The MCAI states that a LH sliding door of a Model AS 350 B3helicopter was lost while flying with the door locked in the open position. Design review determined that the upper rail roller had a single locking device instead of two separate locking devices, which is required for that type of fastener.

This proposed AD would apply to Model AS350B, AS350BA, AS350B1, AS350B2, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters because they are also affected by this unsafe condition due to design similarity.

The FAA is proposing this AD to address the insufficient upper rail roller locking mechanism of the sliding door. The unsafe condition, if not addressed, could lead to the sliding door detaching from the helicopter during flight, and

subsequent damage to the helicopter and injury to persons on the ground.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2025–0006.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0131, which requires modifying affected upper rail rollers and installing a label on each sliding door. EASA AD 2023–0131 also prohibits installing an affected upper rail roller, or a door having an affected upper rail roller installed, on any helicopter. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA about the unsafe condition described in the MCAI. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0131, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between This NPRM and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0131 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0131 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0131 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0131. Material required by EASA AD 2023–0131 for compliance will be available at *regulations.gov* under Docket No. FAA–2025–0006 after the FAA final rule is published.

Differences Between This NPRM and the MCAI

EASA AD 2023–0131 applies to Model AS350BB helicopters, whereas this proposed AD would not because that model is not FAA-type certificated.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 972 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Modifying the upper rail rollers and installing a label on the sliding doors (up to two doors per helicopter) would take up to 8 work-hours and parts would cost $2,668 for an estimated cost of up to $3,348 per helicopter and $3,254,256 for the U.S. fleet.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2025–0006; Project Identifier MCAI–2023–00803–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 3, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category, as identified in European Union Aviation Safety Agency AD 2023–0131, dated July 3, 2023 (EASA AD 2023–0131).

(d) Subject

Joint Aircraft System Component (JASC): Code 5200, Doors.

(e) Unsafe Condition

This AD was prompted by a report of a sliding door that was locked in the open position detaching from the helicopter during flight. The FAA is issuing this AD to address the insufficient upper rail roller locking mechanism of the sliding door. The unsafe condition, if not addressed, could lead to the sliding door detaching from the helicopter during flight, and subsequent damage to the helicopter and injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0131.

(h) Exceptions to EASA AD 2023–0131

(1) Where EASA AD 2023–0131 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2023–0131 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) Where the service information referenced in EASA AD 2023–0131 specifies to discard parts, this AD requires removing those parts from service.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0131.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2023–0131 specifies to submit certain information to the manufacturer, this AD does not require that action.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4116; email: *Adam.Hein@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0131, dated July 3, 2023.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on January 8, 2025.

Steven W. Thompson,

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

[FR Doc. 2025–01030 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2737; Airspace Docket No. 24–ANM–115]

RIN 2120–AA66

Establishment of Class E Airspace at Pine Bluffs Municipal Airport, Pine Bluffs, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace area extending upward from 700 feet or more above the surface of the earth at Pine Bluffs Municipal Airport, Pine Bluffs, WY. This action would support the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Comments must be received on or before March 3, 2025.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–2737 and Airspace Docket No. 24–ANM–115 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it as it would establish Class E airspace to support IFR

operations at Pine Bluffs Municipal Airport, Pine Bluff, WY.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024 and effective September 15, 2024. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish Class E airspace extending upward from 700 feet or more from the surface of the earth at Pine Bluffs Municipal Airport, Pine Bluffs, WY.

The airport is transitioning from VFR to IFR operations with the development of instrument arrival and departure procedures. Class E airspace should be established within a 7-mile radius of the airport, within 2.1 miles either side of the airport's 090° bearing extending 9.5 mile east, within 2.1 miles either side of the airport's 270° bearing extending 12.2 miles west, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius from Pine Bluffs Municipal Airport, WY. The establishment of Class E airspace at the airport will provide the containment of IFR operations in a controlled airspace extending upwards from 700 feet to 1,500 feet above the surface of the earth.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WY E5 Pine Bluffs, WY [New]

Pine Bluffs Municipal Airport, WY
(Lat. 38°57′42″ N, long. 110°13′38″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the airport, within 2.1 miles either side of the airport's 090° bearing extending 9.5 mile east, within 2.1 miles either side of the airport's 270° bearing extending 12.2 miles west, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius from Pine Bluffs Municipal Airport, WY.

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Issued in Des Moines, Washington, on January 13, 2025.

B.G. Chew,

Group Manager, Operation Support Group, Western Service Center.

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Docket No. TTB–2025–0003; Notice No. 238]

RIN 1513–AC94

Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to require a labeling disclosure of all major food allergens used in the production of alcohol beverages subject to TTB's regulatory authority under the Federal Alcohol Administration Act. Under the proposed regulations, unless an exception applies, labels must declare milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame, as well as ingredients that contain protein derived from these foods, if used in the production of the alcohol beverage. TTB proposes a compliance date of 5 years from the date that a final rule resulting from this proposal is published in the **Federal Register**.

DATES: Comments must be received on or before *April 17, 2025.*

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it, within Docket No. TTB–2025–0003 as posted at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/laws-and-regulations/all-rulemaking* under Notice No. 238. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Curt Eilers, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 041.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *https://www.regulations.gov/TTB-2025-0003.*

I. Background

On December 16, 2003, the Center for Science in the Public Interest (CSPI) and others petitioned the Alcohol and Tobacco Tax and Trade Bureau (TTB), requesting changes to the alcohol beverage labeling regulations to, among other things, require information about allergens. The following year, Congress enacted the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA), which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by defining what constitutes a ''major food allergen'' (21 U.S.C. 321(qq)) and requiring the presence of each major food allergen to be declared on the product label using the name of the food source from which the major food allergen is derived.

On July 26, 2006, TTB published an interim rule, T.D. TTB–53 (71 FR 42260), entitled ''Major Food Allergen Labeling for Wines, Distilled Spirits and Malt Beverages,'' which addressed the voluntary labeling of major food allergens used in the production of alcohol beverages. On that same date, TTB published a proposed rule, Notice No. 62 (71 FR 42329), seeking comments on mandatory allergen labeling for alcohol beverages. TTB did not finalize the proposed rule, and mandatory labeling of major food allergens on alcohol beverage labels has not been adopted.

In 2021, TTB received a letter, dated February 24, 2021, from several consumer groups and public health advocates, including CSPI, Alcohol Justice, the American Institute for Cancer Research, Breast Cancer Prevention Partners, the Consumer Federation of America, the National Consumers League, and the U.S. Alcohol Policy Alliance. The letter urged the Secretary of the Treasury to adopt regulations to mandate a standardized label that would include additional information about calories, standard drinks, and advice on moderate drinking from the U.S. Department of Agriculture and U.S. Department of Health and Human Service's *Dietary Guidelines for Americans.* The letter also urged the identification of any major food allergens present in the product and an ingredient declaration that lists each ingredient by its common or usual name.

On February 9, 2022, the Department of the Treasury, in consultation with the Department of Justice and the Federal Trade Commission, released a report entitled ''Competition in the Markets for Beer, Wine, and Spirits'' (Competition Report). The Competition Report was requested by Executive Order 14036, ''Promoting Competition in the American Economy''. One of the Competition Report's findings was that ''[r]egulatory proposals that could serve public health and foster competition by providing information to consumers, such as mandatory allergen, nutrition, and ingredient labeling proposals, have not been implemented.'' [1] The Competition Report contains several recommendations, including that ''TTB should revive or initiate rulemaking proposing ingredient labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes.'' [2]

Consistent with the Competition Report's recommendations, and considering the February 2021 letter referenced above, TTB decided to revisit the issue of mandatory allergen labeling for alcohol beverages. In addition, TTB had received several comments in favor of reopening this issue during the public comment period for proposals to modernize alcohol beverage labeling in 2018. See Notice No. 176, 83 FR 60562, November 26, 2018. Because it has been almost 20 years since TTB solicited comments on allergen labeling, TTB published Notice No. 232, which announced two virtual listening sessions, on February 28 and 29, 2024, and the opening of a docket to receive public input on labeling of wine, distilled spirits, and malt beverages with per-serving alcohol and nutritional information, major food allergens, and/or ingredients.

TTB is now publishing for public comment a new proposal that would require allergen labeling for wines, distilled spirits, and malt beverages. TTB is addressing the Competition Report's recommendations and Notice No. 232 comments from the listening sessions on mandatory alcohol facts and ingredient labeling in separate rulemaking projects.

II. TTB's Authority To Regulate Alcohol Beverage Labeling

A. TTB's Statutory Authority Under the FAA Act

TTB is responsible for the administration of the Federal Alcohol Administration Act, 27 U.S.C. 201 *et seq.* (FAA Act), which sets forth

[1] See page 3 of the report, available at *https://home.treasury.gov/system/files/136/Competition-Report.pdf.*

[2] Id. at page 61.

standards for the regulation of the labeling of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages that will be sold or otherwise introduced in interstate or foreign commerce. (This document generally refers to these products as ''alcohol beverages.'') Section 105(e) of the FAA Act (27 U.S.C. 205(e)) gives the Secretary authority to issue labeling regulations to prevent deception of the consumer, to provide the consumer with ''adequate information'' as to the identity, quality, and alcohol content of the product, and to prohibit false or misleading statements. Additionally, the FAA Act gives the Secretary the authority to prohibit, irrespective of falsity, labeling statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters which are likely to mislead the consumer. In the case of malt beverages, the labeling provisions of the FAA Act apply only if the laws or regulations of the State into which the malt beverages are to be shipped impose similar requirements.

The FAA Act generally requires bottlers and importers to obtain a certificate of label approval (COLA) from TTB prior to bottling wine, distilled spirits, or malt beverages for introduction into interstate commerce, or removing alcohol beverages from customs custody, in bottles, for sale or any other commercial purpose. The law provides that COLAs are to be issued in such manner and form as the Secretary shall prescribe by regulations.

TTB administers the FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Current TTB regulations do not require the disclosure of ingredients or major food allergens on alcohol beverage labels. However, as explained in the next section, labels must disclose the presence of FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame for health-related reasons. A health warning statement applicable to all alcohol beverages containing 0.5 percent or more alcohol by volume is also required by the Alcoholic Beverage Labeling Act of 1988, codified at 27 U.S.C. 213–219 and 219a and implemented in the TTB regulations at 27 CFR part 16.

B. Current Ingredient Disclosures on Alcohol Beverage Labels

TTB's predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF), proposed on several occasions to adopt mandatory ingredient disclosure requirements for alcohol beverages. In each case, ATF ultimately decided not to adopt full ingredient labeling requirements. (See Notice No. 41, 70 FR 22274, April 29, 2005, for a more complete history of those ingredient labeling regulatory initiatives.)

In 1980, ATF published regulations that required ingredient labeling for alcohol beverages, with a delayed effective date. See T.D. ATF–66 (45 FR 40538, June 13, 1980). ATF subsequently rescinded those regulations before they went into effect. See T.D. ATF–94 (46 FR 55093, November 6, 1981). CSPI and others challenged this action in court. ATF subsequently undertook a new round of rulemaking, and issued another final rule, T.D. ATF–150 (48 FR 45549, October 6, 1983), which rescinded ingredient labeling but mandated the disclosure of one ingredient, FD&C Yellow No. 5, on alcohol beverage labels. In the preamble to T.D. ATF–150, ATF stated that there was ''no clear evidence in the record that any other ingredient besides FD&C Yellow No. 5 poses any special health problem. The Department will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative, or on the basis of petitions for rulemaking. . . .'' Ultimately, the D.C. Circuit Court of Appeals upheld ATF's actions in rescinding mandatory ingredient labeling in favor of a policy that would require the agency to consider the necessity of mandatory labeling of specific ingredients on a case-by-case basis. See *Center for Science in the Public Interest* v. *Department of the Treasury,* 797 F.2d 995, 1004 (D.C. Cir. 1986).

Consistent with that case-by-case review policy, ATF subsequently undertook rulemaking that resulted in the issuance of regulations requiring the disclosure on labels of sulfites in alcohol beverages (T.D. ATF–236, 51 FR 34706, September 30, 1986) because it was determined that the presence of undeclared sulfites in alcohol beverages posed a recognized health problem to sulfite-sensitive individuals. See 27 CFR 4.32, 5.63, and 7.63.

In 1987, ATF entered a Memorandum of Understanding (MOU) with the U.S. Food and Drug Administration (FDA) which continues in effect. See Notice No. 648 (52 FR 45502, November 30, 1987). The MOU states that ATF would initiate rulemaking proceedings to promulgate labeling regulations for alcohol beverages when FDA determined that the presence of an ingredient in food products, including alcohol beverages, posed a recognized public health problem and that the ingredient must be identified on a food product label.

Pursuant to the policies set forth in the MOU, and based on FDA determinations as reflected in its regulations, ATF, and later TTB, subsequently engaged in rulemaking that resulted in regulations requiring a declaration on labels when aspartame is used in the production of malt beverages (T.D. ATF–347, 58 FR 44131, August 19, 1993) and distilled spirits (T.D. TTB–176, 87 FR 7526, February 9, 2022). The following statement must appear in capital letters, separate and apart from all other information: ''PHENYLKETONURICS: CONTAINS PHENYLALANINE.'' [3] On April 16, 2012, TTB amended its regulations to require alcohol beverage labels to disclose the presence of cochineal extract and carmine so consumers who are allergic to these color additives would be able to identify and thus avoid alcohol beverage products that contain them. See T.D. TTB–103 (77 FR 22485, April 16, 2012). See also 27 CFR 4.32, 5.63, and 7.63.

C. Enactment of FALCPA

In 2004, Congress enacted the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA). FALCPA amended the Federal Food, Drug and Cosmetic Act (FD&C Act) to require food labels to declare the presence of each major food allergen using the name of the food source from which the major food allergen is derived. For example, instead of merely listing ''semolina,'' the label must also list ''wheat,'' and instead of merely listing ''sodium casein,'' the label must also list ''milk.'' The 2004 FALCPA amendments defined ''major food allergens'' as milk, egg, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as most ingredients [4]

[3] The evidence FDA considered showed a need to alert certain individuals with specific medical conditions to the presence of phenylalanine in products containing aspartame. This statement is directed towards individuals with Phenylketonuria (PKU), an inherited disorder of the metabolism of phenylalanine, who need to carefully restrict their phenylalanine intake.

[4] As explained further in this document, FALCPA provides exemptions for any highly refined oil derived from a major food allergen and any ingredient derived from such a highly refined oil, and for food ingredients that are exempt from major food allergen labeling requirements pursuant to a

containing proteins derived from these foods.

The FALCPA amendments provide two ways for a manufacturer to disclose major food allergens on the label:

- The label can show the name of the food source from which the major food allergen is derived within parentheses in the ingredient list, for example, ''Ingredients: Water, wheat, whey (milk), albumen (eggs), and peanuts.''
- The label can list the name of the food source from which the allergen is derived in a ''Contains'' statement after, or adjacent to, an ingredient list, for example: ''Ingredients: Water, sugar, whey, and albumen. Contains Milk and egg.''

The label can also declare the allergen in the ingredient list as well as in a ''Contains'' statement but when this occurs, the ''Contains'' statement must be complete, which means that the ''Contains'' statement must include all the major food allergens in the product. The allergen labeling requirements in FALCPA apply to any packaged FDA-regulated food, as that term is defined in section 201(f) of the FD&C Act, other than raw agricultural commodities. However, the FAA Act assigns TTB jurisdiction to regulate the labeling of wine, distilled spirits, and malt beverages. See *Brown-Forman Distillers Corp.* v. *Mathews,* 435 F. Supp. 5 (W.D. Ky. 1976) and 1987 MOU with FDA.

In its report on FALCPA, the House of Representatives Committee on Energy and Commerce recognized that FALCPA does not apply to alcohol beverages regulated by TTB under the FAA Act and called for TTB to work with FDA to promulgate appropriate allergen labeling regulations, consistent with the 1987 MOU with FDA. The committee report accompanying FALCPA stated:

> The Committee expects, consistent with the November 30, 1987 Memorandum of Understanding, that the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of Treasury will pursuant to the Federal Alcohol Administration Act determine how, as appropriate, to apply allergen labeling of beverage alcohol products and the labeling requirements for those products. The Committee expects that the TTB and the FDA will work together in promulgation of allergen regulations, with respect to those products.

H.R. Rep. No. 608, 108th Cong., 2d Sess., at 3 (2004) (hereafter ''House committee report''). Congress thus recognized TTB's longstanding policy of consulting with FDA in determining what ingredients in alcohol beverages should be disclosed on labels and indicated that TTB should issue appropriate allergen regulations for alcohol beverage products, pursuant to the policies expressed in the MOU with FDA and the authority of the FAA Act.

Consistent with the expectations expressed in the House committee report, TTB consulted with FDA prior to issuing this proposed rule. However, TTB's legal authority to issue regulations on allergen labeling of alcohol beverages is based on the FAA Act, and thus differs in some respects from the requirements of FALCPA. Accordingly, this proposed rule reflects TTB's interpretation of its authority under the FAA Act, as informed by the language in the House committee report.

The proposed regulations do not necessarily represent the views of FDA regarding allergen labeling or the requirements of FALCPA. One of the key differences between the food labeling regulations implemented by FDA and the alcohol beverage labeling regulations implemented by TTB is that the TTB regulations currently do not require the disclosure of all ingredients on labels. As explained later in this document, this is especially important because there are many allergens other than the major food allergens identified in FALCPA.

III. Rulemaking History

A. 2005 Advance Notice of Proposed Rulemaking

Consistent with the FALCPA House committee report, on April 29, 2005, TTB published in the **Federal Register** (70 FR 22274) Notice No. 41, an advance notice of proposed rulemaking (ANPRM) entitled ''Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Request for Public Comment.'' Notice No. 41 sought public comment on a wide range of alcohol beverage labeling and advertising issues to help TTB determine what regulatory changes in alcohol beverage labeling and advertising requirements, if any, TTB should propose in future rulemaking documents. These included calorie and carbohydrate claims, ''Serving Facts'' or ''Alcohol Facts'' statements, ingredient labeling, and allergen labeling. TTB invited comments on specific issues related to allergen labeling, including:

- Whether TTB regulations should require allergen labeling to be part of or adjacent to a list of ingredients, similar to the FALCPA requirements;
- Whether an allergen must be labeled in an allergen statement even when the allergen name already appears in the product name;
- How processing or fining agents should be labeled;
- Whether TTB should consider threshold levels in allergen labeling;
- What costs industry might incur from new labeling requirements; and
- How consumers might benefit from allergen labeling.

TTB also invited submission of any other relevant information about allergen labeling.

TTB received over 19,000 comments in response to the ANPRM, approximately 50 of which specifically addressed the subject of allergen labeling. Of those, the vast majority favored mandatory labeling of the major food allergens. Industry members, including major trade associations, as well as consumer and public health advocates commented in support of major food allergen labeling. Although commenters took different positions on some of the specific issues TTB sought comment on in the ANPRM, only a few comments questioned the usefulness of requiring allergen information on alcohol beverage labels.

B. 2006 Interim Rule on Voluntary Allergen Labeling

While TTB is not reproposing its 2006 interim regulations which established standards for voluntary labeling of major allergens, there are similarities in this proposal, such as the procedures for obtaining an exemption, that warrant a brief summary of the 2006 regulations. Under the interim regulations, producers, bottlers, and importers of wines, distilled spirits, and malt beverages may voluntarily declare on their labels the presence of milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as ingredients that contain protein derived from these foods. However, if industry members choose to disclose allergens, the interim regulations set forth mandatory rules on how to undertake those disclosures—unless one of three exceptions applies.

Two of these exceptions from major food allergen labeling are based on FALCPA's definition of the term ''major food allergen,'' which excludes both highly refined oil and food ingredients exempt from allergen labeling under the FDA procedures at 21 U.S.C. 343(w)(6) and (7). The third is an exemption through a TTB petition process created by the interim regulations. All three are described in the following paragraphs.

The original FALCPA definition of ''major food allergen'' excluded any highly refined oil derived from one of the eight foods or food groups listed in

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petition for exemption approved by FDA under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

that definition and any ingredient derived from such highly refined oil.[5] TTB included this as an exception from the definition of a major food allergen in the interim regulations.

The second FALCPA exclusion from the definition of ''major food allergen'' arises from two processes FALCPA added to the FD&C Act at 21 U.S.C. 343(w)(6) and (7), by which any person may obtain an exemption from the allergen labeling requirements imposed by the statute. Subsection (w)(6) allows any person to petition the Secretary of Health and Human Services to exempt a food ingredient from the allergen labeling requirements. Under its delegated authority, FDA performs the function of the Secretary in this area. In this situation, the burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the food ingredient, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health. FDA must approve or deny any such petition within 180 days of receipt, or the petition will be deemed denied, unless an extension is mutually agreed upon by FDA and the petitioner.

Subsection (w)(7) allows any person to file a notification containing scientific evidence demonstrating that a food ingredient ''does not contain allergenic protein.'' The scientific evidence must include the analytical method used to produce the evidence that the food ingredient, as derived by the method specified in the notification, does not contain allergenic protein. Alternatively, the notification may contain a determination from FDA under a premarket approval or notification program provided for in section 409 of the FD&C Act (21 U.S.C. 348) that the food ingredient does not cause an allergic response that poses a risk to human health. FDA has 90 days to object to a notification. Absent an objection, the food ingredient may be introduced or delivered for introduction into interstate commerce as a food ingredient that is not a major food allergen.

Many ingredients and food additives used in the production of foods regulated by FDA are also used in the production of alcohol beverages regulated by TTB. Accordingly, the interim regulations included in the definition of the term ''major food allergen'' an exception for uses of food ingredients that are exempt pursuant to 21 U.S.C. 343(w)(6) or (7) discussed above. Alcohol beverage industry members also must establish that the proposed use of the ingredient is consistent with any conditions of use in the FD&C Act exemption for the ingredient.

As noted above, the interim regulations' third exception from allergen labeling is through a TTB petition process. TTB recognized that major food allergens are used in alcohol beverage production in ways that may differ from the way they are used in the production of foods regulated by FDA. For this reason, the interim regulations refer to an exception for a product covered by a petition for exemption approved by TTB. See 27 CFR 4.32a–b, 5.82–5.83, and 7.82–7.83. A petition may pertain to the use of a major food allergen in the production of one specific alcohol beverage product or it may pertain to a class of products using a particular process involving a major food allergen.

The TTB petition process is like that of the petition and notification processes provided for at 21 U.S.C. 343(w)(6) and (7), except that the TTB petition procedure focuses on finished products instead of ingredients. The TTB petition process may be used:

- When it is asserted that the product or class of products, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health; or
- When it is asserted that the product or class of products, as derived by the method specified in the petition, does not contain allergenic protein, even though a major food allergen was used in production.

The interim TTB regulations provide for only a petition procedure, rather than both the petition procedure and the notification procedure provided for in the FALCPA amendments to the FD&C Act. In addition, the interim regulations provide that if TTB does not approve or deny the petition for exemption within 180 days of receipt, the petition is deemed denied, unless an extension of time is mutually agreed upon by TTB and the petitioner. TTB's petition procedure is therefore like the petition procedure in 21 U.S.C. 343(w)(6) in that both procedures place the burden on the petitioner to provide evidence in support of the exemption and give the agency 180 days to respond.

The regulations also provide that a determination under this section constitutes a final agency action and that even though a petition is deemed denied because no action was taken within the 180-day period, the petitioner may resubmit the petition at any time. A resubmitted petition will be treated as a new petition.

C. 2006 Proposed Rule on Mandatory Allergen Labeling

As noted above, on the same date that TTB published interim regulations on the voluntary labeling of major food allergens, the agency also published Notice No. 62 (71 FR 42329 July 26, 2006), proposing to adopt mandatory alcohol beverage labeling requirements when one or more major food allergens, or ingredients derived from such allergens, are used in the production of the alcohol beverage. The proposed regulations were almost identical to those in the interim rule, except where necessary to note that major food allergen labeling would be mandatory. The proposed regulations set forth the same procedures for petitioning for an exemption from allergen labeling.

TTB received 51 comments in response to Notice No. 62. While most commenters were generally supportive of mandatory allergen labeling, concerns were raised about various implementation issues, including the absence of thresholds for the testing of finished alcohol beverages to determine if the products contained major food allergens; whether distillation should be recognized as a process that removed allergenic proteins; and the treatment of fining agents or processing aids, such as eggs, used in the production of alcohol beverages and then filtered out so that only trace amounts of the major food allergen remained in the finished product. While TTB did not finalize the 2006 proposed rule on mandatory allergen labeling, the interim regulations providing for voluntary allergen labeling remain in effect.

IV. Reasons for Issuing a New Notice on Mandatory Allergen Labeling

A. Comments in Response to Notice No. 176

On November 26, 2018, TTB published in the **Federal Register** Notice No. 176 (83 FR 60562), ''Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages,'' which sought comments on the modernization of the labeling regulations, but specifically stated that it would not address issues such as ingredient or allergen labeling. Nonetheless, TTB received several comments critical of that omission. Some of these comments specifically addressed mandatory allergen labeling.

[5] On April 23, 2021, the President signed the Food Allergy Safety, Treatment, Education, and Research (FASTER) Act into law, declaring sesame as the ninth major food allergen. Accordingly, there are now nine major food allergens described in 21 U.S.C. 321(qq).

On February 22, 2019, CSPI, the Consumer Federation of America, and the National Consumers League commented on Notice No. 176 in a letter directed to the Secretary of the Treasury. The comment stated that while the consumer organizations supported the modernization of the labeling regulations, Notice No. 176 ''falls dramatically short of what is needed to truly 'modernize' alcohol labeling by failing to require uniform disclosure of key information—alcohol content, serving size, calories, ingredients, and allergen information—that consumers need to make informed choices.''

The comment stated that ''TTB has similarly failed to follow through on protections for consumers with food allergies. Disclosure of allergen information can have life-and-death consequences for some consumers, a harsh reality that led to passage of [FALCPA], which requires allergen labeling for FDA-regulated foods and beverages.'' The comment questioned why TTB had issued only an interim rule on voluntary allergen labeling, given that in its rulemaking, TTB noted that the major trade associations had expressed support for mandatory labeling of major food allergens. The comment suggested that the voluntary disclosure allowed by the interim rule ''creates a patchwork system that leaves consumers guessing. It may actually undermine public health to the extent that consumers with allergies may assume that an alcoholic beverage is safe to drink if its label has no allergen content declaration, when in fact the manufacturer simply has not bothered to label allergens that may be present.''

The Brewers Association also urged TTB to adopt mandatory allergen labeling, stating that ''the allergen disclosures required by FALCPA should be included in the mandatory information on malt beverage labels.'' The comment also stated that if TTB did not address allergen labeling in this rulemaking, the issue warranted a separate rulemaking in the future. On the other hand, the Distilled Spirits Council of the United States (DISCUS) stated that it supported the proposal to maintain the existing rule on voluntary allergen labeling and suggested that ''TTB should continue to point to FDA as the lead federal agency with regard to allergens.''

B. Letter From Public Health Advocates (2021 CSPI Letter)

On February 24, 2021, a letter was submitted on behalf of CSPI, the Consumer Federation of America, the National Consumers League, Alcohol Justice, the American Institute for Cancer Research, Breast Cancer Prevention Partners, and the U.S. Alcohol Policy Alliance, urging the Secretary to adopt regulations to mandate alcohol content statements and a standardized Serving Facts label on all wine, distilled spirits, and malt beverage products regulated under the FAA Act. The letter also urged the adoption of regulations mandating an ingredient declaration that lists each ingredient by its common or usual name and identifies any major food allergens present in the product.

C. Treasury Report on Competition in the Markets for Beer, Wine, and Spirits

As noted above, on February 9, 2022, the Department of the Treasury, in consultation with the Department of Justice and the Federal Trade Commission, released a report on competition in the markets for alcohol beverages. One of the Competition Report's findings was that ''[r]egulatory proposals that could serve public health and foster competition by providing information to consumers, such as mandatory allergen, nutrition, and ingredient labeling proposals, have not been implemented.'' [6] The Competition Report made some labeling recommendations, including a recommendation that TTB ''should revive or initiate rulemaking proposing ingredient labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes.'' [7]

D. 2024 Virtual Public Listening Sessions

In light of the Competition Report, TTB announced in the Spring 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions that it would publish an NPRM on possible changes to its regulations related to allergen labeling for alcohol beverages. Executive Order 14094, ''Modernizing Regulatory Review,'' was subsequently published on April 6, 2023, directing agencies, to the extent practicable and consistent with applicable laws, to provide opportunities for public participation designed to promote equitable and meaningful participation by a range of interested or affected parties to inform regulatory actions.

On January 31, 2024, TTB issued Notice No. 232, which announced two virtual listening sessions and the opening of a public docket to receive written comments on the labeling of alcohol beverages with per-serving alcohol and nutritional information, major food allergens, and/or ingredients. Consistent with Executive Order 14094, TTB sought input from a wide range of stakeholders, including those who may not usually comment on its proposals, to inform rulemaking, particularly given the broad implications of these issues. TTB also posed specific questions. Those related to major food allergens included whether consumers believe that they are adequately informed by information currently provided on alcohol beverage labels and whether listing major food allergens would be important information for consumers in making purchasing or consumption decisions. TTB also asked whether requiring additional information about major food allergens, alcohol or nutritional information, and ingredients on labels would be expected to increase the cost of products, and whether there are alternative ways of providing the information, for example by allowing information to be provided through a website using a quick response code (QR code) or website address on the label.

The listening sessions, held on February 28 and 29, 2024, engaged consumers, public health stakeholders, and industry members representing businesses of different sizes. Approximately 700 registrants attended the two virtual sessions, including 47 different speakers. In addition to the oral comments received during the listening sessions, TTB received 5,159 written comments in response to Notice No. 232.

The vast majority of the comments TTB received on allergens either favored mandatory labeling of major food allergens or did not express opposition to it. This included consumer and public health stakeholders as well as industry members and trade associations representing the alcohol beverage industry. However, some small sized producers opposed any new regulatory requirements. For example, Carriage House Vineyards and Travelers Cellar commented that ''The proposed changes regarding nutritional information, major food allergens and ingredients would significantly and negatively impact our small farm winery. . . . In our years of operation, consumers have shown no interest, nor have to this point inquired on any of the items that the proposal is looking to add.''

Consumers and public health stakeholders stated that major food allergen disclosures are necessary due to the implications for individuals with

[6] See page 3 of the Competition Report, available at *https://home.treasury.gov/system/files/136/Competition-Report.pdf.*

[7] Id. at page 61.

such allergies. TTB received substantially identical comments from 4,724 individuals supporting allergen disclosures, as well as other disclosures for alcohol content, serving size, nutritional information, and ingredients, which stated that ''For the 33 million Americans with food allergies, knowing what is in a product from ingredient and allergen labeling can be a matter of life or death.'' Other individual commenters stressed the uncertainty they face without mandatory allergen disclosures. For example, one individual commented that ''Without this information on alcoholic beverages, consuming them is like playing a lottery—I never know if a product may contain an ingredient I need to avoid until it's too late.'' The Centers for Disease Control and Prevention commented that ''Accurate labeling for major food allergens is crucial information to ensure safety for the consumer.'' AllergyStrong commented that ''The majority of people are not aware alcohol falls outside [FALCPA]—mistakenly believing that any consumable product is accurately labeled for allergens.'' CSPI stated that ''TTB should follow the lead of FDA and other countries and require ingredient and allergen labeling.''

Some commenters expressed a preference that mandatory allergen labeling for alcohol beverages be consistent with FDA requirements. The Asthma and Allergy Foundation of America stated that ''To the extent possible, labeling information should be displayed on alcoholic beverages similar to labeling on FDA-regulated foods. Consumers with food allergies are accustomed to FDA labeling, and would be able to easily transition to a similar model for checking the safety of alcoholic beverages . . .'' The Brewers Association commented that ''TTB should strive to make [major allergen] disclosures as consistent as possible with FDA disclosure rules under the FALCPA and its implementing regulations and guidance documents, while taking into account the different underlying labeling rules that apply to malt and other alcohol beverages versus most foods.''

Other commenters discussed the effect of distillation on allergenic ingredients used in the production of alcohol beverages, suggesting that any mandatory allergen disclosures should be based on the product post-distillation rather than the raw materials prior to distillation. DISCUS stated that ''Scientifically-based major food allergen labeling . . . that properly identifies products containing allergenic protein capable of causing an adverse reaction—can provide beneficial information to consumers with allergies,'' but also noted that distillation removes the proteins that cause allergic reactions and thus, ''any new allergen labeling regulations need to be focused on the post distillation final product.'' The Scotch Whisky Association commented that ''The distillation process completely transforms the raw materials used to produce a distilled spirit, so they are undetectable in the final product. Therefore, distillers should only list the elements and ingredients that have been added to the final product. Otherwise, consumers could be misled into thinking that they would be affected by the properties of the raw material used in the distillation process.''

Many of the comments TTB received from industry members and their trade associations advocated for the use of QR codes to satisfy new labeling requirements generally. However, among those who spoke about major food allergens specifically, some commenters otherwise in favor of QR codes still supported allergen declarations on the product's label. The American Distilled Spirits Alliance (ADSA) commented that ''while certain important information to consumers, including alcohol content and allergen information, may efficiently and effectively be included on a physical product label, more detailed information and information that is subject to periodic modification or update over time may be better communicated through a QR code. . . .'' Similarly, the National Association of Beverage Importers commented that ''The presence of a major allergen is also such an important piece of information'' that it ''must be available to all consumers and appear on a label on the bottle or container.''

Comments from industry also noted concerns about costs associated with new labeling requirements generally, including costs to conduct laboratory testing. While commenters did not specifically refer to costs of laboratory analysis related to mandatory labeling of major food allergens, ADSA commented that ''further discussion must be had around testing, requirements for good manufacturing practices and other safety protocols.''

E. International Developments

TTB participates in the Codex Alimentarius Commission by working with the FDA and the U.S. Codex Office at the U.S. Department of Agriculture. The Commission, which was established by the Food and Agriculture Organization and the World Health Organization, publishes the Codex Alimentarius, or ''Food Code,'' a collection of standards designed to protect the health of consumers and ensure fair practices in food trade. In recent years, the Codex Committee on Food Labelling has been discussing food allergen standards, allergen labeling provisions, and a possible framework for evaluating exemptions for food allergens. TTB is actively monitoring these developments and other Codex Alimentarius work related to alcohol labeling.

V. Proposed Regulatory Changes

For the reasons stated above, TTB is proposing rules for the mandatory labeling of major food allergens used in the production of alcohol beverages. Consistent with the FALCPA House committee report and TTB's statutory mandate under the FAA Act to promulgate regulations ensuring that consumers receive adequate information about the identity and quality of alcohol beverages, TTB believes that alcohol beverage labels should provide consumers with sufficient information about the use of major food allergens in the production of alcohol beverages so that consumers with food allergies may make an informed decision as to whether consumption of a particular beverage may pose a risk of an allergic reaction.

Existing regulations in 27 CFR 4.32, 5.63, and 7.63 list the mandatory information that must appear on labels of wine, distilled spirits, and malt beverages, respectively. TTB proposes to amend these sections to include mandatory allergen labeling requirements, with a cross-reference to the proposed new regulations that provide more detail about the mandatory allergen labeling requirements.

A. Labeling of Major Food Allergens and other Mandatory Disclosures

1. Wording of the Labeling Statement and Other Mandatory Disclosures

TTB is proposing that the mandatory food allergen statement consist of the words ''Contains Major Food Allergen(s)'' followed by a colon and the name of the food source(s) from which each major food allergen is derived, for example, ''Contains Major Food Allergen: milk'' or ''Contains Major Food Allergens: wheat and milk.'' This wording differs from the current voluntary allergen statement and is intended to make clear that the statement only relates to the nine major

food allergens [8] and does not include other, non-major food allergens, or other ingredients that may cause adverse reactions in some individuals.[9] TTB specifically seeks comments below on this wording and other related issues as described in this section.

TTB recognizes that changes in the wording or format of allergen disclosures may be warranted if TTB also requires ingredient disclosures. For example, if TTB requires both, aligning such labeling with food labeling may be warranted. Unlike foods labeled under FDA regulations, alcohol beverages subject to TTB's labeling rules do not currently require the listing of ingredients on labels. TTB is conducting a separate rulemaking on this issue and is not proposing to adopt mandatory ingredient labeling in this document. For food products, FDA allows major food allergens to be listed within the ingredient statement by their common or usual name, or in a separate ''contains'' statement. See 21 U.S.C. 343(w)(1). If TTB adopts mandatory ingredient labeling, allowing a major food allergen disclosure within such a statement, or allowing the statement to simply say ''contains'' instead of ''Contains Major Food Allergen(s),'' may be warranted. TTB seeks comment on these wording and format issues and the issues discussed below.

Under current TTB regulations, certain ingredients that are not ''major food allergens'' but nevertheless pose a recognized public health problem must be disclosed on labels. Currently this includes FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame.[10] See 27 CFR 4.32, 5.63, and 7.63. If an alcohol beverage contains any of the first four of these ingredients, the label must include a statement to that effect. While examples of such statements are provided, such as ''FD&C Yellow No. 5'' or ''contains carmine,'' the specific wording of the disclosure is left to the industry member. In the case of aspartame, the following statement, in capital letters, must appear, separate and apart from all other information: ''PHENYLKETONURICS: CONTAINS PHENYLALANINE.'' Sometimes industry members combine such disclosures, along with voluntary disclosures of other ingredients, for example, ''contains: cochineal extract and sulfites,'' or ''contains: sulfites and vanilla beans.''

In this notice of proposed rulemaking, TTB is currently only proposing to change its regulations to require the mandatory major food allergen statement ''Contains Major Food Allergen(s): . . .'', which would be separate from and not affect other required disclosures.[11] However, TTB solicits comments on the wording of the proposed mandatory major food allergen statement and the possible inclusion of other mandatory ingredient disclosures. Specifically, TTB solicits comments on the following:

1. Should TTB adopt the proposed wording of the major food allergen statement (''Contains major food allergen(s)'' followed by a colon and the name of the food source from which each major food allergen is derived)? Alternately, should TTB require or allow alternative formats, including the following:

- ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived; or
- A heading such as ''Major Food Allergen Information'' followed by ''Contains:'' or other language and the name of the food source from which each major food allergen is derived.

2. Should TTB allow the inclusion of major food allergens within a voluntary ingredient statement on labels as an alternative to a separate major food allergen statement?

3. If mandatory ingredient labeling is ultimately adopted, should TTB allow the inclusion of major food allergens in the list of ingredients as an alternative to a separate major food allergen statement? If mandatory ingredient labeling is ultimately adopted, should TTB use the ''Contains'' statement for major food allergens, consistent with FDA's approach? Should TTB limit the use of the ''Contains'' statement only for major food allergens?

4. Should other ingredients that are required to be disclosed under current TTB regulations (FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame) be required to be listed in one statement on the label? If so, should the other ingredients be included in a ''Contains'' statement that includes the major food allergens? (For example, ''Contains egg and sulfites''). Or should the major food allergens be identified as such, and the other ingredients listed separately (for example, ''Contains Major Food Allergen: egg. Contains sulfites'')? Should another statement be used for ingredients that are required to be disclosed under current TTB regulations (FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame) to differentiate from the ''Contains'' statement for major food allergens?

5. Would requiring all mandatory disclosures to be in one place on the label, including the proposed major food allergen statement, make it easier for consumers to find this information? Would such a requirement impose additional costs or regulatory burdens on industry members as compared to allowing the mandatory disclosures to appear separately?

6. Should TTB mandate specific placement, type size, and presentation requirements for major allergen labeling statements in addition to the requirements already applicable to all mandatory information on alcohol beverage labels? For example, should the required allergen disclosure statement be set off by a box? Or, to the extent practicable, should TTB mandate formatting consistent with FDA requirements for major allergen labeling?

2. Definition of Major Food Allergen

The definition of the term ''major food allergen'' is consistent with the statutory definition in the FD&C Act, as amended by FALCPA and the FASTER Act. TTB is proposing the same definition used by FALCPA, the FASTER Act, and FDA for consistency in labeling disclosures of major food allergens across products regulated by TTB and FDA. Thus, the proposed regulations define the term ''major food allergen'' as any of the following: ''Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, soybeans, and sesame.'' The term as defined also includes any food ingredient that contains protein derived from one of these nine foods or food groups, subject to certain exceptions explained below in Section V.B.

It should be noted that, consistent with guidance provided by FDA to the food industry, the proposed regulations allow the terms ''soybean,'' ''soy,'' and ''soya'' as synonyms for the term

[8] As noted previously, the FASTER Act of 2021 revised 21 U.S.C. 321(gg) such that there are now nine major food allergens: milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame.

[9] In a draft guidance published in April 2022, FDA notes the distinction between food allergies and other food intolerances, as well as the existence of more than 160 known food allergens, including the 9 currently identified major food allergens. See Evaluating the Public Health Importance of Food Allergens Other Than the Major Food Allergens Listed in the Federal Food, Drug, and Cosmetic Act: Guidance for FDA Staff and Stakeholders (Draft), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/draft-guidance-fda-staff-and-stakeholders-evaluating-public-health-importance-food-allergens-other.*

[10] In the case of sulfites, the disclosure is required if the product contains ''10 or more parts per million of sulfur dioxide or other sulfiting agent(s) measured as total sulfur dioxide.''

[11] For example, ''Contains Major Food Allergen: milk'' or ''Contains Major Food Allergens: egg and milk''.

''soybeans,'' as used in the statute.[12] Furthermore, consistent with FDA guidance, the singular term ''peanut'' may be substituted for the plural term ''peanuts,'' and singular terms (for example, almond, pecan, or walnut) may be used in place of plural terms to describe the different types of tree nuts. FALCPA provides that in the case of tree nuts, the label must list the common name of the specific type of nut (for example, almonds, pecans, or walnuts), and in the case of Crustacean shellfish, the label must list the name of the species of shellfish (for example, crab, lobster, or shrimp). 21 U.S.C. 343(w)(2). The proposed regulations are consistent with the FALCPA amendments with respect to the labeling of tree nuts and Crustacean shellfish.

3. Labeling of Fish Species

In the case of fish, the FALCPA amendments also provide that the name of the species of fish (for example, bass, flounder, or cod) must appear on the label. Id. However, for the reasons outlined below, the proposed regulations set forth in this document would not require labeling of the specific fish species. The proposed regulations would instead require simply listing ''fish'' when any type of finfish protein is used in the production of an alcohol beverage.

Isinglass and fish gelatin are often used to clarify wines and beers. Isinglass is a substance obtained from the swim bladders of sturgeon and other fish. Fish gelatin is obtained from the skin of a fish. Fish gelatin is often made from cod skins but can be made from any species of fish.

It is TTB's understanding that vintners and brewers, when purchasing isinglass or fish gelatin from a manufacturer for fining purposes, often do not know, and have no way of easily finding out, which species of fish was used to make the product. Moreover, it may be difficult for industry members to determine by chemical analysis which fish species was the source of the isinglass or fish gelatin.

TTB recognizes that the FALCPA amendments require the labeling of the species of fish used as an ingredient in a food product. However, it is TTB's responsibility to implement allergen labeling regulations that are appropriate for alcohol beverages, as noted in the FALCPA House committee report. It is likely that declarations of the use of fish in the production of alcohol beverages will generally involve the use of isinglass or fish gelatin as a processing aid, rather than the use of fish or foods derived from fish as an ingredient or a flavor for an alcohol beverage, where the specific fish species may be more easily identified. Because of the particular difficulty faced by producers in determining the specific species of fish used in producing the isinglass or fish gelatin, and because at least some consumers may be allergic to more than one species of fish, requiring labeling with the name of the specific species of fish may impose a difficult fact-finding burden on the alcohol beverage industry without offering consumers significant additional information to help them avoid the risk of an allergic reaction.

Accordingly, TTB solicits comments on whether labeling alcohol beverages produced using finfish protein merely as containing ''fish,'' rather than with the name of the fish species, provides adequate information to consumers. TTB also seeks comments on whether there are alternative approaches to this issue that would provide consumers with adequate information regarding the use of finfish protein in the production of alcohol beverages.

4. Processing and Fining Agents

Pursuant to the FD&C Act and its implementing regulations, incidental additives, including processing aids, are generally not subject to ingredient labeling requirements. FDA regulations exempt from the ingredient labeling requirements incidental additives that are present in a food at insignificant levels and do not have any technical or functional effect in that food. See 21 CFR 101.100(a)(3). However, FALCPA amended the FD&C Act to require that, notwithstanding any other provision of law, a flavoring, coloring, or incidental additive that is, or that bears or contains, a major food allergen must conform to FALCPA's labeling requirements. See 21 U.S.C. 343(w)(4).

The TTB regulations on wine treatment, found at 27 CFR 24.246, authorize the use of certain materials that are approved as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine and, where applicable, in the treatment of juice, subject to certain conditions. Some of these materials are processing aids derived from major food allergens. For example, albumen (egg white) is approved as a fining agent for wine, isinglass (a gelatin prepared from the swim bladders of fish) is approved to clarify wine, and casein (derived from milk) is approved to clarify wine.

TTB is proposing to require the disclosure of fining or processing agents that are or contain major food allergens, with the option of including the added parenthetical ''(processing aid)'' and is soliciting comments on this proposal. For example, if egg whites are used as a processing aid for wine, the industry member has the option of disclosing this on the label as follows: ''Contains Major Food Allergen: egg (processing aid).'' This is an option that industry members may choose to use, but they also may choose to list these agents without the parenthetical. TTB is not proposing parenthetical statements for other incidental additives besides processing aids. TTB seeks comments on whether this proposal, which is generally consistent with FALCPA, will provide adequate information to consumers.

TTB recognizes that some countries may handle this issue through exemptions for particular processing aids and that there are ongoing discussions about exemptions at the international level. TTB will monitor future developments to determine if they provide a scientifically supported basis for a more categorical exemption in this area, and we will continue to consult with FDA on this issue.

5. Threshold Levels

The FALCPA amendments, which took effect for foods labeled on or after January 1, 2006, require allergen labeling for packaged foods regulated by FDA without the establishment of any threshold levels for labeling. The FDA stated that a ''threshold is a value below which it is unlikely that a food allergic individual would experience an adverse effect'' and notes that ''[a]t this time, the FDA has not established a threshold level for any allergens.'' [13]

Consistent with TTB's longstanding policy of consulting with FDA in determining what ingredients in alcohol beverages should be disclosed on labels, TTB defers to FDA on this issue, and FDA has not established any thresholds for major food allergens. Accordingly, TTB is not proposing to set thresholds for the disclosure of major food allergens. Instead, the proposed rule provides that all major food allergens and proteins derived from the major food allergens used in production must be declared on the beverage label, unless the product or class of products is covered by an approved petition for exemption, or otherwise falls under an applicable exception, as discussed below. TTB believes that this position will ensure that consumers have

[12] See Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Guidance for Industry (last revised, November 2022), page 9, available at *https://www.fda.gov/media/117410/download.*

[13] See *https://www.fda.gov/food/food-labeling-nutrition/food-allergies.*

adequate information about the potential presence of major food allergens used in the production of alcohol beverages. If FDA establishes thresholds in the future, TTB will reconsider its policy on this issue.

6. Allergen Advisory Labeling

TTB's proposal does not specifically address allergen advisory labeling, such as statements that a product *may* contain a major food allergen, *e.g.,* ''May Contain (major food allergen).'' TTB is concerned that allergen advisory labeling could be used as substitute for adherence to current good manufacturing practices and could be misleading. TTB is soliciting comments on the use of allergen advisory labeling.

B. Exceptions From Allergen Labeling Requirements

1. Exceptions Found in Current Regulations

TTB is not proposing to amend the standards set forth in the current regulations providing exceptions from major food allergen labeling for ingredients derived from highly refined oil (consistent with the definition of ''major food allergen'' in the FD&C Act) and for food ingredients that are exempt pursuant to the FDA notice and petition processes in 21 U.S.C. 343(w)(6) or (7). Furthermore, TTB is not proposing to amend the current standards in the regulations that allow an exception for a product or class of products covered by a petition for exemption that is approved by TTB. A petition may pertain to the use of a major food allergen in the production of one specific alcohol beverage product or it may pertain to a class of products using a particular process involving a major food allergen. Consistent with the 1987 MOU with FDA, TTB intends to confer with FDA, as appropriate and as FDA resources permit, on petitions submitted under the proposed rule.

2. Distillation

In previous rulemaking, commenters asked whether spirits distilled from a fermented mash containing a major food allergen (such as wheat) must be labeled as containing that major food allergen. Industry members have suggested that the distillation process removes all protein, including allergenic protein. TTB is therefore proposing in 27 CFR 5.75(b)(2) that major food allergens, or ingredients containing major food allergens, need not be declared on a label when such allergens or ingredients have been subject to distillation in such a manner that no protein, allergenic or otherwise, remains in the distilled product or distilled ingredient. As explained below, this is consistent with the position FDA has taken regarding the removal of proteins using the distillation process within the context of major food allergen labeling and gluten-free labeling of distilled foods.[14] TTB is soliciting comments on this proposal.

In June 2015, FDA published Food Allergen Labeling Exemption Petitions and Notifications: Guidance for Industry.[15] In that guidance, FDA provided general advice for when a petition or notification should be submitted under FALCPA, and specifically addressed the distillation process. In particular, the guidance stated that ''An ingredient derived from a major food allergen that does not contain protein is not subject to the labeling requirements described in section 403(w)(1) of the FD&C Act.'' FDA recognized that ''there are some technologies (*e.g.,* distillation) that may be able to produce protein-free ingredients because of the nature of the process and fundamental biochemical properties of proteins, peptides, and amino acids.''

On August 13, 2020, FDA addressed the distillation issue in more detail in its final rule to establish compliance requirements for fermented and hydrolyzed foods, or foods that contain fermented or hydrolyzed ingredients, bearing a ''gluten-free'' claim. See ''*Food Labeling: Gluten-Free Labeling of Fermented or Hydrolyzed Foods*'' *(85 FR 49240).* The preamble to the FDA final rule explained that ''[i]f good manufacturing practices are followed, the process of distillation must remove all protein (and thus gluten), regardless if the product has been distilled from gluten-containing grains.'' 85 FR 49248. FDA noted that ''the process of distillation heats a liquid, which vaporizes components with lower boiling points and separates them from components with higher boiling points. The remaining compounds, whose boiling points are too high to undergo vaporization, are left behind.'' Id. FDA concluded that ''[i]f distillation is done properly, the process removes gluten because gluten does not vaporize.'' Id. For this reason, FDA determined that ''a distilled product's labeling may bear a 'gluten-free' claim and should be safe for people with celiac disease to consume.'' Id. The final rule provides that when a scientifically valid method for verifying that a distilled product is gluten-free is not available, FDA will evaluate compliance ''by verifying the absence of protein in the distilled component using scientifically valid analytical methods that can reliably detect the presence or absence of protein or protein fragments in the food.'' 21 CFR 101.91(c)(5). The preamble to the FDA final rule noted that the ''[t]ransfer of gluten into the distillate would only be expected to occur under poor manufacturing practices in which the initial material is splashing into the distillate due to poor design of the still. Protein testing can be done to confirm that protein (and thus gluten) is absent in the distilled product.'' 85 FR 49248. FDA also noted that ''any ingredients (such as flavors) added to the distilled product would need to be 'gluten-free' under § 101.91(a)*(3)* for the finished product labeling to bear a gluten-free claim.'' Id.

Consistent with the FDA's findings in its guidance on major food allergens and its final rule on the labeling of distilled food products with ''gluten-free'' claims, TTB is proposing to amend the distilled spirits regulations in proposed 27 CFR 5.75(b)(2) to specifically provide that the mandatory labeling requirements do not apply to major food allergens used in the production of a distilled spirits product if they have been completely distilled in such a manner that no protein remains in the distilled spirits. As needed, TTB will evaluate compliance by verifying the absence of protein in the distilled component using scientifically valid analytical methods that can reliably detect the presence or absence of protein or protein fragments in the finished product. If ingredients containing protein are added to the distilled spirits product after distillation, and no major food allergens are listed on the label, industry members must be prepared to substantiate, upon request, the absence of protein in the distillate, the absence of any major food allergens in the added ingredients, and the precautions taken to prevent cross-contact. TTB is soliciting comments on whether this method of verifying compliance is adequate to protect consumers and whether there are better alternatives.

C. Effective Date and Compliance With the Proposed Regulations

TTB is proposing a compliance date of 5 years from the date that a final rule resulting from this proposal is published in the **Federal Register** to minimize the costs and burdens associated with the proposed new labeling information. TTB solicits comments on whether the proposed

[14] TTB's current position on gluten-free labeling of distilled foods is consistent with FDA's. See *https://www.ttb.gov/rulings/r2020-2.*

[15] Available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-food-allergen-labeling-exemption-petitions-and-notifications.*

compliance date would suffice to limit the impact on small businesses and to reduce overall costs of compliance while ensuring that consumers are adequately informed. TTB also seeks comments on whether the use of a single compliance date for any new regulations on allergen, ingredient, or ''Alcohol Facts'' labeling would provide consumers with adequate information in a coherent and timely manner while also reducing costs and other regulatory burdens on industry. See Section VI, Cost Analysis, below, for additional information on coordinated labeling changes. Similarly, TTB intends to clarify that industry members will not be required to submit new COLA applications when the only change being made to a label is the inclusion of a statement of major food allergens. Therefore, this proposal would not require the submission of a new application for label approval simply to add allergen labeling statements in accordance with the new requirements.

VI. Cost Analysis

Executive Order 12866, as amended, requires TTB to design regulations in the most cost-effective manner that will achieve the regulatory objective. Accordingly, TTB seeks to tailor its regulations to impose the least burden on individuals, businesses of differing sizes, and other entities, consistent with the regulatory objective.

A. TTB's Estimate of Costs Associated With Alcohol Facts Proposed Rule

In Notice No. 237, Alcohol Facts Statements in the Labeling of Wines, Distilled Spirits, and Malt Beverages, also published in this issue of the **Federal Register**, TTB proposed an amendment to the labeling regulations that would require an ''Alcohol Facts'' statement on each wine, distilled spirits, and malt beverage label subject to the FAA Act. TTB will not repeat the substance of that analysis here, but below is a summary of the findings of that analysis.

To estimate the costs associated with the Alcohol Facts proposal, TTB utilized the 2014 FDA Labeling Cost Model,[16] adding its own data inputs, making various assumptions about the alcohol beverage industry, and adjusting costs to reflect inflation through January 2023. While FDA provided TTB with access to its model, FDA is not responsible for the assumptions made by TTB about the alcohol beverage market; nor is FDA responsible for the estimates set out in this analysis.

To determine the number of alcohol beverage Universal Product Codes (UPCs)[17] in the marketplace, TTB contracted with NielsenIQ[18] to obtain a one-time report, which consists of data for the period from September 9, 2021, through September 10, 2022,[19] for the following markets: Total U.S. all outlets combined,[20] liquor, and convenience stores.[21]

Based on the available data, TTB estimated the one-time total labeling costs associated with the proposed rule on Alcohol Facts under a 2-year compliance period to have a present discounted value (PDV)[22] of approximately $323.4 million (or approximately $161.7 million per year). If the compliance date is extended to 3 years, the total PDV would be approximately $258.5 million (or $86.5 million per year); for 42 months, the total PDV would be approximately $204.3 million (or $58.4 million per year). Finally, if the compliance period is extended to 5 years, the total PDV would be approximately $201.2 million (or $40.2 million per year).[23]

B. Costs Associated With Allergen Proposed Rule if Coordinated With Alcohol Facts Proposal

TTB is seeking comments on whether the compliance date for this proposed rule should be coordinated with the compliance dates of other labeling changes that have been proposed by TTB, including Notice No. 237, Alcohol Facts Statements in the Labeling of Wines, Distilled Spirits, and Malt Beverages, which proposed the inclusion of Alcohol Facts statements on alcohol beverage labels, as well as any proposals that may be aired as a result of the ANPRM on ingredient labeling. See Notice No. 237.

Promulgating the requirements for the final label changes together would allow bottlers and importers to undertake all the label revisions necessary to implement these changes in one label change. For example, it is TTB's preliminary conclusion that for industry members that would be required to make label changes under any new requirements resulting from the Alcohol Facts and the Allergen rulemakings, it would be more efficient and less costly to make changes to the label to accommodate both requirements at the same time. If the rules were instead promulgated and took effect at different points in time, TTB assumes that the multiple distinct label changes would result in greater costs. TTB invites comments on this preliminary conclusion.

TTB estimates that the cost savings of a coordinated regulatory compliance date for the proposed labeling change rules would be significant. For the purposes of this economic analysis, TTB is considering major label changes to subsume minor label changes. For example, a UPC subject both to the Alcohol Facts NPRM that will affect virtually all UPCs (*e.g.,* the addition of an Alcohol Facts statement), and the proposed Allergen rule would count only under the final Alcohol Facts rule because the major label change required by the proposed Alcohol Facts rule would subsume the minor label changes

[16] FDA has periodically contracted with RTI International to provide a model to estimate the costs of various product labeling changes required by regulation. The most recent version is the ''2014 FDA Labeling Cost Model, Final Report, August 2015,'' available at *https://downloads.regulations.gov/FDA-2016-N-2527-2681/content.pdf.*

[17] Each individual product may have several UPCs associated with different sizes or types of packaging.

[18] Based in part on data reported by NielsenIQ through its MarketTrack Service for the Alcohol Beverage Category for the period from September 9, 2021 through September 10, 2022, for the Total US all outlets combined, liquor, and convenience stores market. Copyright © 2022 Nielsen Consumer LLC.

[19] TTB emphasizes that the analyses, calculations and conclusions in this document may have been informed in part by the NielsenIQ RMS data through NielsenIQ's Retail Measurement Service (RMS) for the beverage alcohol product categories for the reported time period for Total US expanded all outlets combined, liquor, and convenience stores. However, any such analyses, calculations and conclusions are those of TTB and do not reflect the views of NielsenIQ. NielsenIQ is not responsible for, had no role in, and was not involved in analyzing and preparing the results reported herein, or in developing, reviewing or confirming the research approaches used in connection with this document.

[20] NielsenIQ's xAOC market includes retailers in its Food, Drug, Mass, Walmart, Club, Dollar, and Military channels. Nielsen defines those channels as follows:

—Food is inclusive of all grocery stores with greater than $2MM in annual ACV, including smaller chains and independents, and large players such as Whole Foods.

—Drug is inclusive of all chains and independents with greater than $1MM in annual ACV.

—Select Mass includes Target, K-Mart, and ShopKo.

—Walmart includes Walmart Division 1 + Supercenter's + Neighborhood Markets.

—Select Club is inclusive of Sam's Club and BJ's. Costco does not participate in market measurement with any data provider.

—Select Dollar is inclusive of Dollar General, Family Dollar, and Fred's Dollar.

—Military is inclusive of military commissary stores.

[21] Nielsen states that its Convenience channel includes ''major chains as census cooperators, and is projected to represent all chains and independents.''

[22] The present discounted value of monetary values was calculated using a 2 percent discount rate in accordance with OMB *Circular A–4 Chapter 12,* available at *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf.*

[23] All costs in this proposal are provided in 2023 dollars.

required by the proposed Allergen rule. The marginal additional cost of the Allergen rule above the cost of the proposed Alcohol Facts rule is, therefore, negligible if the two rules have the same compliance date. This cost savings arises because alcohol beverage bottlers and importers would generally have to make a major label change to comply with the Alcohol Facts rule, and industry members that were additionally affected by any new allergen disclosure requirements arising out of this rulemaking would be able to undertake just one label change to comply with the requirements of the two rules.

VII. Public Participation

A. Comments Sought

TTB requests comments from the public and all interested parties on the regulatory proposals contained in this document. TTB seeks comments on the proposed rule as well as other approaches also discussed in this document. TTB has posed specific questions on various issues throughout this preamble and also seeks comments in response to those questions. In developing the final rule, TTB will carefully evaluate the proposed regulations considering all comments and suggested alternative approaches and will adopt the most appropriate approach. Where TTB has specifically solicited comments on alternatives to proposed amendments, it may consider adopting such alternatives in lieu of the proposed amendments based on its review of the comments.

TTB also seeks comments on the impact that the proposed changes will have on consumers and on industry members and any suggestions as to how to minimize any costs or regulatory burdens associated with the proposed regulations, including the following issues:

1. Are there alternative ways of providing a major food allergen disclosure, for example, by allowing information to be provided through a website using a quick response code (QR code) or website address on the label? Will such an alternative method still provide adequate information to the consumer?

2. Does the proposed compliance date suffice to reduce overall costs of compliance, and specifically the costs to small businesses, while ensuring that consumers are protected?

3. Is there a shorter compliance period that would provide more benefits to consumers while still limiting costs and potential impacts on small businesses? Specifically, would a 2-, 3-, or 3.5-year compliance period suffice?

4. If a final rule is issued, will industry members begin implementation of the labeling changes in advance of the compliance date? If yes, how might consumers benefit from early compliance by industry?

5. Are there any ongoing costs of compliance with the proposed rule that TTB has not addressed in this document?

6. How many small businesses would be impacted by the proposed rule, and what would be the economic impact of the proposal on these small businesses? How, if at all, does the length of the compliance period affect the impact on small businesses? Please explain in detail and provide specific cost data.

We welcome comments on all other issues presented in this document.

B. Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 238 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing. If TTB schedules a public hearing, it will publish a notice of the date, time, and place for the hearing in the **Federal Register**.

C. Confidentiality and Disclosure of Comments

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

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings Division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

VIII. Regulatory Analysis and Notices

The impacts of this proposed rule have been examined in accordance with Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094, and the Regulatory Flexibility Act (5 U.S.C. 601–612).

A. Purpose of the Rule

The overall purpose of this proposed rule is to provide consumers who are allergic to one or more major food allergens with more information about the identity and quality of alcohol beverage products. Since the effective date of the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA), major food allergen labeling has been required for foods subject to the labeling regulations of the FDA (subject to certain exceptions), and the Department of Agriculture has similarly adopted regulations for foods subject to its labeling regulations. Alcohol beverages subject to the labeling regulations of the FAA Act are the only type of packaged beverage category without any requirement for major food allergen labeling.

Accordingly, TTB proposes to require the disclosure of major food allergens used in the production of alcohol beverages subject to the FAA Act.[24] TTB believes this proposal would provide consumers who are allergic to one or more of the nine major food allergens with the information they need to avoid exposure and the health risks posed by these ingredients.

B. Benefits

According to the FDA, food allergies and other food hypersensitivities affect millions of Americans.[25] A food allergy is an immune response to certain proteins in food, which may cause mild symptoms, but may also result in a severe, life-threatening allergic reaction called anaphylaxis. Because food allergies currently cannot be cured, early recognition of which foods cause individuals to have an allergic reaction, and learning how to avoid such foods, are important ways to prevent serious health risks.

TTB does not possess data that would enable it to quantify the monetary benefits of the proposed rule. However, TTB believes that a labeling statement

[24] Further information on the specifics of TTB's proposal and its authority to implement the proposal are in Section II.

[25] See *https://www.fda.gov/food/food-labeling-nutrition/food-allergies.*

with information about the presence of major food allergens in the production of an alcohol beverage will provide significant benefits. Consumers with these food allergies will be able to make an informed decision as to whether consumption of a particular alcohol beverage may pose a risk of an allergic reaction. This proposal will also promote consistency in major food allergen disclosure across all types of food product labels, removing ambiguity about whether a product contains a major food allergen or not. TTB invites comments on its conclusion that consumers would benefit from having this information available on product labels.

C. Costs of Compliance

As set forth in Section VI of this preamble, based on its use of the FDA Labeling Cost Model and assuming a 5-year coordinated compliance period with the Alcohol Facts rule, TTB estimates that the marginal additional cost of the Allergen rule above the cost of the proposed Alcohol Facts rule is negligible. This is because industry members would generally have to make a major label change to comply with the Alcohol Facts rule, and industry members that were additionally affected by any new allergen labeling requirements from this rulemaking would be able to undertake just one label change to comply with the requirements of the two rules.

TTB notes that this proposal does not require additional analytical testing, as it generally requires labeling of major food allergens used as an ingredient, and ingredients are expected to be known by the producer.

D. Executive Orders 12866, 13563, and 14094

This proposed rule is a ''significant regulatory action'' for purposes of Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094, and has been reviewed by the Office of Management and Budget.

E. Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), TTB has analyzed the potential economic effects of this action on small entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

TTB certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of the proposed regulations on small businesses.

The following analysis provides the factual basis for TTB's certification under section 605.

In FY 2022, TTB collected $8.3 billion in taxes from the alcohol industry.[26] With regard to the total number of authorized producers of alcohol beverages, there are 17,649 wineries and bonded wine cellars; 14,185 brewers; and 4,494 distillers.[27] However, the number of authorized producers and importers who obtain certificates of label approval (COLAs) in any given year, and who therefore could be affected by this proposed rule, is much lower. For example, in FY 2022, TTB received 192,954 label applications and 26,922 formula applications for alcohol beverages.[28] Internal data from TTB's COLAs Online system shows that, on average, fewer than 12,000 permittees or brewers applied for label approval in each of Fiscal Years 2020–2022. The data also shows that most of these COLA applications come from the same set of permittees and brewers every year. During the 3-year period of Fiscal Years 2020–2022, fewer than 18,000 unique permittees or brewers applied for label approval.

The value of the U.S. import trade in alcohol beverages in 2021 totaled $23.9 billion.[29] According to data published on the website of the Distilled Spirits Council of the United States,[30] the total economic contribution of the alcohol beverage industry to the U.S. economy in 2019 included 2,514,000 ''direct'' jobs and 5,630,000 ''total'' jobs; $67.9 billion in direct wages and $160.3 billion in total wages; and $242.6 billion in direct economic activity and $572.3 billion in total economic activity.

TTB recognizes that most producers, bottlers, and importers of alcohol beverages are small entities. The SBA sets out size standards based on the North American Industry Classification System (NAICS), under which an entity can be considered small for the purposes of Regulatory Flexibility Act analysis.[31] Breweries are considered small if they have fewer than 1,250 employees; wineries are considered small if they have fewer than 1,000 employees; and distilleries are considered small if they have fewer than 1,100 employees.[32]

The U.S. Census Bureau's Statistics of U.S. Businesses (SUSB) data include information on employment among establishments within NAICS codes. The most recent data are from 2019.[33] The SUSB data did not include employment at the 1,000, 1,100, or 1,250 employee threshold; however, it does include the number of firms within each NAICS code that have at least 500 employees. Based on those numbers, approximately 99% of the firms in these three NAICS codes are small entities. The percentage may be greater, depending on how many firms have at least 500 employees and fewer than 1,000 employees (for wineries), 1,100 employees (for distilleries), or 1,250 employees (for breweries). There is no NAICS code for importers of alcohol beverages.

[26] Alcohol and Tobacco Tax and Trade Bureau Annual Report Fiscal Year 2022 (FY 2022 TTB Annual Report), available at *https://www.ttb.gov/images/pdfs/ttbar2022.pdf,* page 5.

[27] Id. at page 10.

[28] Id. at page 16. It should be noted that the number of label applications does not necessarily correlate to the number of brands and UPCs in the marketplace for several reasons. TTB cannot determine whether approved labels appear in the marketplace, or how long those labels may remain in use. For example, there may be malt beverage labels authorized for a particular sporting event that are no longer found in the marketplace a few months after the event has taken place. On the other hand, some labels may be revised to reflect different net contents or alcohol content statements without submission of a new label to TTB. Industry members may decide not to use labels for which they have obtained approval. Thus, TTB does not use the number of COLA applications as an estimate of how many brands or UPCs are in the marketplace at any given time.

[29] Id. at page 30.

[30] Economic Contributions of Alcohol Beverage Industry 2019, Distilled Spirits Council of the United States, available at *https://www.distilledspirits.org/wp-content/uploads/2021/10/Economic-Contributions-2019.pdf.* See Annual Economic Briefing (February 9, 2023), Distilled Spirits Council of the United States, available *at https://www.distilledspirits.org/wp-content/uploads/2023/02/FINAL-2022-AEB-Slide-Deck-2.9.23-941am.pdf.*

[31] See Size Standards, U.S. Small Business Administration, available at *http://www.sba.gov/content/small-business-size-standards.*

[32] 13 CFR 121.201.

[33] 2019 SUSB Annual Data Tables by Establishment Industry, U.S. Census Bureau, available at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html.*

TABLE 1—NUMBER OF FIRMS WITH AT LEAST 500 EMPLOYEES

Small-entity size standards for potentially affected industries and number of firms with at least 500 employees				Total employment
Industry (NAICS code)	Small-entity size standard	Total number of firms	Number of firms with at least 500 employees	
Breweries (NAICS 312120)	Fewer than 1,250 employees	4,217	23 (approximately 0.5 percent)	84,503
Wineries (NAICS 312130)	Fewer than 1,000 employees	3,944	19 (approximately 0.48 percent)	59,587
Distilleries (NAICS 312140)	Fewer than 1,100 employees	1,004	10 (approximately 1%)	16,828

Data on revenues by firm size and industry are also available in the SUSB, but are published less frequently. The most recent data available is from 2017.[34] Based on this data, with the revenues adjusted for inflation, 2,609 of the total number of firms (3,214) listed as breweries under NAICS Code 312120 have fewer than 20 employees.[35] This category accounts for $3,314,362,000 of the total inflation-adjusted receipts of $36,032,713,000, or roughly 9.2 percent of the total receipts. With regard to wineries, 2,975 of the 3,576 firms under NAICS Code 31230 have fewer than 20 employees. This category accounts for $2,907,606,000 of the total inflation-adjusted receipts of $24,891,833,000, or roughly 12 percent of the total receipts. With regard to distilleries, 659 of the 760 firms under NAICS Code 31240 have fewer than 20 employees. This category accounts for $1,060,898,000 of the total inflation-adjusted receipts of $14,590,615,000 or roughly 7 percent of the total receipts.

As noted above, not all alcohol beverage producers would be impacted by the requirements of this proposed rule. Some alcohol beverages, while subject to permitting and excise tax requirements, are not required to be labeled under the FAA Act. These include wines with less than 7 percent alcohol by volume and beer produced without both malted barley and hops. Additionally, most alcohol beverages do not contain major food allergens. Some examples of alcohol beverages that use ingredients in the production process that contain major food allergens are malt beverages that contain wheat, and wines and malt beverages that use eggs or fish as processing aids. Some specialty products that are currently labeled as containing ''natural flavors'' may also have to include new labels disclosing the use of major food allergens.

While most businesses subject to the proposed rule are small businesses, the changes proposed in this document will not have a significant impact on those small entities. The production, bottling, importation, and distribution of alcohol beverages is an industry subject to extensive Federal, State, and local regulation. The labeling and advertising regulations under the FAA Act have been in place since 1936. TTB believes that adding a disclosure requirement for major food allergens, the presence of which industry members already track in the usual course of business, will not have a significant impact on the regulated industry.

TTB cannot estimate the exact cost per small entity because we do not know how many product brands (covered by different UPCs) on average are owned by small entities as defined by the SBA. However, as discussed in Section VI, above, TTB estimates that the marginal additional cost of the Allergen rule above the cost of the proposed Alcohol Facts rule is negligible. This is because industry members would generally have to make a major label change to comply with the Alcohol Facts rule, and industry members that were additionally affected by any new allergen labeling requirements from this rulemaking would be able to undertake just one label change to comply with the requirements of the two rules.

This proposal differs from the proposed rule on mandatory allergen statements in 2006 in that allergen labeling requirements will not apply to distilled spirits products where no protein from major food allergens remains in the product after distillation. See Section V, above, and Notice No. 62, 71 FR 42329, July 26, 2006. This will reduce the number of products subject to major allergen disclosure, and thus the compliance burden for small distillers. Additionally, TTB is proposing to reduce the costs associated with the label redesign by not requiring industry members to submit new applications for label approval when the only change is the inclusion, deletion, or revision of a major food allergen statement.

TTB considered other options to reduce the regulatory burden and cost for small businesses, but ultimately is not proposing them. One option considered was to exempt small businesses from the requirements of the proposed rule. The primary purpose of this proposed rule is to provide information to consumers who are allergic to one or more of the nine major food allergens. This purpose would be weakened by a permanent exemption for small businesses. Consumers would not be able to rely on alcohol beverage labels to disclose the presence of major food allergens if the requirements did not apply to all such products. Moreover, TTB questions whether a permanent exemption from mandatory labeling requirements would be consistent with the mandate, in the FAA Act, to ensure that labels provide consumers with adequate information about the identity and quality of alcohol beverage products. TTB notes that there is no specific statutory authority for exempting small businesses from the requirements of the FAA Act as there is under the FD&C Act for nutritional labeling regulated by the FDA. Further, the small business exemption under FDA regulations pertains only to nutrition labeling information, and not to any other mandatory information, including allergens. TTB also considered the option of proposing an extended compliance period only for small businesses. However, this would not be administrable for TTB without imposing additional requirements on these businesses. When reviewing applications for label approval, TTB employees do not have access to the number of people employed by each company, and thus it would not be practical to base compliance status on the SBA standards for small businesses. Additionally, reporting such information to TTB with each label

[34] This data is only available from Economic Census years (years ending in 2 and 7). See 2017 SUSB Annual Data Tables by Establishment Industry, U.S. Census Bureau, available at *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

[35] A recent study estimates that 28.3% of brewing facilities are brewpubs, with 66.7% of brewing facilities categorized as ''micro'' breweries. The study explains that brewpubs and small micro-brewers ''produce beer for a limited market—sometimes only for their own restaurant or retail establishment.'' See Beer Serves America—A Study of the U.S. Beer Industry's Economic Contribution in 2022,'' prepared for the Beer Institute and National Beer Wholesalers Association, which is available at *https://beerservesamerica.org/wp-content/uploads/2023/05/2022-Beer-Serves-America-Report.pdf.*

application would impose a new burden on all industry members that would be subject to this proposed rule. Instead, TTB is proposing a compliance period of 5 years for all industry members, and is expecting that many industry members, particularly large businesses, will start declaring major food allergens after publication of a final rule, in advance of the compliance date.

As previously noted, the label redesign, printing, and administrative costs associated with making a labeling change are on a per-UPC basis. Under the FDA Labeling Cost Model, the longer the compliance period, the more likely it is that affected industry members can coordinate new labeling requirements with scheduled labeling changes, so cost estimates fall significantly as the time allowed for the new labeling requirements increases. In other words, the longer the period industry is given to comply with the new labeling requirements, the lower the costs. According to the FDA Labeling Cost Model, with a compliance period of 5 years, 100 percent of the labeling changes resulting from a regulatory change can be coordinated with a regularly scheduled labeling change, thus significantly reducing the estimated costs and burdens for small businesses that would be subject to the proposed rule.

TTB specifically solicits comments on the number of small producers, bottlers, and importers of alcohol beverages that may be affected by this proposed rule and the impact of this rule on those small businesses. TTB welcomes data on all these issues.

F. Paperwork Reduction Act

Three of the regulatory sections addressed in this notice of proposed rulemaking contain collections of information that have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Those regulatory sections are 27 CFR 4.32, 5.63, and 7.63, and they contain existing information collections assigned OMB control numbers 1513–0084 and 1513–0087. OMB No. 1513–0084 concerns the labeling of sulfites in alcohol beverages, and OMB No. 1513–0087 concerns alcohol beverage labeling requirements under the FAA Act.

This proposed rule includes a new collection of information involving the mandatory declaration of major food allergens on the labels of alcohol beverages. This collection of information has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 pending receipt and evaluation of public comments. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The regulatory sections in this proposed rule that contain the new information collection requirement for a declaration of major food allergens are in proposed regulatory sections §§ 4.32 and 4.32a for wine labels, §§ 5.63 and 5.75 for distilled spirits labels, and §§ 7.63 and 7.75 for malt beverage labels. This new collection of information will be mandatory, and the likely respondents are for-profit businesses, including corporations, partnerships, and small businesses. Specifically, the new information collection would require alcohol beverage bottlers and importers to disclose the presence of any of the nine major food allergens (milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame), as well as ingredients that contain protein derived from these foods, if used in the production of the alcohol beverage, unless an exception applies. The disclosure would state ''Contains major food allergen(s)'' followed by a colon and the name of the food source from which each major food allergen is derived.

As discussed in Section VI, Cost Analysis, above, the FDA Labeling Cost Model projects a ''mean'' internal recordkeeping burden of 1 hour per UPC for labeling changes that are coordinated, and 2 hours per UPC for labeling changes that are not coordinated. As noted above, TTB is proposing a 5-year compliance date, which means that 100 percent of the labeling changes will be ''coordinated.'' TTB believes that a significant proportion of the alcohol beverage industry already collects and maintains information regarding the presence of major food allergens in their products in the usual course of business. Furthermore, TTB does not propose to require industry members to submit new COLA applications for the sole purpose of adding, deleting, or revising major food allergen statements. Thus, the proposed rule would not increase recordkeeping requirements regarding certificates of label approval, which are covered by OMB Control Number 1513–0020.

Accordingly, TTB is estimating an annual burden of 1 hour per respondent for the new major food allergen disclosures proposed under the FAA Act labeling regulations. TTB estimates its annual burden as follows:

- *Number of Respondents:* 10,000.
- *Number of Responses:* 30,000.
- *Average per-Response Burden:* 1 hour per respondent.
- *Total Annual Burden:* 10,000 hours.

TTB has submitted the major allergen disclosure statement information collection requirements and the revised collection requirements under the FAA Act to OMB for review. Please send any comments on these new and revised collection requirements to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by email to *OIRA_submissions@omb.eop.gov.* Please also send a copy of any such comments to TTB by any of the comment submission methods described in the **ADDRESSES** section of this document. Comments should be submitted no later than April 17, 2025.

TTB specifically requests comments concerning:

- The accuracy of the estimated burden associated with the proposed collections of information (see below);
- Whether a unified compliance date for labeling changes that may arise from this rulemaking, along with separate rulemakings on ingredient labeling and ''Alcohol Facts'' labeling, would result in lowering the combined burden hours for the three rulemakings;
- Whether the proposed labeling requirements are necessary to provide consumers with adequate information as to the identity and quality of alcohol beverages, including whether the information will have practical utility;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the collections of information; and;
- Estimates of capital and start-up costs and costs of operation, maintenance, and purchase of services to maintain records and substantiate label claims.

List of Subjects

27 CFR Part 4

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Trade practices, Treaties, Wine.

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Distilled spirits, Food additives, Grains, Imports, International

agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Malt Beverages, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 4, 5, and 7 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. Amend § 4.32 by adding paragraph (f) to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(f) *Declaration of major food allergens.* If any major food allergen as defined in § 4.32a is used in the production of a wine, the label must include a statement as required by that section.

* * * * *

■ 3. Amend § 4.32a by revising the section heading and paragraphs (a)(1)(i), (b), and (c) to read as follows:

§ 4.32a Mandatory labeling of major food allergens.

(a) * * *

(1) * * *

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, soybeans, and sesame; or

* * * * *

(b) *Labeling requirements.* All major food allergens (defined in paragraph (a)(1) of this section) used in the production of a wine, including major food allergens used as incidental additives, such as processing aids, must be declared on a label affixed to the container, except when covered by a petition for exemption approved by the appropriate TTB officer under § 4.32b. The declaration must consist of the words ''Contains Major Food Allergen(s)'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains Major Food Allergen: milk'' or ''Contains Major Food Allergens: egg and milk''), except that the declaration of processing aids (such as clarifying agents) may optionally include the parenthetical explanation (''processing aid'') immediately following the name of the major food allergen (for example, ''Contains Major Food Allergen: egg (processing aid).''

(c) *Cross reference.* For labeling requirements applicable to wines containing FD&C Yellow No. 5, cochineal extract or carmine, and sulfites, see § 4.32(c) through (e).

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 4. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

■ 5. Amend § 5.63 by redesignating paragraphs (c)(5) through (8) as paragraphs (c)(6) through (9) and adding a new paragraph (c)(5).

The addition reads as follows:

§ 5.63 Mandatory label information.

* * * * *

(c) * * *

(5) *Major food allergens.* If any major food allergen as defined in § 5.75 is used in the production of a distilled spirits product, the label must include a statement as required by that section.

* * * * *

Subpart F—[Amended]

■ 6. Amend subpart F by removing the undesignated center heading ''Food Allergen Labeling'' preceding § 5.82.

§§ 5.82 and 5.83 [Redesignated as §§ 5.75 and 5.76]

■ 7. Redesignate §§ 5.82 and 5.83 as §§ 5.75 and 5.76, respectively, in subpart F.

■ 8. Amend newly redesignated § 5.75 by revising the section heading and paragraphs (a)(1)(i) and (b) and adding paragraph (c) to read as follows:

§ 5.75 Mandatory labeling of major food allergens.

(a) * * *

(1) * * *

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, soybeans, and sesame; or

* * * * *

(b) *Labeling requirements.* (1) Except as provided in paragraph (b)(2) of this section, all major food allergens (defined in paragraph (a)(1) of this section) used in the production of a distilled spirits product, including major food allergens used as incidental additives, such as processing aids, must be declared on a label affixed to the container, except when covered by a petition for exemption approved by the appropriate TTB officer as described in § 5.76. The declaration must consist of the words ''Contains Major Food Allergen(s)'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains Major Food Allergen: milk'' or ''Contains Major Food Allergens: wheat and milk''), except that the declaration of processing aids (such as clarifying agents) may optionally include the parenthetical explanation (''processing aid'') immediately following the name of the major food allergen (for example, ''Contains Major Food Allergen: egg (processing aid).''

(2) The labeling requirements of this section do not apply to major food allergens used in the production of a distilled spirits product if they have been completely distilled in such a manner that no protein remains in the distilled spirits. TTB will evaluate compliance by verifying the absence of protein in the distilled component using scientifically valid analytical methods that can reliably detect the presence or absence of protein or protein fragments in the finished product. If ingredients containing protein are added to the distilled spirits product after distillation, and no major food allergens are listed on the label, industry members must be prepared to substantiate, upon request, the absence of protein in the distillate, the absence of any major food allergens in the added ingredients, and the precautions taken to prevent cross-contact.

(c) *Cross reference.* For labeling requirements applicable to distilled spirits containing FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame, see § 5.63(c)(6) through (9).

§ 5.76 [Amended]

■ 9. Amend newly redesignated § 5.76 in paragraph (a) introductory text by removing ''5.82'' and adding in its place ''5.75'' and in paragraph (a)(2) by removing ''5.82(a)(1)(i)'' and adding in its place ''5.75(a)(1)(i)''.

§§ 5.82 and 5.83 [Reserved]

■ 10. Add reserved §§ 5.82 and 5.83.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 11. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205 and 207.

Subpart E—Mandatory Label Information

■ 12. Amend § 7.63 by adding paragraph (b)(5) to read as follows

§ 7.63 Mandatory label information.

* * * * *

(b) * * *

(5) *Major food allergens.* If any major food allergen as defined in § 7.75 is used in the production of a malt beverage, the label must include a statement as required by that section.

§§ 7.71 through 7.74 [Reserved]

■ 13. Add reserved §§ 7.71 through 7.74.

Subpart F—[Amended]

■ 14. Amend subpart F by removing the undesignated center heading ''Food Allergen Labeling'' preceding § 7.82.

§§ 7.82 and 7.83 [Redesignated as §§ 7.75 and 7.76]

■ 15. Redesignate §§ 7.82 and 7.83 as §§ 7.75 and 7.76, respectively, in subpart F.

■ 16. Amend newly redesignated § 7.75 by revising the section heading and paragraphs (a)(1)(i), (b), and (c) to read as follows:

§ 7.75 Mandatory labeling of major food allergens.

(a) * * *

(1) * * *

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, soybeans, and sesame; or

* * * * *

(b) *Labeling requirements.* All major food allergens (defined in paragraph (a)(1) of this section) used in the production of a malt beverage, including major food allergens used as incidental additives, such as processing aids, must be declared on a label affixed to the container, except when covered by a petition for exemption approved by the appropriate TTB officer under § 7.76. The declaration must consist of the words ''Contains Major Food Allergen(s)'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains Major Food Allergen: milk'' or ''Contains Major Food Allergens: wheat and milk''), except that the declaration of processing aids (such as clarifying agents) may optionally include the parenthetical explanation (''processing aid'') immediately following the name of the major food allergen (for example, ''Contains Major Food Allergen: egg (processing aid).''

(c) *Cross reference.* For labeling requirements applicable to malt beverages containing FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame, see § 7.63(b)(1) through (4).

§ 7.76 [Amended]

■ 17. Amend newly redesignated § 7.76 in paragraph (a) introductory text by removing ''7.82'' and adding in its place ''7.75'' and in paragraph (a)(2) by removing ''7.82(a)(1)(i)'' and adding in its place ''7.75(a)(1)(i)''.

§§ 7.82 and 7.83 [Reserved]

■ 18. Add reserved §§ 7.82 and 7.83.

Signed: January 10, 2025.

Mary G. Ryan,

Administrator.

Approved: January 10, 2025.

Aviva Aron-Dine,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2025–00955 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2025–OSERS–0003]

Rehabilitation Training Program—National Vocational Rehabilitation Technical Assistance Center

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Proposed priority, requirements, and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority, requirements, and definitions under the Rehabilitation Training program. The Assistant Secretary may use the priority, requirements, and definitions for competitions in fiscal year (FY) 2025 and later years. We intend to use the priority, requirements, and definitions to fund a cooperative agreement to establish a national vocational rehabilitation technical assistance center (NVRTAC) to provide training and technical assistance to personnel of State VR agencies and their partners to upgrade and increase their competencies, skills, and knowledge in providing quality services and effective management of the VR program.

DATES: We must receive your comments on or before February 18, 2025.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Roslyn Thomas, U.S. Department of Education, 400 Maryland Avenue SW, Lyndon Baines Johnson Building, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0105. Email: *84.264L@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

A brief summary of the rule is available at *www.regulations.gov/docket/ED-2025-OSERS-0003.*

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority, requirements, and definitions. To ensure that your comments have maximum effect in developing the notice of final priority, requirements, and definitions, we urge you to clearly identify the specific priority, requirement, or definition that each comment addresses.

Specific Requests for Comment: The Department is particularly interested in comments regarding the best way for the NVRTAC to prioritize among VR agencies needing intensive training and technical assistance. We are also interested in comments regarding whether the project requirements and related activities under the proposed priority reflect the greatest needs in the field and can assist the State VR

agencies to improve their program and financial management and performance.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from the proposed priority, requirements, and definitions. Please let us know of any ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority, requirements, and definitions by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of this program is to provide competitive grants, including cooperative agreements, to, or enter into contracts with, eligible entities to expand and improve the provision of vocational rehabilitation and other services authorized under the Rehabilitation Act of 1973 (Rehabilitation Act) or to further the purposes and policies in sections 2(b) and (c) of the Rehabilitation Act by supporting activities that increase the provision, extent, availability, scope, and quality of rehabilitation services under the Act. Under the Rehabilitation Act, the Rehabilitation Services Administration (RSA) Commissioner is authorized to make grants to, and enter into contracts with States and public or nonprofit agencies and organizations (including institutions of higher education (IHEs)) to support projects that assist state and other agencies in providing vocational rehabilitation and other services to individuals with disabilities to maximize their employment, independence, and integration into the community and the competitive labor market, and provide training and technical assistance designed to assist in increasing the numbers of, and upgrading the skills of, qualified personnel (especially rehabilitation counselors) who are trained in providing VR services as well as other services authorized under the Rehabilitation Act.

Assistance Listing No.: 84.264L.

Program Authority: 29 U.S.C. 772(a)(1).

Applicable Program Regulations: 34 CFR part 385.

Proposed Priority:

This document contains one proposed priority. The Department may use this priority for the FY 2025 Rehabilitation Training program competition or for any subsequent competitions.

National Vocational Rehabilitation Technical Assistance Center.

Background:

The VR program has evolved over its 100-year history and currently engages more than one million individuals with disabilities each year, nearly all of whom have significant or the most significant physical or mental impairments that seriously limit functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of achieving an employment outcome (Rehabilitation Services Administration, 2020). These individuals are served through 78 State VR agencies, which receive State VR Services and State Supported Employment Services program funding through grants provided by the Rehabilitation Services Administration.[1] Both programs have match requirements.[2]

The amendments to the Rehabilitation Act made by WIOA required State VR agencies to implement new program and fiscal requirements and provisions, with heightened emphasis on expanding employment and career advancement opportunities in competitive integrated employment (CIE) [3] for individuals with disabilities, including students and youth with disabilities. For example, the Rehabilitation Act requires: (1) the provision of pre-employment transition services in Section 113, requiring a reservation of a minimum of 15 percent of VR program Title I funds to be expended on students with disabilities; (2) for 50 percent of the State Supported Employment grant under Section 603 to be expended on youth with a 10 percent non-Federal match per Section 606(b)(7); (3) the addition of Section 511 limiting the use of subminimum wage, which set requirements for VR agencies to provide certain services to individuals employed or seeking employment at subminimum wage; (4) a change in the personnel standards expanding fields from which VR agencies may recruit rehabilitation professionals; and (5) a change in the standards and indicators to the WIOA common performance measures.

Recruitment, retention, and turnover of VR personnel, particularly VR counselors and financial management staff, has led to increasing challenges for VR agencies. Staff deficits affect the ability to serve individuals with disabilities effectively and consistently as well as the ability to manage the complex program and fiscal requirements of the VR program. Research investigating barriers and strategies pertaining to counselor recruitment and retention reveals that the primary reasons counselors leave State VR programs are low salaries, excessive paperwork, and insufficient career/promotional opportunities. Those who leave do so for similar positions in other public agencies and non-profit agencies or, to a lesser degree, individual practices. The primary reasons counselors remain with State

[1] The VR program is administered by 78 VR agencies at the State level, which includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. Section 101(a)(2) of the Rehabilitation Act provides States with flexibility in the organizational structures they choose to administer and operate the VR program, which includes the ability to establish separate agencies that serve only individuals who are blind or visually impaired. Currently, there are 22 VR agencies serving only individuals who are blind or visually impaired, 22 VR agencies serving individuals with all other disabilities, and 34 VR agencies serving individuals with all types of disabilities, including blindness and visual impairments.

[2] Matching requirements: (1) Federal share—Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the vocational rehabilitation services portion of the Unified or Combined State Plan, including expenditures for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, is 78.7 percent. (2) Non-federal share: Except as provided in paragraph (b)(2) and (b)(3) of this section, expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan to meet the non-federal share under this section must be consistent with the provisions of 2 CFR 200.306(b). For further information, please see 34 CFR 361.

[3] Under 34 CFR 361.5(c)(9), *competitive integrated employment* means work that meets the following criteria concerning (1) compensation, (2) work location, and (3) career advancement. First, individuals with disabilities must be paid at least minimum wage, but at the same rate employees without disabilities, and be eligible for benefits as provided to employees without disabilities. Second, the work location is typically found in the community and where the employee with a disability interacts during the course of their duties with other employees without disabilities and customers and vendors without disabilities. Third, employees with disabilities are provided the same opportunities for career advancement as employees without disabilities in similar positions, as appropriate.

VR agencies are their commitment to the agency's mission and the inherent rewards of their work, as well as the employee benefits they receive with the job (Herbert, J.T. et al., 2023).

Through its monitoring activities and review of the VR services portion of the Unified or Combined State Plans required under WIOA, RSA has identified performance issues related to program and fiscal staff capacity deficits and turnover, as well as compliance issues related to financial management of the VR and Supported Employment programs.

To address these and other performance areas, RSA currently funds two VR technical assistance centers (VRTAC), the VRTAC for Quality Management (84.264J) and VRTAC for Quality Employment (84.264K). The performance period of these two VRTACs will end by September 30, 2025. In Project year 4, the intensive technical assistance provided to State VR agencies by the two VRTACs already exceeds the technical assistance centers' target goals for the entire 5-year project performance period. Most of the requests are related to fiscal and program performance monitoring, resulting from RSA's increased emphasis on service provision and fiscal management leading to increased quality and quantity of employment outcomes in CIE. Given the many challenges faced by VR agencies and the challenges associated with an evolving economy and future workforce needs, the NVRTAC will provide expanded training and technical assistance needed by State VR agencies, other service entities, and their personnel on quality management strategies and practices. This assistance will be designed to lead to program and financial compliance and continuous improvement, resulting in the provision of quality vocational rehabilitation services that will enable individuals with disabilities to maximize their opportunities to achieve CIE and self-sufficiency, while meeting employers' needs.

The proposed plan to combine two technical assistance centers into one is in the interest of improved efficiency and reduced redundancy. The closely related content and focus of two separate centers has previously led to extensive need for coordination of overlapping content and redundant overhead costs. A single center is anticipated to more comprehensively and coherently address the full range of VR agency needs.

Under the VR program, agencies must comply with several complex Federal fiscal requirements related to maintenance of effort, reallotment, reservation of funds for pre-employment transition services, and match, among others. VR agencies must understand, track, assess, and adjust, when necessary, program activities to meet these requirements while maximizing program outcomes.

Additionally, the need for improved knowledge and skill in fiscal and resource management can negatively affect the ability of VR agency personnel to meet consumer needs and prevent, where possible, the need for order of selection limiting the numbers of eligible individuals served in the VR program.

Some State VR agencies have experienced VR program challenges, including financial management and service delivery issues. For example, in FY 2022, State VR agencies returned $88 million in unused State VR Services program (Title I) funds at grant closeout, and $3.2 million in unused Supported Employment program (Title VI) funds at grant closeout. In FY 2022, 28 grantees did not provide any matching funds for their Supported Employment award, and 13 grantees did not spend any of their FY 2022 Title VI Supported Employment program funds required to be used for youth with most significant disabilities. This resulted in an unused balance of Supported Employment program Federal funds at the end of the award period. Also, States relinquished $2.45 million in Supported Employment funds during the FY 2023 reallotment period.[4] Additionally, as of March 2024, 31 of 78 VR agencies were placed on corrective action plans to address performance deficiencies related to pre-employment transition services reserve requirements and timeliness of eligibility and Individualized Plan for Employment (IPE) development; further detail on this is on the RSA page.[5]

WIOA requires the core workforce development programs, including the VR program, to report prescribed data related to 11 barriers to employment.[6] The data indicate that individuals with disabilities receiving VR services experience multiple barriers to employment in addition to disability, and the data show that a high percentage of VR program participants have low incomes and experience long-term unemployment.

RSA's goal for technical assistance is to support VR agencies in maximizing the use of VR and Supported Employment program funds and fostering continuous improvement in CIE outcomes achieved by individuals with disabilities, considering the unique circumstances and needs of each VR agency.

Based on data reported by VR agencies through the VR program Case Service Report (RSA–911) for program year (PY)[7] 2017 (July 1, 2017–June 30, 2018) and PY 2022 (July 1, 2022–June 30, 2023), the number of individuals with disabilities determined eligible for the VR program decreased from 414,531 to 354,204. Additionally, the number of participants in the VR program (those eligible individuals who received VR services under an IPE) decreased from 932,835 to 818,646.

Although the employment rate or rehabilitation rate is no longer one of the primary indicators of performance under the Rehabilitation Act, it can provide insight into the performance of the VR program because it indicates whether participants have achieved successful employment when they exit the VR program. The VR program's employment rate decreased from 49.3 percent in PY 2017 to 44.2 percent in PY 2022. In the same period, the number of participants exiting with employment outcomes fell from 152,425 to 115,943. Relatedly, the number of participants who exited the VR program for any reason decreased from 311,748 to 256,435 in the same timeframe.

In light of these data, the Department has determined that VR agency personnel need technical assistance and training on program and resource management strategies and skills to efficiently and effectively provide VR and supported employment services to individuals with disabilities to achieve CIE, including pre-employment transition services to students with disabilities. Effectively and efficiently managing resources is critical for VR agencies to fully capitalize on the funds and staff resources needed to provide individuals with disabilities with timely services of high quality, which will forestall further declines in

[4] These data are from RSA's program data as collected in Vocational Rehabilitation Financial Report (RSA–17), Supported Employment Federal Financial Report (SF–425), and Grant Reallotment (RSA–692).

[5] *https://rsa.ed.gov/about/programs/vocational-rehabilitation-state-grants/section_107_annual_reviews.*

[6] Source: U.S. Department of Labor, Employment and Training Administration, WIOA Statewide Annual Performance Report (ETA–9169) PYs 2020 through 2021.

[7] WIOA requires that State VR programs submit an annual statewide performance report, including information on levels of performance achieved with respect to the performance indicators outlined in section 116 of the Act. These reports are due by October 1 after the completion of each Program Year (PY) (July 1–June 30). The Program Year is consistent with most states' 12-month period used for accounting and budgeting purposes. The Program Year is different from federal fiscal year that is October 1–September 30.

performance. VR personnel need to build strategies to balance the needs of all populations seeking services, including students, youth, and adults with disabilities, and to provide timely and relevant services to meet their unique needs.

The focus on serving individuals with significant and the most significant disabilities, as well as students and youth with disabilities and traditionally underserved populations, coupled with the expectations under the Rehabilitation Act to achieve CIE outcomes and career advancement, also require VR agency personnel, especially VR counselors, to learn and employ innovative service strategies and practices.

For example, recent data for PYs 2021 and 2022 provided by VR agencies through the RSA–911 indicate that approximately one-quarter (25.2 percent and 25.9 percent, respectively) of participants who were enrolled in an education or training program leading to a recognized postsecondary credential or employment achieved a measurable skill gain (MSG). An MSG is documented academic, technical, occupational, or other form of progress that participants achieve toward a recognized postsecondary credential or employment. The MSG rate is one of the primary indicators of performance under section 116 of WIOA. The VR program's performance, in the two most recent years of data collection and reporting under WIOA, suggests continued underutilization or underreporting of employment strategies and services to assist individuals with disabilities in achieving MSGs as they pursue recognized postsecondary credentials or employment.

The PY 2022 national employment rate for the VR program was 56.2 percent in the second quarter after exit. These individuals achieved median earnings of $5,130 for the quarter, which translates into annual median earnings of roughly $20,520. Based on these data, it appears the employment outlook for individuals with disabilities served by the program remains lower compared to non-disabled individuals, suggesting that there is a need for greater utilization of more effective interventions by VR personnel.[8]

Proposed Priority:

The NVRTAC will provide intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to State VR agencies that will enable VR agencies to improve VR program management and performance and, most importantly, to improve employment outcomes achieved by individuals with disabilities.

Regarding program management and performance, the NVRTAC's training and technical assistance will support the assessment, development, and enhancement of VR State agency leaders and staff knowledge, skills, and abilities to improve service delivery and employment outcomes for individuals with disabilities and to perform the following functions:

(a) Implementing State VR agency-level best practices and policies for maximizing engagement and achieving CIE for individuals with disabilities. The center will provide VR agency personnel with technical assistance on evaluating whether the management strategies they adopt have been shown to increase the percentage of participants who achieve an MSG/credential and exit the program with an employment outcome and modifying those strategies, if necessary, to achieve continuous program improvement. The NVRTAC will provide intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to State VR agencies to improve or develop a broad range of management policies and practices, both programmatic and fiscal, to address needs common to many agencies;

(b) Disseminating clear, consistent messages on RSA priorities for the development and implementation of sound management and financial systems and strong internal controls;

(c) Identifying strengths and weaknesses in the agency's capacity to understand factors affecting program effectiveness and timeliness (such as the ability to analyze case service data to identify trends and disparities in employment outcomes achieved by various groups of individuals with disabilities) and designing management strategies to address these deficits;

(d) Analyzing the VR agency's human resource management for inclusion of best practice for recruitment, retention, and onboarding strategies including orientation training for new VR agency directors;

(e) Understanding statutory and regulatory requirements related to performance management, including calculations for the common performance measures required under WIOA;

(f) Monitoring and improving financial and program data reporting and accuracy;

(g) Conducting performance evaluation and quality assurance improvement activities, including the use of data for performance management systems and the implementation of the common performance measures required by WIOA;

(h) Conducting strategic planning and implementing the strategies to address aspects of a strengths, weaknesses, opportunities, and threats (SWOT) assessment that pose challenges and barriers to improving service delivery and employment outcomes for individuals with disabilities, including those with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations;

(i) Developing and implementing effective and efficient program and fiscal policies for delivering pre-employment transition services under section 113, VR services under section 103(a), and supported employment services under title VI of the Rehabilitation Act;

(j) Implementing proactive strategies for the State VR agency to collaborate and engage with educational agencies, Centers for Independent Living, American Indian Vocational Rehabilitation agencies, and community rehabilitation programs;

(k) Implementing strategies to maximize timely and meaningful engagement of VR clients during application and eligibility determination, development of the IPE, and service delivery;

(l) Accurately addressing the required descriptions in the VR services portion of the WIOA Unified or Combined State Plan, particularly in setting goals and strategies that can improve performance;

(m) Coordinating efforts with the State Rehabilitation Council;

(n) Developing relationships with public policymakers and optimize the VR agency's presence and visibility by marketing the program in accordance with the requirements in the Guidance for Federal Financial Assistance at 2 CFR 200.467 and RSA guidance;

(o) Understanding the key resources management elements, including but not limited to financial management, human resources management, and program management and their relevance to important VR program outcomes and various cost containment measures, such as implementing an order of selection giving priority for services to individuals with the most significant disabilities, assessing the need for and impact of implementing a

[8] FY 2022 WIOA National Performance Assessments. *https://www.dol.gov/agencies/eta/performance/results/assessments.*

financial needs test and cost participation in services, and implementing the requirement to seek comparable services and benefits for certain services, among others; and

(p) Resolving corrective action plans and strategies to increase compliance and reduce future noncompliance.

Regarding effective resource management, the NVRTAC will support the assessment, development, and enhancement of staff knowledge, skills, and abilities to ensure that—

(a) Resources, including program funds and personnel, are being used for allowable purposes, are appropriately allocated, and support innovation in compliance with statutory and regulatory requirements;

(b) Internal controls and reporting systems upon which State VR agencies base fiscal and programmatic forecasting and decision-making are improved and reliable to support attainment of program goals and objectives; and

(c) Resources, including program funds and personnel, are fully used in ways that meet existing program needs, priorities, and expected employment outcomes for individuals with disabilities.

The following are TA project activities the NVRTAC will undertake to address weaknesses in resource management:

(a) Assess performance of grantees' financial management processes used to support attainment of fiscal and programmatic outcomes (for example, whether an agency's fiscal processes support the accurate tracking and reporting of non-Federal funds to maximize the drawdown of Federal award funds to support attainment of employment outcomes); and use the assessment to identify areas for improvement in fiscal processes that will assist the agency in meeting program goals.

(b) Assess personnel training and technical assistance needs to identify gaps in fiscal knowledge, skills, and abilities that prevent the agency from the effective and efficient use of resources necessary to achieve employment outcomes.

(c) Provide intensive training and technical assistance on financial planning, to maximize program resources and attainment of program goals and objectives, maximize opportunities for non-Federal sources of match, avoid potential maintenance of effort deficits and match penalties, and meet the reservation of funds requirement for pre-employment transition services.

(d) Provide technical assistance on implementing Federal, State, and program fiscal requirements, including internal controls, in an efficient and effective manner to reduce unnecessary burden and to focus efforts on program outcomes.

(e) Provide technical assistance on the identification, collection, and analysis of program and fiscal data necessary for program management and maximizing available resources to plan and support consumer services.

Proposed Project Requirements:

The Department proposes the following requirements for this program. We may apply one or more of these requirements, including one or more of the activities listed under these requirements, in any year in which this program is in effect.

Proposed Requirements:

To meet the requirements of this priority, the NVRTAC must, at a minimum, conduct the following activities through innovative approaches:

(a) Establish an advisory committee for the NVRTAC. The committee members must include individuals with disabilities, representatives from State VR agencies, individuals with VR subject matter expertise, community rehabilitation providers, individuals with subject matter expertise in assistive technology and advance technology for individuals with disabilities, and individuals with subject matter expertise in financial management and resources management for VR programs. The committee members will provide input and recommendations pertaining to the project design, project implementation, and the project evaluation. At a minimum, the committee should meet semi-annually.

(b) Establish a state-of-the-art NVRTAC website with information technology platform for communicating with State VR agencies and providing training and TA to state VR agencies' personnel. NVRTAC must ensure that all products produced by the NVRTAC and posted on the website have been developed in collaboration with RSA and meet government and industry-recognized standards for accessibility and security.

The website will serve as a key training and technical assistance delivery vehicle; peer-to-peer communication hub; stakeholder convening platform; and the central repository of information about technical assistance and training materials and resources developed and provided by the NVRTAC, including training modules for State VR agency leadership and VR counseling professionals, as well as for new employees onboarding resources. In addition, the system must have the capacity to track training completion or related records, as applicable.

(c) Conduct nationwide technical assistance and training needs assessment of State VR agencies' personnel during the first six months of the project. The needs assessment must include the areas of VR program management, financial and resource management, service delivery, and employment outcomes and should be informed by the following—

(1) Input from RSA staff, RSA monitoring reports, and State VR agency corrective action plans;

(2) Input from State VR agencies about their needs, priorities, and innovative approaches to program and resource management that lead to improved service delivery;

(3) Information regarding the latest National trends, barriers, challenges, and opportunities; and

(4) Information regarding effective and efficient program and resource management strategies, techniques, and practices that may be applicable to State VR agencies.

(d) Develop a training and technical assistance plan. Based on the results of the needs assessment, develop an overarching training and technical assistance plan that must include, at a minimum—

(1) Management strategies and practices that result in improved service delivery and employment outcomes for individuals with disabilities, including the rationale for their selection;

(2) Conceptual framework for the selected strategies and practices, including key assumptions, expectations, and presumed relationships or linkages among strategies and practices;

(3) Nature and scope of the intensive training and technical assistance, targeted training and technical assistance, and universal training and technical assistance to be provided in support of the selected strategies and practices;

(4) Protocols and timelines for requesting, obtaining, and completing training and technical assistance; and

(5) Protocols and timelines for transitioning the State VR agency's technical assistance, upon completion of the technical assistance agreement, to the designated RSA State Liaison, when appropriate.

(e) Provide intensive training and technical assistance to State VR agencies consistent with the technical assistance plan based on a review of a wide variety of information sources, including, but not limited to, RSA's monitoring reports and corresponding State VR agency

corrective action plans; State audit reports; WIOA State plans, particularly the VR portion of these State plans; RSA staff feedback; and the results of comprehensive statewide needs assessments. Intensive training and technical assistance may be provided on-site, over a specified time period, under the terms of signed intensive training and technical assistance agreements between the NVRTAC and the participating State VR agencies. Numerical targets for the number of intensive training and technical assistance agreements will be included in the cooperative agreement between RSA and the NVRTAC.

The intensive training and technical assistance agreements between the NVRTAC and the requesting State VR agencies must include the following components:

(1) Management strategies and practices to be implemented by the State VR agency that are designed to improve service delivery and maximize quality employment outcomes for individuals with disabilities.

(2) Nature and scope of the training and technical assistance to be provided by the NVRTAC.

(3) Roles and responsibilities of the NVRTAC, State VR agency, RSA, and other workforce development partners, including the commitment of resources.

(4) Logic model (as defined in 34 CFR 77.1) that is specific to the intensive need being addressed and that includes performance outcomes, targets, and baselines; project activities, inputs, and outputs; and data collection and analysis commitments.

(f) Implement a plan for project evaluation, which includes a timeline for the evaluation and measurement benchmarks, that will evaluate the impact of the center's training and technical assistance on the performance of the VR agencies that received the center's services. As part of the evaluation plan, there must be a logic model that includes data elements, inputs, activities, outputs, and short-term and long-term performance indicators regarding—

(1) Quantitative outcomes resulting from the program management and employment strategies and practices, including—

(i) Timeliness of the VR processes and services;

(ii) Number of employment outcomes;

(iii)VR participants' employment or career-readiness;

(iv) Cost-effectiveness; and

(v) Sustainability;

(2) Quality, relevance, and usefulness of the project's training and technical assistance activities;

(3) Quantitative or qualitative insights about the relationship between strategies, practices, and training and technical assistance activities on critical outcomes for VR personnel, VR clients, and key partners, including through—

(i) Pre- and post-training assessments;

(ii) Focus groups; and

(iii)Success stories.

(g) Develop and implement models and materials for targeted and universal training and technical assistance for VR agency personnel, on state VR program and fiscal management, and employment strategies for individuals with disabilities, which must include the following—

(1) Integration of assistive technology and artificial intelligence tools to fuel CIE in the 21st century for individuals with disabilities;

(2) Career pathways education, internships, apprenticeships, training, and supports in high-demand occupations, including those in science, technology, engineering, and mathematics (STEM) fields, advanced technology;

(3) Registered and industry-recognized apprenticeships, pre-apprenticeships, and on-the-job training;

(4) Supported employment and customized employment;

(5) Customized training and credential programs to meet employers' demand;

(6) Self-employment and entrepreneurship, including services available under the Randolph-Sheppard Vending Facility Program;

(7) Business engagement and employer supports including dual customer models such as Progressive Employment;

(8) Practices to enhance the employment capacity of individuals with the most significant disabilities receiving supported employment services, such as the Individual Placement and Support model;

(9) Pre-employment transition services that prepare students with disabilities and transition services that prepare youth with disabilities to identify career interests through work-based learning and early career exploration opportunities, including career pathways, internships, and job shadowing, with a focus on high-demand and STEM careers;

(10) Career counseling techniques and resources, including labor market information tools such as Career Index Plus;

(11) Collaboration with workforce development partners, community rehabilitation programs, and other community-based organizations to provide the comprehensive support services that individuals with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations, need to succeed, such as the Integrated Resource Teams model;

(12) Approaches that encourage VR clients to consider jobs in the advanced technology fields that respond to expected labor market needs;

(13) Approaches that encourage VR clients to enter and remain engaged in the VR process, such as rapid engagement, motivational interviewing, benefits counseling, and financial empowerment training, and vehicles such as the Achieving a Better Life Experience (ABLE) tax-free accounts for individuals with disabilities and flexibilities associated with Social Security Income; and

(14) Community outreach strategies to expand the pool of potential VR applicants and referral sources, including traditionally underserved populations.

Proposed Application Requirements:

The Department proposes the following application requirements for the purpose of this priority. We may apply one or more of these requirements, including one or more of the activities listed under these requirements, in any year in which this program is in effect.

Proposed Application Requirement:

The following proposed application requirements are for the purpose of the priority. Applicants must—

(a) Provide, in the narrative section of the application under ''Significance of the Project,'' a landscape analysis of current challenges, opportunities, and initiatives in national VR technical assistance and training. The landscape analysis must address the following

(1) Knowledge about—

(i) State VR program challenges in performance, including barriers and trends regarding program and resource management and employment outcomes for individuals with disabilities especially those with significant and the most significant disabilities, students and youth with disabilities, and traditionally underserved populations, particularly as noted in recent RSA monitoring reports and State VR agency corrective action plans; and

(ii) Federal and State initiatives and best practices to improve program and resource management and employment outcomes for individuals with disabilities, particularly in response to requirements under WIOA.

(2) The proposed project's potential to contribute to these Federal and State

initiatives by assisting State VR agencies in equipping personnel with the necessary skills and training to implement the substantive provisions of the Rehabilitation Act introduced by WIOA that are designed to improve the employment outcomes for individuals with disabilities.

(b) Provide an implementation plan. The implementation plan must describe the feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks and meet expected outcomes.

(c) Describe the plans to establish a state-of-the-art NVRTAC website and information technology platform.

(d) Describe plans for completing the national technical assistance and training needs assessment.

(e) Specify strategies to maximize coordination between the NVRTAC and other TA centers and seek opportunities to coordinate with other training and technical assistance investments, including those funded by the U.S. Departments of Education, Labor, and Health and Human Services, in the provision of training and technical assistance to State VR agencies.

(f) Describe the proposed evaluation plan and logic model for the project.

(g) Provide a dissemination plan. The dissemination plan must describe plans to disseminate its summative findings and results at national conferences, regional forums, or specialized meetings starting after the first year of the performance period, including cost-effective approaches such as virtual convenings, to engage State VR agencies and other potential Federal, State, local, and nongovernment partners, including—

(i) Types of events (*e.g.,* conferences, forums, specialized meetings);

(ii) Target audience (*e.g.,* by event type); and

(iii) Convening modes (in-person, virtual).

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Definitions

The Assistant Secretary for Special Education and Rehabilitative Services proposes the following definitions for this program to ensure that applicants have a clear understanding of how we are using these terms. We may apply these definitions in any year in which this program is in effect.

Intensive training and technical assistance means training and technical assistance provided to State VR agencies and State VR agency personnel, in consultation with RSA, primarily on-site for a specific issue and a set period of time negotiated between the State VR agency and NVRTAC. Intensive training and technical assistance is based on an ongoing relationship between the training and technical assistance center staff and State VR agencies and State VR agency personnel under the terms of a signed intensive training and technical assistance agreement.

Targeted training and technical assistance means training and technical assistance based on needs common to one or more State VR agencies and State VR agency personnel on a time-limited basis and with limited commitment of training and technical assistance center resources. Targeted training and technical assistance are delivered through virtual, or in-person methods tailored to the identified needs of the participating State VR agencies and State VR agency personnel.

Universal training and technical assistance means training and technical assistance broadly available to State VR agencies and State VR agency personnel and other interested parties through their own initiative, resulting in minimal interaction with training and technical assistance center staff. Universal training and technical assistance include generalized presentations, products, and related activities available through a website or through brief contacts with the training and technical assistance center staff.

References

Herbert, J.T., O'Shea, A., Joon Yoon, H., & Balushi, I.A. (2023). Recruitment and retention of state vocational rehabilitation counselors: A mixed methods analysis. *Journal of Rehabilitation,* 89(1), 61–71.

Rehabilitation Services Administration. (2020). The State Vocational Rehabilitation Services Program—The First 100 Years. Retrieved from: *https://ncrtm.ed.gov/library/detail/state-vocational-rehabilitation-services-program-first-100-years.*

Final Priority, Requirements, and Definitions: We will announce the final priority, requirements, and definitions in a notice in the **Federal Register**. We will determine the final priority, requirements, and definitions after considering responses to the proposed priority, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, requirements, or definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priority, requirements, and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the proposed priority, requirements, and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of the preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 385. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities.

The small entities that this proposed regulatory action would affect are institutions of higher education (IHEs) that meet the eligibility requirements in section 241(1) of the Higher Education Act of 1965, as amended, and public and private nonprofit organizations and agencies that partner with IHEs. The Secretary believes that the costs imposed on applicants by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priority and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for any project under the Rehabilitation Training (RT) program funds, an eligible applicant would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a RT grant. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of

information that any other agency or authority of the United States gathers or makes available.

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. Y ou may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2025–01337 Filed 1–16–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–ASIS–NPS0039274; INSERT BILLING CODE]

RIN 1024–AE90

Assateague Island National Seashore; Oversand Vehicles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to amend the special regulations for Assateague Island National Seashore to remove certain permit eligibility requirements for motor vehicles that drive on designated beaches and oversand routes. The rulemaking would eliminate requirements addressing vehicle weight, ground clearance, and dimensions. These requirements were established in 1976 and are no longer necessary. In addition, the NPS proposes to make several technical, non-substantive changes to the regulations.

DATES: Comments on the proposed rule must be received by 11:59 p.m. ET on March 18, 2025.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE90, by either of the following methods:

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

(2) *By hard copy:* Mail to: Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words ''National Park Service'' or ''NPS'' and must include the docket number or RIN (1024–AE90) for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.

Docket: For access to the docket to read comments received, go to *https://www.regulations.gov/* and search for ''1024–AE90''. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on *Regulations.gov* in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Hugh Hawthorne, Superintendent, Assateague Island National Seashore; (410) 629–6080 Ext 6080; *hugh_hawthorne@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Purpose and Significance of Assateague Island National Seashore

In 1965, Congress established the Assateague Island National Seashore to protect and develop Assateague Island and certain adjacent waters and small marsh islands for public outdoor recreation use and enjoyment. 16 U.S.C 459f. Congress directed the Secretary of the Interior, acting through the NPS, to administer the Seashore for general purposes of public outdoor recreation, including conservation of natural features contributing to public enjoyment. 16 U.S.C. 459f–5. The NPS manages the Seashore as a unit of the National Park System. In addition to the Seashore that is managed by the NPS, other public lands on the island are managed by the Maryland Department of Natural Resources (Assateague State Park) and the U.S. Fish and Wildlife Service (Chincoteague National Wildlife Refuge).

The dominant feature of the Seashore is Assateague Island, a barrier island that stretches 37 miles along the Atlantic Coast of Maryland and Virginia. The island is a dynamic place, altered daily by powerful wind and waves. It is the largest natural barrier island ecosystem in the mid-Atlantic region that remains predominantly unaffected by human development. Only a couple of miles wide at its broadest point, the island's terrain offers shelter to famed wild horses as well as sika deer, ghost crabs, and migrating birds such as the great blue heron and snowy egret. The Seashore is a three-hour drive from Washington, Baltimore, and Philadelphia. Visitors to the Seashore can explore sandy beaches, salt marshes, maritime forests, and coastal bays. Popular recreational activities include swimming in the ocean, paddling in coastal bays, fishing, hunting, stargazing, and photography.

Authority To Promulgate Regulations

The NPS Organic Act (54 U.S.C. 100101 *et seq.*) gives the NPS broad authority to regulate the use of lands and waters under its jurisdiction, including a specific authority to promulgate regulations it considers necessary or proper for the use and management of National Park System units. 54 U.S.C. 100751(a). The enabling act for the Seashore allows the NPS to use applicable legal authorities, including those provided by the Organic Act, for the conservation and management of natural resources. 16 U.S.C. 459f–5.

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in 1972 and amended by Executive Order 11989 in 1977. Executive Order 11644 required Federal agencies to issue regulations designating specific areas and routes on public lands where the use of off-road vehicles may be allowed. The NPS implemented these Executive orders, in part, by promulgating a regulation at 36 CFR 4.10 (Travel on park roads and designated routes). Under 36 CFR 4.10,

the use of motor vehicles off park roads is not permitted unless routes and areas are designated for off-road motor vehicle use by special regulation. Such routes and areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves. This proposed rule would remove regulatory requirements for the use of oversand vehicles (OSVs) on designated beaches and oversand routes in the Seashore in compliance with 36 CFR 4.10 and Executive Orders 11644 and 11989.

Use and Management of OSVs in the Seashore

The use of OSVs for access and recreation is a traditional activity that occurred on Assateague Island prior to the establishment of the Seashore. Oversand driving continues to this day and allows visitors to access locations within the Seashore, including remote areas, for recreational activities such as fishing, crabbing, viewing wildlife, and enjoying coastal scenery. The NPS formalized management of OSV use with the promulgation of special regulations in 1974 (39 FR 31633). These regulations established a system of oversand permits to manage the use of OSVs. These regulations designated areas for using OSVs under permit, provided rules of travel, and authorized the suspension or revocation of a permit for violating the regulations. In 1976 the NPS amended the special regulations (41 FR 15008) to allow the superintendent to establish a system of special recreation permits and fees for OSVs. The revised regulations also authorized OSV use in designated areas; established quantified standards to determine whether an OSV qualifies for a permit; and restricted the use of towed travel trailers. The OSV regulations for the Seashore have not changed since they were last amended in 1976.

Using the superintendent's authority to establish a permit system, the superintendent has established additional management prescriptions for OSVs in the superintendent's compendium (or written compilation) of discretionary actions taken by the superintendent that is referred to in NPS regulations at 36 CFR 1.7(b). Among other actions, the compendium requires OSVs to have four-wheel or all-wheel drive and limits the number of OSVs that may be used in the Seashore. No more than 145 OSVs are allowed at any one time in designated OSV areas in Maryland. The NPS manages vehicle access on a one-off, one-on basis after this limit has been reached.

In 2021 the NPS issued a Record of Decision (ROD) finalizing a General Management Plan (GMP) for the Seashore. The GMP provides a decision-making framework that ensures that management decisions effectively and efficiently carry out the NPS mission at the Seashore into the future. The ROD states that the NPS will manage OSV use for maximum flexibility to respond to changing conditions, protect sensitive resources, and minimize conflicts with other uses of the Seashore. The ROD also states that the NPS will periodically review regulations for OSV use at the Seashore and make changes if conditions render changes necessary.

Proposed Rule

This proposed rule would amend the special regulations for the Seashore at 36 CFR 7.65(b) by revising the quantified standards used to determine if a motor vehicle qualifies for a permit that authorizes driving on designated beaches and oversand routes. The rulemaking would remove requirements that (1) the gross vehicle weight rating (GVWR) does not exceed 10,000 pounds; (2) the vehicle has at least seven inches of ground clearance; and (3) the vehicle does not exceed 26 feet in length and 8 feet in width. These requirements were established in 1976 and are no longer necessary. In addition, this rulemaking would make several technical, non-substantive changes to the regulations. All of these changes are discussed in more detail below.

GVWR Requirement

Gross vehicle weight is the base curb weight of a vehicle plus actual cargo weight and passengers. Gross vehicle weight is not a limit or specification. It is an actual weight that should never exceed the GVWR for the vehicle. The GVWR is established by the manufacturer and is the total weight the vehicle can safely carry. The National Highway Traffic Safety Administration (NHTSA) requires manufacturers to label the GVWR on all vehicles, which includes passenger cars, trucks, and buses. The label is typically found on the driver's side door jamb or the door itself. While a vehicle's actual weight can fluctuate based on load, the GVWR is a specific figure that does not change.

The current regulations for the Seashore require the GVWR of a vehicle to be less than or equal to 10,000 pounds in order to be eligible for an OSV driving permit. 36 CFR 7.65(b)(2)(ii)(D). The Seashore is the only National Park System unit with an OSV permit system that prescribes a vehicle weight limit.[1] Although the NPS did not explain the need for this specific requirement when it was established in 1976, it was most likely established to help ensure the safe use of two bridges that provided access to and from private land within the boundary of the Seashore. These lands have since reverted back to NPS ownership. No private property interests remain within the Seashore. One of the bridges no longer exists and the other is no longer open to motor vehicles.

The NPS does not expect the removal of the GVWR requirement to result in adverse impacts to resources at the Seashore. Soil compaction and self-repair from tide cycles mitigate damage to sand on beaches used by OSVs. The NPS uses vehicles that weigh more than 10,000 pounds for administrative actions (*e.g.,* moving beached whales, repairing boundary fences) that do not result in damage to the sand for those reasons. There are many other requirements in the special regulations for the Seashore that mitigate impacts to natural resources from beach driving, the most important being requirements to stay on designated routes and areas that keep OSVs away from dunes and vegetation. Cutting circles and needlessly defacing the sand also is prohibited.

Several models of trucks meet or exceed the current limit of 10,000 pounds.[2] This proposed rule would make those vehicles eligible to receive OSV driving permits. This would create more opportunities for recreation by increasing the pool of applicants that is eligible to receive an OSV driving permit, without any adverse impacts to resources.

Vehicle Ground Clearance

Ground clearance refers to the vertical distance between a vehicle's undercarriage or underside of the chassis and the ground. The current regulations for the Seashore require a vehicle to have a minimum ground clearance of seven inches in order to be eligible for an OSV driving permit. 36 CFR 7.65(b)(2)(ii)(D). Like the GVWR requirement, the NPS did not explain the need for this specific requirement when it was established in 1976. The NPS assumes that it was established to help prevent vehicles from getting stuck on the sand. Although ground clearance can be a contributing factor to whether

[1] See special regulations for Gulf Island National Seashore (36 CFR 7.12), Gateway National Recreation Area (36 CFR 7.29), Cape Lookout National Seashore (36 CFR 7.49), Cape Hatteras National Seashore (36 CFR 7.58), and Cape Cod National Seashore (36 CFR 7.67).

[2] Examples include Ford F–250, Ford F–450, GMC Sierra 2500HD, Chevy Silverado 2500HD Work Truck, and Ram 2500 Tradesman. Source: *Edmunds.com* (last visited December 5, 2024).

a vehicle becomes stuck, a specific, minimum ground clearance requirement has disadvantages as a management action, and ground clearance in general is not among the most important factors that cause vehicles to become stuck.

Variation in vehicle design, manufacturing, and owner modifications have made the minimum ground clearance requirement difficult to measure and challenging to enforce. Ground level clearance can vary across the same model of a vehicle due to several factors such as trim levels, suspension types, packages and options, wheel and tire sizes, load and weight, production variations, and owner modifications. Further, the NPS has no documented or observational evidence that seven inches of ground clearance is a meaningful distance compared to other clearance levels from the ground. Many contemporary sport-utility-vehicles (SUVs) have less than seven inches of ground clearance.[3] The NPS has no reason to believe that vehicles with less than seven inches of ground clearance, as a category, are incapable of driving directly over sand.

In general, insufficient vehicle ground clearance rarely causes vehicles to get stuck at the Seashore if other contributing factors are not present. In most cases, vehicles become stuck because the tires have not been properly deflated, which is recommended for all vehicles. In almost all other cases, vehicles become stuck because they are driven into dunes or wet sand, or because they do not have modern vehicle technology that did not exist when the existing regulations were issued in 1976. This technology includes electronic stability control,[4] traction control systems, modern four-wheel drive (4WD), and all-wheel drive (AWD). Tire choice and condition also has a meaningful effect on vehicle traction over sand. Driver judgement, skill, and responsibility are other key factors. The NPS offers tips on the Seashore website to help avoid vehicles getting stuck. Examples are (1) spinning a vehicle's tires makes them dig deeper into the sand thereby increasing the chance the vehicle's frame will bottom out; (2) after stopping a vehicle back up several feet before proceeding forward; (3) carry 4 boards (2″x 6″x 36″) for placement under each tire when stuck; (4) driving in the tracks of another vehicle is easier than driving through fresh sand; and (5) walk across soft sand first to be sure that it will hold your vehicle. Existing regulations require vehicles to carry a shovel and a tow rope or chain that can help clear vehicles off the sand when they do get stuck. 36 CFR 7.65(b)(2)(ii)(A). The factors described above demonstrate that there are many ways to avoid vehicles getting stuck in the sand that do not require a minimum ground clearance requirement, which is poorly tailored to the problem it is intended to address and difficult to administer and enforce.

Vehicle Length and Width

The current regulations for the Seashore require a vehicle to be no longer than 26 feet and no wider than 8 feet in order to be eligible for an OSV driving permit. 36 CFR 7.65(b)(2)(ii)(D). Like the GVWR and ground clearance requirements, the NPS did not explain the need for these specific requirements when they were established in 1976. The NPS speculates that they may have been established in reference to the size of military surplus vehicles that were commonly used at the time for off-road driving. In any event, the NPS does not manage vehicle dimensions using the length and width requirements in the regulations anymore. Vehicle width is limited in practice by the size of the gate that provides OSV access to the designated beaches and oversand routes. This limiting factor, together with the requirement in the special regulations that vehicles have no more than 2 axles, has proven to be sufficient to keep vehicles that are too large from entering the designated OSV routes and areas.

Technical, Non-Substantive Changes

In addition to the changes described above, this rulemaking would make several technical, non-substantive changes to the current regulations.

In the existing table codified at 36 CFR 7.65(b)(2)(ii)(D), there is a row entitled ''maximum number of wheels (per axle)'' but there is no corresponding number in the right-hand column. When the regulations were published in 1976, the table showed ''2'' as the maximum number of wheels per axle, but then in 1999, a printing error resulted in the omission of that number from the table, where it has not appeared for 25 years. For some time, the NPS has issued permits to OSVs that have up to four wheels per axle without any observed adverse impacts to resources or visitors. In order to eliminate potential confusion about what the CFR requires compared to current management of OSVs, this rulemaking would remove the reference to ''maximum number of wheels (per axle)'' in the regulations.

Because the rulemaking would remove all of the quantified standards in the existing table except for the requirement that vehicles have no more than two axles, having a table is no longer necessary. As a result, the rulemaking would remove the table and instead locate the no more than two axle requirement in paragraph (b)(2)(ii)(D), in narrative form. Revised paragraph (b)(2)(ii)(D) would omit an existing reference to ''four-wheel-drive vehicles'' that is located in an introductory clause to the table. The rulemaking also would remove the paragraph immediately following the table. The first part of that paragraph establishes specific requirements for two-wheel-drive vehicles. The references to four-wheel-drive vehicles (before the table) and to two-wheel-drive vehicles (after the table) are no longer necessary because all OSVs must have 4WD or AWD by administrative action in the superintendent's compendium. The rest of the paragraph immediately following the table provides an exception to the vehicle dimension requirements that would no longer be necessary because the dimension requirements would be removed. Finally, the rulemaking would remove the defined term ''dunes crossing,'' which is not used elsewhere in the special regulations.

Compliance With Other Laws, Executive Orders and Department Policy

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

Executive Order (E.O.) 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rulemaking in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs

[3] Examples include Toyota C–HR, Buick Encore, Mini Cooper Countryman, Kia Soul, Hyundai Kona, Ford Escape, Kia Sorento, and Cadillac XTC. Source: *https://motorandwheels.com/suvs-with-lowest-ground-clearance/* (last visited December 6, 2024).

[4] NHTSA required all new passenger vehicles with a GVWR of 10,000 or less to be equipped with electronic stability control beginning in model year 2012. 72 FR 17236 (April 6, 2007).

(OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this proposed rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No small entities would be directly regulated by the proposed rule, which would modify vehicle requirements for visitors seeking to obtain an OSV permit for driving on designated beaches and oversand routes. OSV permits are non-transferable which means that only those persons who initially receive a permit would be affected by changes to permitting requirements. There is no limit on the number of permits that can be issued. On average, the NPS issues 1,000 OSV permits per year. In recent years, approximately 10% of permit applications have been denied due to vehicles not meeting the GWVR requirement. The NPS has not denied any permit applications for failure to meet the minimum ground clearance requirement or the vehicle dimension requirements because they have not been enforced by the NPS for the reasons explained above. As discussed above, the NPS expects that the rulemaking would slightly increase the pool of applicants eligible to receive an OSV permit by removing the GVWR requirement. This could lead to an incremental increase of visitor activity at the Seashore. The NPS expects this effect, however, to be mitigated by the fact that on many days in peak season the designated beaches and oversand routes are at maximum capacity for OSVs early in the morning through late evening. When this occurs, although the composition of visitors recreating in the designated OSV areas may be different, the total amount of visitor activity will remain the same. In summary, the NPS has considered whether this rulemaking will result in a significant economic impact on a substantial number of small entities. The NPS certifies that this rulemaking will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Congressional Review Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). This proposed rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This proposed rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This proposed rule only affects use of federally administered lands and waters. It has no direct effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. This proposed rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has evaluated this proposed rule under the criteria in E.O. 13175 and under the Department's Tribal consultation policy and has determined that Tribal consultation is not required because the proposed rule will have no substantial direct effect on federally recognized Indian Tribes. Nevertheless, in support of the Department of the Interior's and the NPS's commitment to government-to-government consultation, the NPS intends to send letters of notification to Indian Tribes that are traditionally associated with the land that is now part of the Seashore, including the Accohannock, Pocomoke, Nanticoke, and Assateague peoples.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rulemaking contains existing information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with this rulemaking and assigned OMB Control Number 1024–0026 (expires March 31, 2027). This proposed rule contains no new information requirements that will affect the currently approved information collection. The NPS will use *Recreation.gov* to collect information necessary to make the financial transaction required to purchase an OSV permit.

National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.)

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rulemaking is covered by a categorical exclusion. NPS NEPA Handbook (2015) Section 3.3.D.3 allows for the following to be categorically excluded: Minor changes in programs and regulations pertaining to visitor activities. This rulemaking would make minor changes to the eligibility requirements for obtaining an OSV permit for the Seashore. The substantial majority of requirements for OSV use at the Seashore will remain the same. The NPS has also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43

CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in E.O. 13211; the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the proposed rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A statement of energy effects is not required.

Clarity of This Rulemaking

The NPS is required by E.O.s 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the NPS has not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

List of Subjects in 36 CFR Part 7

National parks, Reporting and Recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 16 U.S.C. 363 and 54 U.S.C. 100751, the National Park Service proposes to amend 36 CFR part 7, as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under DC Code 10–137 and DC Code 50–2201.07.

■ 2. Amend § 7.65 by removing paragraph (b)(1)(iv) and revising paragraph (b)(2)(ii)(D) to read as follows:

§ 7.65 Assateague Island National Seashore.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(D) Which has more than two axles on vehicles and trailers towed by any vehicle.

* * * * *

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2025–01210 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0600; FRL–12508–01–R9]

Air Plan Revisions; Arizona; Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing an approval and a limited approval and limited disapproval of a State Implementation Plan (SIP) submission made by the State of Arizona to address emissions of particulate matter 10 micrometers in diameter or smaller (PM_{10}) from agricultural operations. The SIP submission includes an amended statute, two definition rules, and two rules regulating crop and animal operations in Pinal County, Arizona. We are proposing action on local rules to regulate these emission sources under the Clean Air Act (CAA or ''Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0600 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact one of the people identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact one of the people identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: For general inquiries and inquiries related to the Arizona Administrative Code: Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4125; email at *vineyard.christine@epa.gov.* For inquiries related to the Arizona Revised Statutes: Alina Batool, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone (415) 972–3345; email at *batool.alina@epa.gov.*

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

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I. The State's Submittal

A. What did the State submit?

Table 1 lists the statute and rules addressed by this proposal with the dates that they were adopted and submitted to the EPA by the Arizona Department of Environmental Quality (ADEQ or ''State'').

TABLE 1—SUBMITTED STATUTE AND RULES

Arizona revised statutes (ARS)	Statute title	Amended	Submitted
ARS section 49–457	Agricultural best management practices committee; members; powers; permits; definitions.	03/26/2021	03/03/2023
Arizona administrative code (AAC)	AAC Title	Amended	Submitted
AAC R18–2–610	Definitions for R19–2–610.01, R18–2–610.02, and R18–2–610.03	11/26/2021	03/03/2023
AAC R18–2–610.03	Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area.	11/26/2021	03/03/2023
AAC R18–2–611	Definitions for R18–2–611.01, R18–2–611.02, and R18–2–611.03	11/26/2021	03/03/2023
AAC R18–2–611.03	Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area.	11/26/2021	03/03/2023

On September 3, 2023, the SIP submittal containing the documents listed in Table 1 was deemed complete by operation of law.

B. Are there other versions of the statute and rules?

We approved an earlier version of ARS 49–457 into the SIP on June 29, 1999 (64 FR 34726). We also approved earlier versions of AAC R18–2–610 and R18–2–610.03 into the SIP on May 1, 2017 (82 FR 20267). If we finalize this proposal to approve the submitted version of ARS 49–457 and AAC R18–2–610 and to issue a limited approval and limited disapproval of the submitted version of AAC R18–2–610.03, then these versions will replace the versions of this statute and these rules in the SIP.

We note that on October 11, 2001, we approved AAC R18–2–611, ''Agricultural PM–10 General Permit; Maricopa PM_{10} Nonattainment Area'' into the Arizona SIP, which applies to Maricopa County commercial farmers (crop operations). *See* 66 FR 51869 (October 11, 2001). The March 3, 2023 submittal of rule AAC R18–2–611, ''Definitions for R18–2–611.01, R18–2–611.02, and R18–2–611.03'' is a separate rule that was not submitted to replace the existing SIP-approved rule AAC R18–2–611, ''Agricultural PM–10 General Permit; Maricopa PM_{10} Nonattainment Area.'' If the EPA approves the new rule AAC R18–2–611, ''Definitions for R18–2–611.01, R18–2–611.02, and R18–2–611.03'' into the Arizona SIP, there will be two different rules in the SIP with the same number, but they would be differentiated by their different titles and dates.

C. What is the purpose of the submitted rule and statutory revisions?

Emissions of PM, including PM_{10}, contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. The CAA requires states to have SIPs that provide for attainment, maintenance, and enforcement of the PM_{10} NAAQS, including the adoption and implementation of regulations to control PM emissions in designated PM_{10} nonattainment areas. ADEQ's submission addresses emissions from certain sources of PM_{10} emissions through a statutory provision and several regulations.

First, this submission would revise the existing SIP-approved version of ARS section 49–457 by, among other things, expanding the definition of ''regulated agricultural activities'' to include activities of dairies, beef feedlots, poultry facilities, and swine facilities. It would also expand the definition of ''regulated area'' to apply to any PM_{10} nonattainment areas designated by the EPA on or after June 1, 2009, which includes the West Pinal County PM_{10} nonattainment area.

Second, this submission would revise existing regulations in the Arizona SIP. AAC R18–2–610 makes largely administrative updates to the existing crop operations definitions rule and adds a definition for ''unpaved vehicle or equipment traffic area.'' AAC R18–2–610.03 amends the existing crop operations rule applicable to the West Pinal County PM_{10} nonattainment area, primarily adding a requirement for operators to implement two, as opposed to one, best management practices (BMPs) from the list of options for different areas.

Third, this submission would add a new regulation to the Arizona SIP. AAC R18–2–611.03 requires that commercial dairy operations, beef cattle feedlots, poultry facilities, and swine facilities implement BMPs to reduce PM_{10} emissions from those sources. The new AAC R18–2–611 provides definitions for AAC R18–2–611.03 and other animal operations BMP rules in the State.

The EPA's technical support documents (TSDs) have more information about the statute and rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the statute and rules?

SIP rules must meet applicable substantive requirements, *e.g.,* must be sufficiently stringent (see CAA sections 172(c)(1) and 189(a)(1)(C)), must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

States must adopt and implement reasonably available control measures (RACM), including reasonably available control technology (RACT), in Moderate PM_{10} nonattainment areas (see CAA section 189(a)(1)(C)). Nonattainment areas that are classified as Serious must also demonstrate that they have implemented best available control measures (BACM). (see CAA section 189(b)(1)(B)). In addition, each

attainment plan must ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' (see CAA section 172(c)(1)). RACM and BACM findings are generally made in the context of an overall attainment demonstration. Because this submission is not being evaluated at this time as part of an attainment plan submission, we will not evaluate these rules for RACM and BACM in this action and will instead do so as part of a future attainment planning action.

Guidance and policy documents that we use to evaluate control rules submitted for PM_{10} nonattainment areas, including enforceability, revision/relaxation, and rule stringency requirements, include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).
5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

B. Do the statute and rules meet the evaluation criteria?

The EPA is proposing to conclude that the submitted statute, ARS § 49–457 meets the evaluation criteria. We note that ARS § 49–457 is not intended to regulate agricultural activities in isolation. Although it establishes a number of substantive requirements (for example, the requirement that a person who commences a regulated agricultural activity must comply with the permit), it does not specify, in detail, the requirements for regulated entities. As a result, our evaluation of enforceability is not an evaluation of whether the statute in isolation establishes specific enforceable requirements on agricultural activities, but is instead an evaluation of whether the requirements of the statute are sufficiently clear and enforceable that, when combined with specific local rules implementing the statute (which also have been or will be submitted into the SIP), these rules can be enforced. We propose to find that the rule provisions regarding applicability, BMPs, recordkeeping, reporting and other requirements in the statute are clear. These and other provisions are sufficient to establish a framework under which, in combination with local rules, affected sources and regulators can evaluate and determine compliance with ARS § 49–457 consistently as required by CAA section 110(a).

The EPA is proposing to conclude that the submitted regulations, AAC R18–2–610, R18–2–610.03, AAC R18–2–611, and R18–2–611.03 largely meet the evaluation criteria. The provisions of the rule are generally clear and mostly specify requirements in a manner that sufficiently specifies what is necessary in order to comply. The updated regulations also strengthen the SIP, adding additional control requirements for both animal and crop operations. Rule provisions that do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the deficiencies?

EPA is proposing to conclude that R18–2–610.03 and R18–2–611.03 do not satisfy the requirements of section 110 and part D of title I of the Act, because they are not sufficiently enforceable and therefore prevent full approval of the SIP revision.

The crop and animal operation rules require operators to complete a Best Management Practices Program General Permit Record Form annually. This form is not submitted to the Director but must instead be provided to the Director within two business days of notice to the operator. The form must contain the name of the operator, signature, date signed, and the mailing or physical address of the operation. For animal operations, the form must contain a specification of the BMPs selected for each category. For crop operations the requirement is less clear. Paragraph C.3 of R18–2–610.03 states that the form shall include ''The following information for each best management practice selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable).'' However, there is no list of ''following information'' so it is not clear what, if anything, must be included pursuant to this requirement.

The rules also require operators to maintain records demonstrating compliance for three years. The records must include a copy of the BMP Program General Permit Record Form, but the rules do not otherwise specify any records that must be maintained or reported. Finally, the rules require operators to complete a survey every three years that includes the number of animals for each type of operation, the total miles of unpaved roads, the total acreage of access connections and equipment areas, the chosen BMPs, and, for some operators, whether water was applied on a high risk day. The survey is sent out by ADEQ and responses are submitted to the Arizona Department of Agriculture (ADA). The survey results are aggregated by the ADA and reported to ADEQ. The rules prohibit the report from including any operator's name (that is, the results are anonymous).

Under Rules R18–2–610.03 and R18–2–611.03, absent a specific request from the Director (upon which an operator would have two business days to provide records), source-specific compliance information is only obtained through the survey. This process is not enforceable because compliance information is only available if ADEQ sends out the survey and the ADA subsequently reports the information to ADEQ or the ADEQ exercises its discretion to request records. Further, because the report from ADA to ADEQ is aggregated so that the individual operators remain anonymous, it is not clear whether the survey results would be sufficient to verify or incentivize compliance. Moreover, because these rules require operators to select from a menu of compliance options, it is not clear how compliance could be determined without knowing the chosen compliance options. While it may be possible to verify whether a particular BMP is being implemented, for example, cessation of night tilling, access restrictions, reduced vehicle speeds, or watering, if there is no record of which BMPs have been selected, a determination of noncompliance with the rules would essentially require an exhaustive demonstration that none of the BMPs are being implemented. In the absence of the Director exercising their discretion to request records, it becomes nearly impossible to enforce the requirements in these rules.

D. The EPA's Recommendations to Further Improve the Statute and Rules

The TSDs include recommendations for the next time the State modifies the statute and rules.

E. Proposed Action and Public Comment

The EPA is proposing to approve the statute, ARS § 49–457, and the definition rules, AAC R18–2–610 and R18–2–611. The statute sets out the basic framework of the statewide agricultural BMP program, strengthening the program by expanding its geographic scope and strengthening its substantive requirements, particularly in nonattainment areas classified as Serious. The crop operations definitions rule, AAC R18–2–610 updates a number of definitions, largely with administrative updates. The animal operations definitions rule, AAC R18–2–611 does not itself contain substantive requirements but lays out definitions to support animal operation BMP rules in Arizona. The statute and definitions rules do not contain deficiencies that prevent our approval, and we therefore propose to approve them as authorized in section 110(k)(3) of the Act.

The EPA is also proposing a limited approval and limited disapproval of the submitted Pinal County crop operation, AAC R18–2–610.03, and animal operation, AAC R18–2–611.03, rules. The EPA is proposing a limited approval because the EPA's analysis demonstrates that the rules would strengthen the SIP. The crop operations rule strengthens existing requirements, and the animal operations rule establishes new requirements for agricultural PM_{10} sources in Pinal County. The EPA is proposing a simultaneous limited disapproval for these rules based on the enforceability issues identified in section II.C. of this notice and described in detail in the rule TSD.

If we finalize this approval and limited approval and limited disapproval as proposed, we will replace the existing version of ARS § 49–457 and AAC R18–2–610 and AAC R18–2–610.03 in the SIP, as well as add the new AAC R18–2–611 and AAC R18–2–611.03 to the SIP. We will accept comments from the public on this proposal until February 18, 2025. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval. If we finalize this disapproval as proposed, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in our final action.

In addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction would not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline. The EPA intends to work with the State to correct the deficiencies in a timely manner.

Note that the submitted rules have been adopted as Arizona State law, and the EPA's final limited disapproval would not prevent the State from enforcing them. The limited disapproval also would not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf.*

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference ARS § 49–457, ''Agricultural best management practices committee; members; powers; permits; definitions'' revised on March 26, 2021, which establishes a framework for an agricultural best management practice permit in Arizona, and AAC R18–2–610, ''Definitions for R19–2–610.01, R18–2–610.02, and R18–2–610.03,'' AAC R18–2–610.03, ''Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area,'' AAC R18–2–611, ''Definitions for R18–2–611.01, R18–2–611.02, and R18–2–611.03,'' and AAC R18–2–611.03, ''Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area,'' which establish agricultural best management practice permits for crop and animal operations in Pinal County. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact one of the people identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action is proposing an approval, limited approval, and limited disapproval of state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination with Indian Tribal Governments

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it is merely proposing a limited approval and limited disapproval of state law as meeting federal requirements. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, ''the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.''

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 2, 2025.

Martha Guzman Aceves,

Regional Administrator,Region IX.

[FR Doc. 2025–00115 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2024–0358; FRL–12031–03–OAR]

RIN 2060–AW35

Reconsideration of Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is modifying proposed amendments to the New Source Performance Standards and Emission Guidelines for Existing Sources for the Crude Oil and Natural Gas Source Category in response to petitions for reconsideration. This action corrects information collection estimates in the January 15, 2025 notice of proposed rulemaking.

DATES: Comments on this proposed correction must be received by March 3, 2025.

You may send comments, identified by Docket ID No. EPA–HQ–OAR–2024–0358, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2024–0358 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2024–0358, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Frank Benjamin-Eze, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive P.O. Box 12055 RTP, North Carolina 27711; telephone number: (919) 541–3753; and email address: *benjamineze.frank@epa.gov.* Additional questions may be directed to the following email address: *O&GMethaneRule@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 15, 2025, EPA published a notice of proposed rulemaking (NPRM) entitled ''Reconsideration of Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review'' (RIN 2060–AW35) (90 FR 3734). EPA revises section VI.B. (Paperwork Reduction Act) of the January 15, 2025, NPRM as described below.

Correction

In FR 2024–31227, starting on page 3734 in the **Federal Register** of January 15, 2025, on page 3751, starting in the first column, section VI.B. is corrected to read as follows:

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2523.08 and is being submitted under OMB Control Number 2060–0761. You can find a copy of the ICR in the docket for this proposed rule, and it is briefly summarized here.

The information collection activities for NSPS OOOOb and EG OOOOc were previously approved by OMB under the PRA as of June 28, 2024.

The EPA has revised the approved information collection request (ICR) to include small changes to incorporate EPA's proposed recordkeeping and reporting to indicate whether the flare or enclosed combustion device receives inert gases or other streams which may lower the NHV of the combined stream as proposed in section III.B of this preamble. The EPA estimates an average of 48 respondents will be affected by this proposed requirement over the three-year period (2023–2025). The average annual burden for the recordkeeping and reporting requirements for these owners and operators is estimated at 83 person-hours, with an average annual cost of $4,374 over the three-year period.

The EPA also revised the approved ICR to include burden estimates for the maintenance of records that EPA is soliciting comment on. Specifically, the EPA includes burden estimates in the revised ICR for the records and annual reporting that would be required if EPA were to allow for the use of the associated gas extended flaring allowance under ''exigent circumstances'' as specified in section III.A of this preamble. The incremental increase in burden that would be associated with these recordkeeping and reporting requirements relative to the baseline is estimated at 2 hours per event annually over the three-year period (2024–2026) at an average annual cost of $120 per flaring event over the three-year period. The occurrence of flaring that could potentially be claimed due to ''exigent circumstances'' is unknown. However, we expect that a maximum of 16 percent of flaring events could potentially require an owner or operator to need to extend flaring beyond 48 hours due to ''exigent circumstances''. The burden associated with the two proposed reconsideration items under this action minimally affect the ICR burden estimated for compliance with EG OOOOc. The annual burden for this proposed additional collection of information for the States would be less than 1 percent.

Respondents/affected entities: Oil and natural gas operators and owners.

Respondent's obligation to respond: Mandatory (CAA section 114, 42 U.S.C. 7414(a)).

Estimated number of respondents: 48.

Frequency of response: Varies depending on affected facility.[1]

Total estimated burden: 169 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $15,444 (per year), which includes $6,576 in capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than February 18, 2025.

Joseph Goffman,

Assistant Administrator.

[FR Doc. 2025–01091 Filed 1–15–25; 11:15 am]

BILLING CODE 6560–50–P

[1] The specific frequency for each information collection activity within this request is shown in tables 1a through 1d of the Supporting Statement in the public docket.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–OPPT–2024–0507; FRL 12309–01–OCSPP]

RIN 2070–AL24

Toxics Release Inventory (TRI); Clarification of Toxic Chemicals Due to Automatic Additions of Per- and Polyfluoroalkyl Substances Under the National Defense Authorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The National Defense Authorization Act for Fiscal Year 2020 (NDAA) adds certain per- and polyfluoroalkyl substances (PFAS) automatically to the Toxics Release Inventory (TRI) beginning January 1 of the year following specific triggering events. The Environmental Protection Agency (EPA or Agency) is proposing to make conforming edits to the TRI regulation to explicitly include PFAS that are added to the TRI chemical list automatically pursuant to the NDAA in the regulation's definition of ''toxic chemical.'' This edit confirms that the TRI supplier notification provision requires covered suppliers to notify customers receiving a mixture or other trade name product containing a TRI-listed chemical with the first shipment of each calendar year, with such a requirement beginning on January 1 of the applicable year; thus, supplier notifications are required as of January 1 for any NDAA-added PFAS.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0507, online at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Stephanie Griffin, Data Gathering, Management, and Policy Division (Mailcode 7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1463;

email address: *griffin.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you own or operate a facility or establishment that is required to provide TRI supplier notifications to its customers pursuant to 40 CFR 372.45. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart C.

The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities include facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327*, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 113310, 211130*, 212323*, 212390*, 488390*, 512230*, 512250*, 5131*, 516210*, 519290*, 541713*, 541715* or 811490*.

* Exceptions and/or limitations exist for these NAICS codes.

If you need help determining applicability, consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is proposing to make conforming edits to the TRI regulation's definition of ''toxic chemical'' to explicitly include the PFAS that are added to the TRI chemical list automatically pursuant to the National Defense Authorization Act for Fiscal Year 2020 (NDAA) section 7321(c). Because the NDAA adds certain PFAS automatically to the TRI beginning January 1 of the year following specific triggering events, such PFAS are effectively TRI-listed chemicals (*i.e.,* ''toxic chemicals'') as of the applicable January 1. EPA proposes to amend the Code of Federal Regulations (CFR) to confirm that the TRI chemical list includes all chemicals at 40 CFR 372.65 and any PFAS that have been automatically added pursuant to section 7321(c) of the NDAA.

C. What is the Agency's authority for taking this action?

This action is issued under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 (42 U.S.C. 11001 *et seq.*), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and NDAA section 7321 (Pub. L. 116–92).

D. Why is the Agency taking this action?

EPA is taking this action to align the supplier notification provision with the effective date for addition of a chemical on the EPCRA section 313 list (including those automatically added pursuant to NDAA section 7321). This action is also being taken in response to questions from stakeholders regarding the effective date of supplier notifications for NDAA-added PFAS.

NDAA section 7321(c) adds certain PFAS to the TRI list on January 1 of the year following the EPA activity that caused the addition of the chemical to the TRI list. If an EPA triggering event occurs, the NDAA automatically adds the associated PFAS to TRI as of the following January 1, and EPA then, to align the CFR listing of TRI chemicals with the TRI chemical list as modified by NDAA section 7321(c), issues a final rule codifying the addition of those chemicals to the list at 40 CFR 372.65 each year. Prior to an updated TRI chemical list in the CFR, the regulated community can find information on PFAS added to the TRI reporting list via NDAA section 7321(c) as of January 1 of each year at *https://www.epa.gov/toxics-release-inventory-tri-program/addition-certain-pfas-tri-national-defense-authorization-act.*

Supplier notifications are first required as of the addition of a chemical substance to the TRI list, which includes the January 1 listing date of a PFAS added via NDAA section 7321(c). This is consistent with the longstanding policy of the supplier notification requirement being aligned with the effective date for a chemical on the TRI list. Thus, supplier notifications are first required for a chemical added to the TRI list pursuant to NDAA section 7321(c) beginning in the same year as the effective date for that chemical. Because the automatic additions include PFAS associated with triggering activities through December 31 of each year, there is some time between when the supplier notification requirements are effective on January 1 and when the rule to update the TRI list in the CFR to align with any applicable NDAA section 7321(c) listings is published.

The TRI supplier notification provision requires covered suppliers to initiate notifications for any chemical on the TRI list as of January 1 of that year. The supplier notification provision, which pre-dates the enactment of the NDAA, points to the chemical list codified at 40 CFR 372.65. This action confirms the longstanding supplier notification requirements for TRI-listed chemicals as of their effective dates by clarifying that the supplier notification provision applies not only to chemicals listed at 40 CFR 372.65 but generally to all TRI-listed chemicals. Thus, this action does not add any new requirements, but rather clarifies the timing of the applicability of existing requirements. Additionally, this proposal would further clarify that all TRI regulations apply to chemicals added to the TRI list by NDAA section 7321(c) by defining all such chemicals to be a ''toxic chemical'' for purposes of TRI regulations.

II. Background

A. What are TRI supplier notifications?

Supplier notifications accompanying mixtures or trade name products containing a TRI chemical provide downstream facilities with information necessary to support potential TRI reporting obligations. Supplier notifications must include a statement that the mixture or trade name product contains a TRI chemical, the chemical name, and Chemical Abstracts Service Registry Number (CASRN), and the percentage (by weight) of that chemical within the mixture or trade name product.

Notifications must be provided by a facility or establishment that meets all three criteria: (1) Has a NAICS code that corresponds to Standard Industrial Classification [SIC] codes 20–39 (generally, manufacturing); (2) Manufactures (including imports) or processes a TRI chemical; and (3) Sells or otherwise distributes that chemical within a mixture or trade name product to TRI-covered facilities, or others who may in turn distribute such mixture or trade name product to TRI-covered facilities. If a facility meets all three criteria, then a supplier notification is required with at least the first shipment of the calendar year containing that TRI chemical. For chemicals newly added to the TRI list, notifications must be provided starting with the effective year of the chemical on the TRI list.

B. What is NDAA section 7321(c)?

Among other provisions, NDAA section 7321(c) identifies certain regulatory activities that automatically add PFAS or classes of PFAS to the TRI list of reportable chemicals. Specifically, PFAS or classes of PFAS are added to the TRI list of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- *Final Toxicity Value:* The date on which the Administrator finalizes a

toxicity value for the PFAS or class of PFAS;

- *Significant New Use Rule:* The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- *Addition to Existing Significant New Use Rule:* The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- *Addition as an Active Chemical Substance:* The date on which the PFAS or class of PFAS to which a covered determination applies is:

•Added to the list published under the Toxic Substances Control Act (TSCA) section 8(b)(1) (15 U.S.C. 2601 *et seq.*) and designated as an active chemical substance under TSCA section 8(b)(5)(A); or

- Designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1).

Although the NDAA automatically updates the list of toxic chemicals subject to EPCRA section 313 as of January 1, EPA must also publish a final rule to update the toxic chemical list in the CFR. These final rules and conforming CFR edits have trailed the January 1 effective date.

III. Statutory and Executive Orders Reviews

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

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

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Facilities that are affected by the proposed rule are already required to comply with the supplier notification provisions at 40 CFR 372.45. In addition, OMB has previously approved the information collection activities involving supplier notifications as contained in 40 CFR part 372 under EPA ICR No. 2613.04; OMB Control No. 2070–0212.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this action is any significant adverse economic impact on small entities and that the Agency is certifying that this action will not have a significant economic impact on a substantial number of small entities because the action has no net burden on the small entities subject to the action. This proposed rule adds no new reporting requirements, and there would be no net increase in respondent burden and costs. This action would only conform regulatory text for the scope of ''toxic chemicals'' covered by TRI reporting and supplier notifications already required by respondents. I have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million (in 1995 dollars and adjusted annually for inflation) or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. It does not have substantial direct effects on Tribal government because this action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to regulatory actions considered significant under section 3(f)(1) of Executive Order 12866 and that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of Executive Order (E.O.) 13045.

Since this is not a ''covered regulatory action,'' E.O. 13045 does not apply. However, the Policy on Children's Health does apply. Although this action does not concern an environmental health or safety risk, the information obtained from the reporting required by this proposed rule will be used to inform the Agency's decision-making process regarding chemical substances to which children may be exposed. This information will also assist the Agency and others in determining whether the chemical substances included in this proposed rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve any technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272, does not apply to this action.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice a part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action involves downstream notification requirements that will not affect the level of protection provided to human health or the environment.

Although this action does not concern human health or environmental conditions, EPA may identify and address environmental justice concerns through information collected under TRI. The information obtained through TRI reporting will lead to a better understanding of PFAS releases, which can help inform and tailor future EPA actions regarding PFAS. For example, EPA may identify and address environmental justice concerns as a result of the PFAS information collected under TRI, which is supported by supplier notification requirements that this rule is clarifying. TRI reporting also better informs communities living near facilities that report to TRI, by providing them with information about PFAS releases and waste management practices occurring in their communities. Overall, EPA believes that the information obtained could be used by the public (including people of color, low-income populations, and/or indigenous peoples) to inform their behavior as it relates to potential exposure to PFAS and by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential human health or environmental risks from PFAS.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 20, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.3, the definition of ''Toxic chemical'' is revised to read as follows:

§ 372.3 Definitions.

* * * * *

Toxic chemical means a chemical or chemical category listed in § 372.65 or a chemical added to the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 chemical list pursuant to 15 U.S.C. 8921(c)(1).

* * * * *

[FR Doc. 2024–31406 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2024–0403; FRL–11628–02–OCSPP]

RIN 2070–AL16

N-(1,3-Dimethylbutyl)-N′-phenyl-p-phenylenediamine (6PPD) and its transformation product, 6PPD-quinone; Regulatory Investigation under the Toxic Substances Control Act (TSCA); Extension of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking, extension of the comment period.

SUMMARY: In the **Federal Register** of November 19, 2024, EPA issued an advance notice of proposed rulemaking soliciting public comment on and any additional information relevant to the potential risks associated with N-(1,3-Dimethylbutyl)-N′-phenyl-p-phenylenediamine (6PPD) (CASRN 793–24–8, DTXSID 9025114) and its transformation product, 6PPD-quinone (CASRN 2754428–18–5, DTXSID 301034849). EPA is soliciting that information, along with information about potential alternatives and regulatory options, to help inform the Agency's consideration of potential future regulatory actions under the Toxic Substances Control Act (TSCA). With this document, EPA is extending the comment period by 60 days, from January 21, 2025, to March 24, 2025.

DATES: The comment period for the document that published on November 19, 2024, at 89 FR 91299) (FRL–11628–01–OCSPP) is extended. Comments must be received on or before March 24, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0403, using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information: Wyn Zenni, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 565–6294; email address: *zenni.wyn@epa.gov.*

For general information on TSCA: The TSCA Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

To give stakeholders additional time to review materials and prepare comments, EPA is hereby extending the comment period established in the **Federal Register** of November 19, 2024, (89 FR 91299) (FRL–11628–01–OCSPP) for an additional 60 days, from January 21, 2025, to March 24, 2025. This extension is in response to requests that EPA received which asked for additional time to develop and submit comments. After considering several factors, EPA believes it is appropriate to extend the comment period for 60 days to give stakeholders additional time to prepare comments. More information about the advance notice of proposed rulemaking can be found in the **Federal Register** document of November 19, 2024.

To submit comments or access the docket, please follow the detailed instructions provided under **ADDRESSES**. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 751

Chemicals, Environmental protection, Exports, Hazardous substances, Imports, Reporting and recordkeeping requirements.

Authority: 15 U.S.C. 2605(a).

Dated: January 7, 2025.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2025–00731 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 205, 206, 209, 211, 212, 215, 216, 217, 219, 225, 236, 237, 246, 250, and 252

[Docket DARS–2024–0039]

RIN 0750–AL99

Defense Federal Acquisition Regulation Supplement: Inflation Adjustment of Acquisition-Related Thresholds (DFARS Case 2024–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement the statute that requires an adjustment every 5 years of statutory acquisition-related thresholds for inflation. The adjustment uses the Consumer Price Index for all urban consumers and does not apply to the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, performance and payment bonds, and trade agreements thresholds. DoD is also proposing to use the same methodology to adjust some nonstatutory DFARS acquisition-related thresholds in 2025.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 18, 2025, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2024–D002, using either of the following methods:

○ *Federal eRulemaking Portal: https://regulations.gov.* Search for DFARS Case 2024–D002. Select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2024–D002'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2024–D002 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend multiple DFARS parts to further implement 41 U.S.C. 1908. Section 1908 requires an adjustment every five years (on October 1 of each year evenly divisible by five) of statutory acquisition-related thresholds for inflation, using the Consumer Price Index (CPI) for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, performance and payment bonds, and trade agreements thresholds (see FAR 1.109). As a matter of policy, DoD is also proposing to use the same methodology to adjust nonstatutory DFARS acquisition-related thresholds on October 1, 2025. Federal Acquisition Regulation (FAR) Case 2024–001 proposes comparable changes to acquisition-related thresholds in the FAR.

This is the fifth review of DFARS acquisition-related thresholds since the statute was enacted on October 28, 2004 (section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005). The last review was conducted under DFARS Case 2019–D036 during fiscal year (FY) 2020. The final rule under that case was published in the **Federal Register** on September 29, 2020 (85 FR 61502), effective October 1, 2020.

II. Discussion and Analysis

A. What is an acquisition-related threshold?

This case builds on the review of DFARS thresholds in FY 2005, FY 2010, FY 2015, and FY 2020, using the same interpretation of an acquisition-related threshold. The statute at 41 U.S.C. 1908 is applicable to ''a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as the Federal Acquisition Regulatory Council (the Council) determines.''

There are other thresholds in the DFARS that, while not specified in law, nevertheless meet all the other criteria. These thresholds may have their origin in Executive order or regulation. Therefore, the Council has determined that in this case ''acquisition-related threshold'' has a broader meaning, *i.e.,* a threshold that is specified in law, Executive order, or regulation as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law, Executive order, or regulation to the procurement of property or services by an Executive agency. Acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification.

This proposed rule does not address thresholds that are not acquisition-related. Examples of thresholds that are not ''acquisition-related,'' as defined in this proposed rule, include thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, liquidated damages, and protests.

B. What acquisition-related thresholds are not subject to escalation adjustment under this case?

The statute at 41 U.S.C. 1908 does not permit escalation of acquisition-related thresholds established by the Construction Wage Rate Requirements statute (Davis Bacon Act), the Service Contract Labor Standards statute, performance and payment bonds (formerly the Miller Act), or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979.

Also, the statute does not authorize the DFARS to escalate thresholds originating in Executive order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are amended first.

C. How does DoD analyze escalation of a statutory acquisition-related threshold?

If an acquisition-related threshold is based on statute, the matrix at *https://www.regulations.gov* identifies the statute and the statutory threshold,

including the original threshold and any subsequent revisions.

With the exception of thresholds set by the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, performance and payment bonds (formerly the Miller Act), and the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979, 41 U.S.C. 1908 requires adjustment of the acquisition-related thresholds for inflation using the CPI for all urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are only subject to escalation from that date forward. For purposes of this proposed rule, the matrix includes calculation of escalation based on the estimated CPI value for March 2025 (currently projected at 323.193) divided by the CPI for the date of enactment of the statute or regulation (October 2000, for statutes enacted prior to October 1, 2000). DoD will subsequently adjust as necessary before issuance of the final rule.

Once the escalation factor is applied to the acquisition-related threshold, then the statutory threshold must be rounded as follows:

$10,000–<$100,000 ..	Nearest $5,000.
$100,000–<$1 million	Nearest $50,000.
$1 million–<$10 million.	Nearest $500,000.
$10 million–<$100 million.	Nearest $5 million.
$100 million–<$1 billion.	Nearest $50 million.
$1 billion or more	Nearest $500 million.

The calculations in this proposed rule are based on the base year amount, because escalated amounts in the 2020 rule were subject to rounding. Therefore, using those amounts as the base would distort future calculations.

In 2020, some thresholds, although subject to inflation calculation, did not actually change, because the inflation in 2020 was insufficient to overcome the rounding requirements—*i.e.,* the escalation factor, when applied, did not cause the escalated values to be high enough to round to the next higher value. However, in FY 2025 many thresholds that did not escalate in 2020 have increased through other statutory actions or will now escalate because of five additional years of inflation. Likewise, some thresholds that were escalated in 2020 will not escalate in 2025.

This proposed rule is based on a projected CPI of 323.193 for March 2025. If the actual CPI for March 2025 is higher than 323.193, then additional statutory thresholds may be subject to escalation in the final rule, even though not included in the proposed rule.

D. How does DoD analyze a nonstatutory acquisition-related threshold?

No statutory authorization is required to escalate thresholds that are policy-based within the DFARS. For consistency, escalation of the DoD policy-based acquisition-related thresholds is generally recommended using the same formula applied to the statutory thresholds, unless a reason has been provided for not doing so.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This proposed rule amends the provisions and clause at DFARS 252.204–7007, Alternate A, Annual Representations and Certifications; 252.215–7016, Notification to Offerors—Postaward Debriefings; 252.216–7010, Postaward Debriefings for Task Orders and Delivery Orders; and 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer. However, this proposed rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. This proposed rule does not change the applicability of the provisions and clause to acquisitions at or below the SAT, to acquisitions of commercial products including or excluding COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

DoD does not expect the proposed rule, when finalized, to have a significant impact on the public or the Government because the rule is intended to maintain the status quo by adjusting acquisition-related thresholds for inflation. The escalation of statutory acquisition-related thresholds is mandated by 41 U.S.C. 1908, including how to calculate the escalation. DoD expects this proposed rule to provide the adjustments necessary to mitigate the impact of inflation on both the public and the Government as intended under 41 U.S.C. 1908. The rule does not change direction to contracting officers, nor does it change the applicability of any requirements for offerors and contractors.

V. Executive Orders 12866 and 13563

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

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule maintains the status quo by adjusting thresholds for actual inflationary increases in the CPI. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule, when finalized, will amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 41 U.S.C. 1908 and to amend other acquisition-related dollar thresholds that are based on policy rather than statute in order to adjust for the changing value of the dollar. The statute at 41 U.S.C. 1908 requires adjustment every 5 years of statutory acquisition-related dollar thresholds, except for Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, performance and payment bonds (formerly the Miller Act), and trade agreements thresholds. While reviewing all statutory acquisition-related thresholds, this DFARS case presented an opportunity to also review all nonstatutory acquisition-related thresholds in the DFARS that are based on policy.

The objective of the rule is to maintain the status quo by adjusting acquisition-related thresholds for inflation. The legal basis of the rule is 41 U.S.C. 1908. The statute does not authorize escalation of thresholds originating in Executive orders or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are amended first.

This proposed rule will have a minimal impact on small entities that submit offers or are awarded contracts by DoD. However, most of the threshold

changes proposed in this rule are not expected to have any significant economic impact on small entities because the threshold changes are intended to maintain the status quo by adjusting for changes in the value of the dollar. Often any impact will be beneficial, by preventing burdensome requirements from applying to more and more acquisitions, as the dollar loses value.

According to the System for Award Management (SAM), as of December 2023, there were 361,685 entities registered as small businesses under any North American Industry Classification System code. This proposed rule assumes that any of the 361,685 small entities registered in SAM may experience some benefit from a reduction in burden as a result of the proposed changes.

The proposed rule does not impose any new reporting, recordkeeping, or compliance requirements.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2024–D002), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this proposed rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0189, entitled Certain Federal Acquisition Regulation Part 4 Requirements: FAR Sections Affected 52.204–3, 52.204–6, 52.204–7, 52.204–12 thru 52.204–15, 52.204–20, 52.204–23, 52.212–1(j), 52.212–3(b), and 52.212–3(l); and OMB Control Number 0704–0229, entitled Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses.

List of Subjects in 48 CFR Parts 203, 205, 206, 209, 211, 212, 215, 216, 217, 219, 225, 236, 237, 246, 250, and 252

Government Procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 203, 205, 206, 209, 211, 212, 215, 216, 217, 219, 225, 236, 237, 246, 250, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 203, 205, 206, 209, 211, 212, 215, 216, 217, 219, 225, 236, 237, 246, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.1004 [Amended]

■ 2. Amend section 203.1004 in paragraph (b)(2)(ii) by removing ''$6 million'' and adding ''$7.5 million'' in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 205.303 by revising paragraphs (a)(i) introductory text, (a)(i)(A), and (a)(i)(B) to read as follows:

205.303 Announcement of contract awards.

(a) * * *

(i) The threshold for DoD awards is $9.5 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than $9.5 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than $9.5 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding unexercised options, is more than $9.5 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than $9.5 million.

* * * * *

PART 206—COMPETITION REQUIREMENTS

206.303–1 [Amended]

■ 4. Amend section 206.303–1 in paragraphs (a) and (b) introductory text, by removing ''$100 million'' and adding ''$150 million'' in its place.

206.303–2 [Amended]

■ 5. Amend section 206.303–2 in paragraph (b)(i) introductory text and paragraph (d), by removing ''$100 million'' and adding ''$150 million'' in its place.

206.304 [Amended]

■ 6. Amend section 206.304 in paragraph (a)(S–71) introductory text, by removing ''$100 million'' and adding ''$150 million'' in its place.

PART 209—CONTRACTOR QUALIFICATIONS

209.409 [Amended]

■ 7. Amend section 209.409 by removing ''$150,000'' and adding ''$200,000'' in its place.

PART 211—DESCRIBING AGENCY NEEDS

211.503 [Amended]

■ 8. Amend section 211.503 in paragraph (b), by removing ''$750,000'' wherever it appears and adding ''$950,000 in its place.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.271 [Amended]

■ 9. Amend section 212.271 by removing ''$45,000'' and adding ''$55,000'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.403–1 [Amended]

■ 10. Amend section 215.403–1 in paragraph (c)(4)(B), by removing ''$20 million'' and adding ''$25 million'' in its place.

■ 11. Amend section 215.506 by revising paragraphs (b), (d)(i), and (d)(ii) to read as follows:

215.506 Postaward debriefing of offerors.

(b) Notwithstanding FAR 15.506(b), when requested by a successful or unsuccessful offeror, a written or oral debriefing is required for contract awards valued at $15 million or more (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91)).

* * * * *

(d) * * *

(i) For award of a contract in excess of $15 million and not in excess of $150 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to

request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(ii) For award of a contract in excess of $150 million, disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

* * * * *

215.570 [Amended]

■ 12. Amend section 215.570 by removing ''$10 million'' and adding ''$15 million'' in its place.

PART 216—TYPES OF CONTRACTS

■ 13. Amend section 216.505 by revising and republishing paragraph (b) to read as follows:

216.505 Ordering.

* * * * *

(b) *Orders under multiple-award contracts*—(1) *Fair opportunity.*

(A) See 215.101–2–70 for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to orders placed against multiple award indefinite delivery contracts.

(B) See 217.7801 for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

(2) *Exceptions to the fair opportunity process.* For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority at FAR 16.505(b)(2)(i)(B) or (C), follow the procedures at PGI 216.505(b)(2).

(6) *Postaward notices and debriefing of awardees for orders exceeding $7.5 million.* In addition to the notice required at FAR 16.505(b)(6), a written or oral postaward debriefing of successful and unsuccessful awardees is required for task orders and delivery orders valued at $15 million or more (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91)).

(ii) Follow the procedures at 215.506 and 215.506–70 when providing the postaward debriefing to successful and unsuccessful awardees for task orders or delivery orders valued at $15 million or more.

216.506–70 [Amended]

■ 14. Amend section 216.506–70 in paragraph (b), by removing ''$10 million'' and adding ''$15 million'' in its place.

PART 217—SPECIAL CONTRACTING METHODS

217.170 [Amended]

■ 15. Amend section 217.170 in paragraphs (d)(1)(iv) and (d)(5) introductory text, by removing ''$150 million'' and adding ''$200 million'' in its place.

217.171 [Amended]

■ 16. Amend section 217.171 in paragraph (d), by removing ''$750 million'' and adding ''$950 million'' in its place.

217.172 [Amended]

■ 17. Amend section 217.172 in paragraphs (c), (d), (f)(1), and (f)(2), by removing ''$750 million'' and adding ''$950 million'' in its place.

PART 219—SMALL BUSINESS PROGRAMS

219.502–2 [Amended]

■ 18. Amend section 219.502–2—

■ a. In paragraph (1), by removing ''$3 million'' and adding ''$3.5 million in its place; and

■ b. In paragraph (2), by removing ''$1.5 million'' and adding ''$2 million'' in its place.

219.808–1 [Amended]

■ 19. Amend section 219.808–1 in paragraph (a), by removing ''$100 million'' and adding ''$150 million'' in its place.

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

■ 20. Amend section 225.103 in paragraphs (a)(ii)(B)(*2*) and (*3*) and paragraphs (b)(ii)(B) and (C), by removing ''$1.5 million'' and adding ''$2 million'' in its place.

225.771–2 [Amended]

■ 21. Amend section 225.771–2 in paragraph (a) introductory text, by removing ''$150,000'' and adding ''$200,000'' in its place.

225.771–5 [Amended]

■ 22. Amend section 225.771–5 by removing ''$150,000'' and adding ''$200,000'' in its place.

225.7002–2 [Amended]

■ 23. Amend section 225.7002–2 in paragraph (a), by removing ''$150,000'' and adding ''$200,000'' in its place.

225.7023–3 [Amended]

■ 24. Amend section 225.7023–3 in paragraph (b), by removing ''$150,000'' and adding ''$200,000'' in its place.

225.7023–4 [Amended]

■ 25. Amend section 225.7023–4 in paragraph (c), by removing ''$150,000'' and adding ''$200,000'' in its place.

225.7201 [Amended]

■ 26. Amend section 225.7201 in paragraph (a), by removing ''$750,000'' and adding ''$950,000'' in its place.

225.7204 [Amended]

■ 27. Amend section 225.7204 in paragraphs (a) and (b), by removing ''$15 million'' and adding ''$20 million'' in its place.

225.7703–2 [Amended]

■ 28. Amend section 225.7703–2 in paragraphs (b)(2)(i) and (b)(2)(ii) introductory text, by removing ''$100 million'' and adding ''$150 million'' in its place.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.303–1 [Amended]

■ 29. Amend section 236.303–1 in paragraphs (a)(4)(i) introductory text and (a)(4)(ii), by removing ''$4.5 million'' and adding ''$5.5 million'' in its place.

236.601 [Amended]

■ 30. Amend section 236.601 in paragraph (1), by removing ''$1.5 million'' and adding ''$2 million'' in its place.

PART 237—SERVICE CONTRACTING

237.170–2 [Amended]

■ 31. Amend section 237.170–2 in paragraphs (a)(1) and (2), by removing ''$100 million'' and adding ''$150 million'' in its place.

PART 246—QUALITY ASSURANCE

246.402 [Amended]

■ 32. Amend section 246.402 in the introductory text, by removing ''$350,000'' and adding ''$400,000'' in its place.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.102–1 [Amended]

■ 33. Amend section 250.102–1 in paragraph (b), by removing ''$75,000'' and adding ''$95,000'' in its place.

250.102–1–70 [Amended]

■ 34. Amend section 250.102–1–70 in paragraph (b)(1), by removing ''$75,000'' and adding ''$95,000'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 35. Amend section 252.204–7007—
■ a. By revising the provision date; and
■ b. In paragraph (d)(1)(v), by removing ''$150,000'' and adding ''$200,000'' in its place.

The revision reads as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

Alternate A, Annual Representations and Certifications (Date)

* * * * *

■ 36. Amend section 252.215–7016 by—
■ a. Revising the provision date; and
■ b. Revising and republishing paragraph (b).

The revisions and republication read as follows:

252.215–7016 Notification to Offerors—Postaward Debriefings.

* * * * *

Notification to Offerors—Postaward Debriefings (Date)

* * * * *

(b) *Postaward debriefing.*(1) Upon timely request, the Government will provide a written or oral postaward debriefing to successful or unsuccessful offerors for contract awards valued at $15 million or more, while protecting the confidential and proprietary information of other offerors. The request is considered timely if received within 3 days of notification of contract award.

(2) When required, the minimum postaward debriefing information will include the following:

(i) For contracts in excess of $15 million and not in excess of $150 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(ii) For contracts in excess of $150 million, disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(3) If a required postaward debriefing is provided—

(i) The debriefed Offeror may submit additional written questions related to the debriefing not later than 2 business days after the date of the debriefing;

(ii) The agency will respond in writing to timely submitted additional questions within 5 business days after receipt by the contracting officer; and

(iii) The postaward debriefing will not be considered to be concluded until the later of—

(A) The date that the postaward debriefing is delivered, orally or in writing; or

(B) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.

* * * * *

■ 37. Amend section 252.216–7010—
■ a. By revising the clause date; and
■ b. In paragraph (a)(1), by removing ''$10 million'' and adding ''$15 million'' in its place.

The revision reads as follows:

252.216–7010 Postaward Debriefings for Task Orders and Delivery Orders.

* * * * *

Postaward Debriefings For Task Orders and Delivery Orders (Date)

* * * * *

■ 38. Amend section 252.225–7003 by—
■ a. Revising the provision date; and
■ b. Revising and republishing paragraph (b).

The revisions and republication read as follows:

252.227–7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

* * * * *

Report of Intended Performance Outside the United States and Canada—Submission With Offer (Date)

* * * * *

(b) The Offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds $20 million in value; and

(2) The Offeror is aware that the Offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $950,000 in value; and

(ii) Could be performed inside the United States or Canada.

* * * * *

[FR Doc. 2024–31570 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Conformance of the Cost Accounting Standards to Generally Accepted Accounting Principles for CAS 404 Capitalization of Tangible Assets and CAS 411 Accounting for Acquisition Costs of Material

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (CAS Board or the Board), is releasing this advanced notice of proposed rulemaking (ANPRM) to elicit public comments on proposed changes to the Cost Accounting Standards (CAS) on conformance to Generally Accepted Accounting Principles (GAAP) related to CAS 404, *Capitalization of Tangible Assets,* and CAS 411, *Accounting for Acquisition Costs of Material,* to GAAP. This ANPRM follows issuance of a Staff Discussion Paper 85 FR 58399 (September 18, 2020).

DATES: Comments must be in writing and must be received by March 18, 2025.

ADDRESSES: Submit comments to the *Federal eRulemaking Portal: https://www.regulations.gov.* by searching for ''CASB 2020–1''. Select the link ''Comment Now'' that corresponds with ''CASB 2020–1''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''CASB 2020–1'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two-to-three days after submission to verify posting.

Privacy Act Statement: The CAS Board proposes the rule to elicit public views pursuant to 41 U.S.C. 1502. Submission of comments is voluntary. The information will be used to inform sound decision-making. Please note that all comments received in response to this document will generally be posted or released in their entirety, including any personal and business confidential information provided. Do not include any information you would not like to be made publicly available. Additionally, the OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01, 88 FR 20913 (available at *www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records*), includes a list of routine uses associated with the collection of this information.

FOR FURTHER INFORMATION CONTACT: John L. McClung, Manager, Cost Accounting Standards Board (telephone: 202–881–9758; email: *john.l.mcclung2@omb.eop.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (CAS Board), is releasing this Advanced Notice of Proposed Rulemaking (ANPRM) on the conformance of *CAS 404, Capitalization of Tangible Assets, and CAS 411, CAS Accounting for Acquisition Costs of Material,* to the Generally Accepted Accounting Principles (GAAP). In accordance with 41 U.S.C. 1502(c), the Board is required to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard prior to the promulgation of any new or revised CAS.

On September 18, 2020, the Board published a Staff Discussion Paper (85 FR 58399) to solicit views with respect to the Board's initial assessment of CAS 404 and CAS 411 to conform them, where practicable, to GAAP. Respondents were invited to comment, among other things, on the differences identified between CAS and GAAP, the frequency and magnitude of issues identified with CAS non-compliances, and recommendations on any changes to the Standards to conform them to GAAP.

This ANPRM reflects input from the public, as discussed below, as well as research accomplished by the Board in the respective subject areas. The Board used the side-by-side comparison of CAS and GAAP requirements set forth in the Staff Discussion Paper to identify any material differences. Unique CAS requirements were assessed for their necessity in protecting the interests of the Government or if the existing requirements in other CAS standards or requirements in other relevant rules may protect the interests of the Government.

II. CAS 404

A. Overview

CAS 404 requires contractors, for the purposes of cost measurement, to establish and adhere to policies with respect to capitalization of the acquisition costs of tangible assets. CAS 404 establishes criteria which the contractor's policies and procedures should satisfy. CAS 404 was initially published February 27, 1973 at 38 FR 5318. The preamble for the original publication of CAS 404 acknowledged that:

> Work preliminary to the development of this Standard was initiated as the result of recognition that the general subject of fixed asset accounting has been the source of continuing problems between contractors and the Government concerning equitable determinations of the costs attributable to performance of specific contracts.

The Board ultimately decided after careful consideration of public comments that this standard would establish the beginning point for fixed assets and focus solely on the ''determination of the acquisition costs to be capitalized as opposed to those which are charged against revenues of the current period [as depreciation]''.

CAS 404 was modified in 1996 by the addition of CAS 404–50(d) to address issues relating to the treatment of gains or losses attributable to tangible capital assets subsequent to mergers or business combinations by government contractors. This added language requires tangible capital assets of an acquired company to be capitalized by the buyer at the seller's net book value, if the assets generated cost on government contracts in the most recent cost accounting period prior to the business combination; otherwise, the assets, which did not generate cost on government contracts, may be assigned a portion of the purchase price of the acquired entity not to exceed their fair value.

With the exception of the requirements added in 1996 by CAS 404–50(d)(1), the principal need for the promulgation of the initial CAS 404 no longer exists. GAAP has been revised significantly with additional content since the original promulgation of CAS 404 in 1974.

Furthermore, as explained in greater detail in the response to public comments in subsection b., below, a comparison of CAS 404 with pertinent GAAP content revealed significant overlap and nearly completely equivalent requirements with the noted exception of CAS 404–50(d). For all other requirements in CAS 404, a comparable requirement exists in GAAP, FAR or other CAS Standard that would protect the Government's interests and promote uniformity and consistency. The alignment is so close as to make CAS 404 nearly duplicative of GAAP in all cases except CAS 404–50(d)(1). Where such comparable requirements exist between CAS and GAAP, the CAS 404 requirement can be eliminated.

In addition to the CAS 404–50(d) requirements for assets acquired through a business combination, there are two other potential differences between CAS and GAAP that require further consideration: (i) the CAS requirements for a minimum capitalization threshold, and (ii) written statements of accounting policies and practices. As described below in subsection b., the Board has provisionally concluded that reliance on GAAP would materially achieve uniformity and consistency necessary for Government contracting related to these two differences.

In summary, the Board has provisionally concluded that CAS 404, with the exception of CAS 404–50(d)(1), has become unnecessary to protect the Government's interests which may be achieved through reliance on GAAP and other CAS Standards. Therefore, the Board is considering a proposed rule that would eliminate CAS 404 and retain the requirements CAS 404–50(d)(1) by relocating them to 9904.418–50 and seeks comment on such action in this ANPRM. This action would be consistent with the Board's guiding principles for conforming CAS to GAAP because it would eliminate CAS content to minimize the burden on contractors while protecting the interests of the Federal Government. Furthermore, the Board's conclusion on CAS 404 would align with the guiding principles to rely on coverage in GAAP when it would materially achieve uniformity and consistency in cost accounting without bias or prejudice to either party, rely on other CAS Standards which may protect the Government's interests, and eliminate CAS coverage no longer necessary.

B. Summary of Public Comments

The Board received four sets of public comments to the SDP. These comments came from industry associations and companies. The Board appreciates the efforts of all parties that submitted comments and found the depth and breadth of the comments to be informative. Responses to specific comments for CAS 404 are as follows:

1. Minimum capitalization threshold. The Board observed in the SDP that CAS prescribes a specific ceiling for a monetary capitalization threshold (currently not to exceed $5,000), and GAAP does not.

Comment: Four respondents provided comments to this potential difference identified by the Board. All four stated that the conceptual framework of GAAP would provide reasonable limitations for selecting capitalization thresholds and consistently following them. Two respondents also observed additional FAR requirements and market forces that would curb unreasonably high thresholds and protect the government's interests.

Response: Although GAAP does not provide for a specific minimum capitalization threshold, the Board has provisionally determined that the competitive constraints, disclosure statement requirements, and retention of CAS 401, which requires contractors subject to CAS to consistently follow their disclosed practices, should adequately protect the governments interest in the absence of the current prescriptive capitalization threshold. The risk of variations in the capitalization threshold, given the constraints discuss further below, would generally only result in immaterial differences in the assignment of cost between cost accounting periods.

2. Written statements of accounting policies and practices. The second potential difference the Board noted is the requirement to have a written policy for capitalization. GAAP does not explicitly require a written statement for capitalization policy; however, typically, written documentation would exist because it would be required as evidence of internal controls during audits of Sarbanes-Oxley compliance and of financial reporting.

Comment: All respondents believed that written policies and procedures would exist absent the perspective requirement currently contained CAS. For example, in meeting the GAAP requirements, contractors maintain conventions and guidelines for the consistent treatment of the costs of acquiring tangible capital assets. Such conventions represent reasonable limits and are maintained to satisfy the GAAP requirements for consistency and accurate accounting. In addition, contractors subject to CAS would still have to consistently follow their disclosed practices (CAS 401) and the information would also be included in a disclosure statement.

Response: Although GAAP does not explicitly require a written statement for capitalization policies, the Board agrees with the respondents and has provisionally determined that these written statements would continue to exists in the absence of the current explicit CAS requirement. The cumulative requirements that will remain in CAS 401, which requires comparison of actual practices year over year, Disclosure Statements and current practices to comply with GAAP would adequately protect the governments interest absent the expressed requirement to maintain policies and procedures required by CAS. In addition, FAR and DFARs accounting system requirements also make written policies and procedures, such as on capitalization, necessary.

3. Assets acquired through a business combination. Another difference noted by the Board is the requirements in CAS for treatment of tangible assets acquired in a business combination. CAS 404–50(d) and (e) refer to two financial accounting treatments for business combinations: ''purchase method'' and ''pooling of interest method.'' As noted in the SDP, these methods could be found in financial accounting literature at APB Opinion 16. Subsequently, financial accounting treatment has been revised several times.

In June 2001, FASB revised its approach for accounting for business combinations in Statement Financial Accounting Standards No. 141, which superseded APB Opinion 16 and adopted a single-method approach requiring that all business combinations be accounted for by the purchase method. The purchase method requires that the cost attributed to the plant and equipment of the acquired entity be ''the current replacement cost for similar capacity unless the expected future use of the assets indicates a lower value to the acquiring entity.''

July 2009, the FASB Accounting Standards Codification (ASC) became authoritative for GAAP, and ASC 805–20–30–1 requires acquirers to measure tangible capital assets at the acquisition date fair values, which would be the same as replacement value at acquisition date. Replacement value refers to the amount a similar condition and used asset would cost. The CAS Board notes, however, that FASB Topic 105—*Generally Accepted Accounting Principles* provides APB Opinion 16 and FASB Statement No. 141 are considered grandfathered guidance allowing for the continued application of the superseded accounting standards for business combination transactions that have an ongoing effect in an entity's financial statements. As part of the codification, GAAP has also transitioned to the term ''acquisition method'' rather than ''purchase method'' for this accounting treatment of business combinations.

Regarding the cost treatment of tangible assets acquired in a business combination accounted for under the purchase method, the Board noted that under CAS 404–50(d)(2) when the acquired company has tangible assets that did not generate depreciation or cost of money allocated to Federal contracts the assets are assigned a portion of the purchase price of the acquired company, not to exceed their fair value. However, under CAS 404–50(d)(1) when the acquired company has tangible assets that generated depreciation or cost of money allocated to Federal contracts, the assets are measured by the acquirer at the net book value. By comparison, for both circumstances, GAAP would require that the assets be measured by the acquirer at fair value. Absent the requirements of CAS 404–50(d)(1) the government would be at risk if an asset was increased in value such that the combined depreciation recognized by the both the acquired company and the acquiring company for government contracts exceeds the historic cost for which the asset was originally purchased for use.

Comment: Three respondents provided comments to this potential difference identified by the Board. All three agreed if CAS 404 was eliminated that this provision should be retained as a procurement Policy in the FAR 31.205–52, as noted by the Board in the SDP. However, all three also urged to the Board that if CAS 404 was eliminated CAS 405 should also be revised to avoid a potential unintended consequence and harm to contractors related to inclusion of unallowable costs in allocation bases.

Response: The Board believes this difference between CAS and GAAP may create an exposure of unknown materiality. The Board agrees with the commenters' observation that risk could be mitigated by a procurement policy through modification of the FAR. However, the Board has provisionally concluded that the underlying issue relates to the measurement of costs and

therefore should be addressed by the Board. For these reasons, the Board is considering a proposed rule that would retain the requirements in CAS 404–50(d)(1) and move them to a new section in 9904.418–50. The retention would also prevent the potential unintended consequence and harm to contractors related to inclusion of unallowable costs in allocation bases raised in the comments. This proposed action would be consistent with the Board's guiding principles to eliminate content from CAS where GAAP, other CAS Standards or other relevant rules may protect the interests of the Government. In addition, the Board provisionally concluded that moving the retained requirement to another Standard rather than maintaining CAS 404 with minimal content would best achieve the goal of streamlining CAS. The Board is seeking comments on such actions in this ANPRM.

III. CAS 411

A. Overview

CAS 411, initially published May 5, 1975 at 40 FR 19425, provides criteria for the accounting for acquisition costs of material used during the course of a contract. CAS 411 also includes provisions on the use of inventory costing methods. The preamble for the original publication of CAS 411 acknowledged that—

Preliminary work on the development of this Standard resulted from the absence of a requirement in agency regulations that the same costing method be used for similar categories of material within the same business unit and that the method be consistently applied.

The principal need for the promulgation of the initial CAS 411 no longer exists. GAAP has been revised significantly with additional content and changes in requirements since the original promulgation of CAS 411 in 1975. The majority of the CAS 411 standard has remained static since the initial promulgation. The standard, however, was corrected in 1992 (57 FR 34167) to make clear that it does not cover accounting for the acquisition costs of tangible capital assets nor accountability for Government-furnished materials.

Furthermore, as explained in greater detail in the response to public comments in subsection b., below, a comparison of CAS 411 with pertinent GAAP content revealed significant overlap and nearly completely equivalent requirements. The Board identified that a comparable requirement existed in GAAP, FAR or other CAS Standard that would protect the Government's interests and promote uniformity and consistency. The alignment is so close as to make CAS 411 nearly duplicative of GAAP. The Board reasoned that where such comparable requirements exist between CAS and GAAP, the CAS 411 requirement could be eliminated.

The Board identified two potential differences between CAS and GAAP that required further consideration. The CAS requires written statements of accounting policies, and uses the terms ''moving'' and ''weighted'' average in relation to inventory costing methods, while GAAP simply uses ''average''. As described below in subsection b, the Board has provisionally concluded that reliance on GAAP would materially achieve uniformity and consistency necessary for Government contracting related to these two differences. In addition, as it relates to written statements of accounting policies, contractors whose activities that would trigger full CAS coverage and have been subject to CAS 411 would still be required to disclose these practices as part of their required CAS Disclosure Statement.

For the reasons stated above, the Board is considering a proposed rule that would eliminate CAS 411 in its entirety. This action would be consistent with the Board's guiding principles for conforming CAS to GAAP because it would eliminate CAS content to minimize the burden on contractors while protecting the interests of the Federal Government. Furthermore, the Board's provisional conclusion on CAS 411 would align with the guiding principles to rely on coverage in GAAP when it would materially achieve uniformity and consistency in cost accounting without bias or prejudice to either party, rely on other CAS Standards which may protect the Government's interests, and eliminate CAS coverage no longer necessary.

B. Summary of Public Comments

The Board received four sets of public comments to the SDP. These comments came from industry associations and companies. The Board appreciates the feedback. Responses to specific comments for CAS 411 are as follows:

1. Written statements of accounting policies and practices. The Board noted that GAAP does not explicitly require written statements of accounting policies and practices, while CAS 411–40(a) requires written statements of accounting policies and practices for accumulating the costs of material and for allocating costs of material to cost objectives.

Comment: All commenters acknowledged GAAP does not explicitly require a written statement of accounting policies and practices, however approximately 70% of the AIA member companies surveyed and 77% of FEI commercial companies surveyed do in fact have specific written policies and procedures addressing this area. Commenters noted the Board, during the promulgation of CAS 411, had acknowledged that many companies had written policies and practices in place before the CAS 411 requirement existed. Further, companies subject to CAS 411 are also required to submit Disclosure Statements. They also noted that Enterprise Resource Planning (ERP) software systems would be another existing source for written statements of accounting practices related to how the costs of material are accumulated and allocated. ERP software systems are used by contractors to manage their day-to-day business activities related to material management and accounting for such activity include documented business scripts that document how the system works.

Response: Although GAAP does not explicitly require a written statement for accounting policies and practices for accumulating the costs of material and for allocating costs of material to cost objectives, the Board has provisionally determined that these written statements would continue to exists in the absence of the current explicit CAS requirement. The cumulative requirements that will remain in CAS 401, Disclosure Statements and current practices to comply with GAAP would adequately protect the government's interest absent the expressed requirement to maintain policies and procedures required by CAS.

2. Average cost method for inventory costing. The second difference noted by the Board in the SDP related to the average cost method for measuring inventory. CAS provides for the use of the moving average cost method or the weighted average cost method. Both of these methods are explicitly defined in CAS 411–30, including how the cost would be computed under each method. CAS 411–30(a)(6) defines ''moving average'' as ''an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.'' CAS 411–40(a)(7) defines ''weighted average cost'' as ''an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the

cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.'' By comparison, GAAP simply provides for the use of an ''average'' method without defining or describing specific average methods. GAAP does make clear in ASC 330–10–30–9 that ''the major objective in selecting a method [for inventory costs] should be to choose the one which, under the circumstances, most clearly reflects periodic income.'' The Board understood this to mean that the method selected must result in a measurement of costs matched against revenue from a sale. The matching principle between cost and revenue in GAAP is similar to the CAS concept of matching the cost to a contract—both of which result in periodic income. As a result, although GAAP doesn't explicitly define acceptable average methods, there is some constraint to the variations a contractor could elect to use in compliance with GAAP.

Comment: Commenters noted the Board is correct in that GAAP does not define specific ''average'' inventory costing methods, however their research of various GAAP pronouncements and discussions with member companies' GAAP accountants failed to uncover an average method beyond weighted average and moving average methods. Additionally, 100% of the AIA and FEI member companies surveyed use either the moving average, weighted average or standard cost method for inventory costing. Furthermore, in today's world, the logic behind inventory valuation methods is built into very expensive ERP systems and is not changed haphazardly. FEI noted that a survey of member companies showed that changes are overwhelmingly driven (*i.e.,* 82%) by either new ERP system implementations/upgrades or organization type transaction activities (*e.g.,* M&A). None of the respondents noted they make changes to ERP systems in order to solely change inventory valuation/costing methods. Commenters also noted that they are not aware of any circumstances where the use of an average method compliant with GAAP would not be acceptable for accounting for government contracts. AIA further noted it was not aware of an average costing method compliant with GAAP beyond the moving average or weighted average methods. In addition, commenters noted that the guiding principles of GAAP align identically with the fundamental requirements of CAS 411, so even if there was another inventory average costing method for GAAP, such method would almost certainly be acceptable for accounting for government contracts. GAAP's guiding principles require the use of a consistently applied inventory method that is rational, reasonable and matches inventory costs with revenues. Identical to GAAP, CAS 411 requires that the inventory costing method chosen must be, ''used in a manner which results in systematic and rational costing of issues of material to cost objectives. The same costing method shall, within the same business unit, be used for similar categories of material.'' (Ref: 9904.411–40(e)). Commenters view the principles and requirements of GAAP in this area are more restrictive than CAS.

Response: The Board appreciates the efforts of the associations and their members to gather and provide this information and analysis. Based on the comments and additional research conducted by the Board, the Board has not identified any additional ''average'' inventory costing methods beyond weighted or moving. The Board has provisionally concluded that CAS 411 and the corresponding requirements in GAAP are not materially different. Furthermore, the Board has also provisionally concluded that GAAP, FAR and other Standards may protect the Government's interests. Therefore, the Board is considering a proposed rule that would eliminate CAS 411 and rely on GAAP to achieve the uniformity and consistency required for Government contracting. This action would be consistent with the Board's guiding principle to eliminate content from CAS where reliance on GAAP would materially achieve uniformity and consistency in cost accounting without bias or prejudice to either party.

IV. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to ANPRM because these actions impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public requiring the approval of OMB under 44 U.S.C. 3501, *et seq.*

V. Executive Orders 12866, 13563, 14094 and the Regulatory Flexibility Act

Executive Orders (E.O.s) 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic impact of the ANPRM is expected to be minor because the affected contractors and subcontractors are those who are already subject to CAS and would seek to rely more heavily on GAAP, which these contractors are using in their commercial transactions. Accordingly, the ANPRM is not a significant regulatory action and, therefore, are not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended by E.O. 14094, Modernizing Regulatory Review.

List of Subjects in 48 CFR 9904

Government procurement, Cost accounting standards

Christine J. Harada,

Senior Advisor Office of Federal Procurement Policy, and Chair, Cost Accounting Standards Board, performing by delegation the duties of the Administrator for Federal Procurement Policy.

For the reasons set forth in the preamble, The Federal Procurement Policy Office proposes to amend 48 CFR part 9904 as set forth below:

PART 9904—COST ACCOUNTING STANDARDS

■ 1. The authority citation for part 9904 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

Subpart 9904.404—[Removed and Reserved]

■ 2. Remove and reserve subpart 9904.404.

Subpart 9904.411—[Removed and Reserved]

■ 3. Remove and reserve subpart 9904.411.

■ 4. In § 9904.418–50, add paragraph (i) to read as follows:

§ 9904.418–50 Techniques for application.

* * * * *

(i) The capitalized values of tangible capital assets acquired in a business combination shall be assigned to these assets as follows: All the tangible capital assets of the acquired company that during the most recent cost accounting period prior to a business combination generated either depreciation expense or cost of money charges that were allocated to Federal government contracts or subcontracts negotiated on the basis of cost, shall be capitalized by the buyer at the net book value(s) of the

asset(s) as reported by the seller at the time of the transaction.

[FR Doc. 2025–00012 Filed 1–16–25; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 13

[Docket DOT–OST–2020–0229]

RIN 2105–AE97

Procedures for Considering Environmental Impacts

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Transportation (the Department) is withdrawing a notice of proposed rulemaking (NPRM) issued on November 23, 2020, that proposed to amend its National Environmental Policy Act (NEPA) implementing procedures.

DATES: As of January 17, 2025, the NPRM, ''Procedures for Considering Environmental Impacts,'' published on November 23, 2020 (85 FR 74640), is withdrawn.

ADDRESSES: U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9152.

Electronic Access: You can view and download related documents and public comments by going to the website *https://www.regulations.gov.* Enter the docket number DOT–DOT–OST–2020–0229 in the search field.

FOR FURTHER INFORMATION CONTACT: April Marchese, Director, Infrastructure Permitting Improvement Center, 202–366–4416, *april.marchese@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: NEPA establishes a national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. 4331(a). Section 102(2) of NEPA establishes the procedural requirements to carry out the policy stated in section 101 of NEPA. It requires Federal agencies to consider the environmental effects of proposed actions in their decision-making and prepare detailed environmental statements on recommendations or reports and other major Federal actions significantly affecting the quality of the human environment. 42 U.S.C. 4332(2)(C).

On November 23, 2020, the Department issued an NPRM that proposed to amend its NEPA implementing procedures (85 FR 74640). Specifically, the Department proposed to revise its current procedures, DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts,'' originally published in 1979, 44 FR 56420 (Oct. 1, 1979), and codify them in the Code of Federal Regulations. These revisions were never finalized due to a variety of factors. Therefore, the DOT Order 5610.1C is still in effect and will continue to be in effect until updates are made through a public review process. DOT received 49 comments in response to the proposed rule. Comments were submitted by ten State or local departments of transportation (State DOTs); two other State agencies, nine transportation interest groups (trade associations); and 24 private entities and citizens. DOT received one comment from a member of Congress. DOT received three other comment letters that were outside of the scope of the rulemaking. The comments received have been reviewed and will aid in any further revisions that are made to DOT Order 5610.1C to update and modernize DOT's NEPA procedures.

On June 3, 2024, President Biden signed into law the Fiscal Responsibility Act of 2023 (FRA, Pub. L. 118–5). The FRA made revisions to the NEPA statute with the aim of streamlining the environmental review process. In addition, there have been further refinements in agency best management practices in the environmental review and permitting process that should be incorporated into the DOT NEPA procedures prior to finalizing.

Reason for Withdrawal

Given the revisions to the NEPA statute and updates to best management practices across the Government for the environmental permitting and review process, DOT is withdrawing the proposed rule for DOT's NEPA implementing procedures. Any revisions that are made will be issued for notice and public comment prior to being finalized.

Issued in Washington, DC, under authority delegated in 49 CFR 1.25a(a)(2):

Christopher Coes,

Assistant Secretary of Transportation Policy.

[FR Doc. 2025–01199 Filed 1–16–25; 8:45 am]

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Notices

Federal Register
Vol. 90, No. 11
Friday, January 17, 2025

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2022–0014]

Availability of Revised Guideline for Controlling Retained Water in Raw Meat and Poultry

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice of availability; response to comments.

SUMMARY: FSIS is announcing updates to and responding to comments on its guideline to assist meat (including Siluriformes fish and fish products) and poultry establishments in meeting the regulatory requirements *for calculating the correct retained water percentage in raw livestock, poultry, and Siluriformes fish carcasses and parts resulting from post-evisceration processing.* FSIS is providing clarification based on arithmetic errors commonly encountered in protocol reviews.

DATES: Establishments will have until March 3, 2025, to submit their revised protocols to the Risk Management and Innovations Staff (RMIS) via askFSIS for review.

Establishments will have until January 1, 2026, to make any necessary label changes.

The Office of Field Operations will start reviewing establishments' retained water protocols on October 1, 2025.

ADDRESSES: A downloadable version of the guideline is available at *https://www.fsis.usda.gov/policy/fsis-guidelines.*

FOR FURTHER INFORMATION CONTACT: Rachel A. Edelstein, Assistant Administrator, Office of Policy and Program Development, FSIS; USDA, Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2024, FSIS published a revised guideline to assist meat and poultry establishments in meeting the regulatory requirements found in the final rule ''Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements'' (66 FR 1750), which set limits for water retained by raw, single-ingredient, meat and poultry products from post-evisceration processing, such as carcass washing and chilling. Under 9 CFR 441.10, raw livestock, poultry, and Siluriformes fish carcasses and parts (hereinafter, ''meat and poultry products'') are not permitted to retain water from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected in accordance with a written Retained Water Protocol (RWP) that any water retained is from addressing food safety requirements. In addition, the establishment is required to disclose on the product's label the maximum percentage of retained water in the raw product (9 CFR 441.10(b)). The required labeling statement is intended to help consumers make informed purchasing decisions.

In the **Federal Register** notice announcing the availability of the revised guideline (89 FR 22331), FSIS explained that it revised its guidance because it conducted a review of older RWPs and found that establishments were not correctly applying formulas when determining changes in total moisture percentage in products after water spray or immersion processing. For example, many establishments subtract the pre-pack moisture percentages from the post-evisceration moisture percentages to calculate the retained water. However, these percentages are represented by different bases (or denominators).

After review and consideration of all comments, FSIS has made changes to and clarified certain aspects of the guideline. The revisions to the guideline are summarized below in FSIS' responses to comments. The updated guideline is available on the FSIS guidance web page at: *https://www.fsis.usda.gov/policy/fsis-guidelines.* Although comments on this guideline will no longer be accepted through *www.regulations.gov,* FSIS will continue to update this document as necessary.

The updated guideline represents the Agency's current thinking on retained water requirements. FSIS is encouraging establishments that have been using the previous version of the guideline to update their RWPs following the recommendations in the new guideline to ensure their data are reproducible and statistically verifiable.

Summary of Comments and Responses

The Agency received three comments on the guideline from organizations representing the meat and poultry industry and one comment from an individual. The individual supported FSIS' retained water regulations but did not specifically comment on the revised guideline.

Use of Guidance To Clarify Retained Water Policy

Comment: Two organizations representing the poultry industry stated that the changes included in the revised guideline are significant, and that the Agency should undertake rulemaking to propose the changes. One commenter stated that the revised guideline will impose new and additional requirements for establishments to calculate retained water amounts in products that substantively differ from FSIS' previous requirements. The commenter further stated that the Agency should provide specific direction on how establishments may satisfy existing regulatory requirements other than by using the formulas for calculating retained water provided in the revised guideline.

Response: As stated in the preface to the revised guideline, the document clarifies how establishments can meet requirements to collect and use data to demonstrate the amount of retained water in the product covered by the RWP and how to accurately label product to reflect the amount of water retained. The guidance also provides information on how to correctly apply formulas to calculated retained water. The contents of the document, as with all Agency guidance, do not have the force and effect of law and are not meant to bind the public in any way. The document is intended only to provide clarity to industry regarding existing requirements under the regulations in 9 CFR 441.10.

The revised guideline provides examples of acceptable methods for calculating retained water, including

discussion of safe harbors and common errors or unsupportable approaches. As stated in the revised guideline, establishments may decide to develop alternative methods for calculating retained water to demonstrate that they meet the regulatory requirements in 9 CFR 441.10.

Scope of Products and Processes Subject to Retained Water Labeling Requirements

Comment: Three commenters representing the meat and poultry industry stated that additional information from FSIS is needed to clarify which meat and poultry products and production processes may be subject to retained water labeling changes based on the revised guideline. For example, two of these commenters stated that in the 2001 retained water final rule, FSIS stated that the requirements in 9 CFR 441.10 apply to all amenable products, including offal (66 FR 1750,1759). However, the commenters noted, the Agency later clarified through guidance that certain products are not subject to the requirements under 9 CFR 441.10 and, therefore, do not need to be covered by an RWP.

Response: The 2001 final rule (66 FR 1750) addresses which products are subject to 9 CFR 441.10. However, FSIS does note that the 2001 final rule does not cover which processes are subject to 9 CFR 441.10, and that FSIS *Directive 6700.1* is the only source of that information. As such, FSIS is clarifying in this **Federal Register** notice and the guideline that the following processes are subject to 9 CFR 441.10:

- Carcass washing with or without an antimicrobial;
- Spray chilling carcasses, parts, trimmings, byproducts, bones, or other edible parts with or without an antimicrobial;
- Water or ice chilling with or without an antimicrobial;
- Post-chill spraying with or without an antimicrobial; and
- Application of any aqueous antimicrobial or processing aid.

FSIS further clarifies that the following processes are not subject to 9 CFR 441.10:

- Scalding or flushing gastrointestinal organs to remove digestive tract contents;
- Flushing beef heads to remove digestive tract contents; and
- Washing parts to remove excess blood.

FSIS updated the guideline with this information.

Comment: One commenter representing the meat industry recommended including the Agency's longstanding position that product containing retained water at ≤ 0.49 percent is not required to have a retained water label statement earlier in the guideline.

Response: FSIS agrees and moved the statement up in the document.

Agency Support for Revised Formula To Calculate Retained Water Percentages

Comment: Three organizations representing the meat and poultry industry stated that, before implementing the revised guideline, FSIS should more sufficiently explain the reasoning behind its determination that the mathematical formula for calculating retained water percentages for the purposes of the regulatory requirements under 9 CFR 441.10 is incorrect. Two commenters stated that standard industry practice, when using moisture percentages instead of weights, is to subtract the moisture content of the post-evisceration sample from the moisture content of the pre-packaging sample to determine the difference and, therefore, the added moisture. The commenters noted that the Agency approved retained water protocols using this method for more than 20 years.

One organization representing the poultry industry noted that the Agency stated in the revised guideline that the changes to the prior version of the guideline are based on the latest scientific information. However, the commenter stated, FSIS failed to explain that science to industry and, instead, only provided the revised formula. The commenter concluded that, for industry to adequately submit comments on the revised guideline, FSIS should explain what the new science is and why the new science supports the determination that the existing Agency guidance needed to be revised.

Response: The updated guideline explains basic math. A difference in moisture percentages does not equal the amount of retained water as a percentage of the product weight, as defined in the 2001 **Federal Register** final rule (66 FR 1750). The side-by-side comparison in the Appendix of the guideline clearly demonstrates that subtraction grossly underrepresents the percentage of retained water in a product when compared to the uncontested formula used to calculate retained water from product weights. The formula provided in the guideline demonstrates that it provides the same retained water percentage as when using product weights. FSIS has provided an attachment in the guideline that goes through the math step-by-step.

Differences Between Existing and Revised Retained Water Calculations

Comment: Three organizations representing the meat and poultry industry stated that the new mathematical formula discussed in the revised guideline will result in significantly different calculated results in retained water percentages than the formula used in the Agency's existing guidance. Commenters stated that these different results will cause confusion and concern for customers and industry, as the same product may be labeled with different retained water declarations before and after implementation of the revised guideline. One organization representing the poultry industry stated that this confusion could lead to consumer distrust in both industry and FSIS.

One organization representing the poultry industry specifically stated that the new formulas will result in different retained water calculations for a variety of reasons unrelated to the calculation methodology including, but not limited to dwell time, antimicrobial used, pH of the chiller, amount of time from the chiller to point of pack, temperature in second processing, and type of chicken part. The commenter stated that some of the percentages resulting from following the revised guideline represent water retention that is physically impossible to achieve.

Response: FSIS provided a formula that allows establishments to compare moisture percentages and still provide the same result as if they were using product weights. FSIS disagrees that the results would be physically impossible to achieve. If the establishment used product weights instead of moisture percentages, they would get the same results as when using the formula in the guideline. There is nothing new for consumers to understand. FSIS is still requiring establishments to provide the maximum amount of retained water as a percentage of the product weight. If the retained water amounts are different, before and after implementation of the revised guideline, the establishment previously used incorrect math to calculate their products' retained water. Correcting this miscalculation is important so that consumers receive truthful and accurate information on product labels.

Comment: Two organizations representing the meat and poultry industry stated that the dry and wet methods will return different results. One organization representing the poultry industry stated that industry findings demonstrate that using the

revised guideline results in values that increase the retained moisture percentage from 50% to over 400%, even though products were manufactured at the same facility using the same production process and contain a substantially similar amount of retained water. The commenter stated that the only change which accounts for the difference is the revised guideline formula, which consists of an additional step on top of the existing guideline.

Response: Members of industry may have been underrepresenting their retained water percentages for as long as they have been using subtraction to calculate differences in moisture percentages, rather than the amount of retained water as a percentage of the product weight. FSIS published this guideline to help members of industry ensure that they are not underreporting retained water in the future.

Comment: One organization representing the poultry industry noted that, in the revised guideline, FSIS distinguishes between the calculation of moisture percentage for products with water added incidentally due to processing and for products with solutions, including water, added purposefully to change the nature of the product.

Response: When adding an aqueous solution as an ingredient, the weight of the added solution is known. However, with retained water, the amount that is added is an unknown. Therefore, the formulas to calculate added solutions as ingredients versus retained water are different. The guideline makes clear that it only applies to the retained water regulations and does not apply to the added solution regulations. If the product has added solutions, then that product must be labeled in accordance with 9 CFR 317.2(e)(2) for meat and 9 CFR 381.117(h) for poultry.

Comment: A member of the meat industry stated that if the establishment's data supports that the product has no retained water (≤0.49 percent), then it is not required to have a retained water label statement. The commenter said that it would be more useful for this information to be provided early in the guideline when outlining the scope of the document instead of almost halfway through as a note.

Response: FSIS made the requested change. The Agency clarified when protocols are not needed earlier in the guideline.

Comment: During a RWP review, a member of the poultry industry requested that FSIS change the format of its moisture content formula for dry basis to match the format of the wet basis formula.

Response: FSIS made the requested change to improve readability.

Validation of New Retained Water Formulas

Comment: One organization representing the meat industry stated that studies should be conducted to validate that the calculations provided in the revised guideline will produce the same retained water percentage as the traditional wet weight method used under existing Agency guidance. The commenter stated that the revised guideline should be withdrawn to allow for such validation studies to be conducted. The commenter offered to partner with FSIS to conduct the studies and provide additional training and support to industry depending on the results.

Response: FSIS disagrees that the guidance requires additional validation by FSIS. The guidance explains basic math. The math doesn't change through repetitions of side-by-side comparisons. FSIS provided the side-by-side comparison in the Appendix of the guideline that clearly demonstrates that subtraction grossly underrepresents the percentage of retained water in a product when compared to the uncontested formula used to calculate retained water from product weights. The formula provided in the guideline demonstrates that it provides the same retained water percentage as when using product weights. However, FSIS encourages any additional industry validation of guidance or support that would facilitate accurate labeling.

Comment: One commenter stated that, prior to implementing the revised guideline on water retention, FSIS should engage with consumers to fully understand how they interpret retained water statements and what those statements mean to end users.

Response: Current retained water regulations went through rulemaking and provided opportunity for consumer comment. As explained above, the guideline explains basic math. FSIS requested comments on the updated guideline and met with industry groups after it announced the updated guideline. The clarifications provided in the revised guideline will ensure that establishments label their products with accurate, supportable retained water statements.

Sample Size Calculation Disparity in Revised Guideline

Comment: One organization representing the poultry industry stated that, when it used the sample size calculator provided on page 10 of the revised guideline, the organization produced a different sample size than reported in the guideline. Specifically, the commenter stated that, in the provided examples with a 6% mean water retention and a standard deviation of 3.1 percent, the calculator indicates that establishments would need a sample size of 105, as compared to the 40 samples reported in the revised guideline.

Response: FSIS acknowledges that the revised guideline did not include sufficient information regarding the provided calculator for establishments to enter the values and replicate the tool. The Agency updated the revised guideline to clarify the examples.

Deadline To Submit Revised RWPs to FSIS and Compliance Date for Labeling Changes

Comment: A few organizations representing the meat and poultry industry stated that the Agency's announced September 30, 2024, deadline for establishments to submit to FSIS for approval any revised RWPs did not provide them enough time to develop and submit revised RWPs.

Three organizations representing the meat and poultry industry also stated that the Agency's announced April 1, 2025, timeline for companies to make label changes in response to the revised guideline is inadequate. The commenters stated that, at a minimum, FSIS should follow the Agency's uniform compliance date for labeling, under which companies would have until January 1, 2026, to make any necessary label changes.

Response: FSIS announced in the August 30, 2024, *Constituent Update* that the Agency has extended the deadlines. The deadline for establishments to submit retained water protocols to the Agency has been moved to March 3, 2025. OFO will start reviewing RWPs on October 1, 2025. Meanwhile, the deadline for establishments to make any labeling changes will be the Uniform Compliance Date, which is January 1, 2026.

Trade Considerations

Comment: One organization representing the poultry industry stated that the revised guideline could impact trade and the ability of domestic producers to export poultry products from the United States.

Response: Some countries restrict how much retained water certain products can retain. However, the changes in this guideline do not affect foreign countries' regulations. FSIS is

providing clarification based on arithmetic errors commonly encountered in protocol reviews. In addition, the formula FSIS uses for retained water using product weights matches that of other countries, including Canada and countries in the European Union.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this notice online through the FSIS web page located at: *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register* .

FSIS also will make copies of this **Federal Register** publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password-protect their accounts.

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(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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Done, at Washington, DC

Denise Eblen,

Administrator.

[FR Doc. 2025–01103 Filed 1–16–25; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

State Advisory Committees; Renewal

AGENCY: Commission on Civil Rights.

ACTION: Notice of renewal of the 51 State advisory committees charter.

SUMMARY: The Commission on Civil Rights announces the charter renewal of the Agency's 51 State advisory committees, Federal advisory committees in each State and the District of Columbia that advise the Commission on civil rights issues within their respective geographical jurisdiction.

DATES: This charter renewal will take effect on January 30, 2025, and expires after two years unless otherwise renewed.

FOR FURTHER INFORMATION CONTACT: David Mussatt, US Commission on Civil Rights, 230 S. Dearborn St, Suite 2120, Chicago, IL 60604, telephone (312) 353–8311, *email dmussatt@usccr.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), the Commission on Civil Rights (USCCR) is giving notice of the charter renewal that will go into effect on January 30, 2025, for the 51 non-discretionary advisory committees that Congress mandated per 42 U.S.C. 1975a(d). These advisory committees, created in each State and the District of Columbia, provide advice and recommendations to the USCCR on civil rights issues within their respective geographical jurisdiction. The advisory committees are composed of representatives of the diverse political perspectives of the bipartisan Commissioners. The diversity of the committees ensure the requisite range of views and expertise necessary to discharge their responsibilities. For more information on the advisory committees and to access copies of their reports and documents of their meetings, visit the USCCR advisory committees page on the USCCR website at *https://www.usccr.gov/advisory-committees.*

Dated: January 13, 2025.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2025–01080 Filed 1–16–25; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2173]

Establishment of a Foreign-Trade Zone Under the Alternative Site Framework in Clallam County, Washington

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Port of Port Angeles (the Grantee), a Washington public agency, made application to the Board (B–24–

2024, docketed May 20, 2024) requesting the establishment of a foreign-trade zone under the ASF with a service area of Clallam County, adjacent to the Port Angeles Customs and Border Protection port of entry, and proposed Sites 1 and 2 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (89 FR 45820 and 45821, May 24, 2024) and the application was processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopted the findings and recommendations of the examiners' report, and found that the requirements of the FTZ Act and the Board's regulations are satisfied;

Therefore, on January 10, 2025, the Board granted to the Port of Port Angeles the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 303, as described in the application, and subject to the FTZ Act and the Board's regulations, including section 400.13, to the Board's standard 2,000-acre activation limit, and to an ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated within five years from the month of approval.

Dated: January 14, 2025.

Dawn Shackleford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2025–01132 Filed 1–16–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Final Results of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that producers/exporters subject to this review did not make sales of subject merchandise at prices below normal value. The period of review (POR) is December 1, 2022, through November 30, 2023.

DATES: Applicable January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Henry Wolfe, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973, and (202) 482–0574, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2024, Commerce published the *Preliminary Results* of the 2022–2023 administrative review of the antidumping duty order [1] on carbazole violet pigment 23 (CVP–23) from India in the **Federal Register** and invited parties to comment.[2] We received no comments from interested parties on the *Preliminary Results,* and we have made no changes to the *Preliminary Results.* Accordingly, no decision memoranda accompany this **Federal Register** notice, and the *Preliminary Results* are hereby adopted as these final results. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.[3] Accordingly, the deadline for these final results is now April 11, 2025.

Scope of the Order

The product covered by the *Order* is CVP–23, in any form. For a full description of the scope of the *Order, see* the *Preliminary Results* PDM.

Rate for Non-Selected Companies

The Act and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this administrative review, we calculated weighted-average dumping margins for Meghmani Pigments/Meghmani LLP (Meghmani) [4] and Navpad Pigments Pvt. Ltd. (Navpad) that are zero and we did not calculate any margins which are not zero, *de minimis,* or determined entirely on the basis of facts available. Thus, in accordance with the expected method, and consistent with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle,*[5] we are applying to Gharda Chemicals Ltd., which was not selected for individual review in this review, a margin of zero percent.

Final Results of Review

We determine that the following estimated weighted-average dumping margins exist for the period December 1, 2022, through November 30, 2023.

Producer and/or exporter	Weighted-average dumping margin (percent)
Gharda Chemicals Ltd.	0.00
Meghmani Pigments/Meghmani LLP	0.00
Navpad Pigments Pvt. Ltd.	0.00

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of the final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we made no changes from the *Preliminary Results,* there are no new calculations to disclose.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), upon completion of the administrative review, Commerce shall determine, and

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 from India,* 69 FR 77988 (December 29, 2004) (*Order*).

[2] *See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023,* 89 FR 74873 (September 13, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated December 9, 2024.

[4] Commerce previously collapsed Meghmani Pigments and Meghmani LLP (collectively, Meghmani) and treated the firms as a single entity. *See Preliminary Results* PDM at 3–6.

[5] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345, 1352 (Fed. Cir. 2016) (*Albemarle*) (holding that Commerce may only use ''other reasonable methods'' if it reasonably concludes that the expected method is ''not feasible'' or ''would not be reasonably reflective of potential dumping margins'').

U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. Because the respondents' weighted-average dumping margins or importer-specific assessment rates are zero in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.[6] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[7]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR for which Meghmani and Navapad did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate established in the original less-than-fair value (LTFV) investigation (*i.e.,* 27.48 percent) [8] if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these final results of this administrative review (*i.e.,* 0.00 percent); (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, the cash deposit rate will be the company-specific rate established for the most recent completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 27.48 percent, the all-others rate established in the less-than-fair-value investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification To Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 10, 2025.

Steven Presing,

Acting Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2025–01124 Filed 1–16–25; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[7] *See* section 751(a)(2)(C) of the Act

[8] *See Order,* 69 FR 77989.

[9] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Final Guidance on Designation of New Regional Ocean Partnerships

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of availability of final guidance regarding the designation of new regional ocean partnerships.

SUMMARY: Under the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA), coastal States (including Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and American Samoa), Indian Tribes (as defined in the final guidance), and other entities may form new partnerships and apply to NOAA (as delegated) for designation as a regional ocean partnership (ROP). ROPs coordinate the management of ocean, coastal, and Great Lakes resources. After inviting Tribal consultation and careful consideration of public comments, NOAA announces the final guidance on designating new ROPs under the NDAA.

ADDRESSES: Copies of the final designation guidance document may be found on NOAA's Office for Coastal Management website at *https://coast.noaa.gov/data/coasthome/funding/_pdf/rop-designation-guidance-final.pdf.*

A summary of comments received and NOAA's responses to the comments may be found at: *https://coast.noaa.gov/data/coasthome/funding/_pdf/rop-designation-guidance-comments.pdf.*

FOR FURTHER INFORMATION CONTACT: Joshua Lott, Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910; ATTN: Regional Ocean Partnership Designation Guidance. Phone: (202) 670–3826; or Email: *rop.iija@noaa.gov.*

SUPPLEMENTARY INFORMATION: ROPs are regional organizations voluntarily convened by coastal States and Indian Tribes, and designated by NOAA, as delegated, per the NDAA, to coordinate the management of ocean, coastal, and Great Lakes resources. These partnerships work in collaboration with other governments (including Tribal, Federal, and local) and stakeholders to address ocean and coastal issues of common concern in that region.

There are four existing ROPs: the Gulf of Mexico Alliance, the Northeast Regional Ocean Council, the Mid-Atlantic Regional Council on the Ocean, and the West Coast Ocean Alliance. Section 10102(b)(3) of the NDAA, codified at 16 U.S.C. 1468(b)(3), designates these four entities as regional ocean partnerships; as such, the designation guidance and application process for new partnerships does not apply to them.

The final designation guidance includes elements, specified in the NDAA, that must be included in an application for a new ROP; the manner in which the application must be submitted to NOAA; and funding eligibility for new ROPs. Applications for new ROPs must identify the members that will comprise the new ROP, identify the governing body of the new ROP, identify the purposes and functions of the new ROP, and be formally submitted by all state governors and Tribal government leaders.

Authority: 16 U.S.C. 1468.

Jeffrey L. Payne,

Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2025–01163 Filed 1–16–25; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE594]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Northwest Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the University of Texas at Austin (UT) to incidentally harass marine mammals during survey activities associated with a marine geophysical survey in coastal waters off Texas in the northwest (NW) Gulf of Mexico (GOM).

DATES: This authorization is effective from January 13, 2025 through January 12, 2026.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below and can be found in section 3 of the MMPA (16 U.S.C. 1362) and NMFS regulations at 50 CFR 216.103.

Summary of Request

On July 25, 2024, NMFS received a request from UT for an IHA to take marine mammals incidental to a marine geophysical survey in coastal waters off Texas in the NW GOM. The application was deemed adequate and complete on September 24, 2024. UT's request is for take of bottlenose dolphins, Atlantic spotted dolphins, and rough-toothed dolphins, by Level B harassment only. Neither UT nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Activity

Researchers from UT plan to conduct a low-energy marine seismic survey using airguns as the acoustic source from the research vessel (R/V) Brooks McCall (McCall) or similar vessel operated by TDI-Brooks International. The planned survey will occur within Texas State waters in the NW GOM from approximately January to April 2025. The planned survey will occur within the Exclusive Economic Zone (EEZ) of the United States and in Texas State waters, in water depths less than 30 meters (m). To complete this high resolution 3D (HR3D) seismic survey, the McCall will tow a 2-airgun array with a total discharge volume of ~210 cubic inches (in^3) at a depth of 3–4 meters (m), with a shot interval of 12.5 m (5–10 seconds (s)) as the primary acoustic source. The airgun array receiver will consist of four 25-m-long solid-state hydrophone streamers, spaced 10 m apart. Approximately 4,440 km of seismic acquisition is planned. The airgun array will introduce underwater sounds that may result in take, by Level B harassment only, of marine mammals.

A detailed description of the planned marine geophysical survey is provided in the **Federal Register** notice for the proposed IHA (89 FR 91340, November 19, 2024). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for a detailed description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to UT was published in the **Federal Register** on November 19, 2024 (89 FR 91340). That notice described, in detail, UT's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of

proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. The proposed notice was available for a 30-day public comment period. NMFS received no public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and may be taken as a result of the planned survey and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality (M/SI) from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in table 1 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES [1] LIKELY AFFECTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]	GOM population abundance [5]
Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae							
Atlantic spotted dolphin ...	*Stenella frontalis*	GOM	-/-; N	21,506 (0.26; 17,339; 2018).	166	[6] 36	[7] 12,240
Rough-toothed dolphin	*Steno bredanensis*	GOM	-/-; N	unk (n/a; unk; 2018)	undetermined	39	4,853
Bottlenose dolphin	*Tursiops truncatus*	GOM Western Coastal	-/-; N	20,759 (0.13; 18,585; 2018).	167	36	[7] 151,886
		Northern GOM Continental Shelf.	-/-; N	63,280 (0.11; 57,917; 2018).	556	[5] 65	

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] Model-predicted stock abundance for Atlantic spotted dolphins and bottlenose dolphins from the most recent GOM density models (Garrison *et al.,* 2023). Stock abundance for rough-toothed dolphins was taken from Roberts *et al.* (2016) density models, as Garrison *et al.* (2023) did not create a model for this species.

[6] M/SI is a minimum count and does not include projected mortality estimates for 2015–2019 due to the DWH oil spill.

[7] This estimate includes both coastal and continental shelf bottlenose dolphins from other stocks.

As indicated above, all three species (with four managed stocks) in table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the planned survey areas are included in table 2 of the IHA application.

A detailed description of the species likely to be affected by the marine geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (89 FR 91340, November 19, 2024); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.,* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical

modeling, *etc.*). On October 24, 2024, NMFS published (89 FR 84872) the final Updated Technical Guidance, which includes updated thresholds and weighting functions to inform auditory injury estimates, and has replaced the 2018 Technical Guidance used previously (NMFS 2018). The updated hearing groups are presented below (table 2). The references, analysis, and methodology used in the development of the hearing groups are described in NMFS' 2024 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2024]

Hearing group	Generalized hearing range *
Underwater:	
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 * kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on ~65 dB threshold from composite audiogram, previous analysis in NMFS 2018, and/or data from Southall *et al.,* 2007; Southall *et al.,* 2019. Additionally, animals are able to detect very loud sounds above and below that ''generalized'' hearing range.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from UT's survey activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (89 FR 91340, November 19, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from UT's survey activity on marine mammals and their habitat. That information and analysis is referenced in this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (89 FR 91340, November 19, 2024).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound from low energy seismic airguns. Based on the nature of the activity, *i.e.,* use of a low energy 2-airgun array, auditory injury (Level A harassment) is neither anticipated nor authorized. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will likely be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur auditory injury of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 decibels (dB) (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment

thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

UT's planned survey includes the use of impulsive seismic sources (*e.g.,* GI-airguns) and therefore, the 160 dB re 1 µPa (rms) criteria is applicable for analysis of Level B harassment.

Level A harassment—NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2024 (2024 Updated Technical Guidance)) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). NMFS defines auditory injury as ''damage to the inner ear that can result in destruction of tissue . . . which may or may not result in permanent threshold shift (PTS)'' (NMFS, 2024). NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has incurred some level of hearing loss at the relevant frequencies; typically, animals with PTS are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). UT's planned survey includes the use of impulsive seismic sources (*i.e.,* airguns).

UT previously used modeling based on NMFS' 2018 technical guidance in order to calculate their isopleths. Based on the outcome of these comparisons/analyses using the Updated 2024 Technical Guidance, the low-frequency and high-frequency (now very high-frequency) cetacean isopleths are slightly larger using the updated guidance, and the mid-frequency (now high-frequency) cetacean isopleth is the same as those calculated using the 2018 Technical Guidance. As NMFS is only authorizing takes of mid-frequency (now high-frequency) cetaceans, the isopleths based on the 2018 Technical Guidance will be used as the basis for take numbers and mitigation zones for this IHA.

The 2018 and 2024 thresholds are provided in the tables below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance and in NMFS' 2024 Updated Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—NMFS' 2018 THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT
[PTS]

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

TABLE 4—NMFS' 2024 THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY
[AUD INJ]

Hearing group	AUD INJ onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 222 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,HF,24h}$: 193 dB	*Cell 4:* $L_{E,HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,VHF,24h}$: 159 dB	*Cell 6:* $L_{E,VHF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 223 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 230 dB; $L_{E,OW,24h}$: 185 dB	*Cell 10:* $L_{E,OW,24h}$: 199 dB.

* Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

Note: Peak sound pressure level (Lp,0-pk) has a reference value of 1 µPa (underwater) and 20 µPa (in air), and weighted cumulative sound exposure level (LE,p) has a reference value of 1 µPa2s (underwater) and 20 µPa2s (in air). In this table, criteria are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017; ISO 2020). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.,* 7 Hz to 165 kHz) or in air (*i.e.,* 42 Hz to 52 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW, OW, PA, and OA pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these criteria will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

When the Technical Guidance was initially published (NMFS, 2016), in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a user spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimation of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate.

The planned survey will entail the use up to two 105 in^3 airguns with a maximum total discharge of 210 in^3 at a tow depth of 3–4 m. UT used modeling by Lamont-Doherty Earth Observatory (L–DEO), which determines the 160 dB_{rms} radius for the airgun source down to a maximum depth of 2,000 m. Received sound levels have been predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from the 2-airgun array. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor).

The planned low-energy survey will acquire data with up to two 105-in^3 GI guns, towed in-line, at a depth of 3–4 m. The shallow-water radii are obtained by scaling the empirically derived measurements from the GOM calibration survey to account for the differences in volume and tow depth between the calibration survey (6,600 in^3 at 6 m tow depth) and the planned survey (210 in^3 at 4 m tow depth). A simple scaling factor is calculated from the ratios of the isopleths calculated by the deep-water L–DEO model, which are essentially a measure of the energy radiated by the source array.

L–DEO's methodology is described in greater detail in UT's IHA application. The estimated distances to the Level B harassment isopleth for the planned airgun configuration are shown in table 5.

TABLE 5—PREDICTED RADIAL DISTANCES FROM THE R/V MCCALL SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Max tow depth (m)	Water depth (m)	Predicted distances (in m) to the Level B harassment threshold
2 105-in^3 airguns	4	<100	1,750

TABLE 6—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

[NMFS 2018]

	Mid frequency cetaceans
PTS SEL_{cum}	0
PTS Peak	*1.5

*The largest distance of the dual criteria (cumulative SEL (SEL_{cum}) or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

Table 6 presents the modeled Level A harassment isopleths for the dolphin species considered here based on L–DEO modeling incorporated in the companion user spreadsheet, for the low-energy surveys with the shortest shot interval (*i.e.,* greatest potential to cause auditory injury or PTS based on accumulated sound energy) (NMFS 2018). Although NMFS' 2024 Updated Technical Guidance was finalized on October 24, 2024 (89 FR 84872), a similar survey using four 105-in^3 GI guns showed no difference in the auditory injury (Level A harassment) isopleths for delphinid species in the same hearing group (89 FR 81429, October 8, 2024; 89 FR 101555, December 16, 2024), so the values based on the 2018 guidance were used here.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the Nucleus software program and the NMFS user spreadsheet, described below. The acoustic thresholds for impulsive sounds contained in the NMFS Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS, 2024). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

The SEL_{cum} for the 2-airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect

near the source and is calculated as a point source, the farfield signature is not an appropriate measure of the sound source level for large arrays. See UT's application for further detail on acoustic modeling.

Auditory injury is unlikely to occur for the dolphin species considered here, given the very small modeled zones of injury for those species (all estimated zones are less than 10 m), in the context of distributed source dynamics.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not anticipate that Level A harassment is a likely outcome for any of the dolphin species considered here and do not authorize any take by Level A harassment for these species.

The Level A and Level B harassment estimates are based on a consideration of the number of marine mammals that could be within the area around the operating airgun array where received levels of sound ≥160 dB re 1 µPa rms are predicted to occur. The estimated numbers are based on the densities (numbers per unit area) of marine mammals expected to occur in the area in the absence of seismic surveys. To the extent that marine mammals tend to move away from seismic sources before the sound level reaches the criterion level and tend not to approach an operating airgun array, these estimates likely overestimate the numbers actually exposed to the specified level of sound.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

For the planned survey area in the NW GOM, UT determined that the best source of density data for marine mammal species that might be encountered in the project area was habitat-based density modeling conducted by Garrison *et al.,* (2023). The Garrison *et al.,* (2023) data provides abundance estimates for marine mammal species in the GOM within 40 km² hexagons (~3.9 km sides and ~7 km across from each side) on a monthly basis. To calculate expected densities specific to the survey area, UT calculated the mean of the predicted densities from the cells within the combined survey area (primary and alternate survey area) for each species and month. The highest mean monthly density was chosen for each species from the months of January to April (*i.e.,* the months within which the survey is expected to occur).

Rough-toothed dolphins were not modeled by Garrison *et al.,* (2023) due to a lack of sightings, so habitat-based marine mammal density estimates from Roberts *et al.,* (2016) were used. The Roberts *et al.,* (2016) models consisted of 10 km x 10 km grid cells containing average annual densities for U.S. waters in the GOM. The combined survey area was used to select grid cells from the Roberts *et al.,* (2016) dataset, and the mean of the selected grid cells for rough-toothed dolphins was calculated to estimate the annual average density of the species in the survey area. Estimated densities used and Level B harassment ensonified areas to inform take estimates are presented in table 7.

TABLE 7—MARINE MAMMAL DENSITIES AND TOTAL ENSONIFIED AREA OF ACTIVITIES IN THE PLANNED SURVEY AREA

Species	Estimated density (#/km²)	Level B ensonified area (km²)
Atlantic spotted dolphin	[b] 0.0043	1,522
Bottlenose dolphin [a]	[b] 0.8596	1,522
Rough-toothed dolphin	[c] 0.0037	1,522

[a] Bottlenose dolphin density estimate does not differentiate between coastal and shelf stocks.
[b] Density calculated from Garrison *et al.,* (2023).
[c] Density calculated from Roberts *et al.,* (2016).

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level B harassment threshold was calculated, as described above. Those radial distances were then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The area expected to be ensonified on 1 day was determined by multiplying the number of line km possible in 1 day by two times the 160-dB radius plus adding endcaps to the start and beginning of the line. The daily ensonified area was then multiplied by the number of survey days (20 days). The highest mean monthly density for each species was then multiplied by the total ensonified area to calculate the estimated takes of each species.

No takes by Level A harassment are expected or authorized. Estimated exposures and authorized take numbers are shown in table 8.

TABLE 8—AUTHORIZED TAKE

Common name	Stock	Estimated Level B take	Authorized Level B take	Stock abundance [1]	Percent of stock
Atlantic spotted dolphin	GOM	7	[2] 26	21,506	0.12
Bottlenose dolphin [3]	GOM Western Coastal	1,309	1,309	20,759	6.31
	Northern GOM Continental Shelf			63,280	2.07
Rough-toothed dolphin	GOM	6	[2] 14	4,853	0.29

[1] Stock abundance for Atlantic spotted dolphins and bottlenose dolphins was taken from Garrison *et al.,* (2023). Stock abundance for rough-toothed dolphins was taken from Roberts *et al.,* (2016), as Garrison *et al.,* (2023) did not create a model for this species.

[2] Authorized take increased to mean group size from Maze-Foley and Mullin (2006).
[3] Estimated take for bottlenose dolphins is not apportioned to stock, as density information does not differentiate between coastal and shelf dolphins. However, based on the planned survey depths, we expect that most of the takes would be from the coastal stock, but some takes could be from the shelf stock. Percent of stock was calculated as if all takes authorized accrued to the single stock with the lowest population abundance.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Vessel-Visual Based Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSOs)) to scan the ocean surface visually for the presence of marine mammals. PSOs shall establish and monitor a pre-start clearance zone and, to the extent practicable, a Level B harassment zone (table 5). These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During pre-start clearance (*i.e.,* before ramp-up begins), the pre-start clearance zone is the area in which observations of marine mammals within the zone will prevent airgun operations from beginning (*i.e.,* ramp-up). The pre-start clearance zone encompasses the area at and below the sea surface out to a radius of 200 m from the edges of the airgun array.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring must begin no less than 30 minutes prior to ramp-up and must continue until 1 hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs must coordinate to ensure 360 degree visual coverage around the vessel from the most appropriate observation posts, and must conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor a pre-start clearance zone and to the extent practicable, a Level B harassment zone. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours, Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sightings rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Pre-Start Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. The intent of pre-start clearance observation (30 minutes) is to ensure no marine mammals are observed within the pre-start clearance zone prior to the beginning of ramp-up. The intent of the ramp-up is to warn marine mammals of pending seismic survey operations and to allow sufficient time for those animals to leave the immediate vicinity prior to the sound source reaching full intensity. A ramp-up procedure, involving a stepwise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the airgun array. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow PSOs time to monitor the pre-start clearance zone for 30 minutes prior to the initiation of ramp-up (pre-start clearance).
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in.
- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Ramp-up may not be initiated if any marine mammal is within the pre-start clearance zone. If a marine mammal is observed within the pre-start clearance zone during the 30 minutes pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zone or until an additional time period has elapsed with no further sightings (15 minutes for small delphinids and 30 minutes for all other species).
- Ramp-up must begin by activating one GI airgun for no less than 5 minutes and then activating the second airgun. The operator must provide information to the PSO documenting that appropriate procedures were followed.

• PSOs must monitor the pre-start clearance zone during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the pre-start clearance zone. Once ramp-up has begun, observations of marine mammals for which take authorization is granted within the pre-start clearance zone does not require shutdown.

• If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of marine mammals have occurred within the pre-start clearance zone. For any longer shutdown, pre-start clearance observation and ramp-up are required. Ramp-up may occur at times of poor visibility (*e.g.,* BSS 4 or greater), including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

• Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require a 30-minute pre-start clearance period.

Shutdown Procedures

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to call for shutdown of the airgun array. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the airgun array to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. The shutdown requirement will be waived for small dolphins. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins- *Steno, Stenella,* and *Tursiops.* As *Tursiops, Stenella,* and *Steno* are the only species expected to potentially be encountered, there is no shutdown requirement included in the issued IHA for species for which take is authorized. UT must implement shutdown if a marine mammal species for which take was not authorized or a species for which authorization was granted but the authorized takes have been met approaches the Level B harassment zone.

We include this small dolphin exception because shutdown requirements for these species under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for the dolphin species considered here, as they are relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding with no apparent effect observed (*e.g.,* Barkaszi *et al.,* 2012; Barkaszi and Kelly, 2018). The potential for increased shutdowns resulting from such a measure would require the McCall to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area.

Vessel Strike Avoidance Mitigation Measures

Vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (separation distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena and (2) broadly to identify a marine mammal as a whale (defined in this context as sperm whales or baleen whales), or other marine mammals.

Vessel speeds must be reduced to 10 knots (kn) (18.5 kph) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel. The vessel must maintain a minimum separation distance of 500 m from baleen whales. If a baleen whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 kn (18.5 kph) or less until the 500-m separation distance is established. If a whale is observed but cannot be confirmed as a species other than a baleen whale, the vessel operator must assume that it is a baleen whale and take appropriate action. All vessels must maintain a minimum separation distance of 100 m from sperm whales. All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations will take place during daytime airgun operations. During seismic survey operations, two visual PSOs will be on duty at all times during daytime hours. The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. UT must use dedicated, trained, and NMFS-approved PSOs. At least one visual PSO aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval. Monitoring shall be conducted in accordance with the following requirements:

- PSOs shall be independent, dedicated, trained visual PSOs and must be employed by a third-party observer provider.
- PSOs shall have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards).
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task.
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics.
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within 1 week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.
- For data collection purposes, PSOs shall use standardized electronic data collection forms. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the airgun array and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the airgun array. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:
  - Vessel name, vessel size and type, maximum speed capability of vessel;
  - Dates (MM/DD/YYYY) of departures and returns to port with port name;
  - PSO names and affiliations, PSO ID (initials or other identifier);
  - Date (MM/DD/YYYY) and participants of PSO briefings;
  - Visual monitoring equipment used (description);
  - PSO location on vessel and height (meters) of observation location above water surface;
  - Watch status (description);
  - Dates (MM/DD/YYYY) and times (Greenwich Mean Time/UTC) of survey on/off effort and times (GMC/UTC) corresponding with PSO on/off effort;
  - Vessel location (decimal degrees) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;

- Vessel location (decimal degrees) at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
- Vessel heading (compass heading) and speed (knots) at beginning and end of visual PSO duty shifts and upon any change;
- Water depth (meters) (if obtainable from data collection software);
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (description) (*e.g.,* vessel traffic, equipment malfunctions); and
- Vessel/Survey activity information (and changes thereof) (description), such as airgun power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).

• Upon visual observation of any marine mammals, the following information must be recorded:

- Sighting ID (numeric);
- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- Location of PSO/observer (description);
- Vessel activity at the time of the sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
- PSO who sighted the animal/ID;
- Time/date of sighting (GMT/UTC, MM/DD/YYYY);
- Initial detection method (description);
- Sighting cue (description);
- Vessel location at time of sighting (decimal degrees);
- Water depth (meters);
- Direction of vessel's travel (compass direction);
- Speed (knots) of the vessel from which the observation was made;
- Direction of animal's travel relative to the vessel (description, compass heading);
- Bearing to sighting (degrees);
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Species reliability (an indicator of confidence in identification) (1 = unsure/possible, 2 = probable, 3 = definite/sure, 9 = unknown/not recorded);
- Estimated distance to the animal (meters) and method of estimating distance;
- Estimated number of animals (high/low/best) (numeric);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach (meters) and/or closest distance from any element of the airgun array;
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action;
- Photos (Yes/No);
- Photo Frame Numbers (List of numbers); and
- Conditions at time of sighting (Visibility; BSS).

Reporting

UT shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airgun arrays were operating. Tracklines should include points recording any change in airgun array status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). Geographic Information System files shall be provided in Environmental Systems Research Institute shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize data collected as described above in Monitoring and Reporting. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in the survey activities discover an injured or dead marine mammal, UT shall report the incident to the Office of Protected Resources (OPR), NMFS and the NMFS, Southeast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Vessel strike—In the event of a strike of a marine mammal by any vessel involved in the activities covered by the authorization, UT shall report the incident to OPR, NMFS, and the NMFS Southeast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, BSS, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;

- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to Atlantic spotted dolphins, bottlenose dolphins, and rough-toothed dolphins, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

NMFS does not anticipate that serious injury or mortality would occur as a result of UT's planned survey, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section above, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential take will be in the form of Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), responses that are considered to be of low severity, and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, 2021). These low-level impacts of behavioral harassment are not likely to impact the overall fitness of any individual or lead to population level effects of any species. As described above, auditory injury (Level A harassment) is not expected to occur given the estimated small size of the Level A harassment zones.

In addition, the maximum expected Level B harassment zone around the survey vessel is 1,750 m. Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (20 survey days) and temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and marine mammal prey species are not expected to cause significant or long-term fitness consequences for individual marine mammals or their populations.

Additionally, the acoustic ''footprint'' of the planned survey will be very small relative to the ranges of all marine mammals that would potentially be affected. Sound levels will increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the planned survey area. The seismic array will be active 24 hours per day throughout the duration of the planned survey. However, the very brief overall duration of the planned survey (20 survey days) will further limit potential impacts that may occur as a result of the planned activity.

There are no rookeries, mating, or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals within the project area.

In summary and as described above, the following factors support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No auditory injury (Level A harassment) is anticipated or authorized;
- The planned activity is temporary and of relatively short duration (23 days total with 20 days of planned survey activity);
- The anticipated impacts of the planned activity on marine mammals will be temporary behavioral changes due to avoidance of the ensonified area, which is relatively small (see tables 5 and 6);
- The availability of alternative areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity is readily abundant;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the planned survey will be temporary and spatially limited and impacts to marine mammal foraging will be minimal; and
- The mitigation measures are expected to reduce the number and severity of takes, to the extent practicable, by visually detecting marine mammals within the established zones and implementing corresponding mitigation measures (*e.g.,* delay; ramp-up).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may

be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of takes NMFS is authorizing is below one-third of the modeled abundance for all relevant populations (specifically, take of individuals is less than 7 percent of the most appropriate abundance estimate for each stock, see table 7). This is conservative because this approach assumes all takes are of different individual animals, which is likely not the case. Some individuals may be encountered multiple times in a day, but PSOs would count them as separate individuals if they cannot be identified.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species are authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to UT for the potential harassment of small numbers of three marine mammal species incidental to the marine geophysical survey in the NW GOM that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: January 14, 2025.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2025–01143 Filed 1–16–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE611]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Marine Planning Committee will hold a webinar, which is open to the public.

DATES: The online meeting will be held on January 30, 2025, from 8:30 a.m. to 5 p.m., Pacific standard time.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The purpose of this webinar is to consider current issues related to offshore wind (OSW) energy development off the U.S. West Coast and prepare a report for the March Council meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 14, 2025.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2025–01147 Filed 1–16–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–C–2024–0049]

Tribal Consultation on the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge

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

ACTION: Notice of Tribal Consultation and request for written comments.

SUMMARY: The United States Patent and Trademark Office (USPTO), Department of Commerce, announces a Tribal Consultation, and requests written comments, regarding the World Intellectual Property Organization (WIPO) Treaty on Intellectual Property, Genetic Resources (GRs) and Associated Traditional Knowledge (ATK) (hereinafter, the ''Treaty'') adopted by WIPO Member States in Geneva, Switzerland on May 24, 2024. The Tribal Consultation will consist of virtual webinars and a request for written comments on whether the United States should sign and implement the Treaty and any impacts of taking those actions. For purposes of this Notice, the words ''Tribe'' or ''Tribes'' are intended to refer to Tribal Nations, State recognized Tribes, other Tribes, and Native Hawaiians and other Pacific Islanders.

DATES:

Webinar Dates: The two virtual webinars for federally recognized Tribal Nations and their proxies will be held on Tuesday, March 18 and Wednesday, March 19, 2025, 3 p.m. to 5 p.m. (eastern). The virtual webinar for the Native Hawaiian Community, their representatives and organizations, and other Pacific Islanders will be held on Thursday, March 27, 2025, 3 p.m. to 5 p.m. (eastern). The virtual webinar for State and non-recognized Tribes, and Tribal and inter-Tribal organizations, including organizations that represent Indigenous Peoples based in the United States, will be held on Friday, March 28, 2025, 3 p.m. to 5 p.m. (eastern).

Written Comment Deadline: Written comments on the questions in this Notice must be received by Monday, April 28, 2025.

ADDRESSES: *Webinar Registration Address:* Please register in advance to participate in one of these webinars at: *https://www.uspto.gov/ip-policy/tribal-consultations-genetic-resources-traditional-knowledge-and-traditional-cultural.* After registering, you will receive a confirmation email containing information about joining the meeting. If you are unable to join via the platform, a call-in number also will be provided. The registration links are not the same for each webinar.

Written Comments Address: Written comments may be submitted by email to: *TribalConsult2025_GRATKTreaty@uspto.gov.* Please use the heading ''WIPO GRATK TREATY TRIBAL CONSULTATION 2025'' in the subject line. Please note: Tribes must submit written comments responsive to the issues raised in this Notice and/or the public FRN by Monday, April 28, 2025.

If electronic submission of comments is not feasible, please submit comments by First-Class Mail or Priority Mail to: Susan Anthony, Tribal Affairs Liaison, Mail Stop OPIA, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22314–1450.

FOR FURTHER INFORMATION CONTACT: Susan Anthony, Tribal Affairs Liaison, Office of Policy and International Affairs (OPIA), USPTO, at *Susan.Anthony@uspto.gov* or 571–272–8459. Please direct media inquiries to the USPTO's Office of the Chief Communications Officer at 571–272–8400. These webinars are closed to the media.

SUPPLEMENTARY INFORMATION: WIPO is a specialized United Nations agency based in Geneva, Switzerland, that focuses on intellectual property. Established in September 2000, the WIPO Intergovernmental Committee (IGC) [1] serves as a forum where WIPO Member States [2] and accredited observers can discuss and address the intellectual property issues that arise in the context of access to GRs as well as the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs). The IGC operates in accordance with a mandate [3] determined by the WIPO General Assembly.

At its Fifty-Fifth (30th Extraordinary) Session, held in Geneva on July 14–22, 2022, the WIPO General Assembly decided to convene a diplomatic conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources, and Traditional Knowledge Associated with Genetic Resources.

The diplomatic conference occurred on May 13–24, 2024, at WIPO Headquarters in Geneva, Switzerland. On May 24, 2024, WIPO Member States adopted the Treaty. The text of the adopted Treaty is different in several respects from the proposed text [4] that served as the starting point for negotiations at the diplomatic conference.

Article 3 of the Treaty mandates that patent applicants disclose the origin/source of a GR, or associated traditional knowledge (ATK) provided by Indigenous Peoples or local communities, in certain circumstances. In particular, the disclosure requirement is triggered where a claimed invention is ''based on'' a GR or ATK, which requires satisfaction of a two-part test: (1) the GR or ATK ''must have been necessary for the claimed invention''; and (2) ''the claimed invention must depend on the specific properties of'' the GR or ATK. Among its 22 articles, the Treaty covers several other topics, including treaty objectives, definitions, exceptions and limitations, non-retroactivity, sanctions and remedies for noncompliance, relationship with other international agreements, and review and potential revision of Treaty text.

For additional context, the text of the Treaty can be found on the WIPO website at: *https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf.* WIPO's ''informal summary'' of the Treaty can be found at: *https://www.wipo.int/edocs/mdocs/mdocs/en/gratk_dc/gratk_dc_exsum.pdf.*

The Treaty is open for signature by any eligible Member State of WIPO for one year after its adoption (*i.e.,* up to May 23, 2025).[5] The act of signing does

[1] More information on the IGC may be found at: *www.wipo.int/tk/en/igc.* In particular, the current ''IGC Mandate'', covering the biennium 2024/2025, may be found at: *https://www.wipo.int/export/sites/www/tk/en/igc/docs/igc-mandate-2024-2025.pdf*

[2] WIPO currently has 193 Member States (*www.wipo.int/members/en/*).

[3] The current ''IGC Mandate'', covering the biennium 2024/2025, may be found at: *https://www.wipo.int/export/sites/www/tk/en/igc/docs/igc-mandate-2024-2025.pdf.*

[4] That text (known as the ''Basic Proposal'') may be found at: *https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_3.pdf.* In October 2023, following a Special Session and Preparatory Committee meeting of the IGC, the USPTO requested comments on draft text that subsequently became the ''Basic Proposal'' of the diplomatic conference (*https://www.federalregister.gov/documents/2023/10/24/2023-23387/wipo-igc-negotiations-on-genetic-resources-and-associated-traditional-knowledge*). Tribal input received by the USPTO helped inform positions taken by the United States at the diplomatic conference.

[5] According to WIPO, as of December 5, 2024, 38 delegations had signed the Treaty: Algeria, Bosnia and Herzegovina, Brazil, Burkina Faso, Cabo Verde, Central African Republic, Chile, Colombia, Congo, Côte d'Ivoire, Democratic People's Republic of Korea, Dominican Republic, Eswatini, Gambia, Ghana, Indonesia, Lesotho, Madagascar, Malawi, Marshall Islands, Morocco, Namibia, Nicaragua, Niger, Nigeria, Niue, Paraguay, Peru, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, South Africa, Togo, United Republic of Tanzania, Uganda, Uruguay, Vanuatu, Zimbabwe.

Continued

not make a Member State a party to (*i.e.,* bound by) the Treaty. Rather, signing qualifies the signatory Member State to proceed to ratification, acceptance, or approval and creates an obligation for the Member State to refrain from acts that would defeat the object and purpose of the Treaty.[6] To become a party to the Treaty, a Member State must undertake a separate step of ratification or accession.[7]

The Treaty will enter into force three months after it is ratified or acceded to by 15 Contracting Parties. [8] Thereafter, Treaty provisions will apply in any Member State of WIPO that is or subsequently becomes a Contracting Party to the Treaty. This means, for example, that the Treaty's required disclosure of the origin/source of GRs/ATK will apply to all patent applicants who file an application in a Contracting Party, including those applicants who come from countries that have not ratified or acceded to the Treaty.

Within the U.S. Government, the USPTO, based on authority delegated by the U.S. Department of State, takes the lead in the WIPO IGC among other Federal agencies and coordinates and develops U.S. positions on issues before the WIPO IGC.

Request for Information

The USPTO welcomes Tribal input on any issues relevant to this Notice and is particularly interested in comments responsive to the questions below. The USPTO also has issued in this issue of the **Federal Register** a notice entitled, ''Request for Comments and Testimony on the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge,'' which is directed to the general public (''public FRN''). Tribes may also provide comments responsive to the questions or participate in the public hearing described in the USPTO's public FRN regarding the Treaty.

Questions for Comment

When submitting written comments, please identify yourself and either your Tribal Government, or that you are a Native Hawaiian or other Pacific Islander. If you are a representative, please identify yourself and for whom you are speaking. Commenters need not respond to every question and may provide relevant information, even if not responsive to a particular question.

1. In your view, should the United States sign and become a party to the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge? In your response, please identify and explain your reasons in detail, including legal, policy, and any other considerations.

2. In your view, please explain whether the Treaty is consistent or inconsistent with existing U.S. law, including tribal treaties and other federal law. In your response, please explain your legal reasoning and identify the provisions of the Treaty that are consistent or inconsistent with U.S. law.

3. If, in your view, the Treaty is inconsistent with existing U.S. law, please identify and explain the change(s) to U.S. law necessary for compliance with the Treaty. In doing so, please describe any impacts of adopting such change(s).

4. In your view, please explain whether the Treaty is consistent or inconsistent with existing U.S. international obligations, including treaties, free trade agreements, and other international agreement(s). In your response, please explain your legal reasoning and identify the provision(s) of the Treaty that are consistent or inconsistent with specific U.S. international obligations.

5. Please indicate whether and, if so, how GRs and ATK may be protected by existing U.S. law(s). In doing so, please explain your legal reasoning and identify the specific law(s) by which GRs and ATK may be protected.

6. Please indicate whether and, if so, how GRs and ATK may be protected by tribal treaties, tribal customary law and protocols, tribal codes, or in other ways. In doing so, please explain your legal reasoning and identify the specific provision(s) of the identified ways by which GRs and ATK may be protected.

7. If the United States does not become a party to the Treaty, please identify any Treaty or other provision(s) you believe should be incorporated in U.S. patent or other law for protection of GRs and ATK. In your response, please explain the reason(s) for and any impact(s) of, incorporating those provisions in U.S. patent or other law.

8. In your view, please identify and explain any impact(s) of implementing the Treaty on domestic and global innovation, including both tribal and non-Indigenous innovation.

9. Based on your experiences with other countries that require patent applicants to disclose the source or origin of GRs or ATK, please identify and explain any possible impact(s) of Treaty implementation in the United States.

10. In your view, please identify and explain any impact(s) of implementing or not implementing the Treaty on the Tribal Nations and other Indigenous Peoples located in the U.S.

Derrick L. Brent,

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

[FR Doc. 2025–01092 Filed 1–16–25; 8:45 am]

BILLING CODE 3510–16–P

(*https://www.wipo.int/export/sites/www/treaties/en/docs/pdf/gratk.pdf*).

[6] *See, e.g.,* Article 18 of the Vienna Convention on the Law of Treaties (*https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf*).

[7] *See* WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, Articles 12–13, 18 (*https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf*).

[8] According to WIPO, as of December 5, 2024, only Malawi had ratified or acceded to the Treaty.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–C–2024–0048]

Request for Comments and Testimony on the World Intellectual Property Organization Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge

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

ACTION: Request for comments and notice of hearing.

SUMMARY: The United States Patent and Trademark Office (USPTO), Department of Commerce, requests input from all interested parties on the World Intellectual Property Organization (WIPO) Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (hereinafter, ''the Treaty'') adopted by WIPO Member States in Geneva, Switzerland on May 24, 2024. In particular, the USPTO welcomes written comments, and will hold a hybrid hearing, on whether the United States should sign and implement the Treaty and any impacts of taking those actions. The text of the Treaty can be found on the WIPO website at: *https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf.*

DATES: Written comments must be received on or before March 18, 2025. The USPTO will also hold a hybrid hearing on this matter on April 29, 2025, from 9 a.m.–12 p.m. and 1–4 p.m. eastern time (ET). If necessary, the hearing may continue on April 30, 2025. Any interested parties wishing to present oral testimony at the hearing must submit a written request for an opportunity to do so no later than April 22, 2025. Details on submitting such a request are provided below.

ADDRESSES:

I. For Comment Submitters

For reasons of Government efficiency, comments should be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov.* To submit comments via the portal, enter docket number PTO–C–2024–0048 on the homepage and select ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this request for information and select the ''Comment'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in Adobe® portable document format or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as a personal address or phone number, should not be included.

Visit the Federal eRulemaking Portal (*www.regulations.gov*) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please submit comments by First-Class Mail or Priority Mail to: Michael Buckler, Patent Attorney, Mail Stop OPIA, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

II. For All Hearing Attendees

The hybrid hearing will be held in person in the Clara Barton Auditorium at the USPTO, 600 Dulany Street, Alexandria, Virginia 22314. The hearing will also be available in a virtual format for those wishing to attend remotely. Prior to the hearing, information on attendance will be posted on the Office of Policy and International Affairs (OPIA) section of the USPTO website, *https://www.uspto.gov/ip-policy.*

III. For Hearing Testifiers (Requests To Present Oral Testimony)

All interested parties are invited to testify at the hearing. Anyone wishing to present oral testimony at the hearing must submit a request in writing no later than April 22, 2025. Requests to testify must be submitted by email to Michael Buckler at *michael.buckler@uspto.gov* or, if email submission is not feasible due to a lack of access to a computer and/or the internet, by First-Class Mail or Priority Mail as indicated above.

Requests to testify should specify:

1. The name of the person wishing to testify;

2. The person's contact information (telephone number and email address);

3. The organization(s) the person represents, if any;

4. An indication of the amount of time needed for the testimony (not to exceed 5 minutes to allow time for follow-up questions);

5. An indication of whether testimony will be provided in person or remotely; and

6. A copy of your prepared remarks.

FOR FURTHER INFORMATION CONTACT: Michael Buckler, Patent Attorney, USPTO, Office of Policy and International Affairs (OPIA), at *michael.buckler@uspto.gov* (preferred) or 571–272–6024.

SUPPLEMENTARY INFORMATION:

I. Background

WIPO is a specialized United Nations agency based in Geneva, Switzerland, that focuses on intellectual property. Established in September 2000, the WIPO Intergovernmental Committee (IGC) [1] is a Permanent Committee of WIPO where Member States [2] and accredited observers can discuss and address intellectual property issues that arise in the context of access to genetic resources (GRs) as well as the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs). The IGC operates in accordance with a mandate [3] determined by the WIPO General Assembly.

At its Fifty-Fifth (30th Extraordinary) Session, held in Geneva on July 14–22, 2022, the WIPO General Assembly decided to convene a diplomatic conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources.

The diplomatic conference occurred on May 13–24, 2024, at WIPO Headquarters in Geneva. On May 24, 2024, WIPO Member States adopted the Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge. The text of the adopted Treaty is different in several respects from the proposed text [4] that served as the starting point for negotiations at the diplomatic conference.

Article 3 of the Treaty mandates that patent applicants disclose the origin/source of a GR, or associated traditional knowledge (ATK) provided by Indigenous Peoples or local communities, in certain circumstances. In particular, the disclosure requirement is triggered where a claimed invention is ''based on'' a GR or ATK, which requires satisfaction of a two-part test: (1) the GR or ATK ''must have been necessary for the claimed invention''; and (2) ''the claimed invention must depend on the specific properties of'' the GR or ATK. Among its 22 articles, the Treaty covers several other topics, including treaty objectives, definitions, exceptions and limitations, non-retroactivity, sanctions and remedies for noncompliance, relationship with other international agreements, and review and potential revision of Treaty text.

For additional context, the text of the Treaty can be found on the WIPO website at: *https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf.* Likewise, WIPO's ''informal summary'' of the Treaty can be found at: *https://www.wipo.int/edocs/mdocs/mdocs/en/gratk_dc/gratk_dc_exsum.pdf.*

The Treaty is open for signature for one year after its adoption (*i.e.,* up to May 23, 2025).[5] The act of signing does not make a Member State a party to (*i.e.,* bound by) the Treaty. Rather, signing qualifies the signatory Member State to proceed to ratification, acceptance, or approval; and creates an obligation for the Member State to refrain from acts that would defeat the object and purpose of the Treaty.[6] To become a party to the Treaty, a Member State must undertake a separate step of ratification or accession.[7]

[1] More information on the IGC may be found at: *https://www.wipo.int/tk/en/igc.*

[2] WIPO currently has 193 Member States. *https://www.wipo.int/members/en/.*

[3] The current ''IGC Mandate'', covering the biennium 2024/2025, may be found at: *https://www.wipo.int/export/sites/www/tk/en/igc/docs/igc-mandate-2024-2025.pdf.*

[4] That text (known as the ''Basic Proposal'') may be found at: *https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_3.pdf.* In October 2023, following a Special Session and Preparatory Committee meeting of the IGC, the USPTO requested comments on draft text that subsequently became the ''Basic Proposal'' of the diplomatic conference. *https://www.federalregister.gov/documents/2023/10/24/2023-23387/wipo-igc-negotiations-on-genetic-resources-and-associated-traditional-knowledge.* Comments received by the USPTO helped inform positions taken by the United States at the diplomatic conference.

[5] According to WIPO, as of December 5, 2024, thirty-eight delegations had signed the Treaty: Algeria, Bosnia and Herzegovina, Brazil, Burkina Faso, Cabo Verde, Central African Republic, Chile, Colombia, Congo, Côte d'Ivoire, Democratic People's Republic of Korea, Dominican Republic, Eswatini, Gambia, Ghana, Indonesia, Lesotho, Madagascar, Malawi, Marshall Islands, Morocco, Namibia, Nicaragua, Niger, Nigeria, Niue, Paraguay, Peru, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, South Africa, Togo, United Republic of Tanzania, Uganda, Uruguay, Vanuatu, and Zimbabwe. *https://www.wipo.int/export/sites/www/treaties/en/docs/pdf/gratk.pdf.*

[6] See, *e.g.,* Article 18 of the Vienna Convention on the Law of Treaties. *https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.*

[7] See WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional

Continued

The Treaty will enter into force three months after it is ratified or acceded to by 15 eligible parties.[8] Thereafter, Treaty provisions will apply in any Member State of WIPO that is or subsequently becomes a Contracting Party to the Treaty. This means, for example, that the Treaty's required disclosure of the origin/source of GRs/ATK will apply to all patent applicants who file an application in a Contracting Party, including those applicants who come from countries that have not ratified or acceded to the Treaty.

Within the U.S. Government, the USPTO, based on authority delegated by the U.S. Department of State, takes the lead in the WIPO IGC among other Federal agencies and coordinates and develops U.S. positions on issues before the WIPO IGC.

In addition to this request for comments and notice of hearing, the USPTO will conduct a Tribal Consultation to seek input from Tribes on the Treaty. Additional details about the Tribal Consultation can be found in a notice published in this issue of the **Federal Register**.

II. Substantive Guidance on Comments and Testimony

The USPTO welcomes any relevant, written comments or oral testimony on the topics described herein, particularly on the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, the text of which can be found on the WIPO website at: *https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf.*

The USPTO is especially interested in responses to the questions below. However, commenters or testifiers need not respond to every question and may provide relevant information even if it is not responsive to a particular question. Comments and testimony should be as detailed as possible and provide all necessary information to enable an objective assessment of the views expressed, including specific references to: laws, regulations, and policy statements; executive, presidential, or other orders; administrative, court, or other determinations; and available data (and associated methodology) regarding purported and potential impacts of policy decisions.

1. In your view, should the United States sign and become a party to the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge? In your response, please identify and explain your reasoning in detail, including legal and policy considerations.

2. In your view, please explain whether the Treaty is consistent with existing U.S. patent law. In your response, please explain your legal reasoning and identify the provision(s) of the Treaty that you view as consistent or inconsistent with U.S. patent law.

3. If, in your view, the Treaty is inconsistent with existing U.S. patent law, please identify and explain the change(s) to U.S. patent law necessary for compliance with the Treaty. In doing so, please describe any impact(s) of adopting such changes.

4. In your view, please explain whether the Treaty is consistent with existing U.S. international obligations, including treaties, free trade agreements, and other binding international agreement(s). In your response, please explain your legal reasoning and identify any provision(s) of the Treaty that you view as consistent or inconsistent with specific U.S. international obligations.

5. If the United States does not become a party to the Treaty, please identify any Treaty provision(s) you believe should be incorporated into U.S. patent law. In your response, please explain the reason(s) for and any impact(s) of incorporating the identified provision(s) into U.S. patent law.

6. In your view, please identify and explain any impact(s) of implementing the Treaty in the United States on domestic and global innovation, including U.S. science and innovation leadership.

7. In your view, please identify and explain any impact(s) of implementing the Treaty in the United States on businesses, consumers, investors, and the economy.

8. Based on your experiences with other countries that require patent applicants to disclose the source or origin of GRs or ATK, please identify and explain any possible impact(s) of Treaty implementation in the United States.

III. Additional Information on Hearing

Speaking slots are limited, and the USPTO may be unable to honor all requests. If more requests to provide oral testimony are received than time allows, requesters will be invited to submit written comments. Time slots will be a maximum of five minutes each to allow for follow-up questions on testimony or corresponding comments. Speakers providing testimony at the hearing should submit a written copy of their testimony for inclusion in the record of the proceedings no later than April 22, 2025. Speakers will have one week following the hearing to submit any supplemental materials referenced during their testimony. Such materials must be submitted by email to Michael Buckler at *michael.buckler@uspto.gov* or, if email submission is not feasible due to a lack of access to a computer and/or the internet, by First-Class Mail or Priority Mail as indicated above.

Before the hearing, an agenda of witness testimony will be sent to testifiers and posted on the OPIA section of the USPTO website, *https://www.uspto.gov/ip-policy.*

If time allows, the USPTO may permit unscheduled testimony at the hearing.

The hearing will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven business days prior to the hearing.

A recording of the hearing will be posted on the OPIA section of the USPTO website, *https://www.uspto.gov/ip-policy,* as soon as possible after the hearing.

A transcript of the hearing will be available on the OPIA section of the USPTO website, *https://www.uspto.gov/ip-policy,* as soon as possible after the hearing.

Derrick L. Brent,

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

[FR Doc. 2025–01090 Filed 1–16–25; 8:45 am]

BILLING CODE 3510–16–P

Knowledge, Articles 12–13, 18. *https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf.*

[8] According to WIPO, as of December 5, 2024, only Malawi had ratified or acceded to the Treaty.

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2025–0006]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) requests the Office of Management and Budget's (OMB's) approval of an information collection titled ''Auto Loan Survey.''

DATES: Written comments are encouraged and must be received on or before March 18, 2025 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CFPB_PRA@cfpb.gov.* Include Docket No. CFPB–2025–0006 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street, NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, PRA Officer, at (304) 481–5511, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Auto Loan Survey.

OMB Control Number: 3170–00XX.

Type of Review: New information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,060.

Estimated Total Annual Burden Hours: 1,670.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau (CFPB) is charged with researching, analyzing, and reporting on topics relating to the CFPB's mission, including consumer behavior, consumer awareness, and developments in markets for consumer financial products and services. To improve its understanding of how consumers engage with financial markets, the CFPB has successfully used credit record data as a sampling frame to survey people about their experiences in consumer credit markets.

The CFPB seeks approval for a new survey of auto loan borrowers. The survey will use the CFPB's Consumer Credit Information Panel (CCIP) as the sampling frame. This survey will solicit information on the consumer's experience related to auto purchases and loans including choosing a vehicle and financing, experiences with major vehicle expenses, experiences with loan servicing, and, if applicable, loan modification and repossession. This survey will augment the auto finance data pilot and linked CCIP data by providing information not available in either source such as consumer demographics, household income and assets, income or expense shocks, understanding of the auto financing market, expectations, and self-reported experiences with auto-loan origination and servicing. The survey will follow similar methods as in the CFPB's prior Making Ends Meet Survey (approved under OMB Control Number 3170–0066) and Student Loan Survey (approved under OMB Control Number 3170–0078) but sample a different population of borrowers and focus primarily on auto loans. The CFPB expects to recruit about 23,000 participants to participate in the survey.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB;s estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2025–01142 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2025–0004]

Request for Information Regarding Consumer Credit Card Market

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for information.

SUMMARY: The Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act or Act) requires the Consumer Financial Protection Bureau (CFPB) to conduct a review (Review) of the consumer credit card market, within the limits of its existing resources available for reporting purposes. In connection with conducting that Review, and in accordance with the Act, the CFPB is soliciting information from the public about a number of aspects of the consumer credit card market as described further below.

DATES: Comments must be submitted on or before April 17, 2025 to be assured of consideration.

ADDRESSES: You may submit responsive information and other comments, identified by the document title and Docket No. CFPB–2025–0004, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2025_ConsumerCreditCardMarketRFI@cfpb.gov.* Include the document title and Docket No. CFPB–2025–0004 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Request for Information Regarding Consumer Credit Card Market, Consumer Financial Protection Bureau, c/o Legal Division Docket Manager, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number for this request for information. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics.) In general, all comments received will be posted without change to *http://www.regulations.gov.* All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Daniel Martinez, Consumer Credit, Payments, and Deposits Markets Senior

Program Manager, Division of Research, Markets, and Regulations, at (202) 435–7700, or *Daniel.Martinez@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: Section 502(a) of the CARD Act [1] requires the CFPB to conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market every two years. To inform that review, section 502(b) instructs the CFPB to seek public comment.[2]

The CFPB's first such review was published in October 2013; the CFPB's second such review was published in December 2015; the CFPB's third such review was published in December 2017; the CFPB's fourth such review was published in August 2019; the CFPB's fifth such review was published in September 2021; the CFPB's sixth such review was published in October 2023.[3] To inform the CFPB's next review, the CFPB hereby invites members of the public, including consumers, credit card issuers, industry analysts, consumer groups, and other interested persons to submit information and other comments relevant to the issues expressly identified in section 2 below, as well as any information they believe is relevant to a review of the credit card market.

1. Background: the CARD Act

The CARD Act was signed into law in May 2009.[4] Passage of the Act was expressly intended to ''establish fair and transparent practices related to the extension of credit'' in the credit card market.[5] To achieve these agreed-upon purposes, the Act changed the requirements applicable to credit card practices in a number of significant respects.[6]

[1] *See* 15 U.S.C. 1616(a).

[2] *See* 15 U.S.C. 1616(b).

[3] CARD Act Report, *http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf;* The Consumer Credit Card Market, *available at http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf;* The Consumer Credit Card Market, *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf;* The Consumer Credit Card Market, *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf;* The Consumer Credit Card Market, *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf;*

[4] The CARD Act's provisions took effect in three stages: August 2009, February 2010, and October 2011.

[5] Pub. L. 111–24, 123 Stat. 1734 (2009).

[6] *See* CARD Act Report at 10–13, *http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.*

2. Issues on Which the CFPB seeks public comment for its Review

In connection with its pending Review, the CFPB seeks information from members of the public about how the credit card market is functioning. The CFPB seeks comments on the experiences of consumers and credit card issuers in the credit card market and on the overall health of the credit card market, as outlined in section 502(a) and in (1) through (7) below. While the CFPB identifies specific topics of interest below, the CFPB also wants to be alerted to and understand the information that consumers, credit card issuers, industry analysts, consumer groups, and other interested persons believe is most relevant to the CFPB's review of the credit card market, so this list of subjects should not be viewed as exhaustive. Commenters are encouraged to address any other aspects of the consumer credit card market that they believe would be of interest or concern to the CFPB.

Please feel free to comment generally or respond to any or all of the questions below but please indicate in your comments on which topic areas or questions you are commenting:

(1) *The terms of credit card agreements and the practices of credit card issuers*

a. How have the substantive terms and conditions of credit card agreements or the length and complexity of such agreements changed over the past two years?

b. How have issuers changed their pricing, marketing, underwriting, or other practices?

c. How are the terms of, and practices related to, major supplementary credit card features (such as credit card rewards, deferred interest promotions, balance transfers, and cash advances) evolving? What are the terms of, practices related to, and prevalence of emerging supplementary credit card features?

d. How have issuers' marketing practices changed since the CFPB reported on the credit card market in 2023? If so, in what ways?

e. What practices of credit card issuers may uniquely affect special populations (such as servicemembers and their dependents, low- and moderate-income consumers, older Americans, and students)? What are the effects of protections specific to special populations (for example, consumers with non-prime credit scores)? How are these changing and what, if any, trends are evolving?

f. How have practices related to collecting on delinquent and charged-off credit card debt?

g. Has the use of electronic communication (*e.g.,* email or SMS) by creditors and debt collectors in connection with credit card debt grown or otherwise evolved? If so, in what ways?

h. How are the practices of for-profit debt settlement companies changing and what trends are occurring in the debt settlement industry? How are creditors and non-profit credit counseling agencies responding to these changes and trends?

(2) *The effectiveness of disclosure of terms, fees, and other expenses of credit card plans*

a. How effective are current disclosures of rates, fees, and other cost terms of credit card accounts in conveying to consumers the costs of credit card plans?

b. What further improvements in disclosure, if any, would benefit consumers and what costs would card issuers or others incur in providing such disclosures?

c. How well are current credit card disclosure rules and practices adapted to the digital environment? What adaptations to credit card disclosure regimes in the digital environment would better serve consumers or reduce industry compliance burden?

(3) *The adequacy of protections against unfair or deceptive acts or practices relating to credit card plans*

a. What unfair, deceptive, or abusive acts and practices exist in the credit card market? How prevalent are these acts and practices and what effect do they have? With regard to any unfair, deceptive, or abusive acts and practices that exist in the credit card market, how might any such conduct be prevented and at what cost?

(4) *The cost and availability of consumer credit cards*

a. How have the cost and availability of consumer credit cards (including with respect to non-prime borrowers) changed since the CFPB reported on the credit card market in 2023? What is responsible for changes (or absence of changes) in cost and availability? Has the impact of the CARD Act on cost and availability changed over the past two years?

b. How, if at all, are the characteristics of consumers with lower credit scores changing? How are groups of consumers in different score tiers faring in the market? How do other factors relating to consumer demographics or financial lives affect consumers' ability to successfully obtain and use credit cards?

c. How have market trends and issuer practices pertaining to deferred interest

evolved since the CFPB's prior Review of the product in 2021?

d. What are the practices and metrics of ''issuers who specialize in providing credit cards to consumers with lower credit scores? How are credit card-as-a-service partnerships changing the cost and availability of credit for consumers?

e. How are consumers' credit needs evolving? How are consumers' spending patterns changed over time and reflect the demand for credit? Are non-prime consumers transacting more on essential goods and services?

f. How are paper statement fees impacting the cost of credit? What proportion of consumers receive paper statements?

g. How is competition in the consumer credit card market changing? How has the CARD Act (positively or negatively) impacted competition between credit card issuers? How, if at all, do these changes and impacts relate to the cost or availability of consumer credit cards?

(5) *The safety and soundness of credit card issuers*

a. How is the credit cycle evolving? What, if any, safety and soundness risks are present or growing in this market, and which entities are disproportionately affected by these risks? How, if at all, do these safety and soundness risks to entities result from or otherwise relate to long-term indebtedness on the part of some consumers, or changes in consumers' ability to manage their debts? Has the impact of the CARD Act on safety and soundness changed over the past two years?

(6) *The use of risk-based pricing for consumer credit cards*

a. How has the use of risk-based pricing for consumer credit cards changed since the CFPB reported on the credit card market in 2023? What has driven those changes or lack of changes? Has the impact of the CARD Act on risk-based pricing changed over the past two years?

b. How have CARD Act provisions relating to risk-based pricing impacted (positively or negatively) the evolution of practices in this market?

c. Are changes in consumers' credit scores leading to both upward and downward APR repricing? Are incidence in one direction more common than the other?

(7) *Consumer credit card product innovation*

a. How has credit card product innovation changed since the CFPB reported on the credit card market in 2023? What has driven those changes or lack of changes? Has the impact of the CARD Act on product innovation changed over the past two years?

b. How have broader innovations in finance, such as (but not limited to) new products and entrants offering unique features, evolving digital tools, greater availability of and new applications for consumer data, and new technological tools (like artificial intelligence), impacted the consumer credit card market, either directly or indirectly? In what ways do CARD Act provisions encourage or discourage innovation? In what ways do innovations increase or decrease the impact of certain CARD Act provisions, or change the nature of those impacts?

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2025–01201 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2025–0007]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval for an existing information collection, titled ''Generic Information Collection Plan for the Collection of Qualitative Feedback on Bureau Service Delivery,'' approved under OMB Control Number 3170–0024.

DATES: Written comments are encouraged and must be received on or before March 18, 2025 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CFPB_PRA@cfpb.gov.* Include Docket No. CFPB–2025–0007 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, PRA Officer, at (304) 481–5511, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Collection of Qualitative Feedback on Bureau Service Delivery.

OMB Control Number: 3170–0024.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals and households; private sector; and State, Local, and Tribal Governments.

Estimated Number of Respondents: 500,000.

Estimated Total Annual Burden Hours: 125,000.

Abstract: This generic information collection plan provides for the collection of qualitative feedback from consumers, financial institutions, and stakeholders on a wide range of services the CFPB provides in an efficient, timely, manner in accordance with the CFPB's commitment to improving service delivery. By qualitative feedback, the CFPB means information that provides useful insights on, for example, comprehension, usability, perceptions, and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The CFPB expects this feedback to include insights into consumer, financial institution or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the CFPB and consumers, financial institutions, and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2025–01140 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Days of Service Project Collection Tool

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 18, 2025.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) *By mail sent to:* AmeriCorps, Attention Rhonda Taylor, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, (202) 355–2202 or by email at *RTaylor@americorps.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Days of Service Project Collection Tool.

OMB Control Number: 3045–0122.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and organizations.

Total Estimated Number of Annual Responses: 100,000.

Total Estimated Number of Annual Burden Hours: 17,000.

Abstract: AmeriCorps is soliciting comments concerning the proposed renewal of its Days of Service Project Tool, which allows organizers of volunteer events to register their service projects associated with Martin Luther King, Jr., Service Day, September 11th Day of Service, and other volunteer events. Respondents include national service grantees, corporations, volunteer organizations, government entities, and individuals. AmeriCorps wants to help promote Days of Service and other relevant volunteer activities across the country and also to assess the impact of the agency's initiatives. Information provided is purely voluntary and will not be used for any grant or funding support. The current application is due to expire on March 31, 2025. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Rhonda Taylor,

Director of Partnerships and Program Engagement.

[FR Doc. 2025–01093 Filed 1–16–25; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD (P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Evaluation of The U.S. Army Barracks Locks Upgrade Initiative (BLUI) submitted under ''DoD-wide Data Collection and Analysis for the Department of Defense Qualitative and Quantitative Data Collection in Support of the Independent Review Commission on Sexual Assault Recommendations''; OMB Control Number 0704–0644.

Type of Request: New.

Number of Respondents: 1,660.

Responses per Respondent: 1.

Annual Responses: 1,660.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 415.

Needs and Uses: The Independent Review Commission on Sexual Assault in the Military recommended that the Department develop a ''state-of-the-art DoD prevention research capability'' to better understand and develop prevention approaches for sexual assault and other crimes. This information collection is necessary to understand the impact of the U.S. Army's BLUI, which modernized locks in Army barracks, on sexual and non-sexual crimes and related outcomes. The study focuses on E1–E4 Soldiers living in barracks, assessing the upgrades' effectiveness and related communications on trust in leadership, fear and perceived risk of sexual and non-sexual crimes, and actual victimization/perpetration. This information will help support the development of evidence-based approaches for prevention.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: January 13, 2025.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–01133 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD (P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Evaluation of the Enhanced, Assess, Acknowledge, Act Sexual Assault Resistance Training submitted under ''DoD-wide Data Collection and Analysis for the Department of Defense Qualitative and Quantitative Data Collection in Support of the Independent Review Commission on Sexual Assault Recommendations''; OMB Control Number 0704–0644.

Type of Request: New.

Baseline and Follow-Up Survey

Number of Respondents: 1,200.
Responses per Respondent: 2.
Annual Responses: 2,400.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 600.

EAAA Training Feedback Forms

Number of Respondents: 480.
Responses per Respondent: 1.
Annual Responses: 480.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 40.

Total Submission Burden

Total Number of Responses: 1,680.
Total Number of Annual Responses: 2,880.
Total Respondent Burden Hours: 640.

Needs and Uses: The Independent Review Commission on Sexual Assault in the Military recommended that the Department develop a ''state-of-the-art DoD prevention research capability'' to better understand and develop prevention approaches for sexual harassment, sexual assault, and other forms of violence. The information collection is necessary to understand whether the Enhanced, Assess, Acknowledge, Act Sexual Assault Resistance Training can be implemented with fidelity in the military as a primary prevention activity and whether it will produce beneficial outcomes. This information will help support the development of evidence-based approaches for prevention.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: January 13, 2025.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–01134 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD (P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular

information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Evaluation of U.S. Army Coaching for Resilience and Trauma-Informed Leadership Training Pilot submitted under ''DoD-wide Data Collection and Analysis for the Department of Defense Qualitative and Quantitative Data Collection in Support of the Independent Review Commission on Sexual Assault Recommendations''; OMB Control Number 0704–0644.

Type of Request: New.

Coaching for Resilience (CFR) Surveys, Feedback Form, and Interviews (Soldiers)

Number of Respondents: 720.
Responses per Respondent: 1.55.
Annual Responses: 1,116 (720 for survey; 360 for feedback form; 36 for interviews).
Average Burden per Response: 15 minutes (surveys); 6 minutes (feedback forms); 45 minutes (interviews).
Annual Burden Hours: 423.

Trauma Informed Leadership Training Survey and Interviews (Drill Sergeants)

Number of Respondents: 180.
Responses per Respondent: 1.07.
Annual Responses: 192 (180 for survey; 12 for interviews).
Average Burden per Response: 15 minutes (survey); 45 minutes (interviews).
Annual Burden Hours: 54.

CFR Performance Expert Interviews

Number of Respondents: 12.
Responses per Respondent: 1.
Annual Responses: 12.
Average Burden per Response: 45 minutes.
Annual Burden Hours: 9.

Total

Number of Respondents: 912.
Annual Responses: 2,040.
Annual Burden Hours: 486.

Needs and Uses: The Independent Review Commission on Sexual Assault in the Military recommended that the Department ''institute a pilot program to link Service members with resources and support'' to actively support Service members with the most effective prevention interventions. The information collection is necessary to understand whether the Coaching for Resilience and Trauma-Informed Leadership Training pilot can be implemented with fidelity in the military as a primary prevention activity and whether it will produce beneficial outcomes. This information will help support the development of evidence-based approaches for prevention.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: January 13, 2025.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–01136 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: January 13, 2025, 3:00 p.m.–3:45 p.m. Eastern Standard Time (EST); open to the public, 4:00 p.m.–4:30 p.m. EST; closed to the public.

ADDRESSES: The open and closed portions of the DIB public meeting on January 13, 2025 will take place at the Pentagon, in Washington, DC The open portion of the meeting will be accessible to the public virtually, via the Defense Visual Information Distribution Service.

FOR FURTHER INFORMATION CONTACT: Dr. Marina Theodotou, Designated Federal Officer (DFO) at (703) 945–5652 (voice) or *osd.innovation@mail.mil.* Mailing address is Defense Innovation Board, 4800 Mark Center Drive, Suite 15D08, Alexandria, VA 22350–3600. The most up-to-date changes to the meeting agenda and link to the virtual meeting can be found on the website at *https://innovation.defense.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''); 5 U.S.C. 552b; and 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the DFO and the DoD, the DIB was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its January 13, 2025 meeting. The circumstances included the DIB's calendar availability related to when to hold the meeting due to the new administration transition timeline and an internal transition of the DIB to a new DoD Sponsor, the Director of the Defense Innovation Unit (DIU). Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of Meeting: The mission of the DIB is to provide the Secretary of Defense (SecDef), the Deputy Secretary of Defense (DepSecDef), and the Director of the DIU independent advice and strategic insights on emerging and disruptive technologies and their impact on national security, adoption of commercial sector innovation best practices, and ways to leverage the United States innovation ecosystem to align structures, processes, and human capital practices to accelerate and scale innovation adoption, foster a culture of innovation and an experimentation mindset, and enable the DoD to build enduring advantages. The DIB focuses on innovation-related issues and topics raised by the SecDef, the DepSecDef, or the DIU. The objective of this DIB meeting is to present its key recommendations resulting from its two current studies: ''A Pathway to Scaling Unmanned Weapon Systems'' and ''Scaling Nontraditional Defense Innovation'', and vote on the advice and recommendations for the Department to adopt.

Agenda: The DIB's open portion of the meeting will take place on January 13, 2025, 3:00 p.m.–3:45 p.m. EST. The DIB DFO, Dr. Marina Theodotou, will open the meeting and introduce the DIB Chair, Michael Bloomberg for his welcome and opening remarks. The DIB Chair and members will discuss relevant innovation topics through open discussions, present their findings and recommendations to the DIB for deliberation, and vote on its two current studies: ''A Pathway to Scaling Unmanned Weapon Systems'' and ''Scaling Nontraditional Defense Innovation''. Additionally, the DepSecDef will speak on the overall work of the DIB and the value of the recommendations it has provided to the Department. Next, the DFO will read written public comments into the meeting record, followed by closing remarks from the DIB's Chair, and

adjournment of the open portion of the meeting by the DFO.

The DIB will continue in a closed session from 4:00 p.m. to 4:30 p.m. during which the DIB members will brief the SecDef on the findings and recommendations of their two current studies, and discuss classified matters relating to unmanned systems, scaling innovative processes and procedures, and approaches to strengthen how the Department engages with Industry to drive faster tech adoption.

Meeting Accessibility: Pursuant to 1009(a)(1) of the FACA and 41 CFR 102–3.140 and 102–3.150, the open meeting will be accessible to the public virtually on January 13, 2025, 3:00 p.m.–3:45 p.m. EST. Members of the public wishing to attend the meeting virtually will be able to access a link published on the DIB website the morning of the meeting.

In accordance with 1009(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that part of the DIB meeting will be closed to the public on January 13th, from 4:00 p.m. to 4:30 p.m. Specifically, the DDIU as the DIB Sponsor, in consultation with the DoD Office of General Counsel, has determined in writing that this portion of the meeting will be closed to the public because the DIB will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the classified nature of discussions related to national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meeting. To permit this portion of the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DIB's findings and recommendations to the SecDef.

Written Statements: Pursuant to 41 CFR 102–3.150(6) and 102–3.140 and 1009(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the DIB in response to the stated agenda of the meeting or regarding the DIB's mission in general. Written comments or statements should be submitted to Dr. Marina Theodotou, the DFO, via email to *osd.innovation@mail.mil.* Comments or statements must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements being submitted in response to the agenda set forth in this notice by 12:00 p.m. on January 12, 2025, to be considered by the DIB. The DFO will review all timely submitted written comments or statements with the DIB Chair and ensure the comments are provided to all members before the meeting. Written comments or statements received after January 12th may not be provided to the DIB until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the DIB's website.

Dated: January 14, 2025.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–01204 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0121]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD (P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Recruiting, Retaining, and Promoting Servicemembers who Identify as Hispanic or Latino/Latina; OMB Control Number 0704–RPSS.

Type of Request: New.

Number of Respondents: 2,140.

Responses per Respondent: 1.

Annual Responses: 2,140.

Average Burden per Response: 36.17 minutes.

Annual Burden Hours: 1,290.

Needs and Uses: Over the last several years, the DoD has been concerned about the force's ethnic composition due to underrepresentation of Hispanic or Latino/Latina service members in the senior grades across the services. The Fiscal Year 2022 National Defense Authorization Act (NDAA), Section 572, also requires a study focused on the recruitment, retention, and promotion of service members identifying as Hispanic. To address these items covered by the FY22 NDAA, OUSD (P&R) Office for Diversity, Equity, and Inclusion (ODEI) has contracted with CNA to conduct a study to identify and address gaps in DoD's understanding of the recruitment, retention, and career progression of Hispanic service members; evaluate past efforts and initiatives by DoD and the services aimed at increasing Hispanic representation; and identify key lessons learned or best practices that should inform future initiatives. As part of this study, CNA will conduct service-specific in-person and virtual focus groups with active-duty service members in the Marine Corps, Army, Navy, Air Force, and Space Force. The voluntary focus groups will inquire about focus group participants' opinions and experiences based on their military careers. The purpose of the focus groups is to better understand the challenges that service members face in recruiting, retention, and promotion, especially for those who identify as Hispanic or Latino/Latina.

Additionally, Florida International University, a subcontractor to CNA on this study, will conduct a survey among eligible members of the general Hispanic population who are registered to vote in the United States (U.S.), analyze the survey data, and produce a report detailing findings and recommendations for ODEI. The intent of the survey is to examine factors that influence the U.S. Hispanic population's perceptions of military service in the U.S. Armed Services and to identify the root causes for the notable disparity in the recruitment, retention, and promotion of service members who identify as Hispanic. Participation in the survey will be voluntary.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: January 13, 2025.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–01137 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Evaluation of the U.S. Marine Corps' Prime for Life 4.5 Program submitted under ''DoD-wide Data Collection and Analysis for the Department of Defense Qualitative and Quantitative Data Collection in Support of the Independent Review Commission on Sexual Assault Recommendations''; OMB Control Number 0704–0644.

Type of Request: New.

Number of Respondents: 1,215.

Responses per Respondent: 2.683.

Annual Responses: 3,260.

Average Burden per Response: 12.07 minutes.

Annual Burden Hours: 656.

Needs and Uses: The Independent Review Commission on Sexual Assault in the Military recommended that the Department develop a ''state-of-the-art DoD prevention research capability'' to better understand and develop prevention approaches for sexual harassment, sexual assault, and other forms of violence. The information collection is necessary to understand whether the Prevention Research Institute's Prime for Life 4.5-hour training can be implemented with fidelity in the military as a primary prevention activity and whether it will produce beneficial outcomes. This information will help support the development of evidence-based approaches for prevention.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: January 13, 2025.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–01135 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Demonstration Grants for Indian Children and Youth Program—Native Youth Community Projects

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is inviting applications for the Demonstration Grants for Indian Children and Youth Program (Demonstration program).

DATES:

Applications Available: January 17, 2025.

Deadline for Notice of Intent to Apply: February 18, 2025.

Date of Pre-Application Webinar: February 3, 2025.

Application Deadline: April 28, 2025.

Deadline for Intergovernmental Review: June 26, 2025.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to the *Application Submission Instructions* section.

FOR FURTHER INFORMATION CONTACT: Donna Bussell, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W239, Washington, DC 20202–6335. Telephone: (202) 987–0204. Email: *donna.bussell@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: Full Text of Announcement:

I. Funding Opportunity Description

1. *Purpose of Program:* The purpose of the program is to provide financial assistance to community-driven projects that develop and share innovative services and programs designed to improve the educational opportunities and achievement of Indian students by addressing community-level challenges.

Assistance Listing Number: 84.299A.

OMB Control Number: 1810–0722.

2. *Award Information:*

Type of Award: Discretionary grant.

Estimated Available Funds: The Administration requested $72,000,000 for Special Programs for Indian Children for fiscal year (FY) 2025, of which we intend to use an estimated $20,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $400,000–500,000.

Estimated Average Size of Awards: $450,000.

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2026 or in future years from the list of unfunded applications from this competition.

Project Period: Up to 36 months, with potential for renewal of up to an additional 24 months (*i.e.,* a total potential grant of up to 60 months).

Note: Under section 6121(d)(1)(C) of the Elementary and Secondary Education Act (ESEA), the Secretary of Education awards grants for an initial period of 36 months (3 years) and may renew them for up to 24 months (2 years) if the grantee has made substantial progress based on the approved application and any needed subsequent modifications to such application. The Department requests that applicants provide budget information in their applications for the full period, up to 60 months, for which they hope to be funded.

3. *Eligible Applicants:* Under section 6121(b) of the ESEA and 34 CFR 263.20, the following entities are eligible under this program, either alone or in a consortium:

(a) A State educational agency (SEA)

(b) A local educational agency (LEA).

(c) An Indian Tribe.

(d) An Indian organization.

(e) A federally supported elementary school or secondary school for Indian students (Bureau of Indian Education (BIE) or Tribally Controlled School).

(f) A Tribal College or University (TCU).

Note: Non-Tribal applicants who are in partnerships with Indian Tribes or Indian organizations should include in their partnership agreement, which is specified in Application Requirement (f), a description of substantial involvement from Tribes, with Tribal direction incorporated throughout the project period.

4. Background: The Demonstration program-NYCP finds and shares innovative, community-driven opportunities to support Native youth. Projects aim to develop strategies to prepare Native youth for their future while connecting with their Tribal Nations, demonstrate effectiveness, and share learning opportunities. Project design relies on Tribal input, alignment, and consultation to uphold self-determination and sovereignty.

For FY 2025, the Department will fund Native Youth Community Projects (NYCP) to support community-driven projects to help Native children and youth become college- and career-ready.

For the FY 2025 awards, the Department prioritizes partnerships with local businesses for career preparation programs designed to provide Native youth with the knowledge and skills needed to make an effective transition from school to a high-skill career.

The Department is also prioritizing access for Native students to early learning educational opportunities promoting equity in achievement. In addressing this priority, applicants could propose projects that are designed to administer early learning programs that are inclusive, developmentally informed, and linguistically and culturally responsive to prepare young children to make sufficient academic growth by the end of grade 3, including kindergarten and pre-kindergarten programs, community and family-based preschool programs that emphasize school readiness, screening and referral, meaningful parent and family engagement, and the provision of services to Native children and youth with disabilities to support early school success.

Both the priority for partnerships with local businesses and career centers and the priority for early learning educational opportunities are optional competitive preference priorities, as discussed later in this notice.

Note: These tables provide a summary of certain sections in this notice. Further detail on each of these sections is provided below. Applicants should read the notice in its entirety before applying.

TABLE 1—SUMMARY OF NOTICE INVITING APPLICATIONS (NIA) SECTIONS THAT MUST BE ADDRESSED FOR YOUR APPLICATION TO BE CONSIDERED

Application section	Description
Absolute Priority *The full text is in the priorities section below.*	Applicants must propose a project that fulfills the requirements of a Native Youth Community Project: 1) Focused on a defined local geographic area 2) Centered on the goal of ensuring that Indian students are prepared for college and careers 3) Informed by evidence 4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives 5) Designed and implemented through a partnership of various entities 6) Led by an entity that is eligible and demonstrates the capacity to improve relevant outcomes
Application Requirements *The full text of each requirement is in the application requirements section below.*	(a) Tribal and Family Involvement. (b) Evaluation Plan. (c) Evidence-Based and Culturally Appropriate. (d) Project Sustainability Post Grant. (e) Needs Assessment or Other Data Analysis. (f) Signed Partnership Agreement. (g) Project plan with measurable objectives. (h) Assurance that funds will be used to supplement other program funding.

TABLE 2—SUMMARY OF NIA SECTIONS THAT ARE EVALUATED AND SCORED

Application section	Description and points
Competitive Preference Priorities (CPP) *The full text is in the priorities section below.*	CPP 1: Tribal Lead Applicants (0 or 2 points) CPP 2: Tribal Partnership (0 or 1 point) CPP 3: Improving Educational Opportunities and Achievement of Indian Children and Youth (up to 2 points)
Selection criteria *The full text is in the selection criteria section below.*	Need for the Project (20 points) Quality of the Project Design (40 points) Quality of Project Personnel (20 points) Quality of Project Evaluation or Other Evidence Building (20 points)

5. Priorities: This notice contains one absolute priority and three competitive preference priorities.[1]

Absolute Priority: For FY 2025 and any future year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority, which

[1] The absolute priority is from 34 CFR 263.21(c)(1) and incorporates a definition from 34 CFR 263.20; Competitive Preference Priority 1 is from 34 CFR 263.21(b)(1); Competitive Preference Priority 2 is from 34 CFR 263.21(b)(2); and Competitive Preference Priority 3 is from section 6121(c) of the ESEA (20 U.S.C. 7441).

means that all applications must address it to be eligible.[2]

This priority is:

Native Youth Community Projects.

To meet this priority, applicants must propose a project that fulfils the requirements of a Native Youth Community Project.

A Native Youth Community Project means a project that is:

(1) Focused on a defined local geographic area;

(2) Centered on the goal of ensuring that Indian students are prepared for college and careers;

(3) Informed by evidence, which could be either a needs assessment conducted within the last three years or other data analysis, on—

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources;

(4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives;

(5) Designed and implemented through a partnership of various entities which—

(i) Must include—

(A) One or more Tribes or their Tribal education agencies; and

(B) One or more BIE-funded schools, one or more LEAs, or both; and

(ii) May include other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that—

(i) Is eligible for a grant under the Demonstration Grants for Indian Children program; and

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

Competitive Preference Priorities: For FY 2025 and any future year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Applicants are not required to address the competitive preference priorities, but addressing them may result in additional points.[3] An application can receive points under either Competitive Preference Priority 1 or 2, but not both. Any application can also receive points under Competitive Preference Priority 3.

These priorities are:

Competitive Preference Priority 1: Tribal Lead Applicants (0 or 2 points).

To meet this priority, an application must be submitted by an Indian Tribe, Indian organization, BIE-funded school, or TCU that is eligible to participate in the Demonstration program. A group application submitted by a consortium that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership is eligible to receive the preference only if the lead applicant for the consortium is the Indian Tribe, Indian organization, BIE-funded school, or TCU.

Note: Being the lead applicant means that the Indian Tribe, Indian organization, BIE-funded school, or TCU submits the application and leads the work with partners.

Competitive Preference Priority 2: Tribal Partnership (0 or 1 point).

To meet this priority, an application must be submitted by a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership if the consortium or partnership: (1) includes an Indian Tribe, Indian organization, BIE-funded school, or TCU; and (2) is not eligible to receive the preference under Competitive Preference Priority 1.

Note: To receive points under this priority, an applicant must include a signed agreement with the Indian Tribe, Indian organization, BIE-funded school, or TCU detailing the activities that each member of the group plans to perform.[4]

Competitive Preference Priority 3: Improving Educational Opportunities and Achievement of Indian Children and Youth (up to 2 points).

To meet this priority, an applicant must demonstrate that the application proposes a project designed to improve educational opportunities for Indian students through one or both of the following activities:

(1) Early childhood education programs that are effective in preparing young children to make sufficient academic growth by the end of grade 3, including kindergarten and pre-kindergarten programs, family-based preschool programs that emphasize school readiness, screening and referral, and the provision of services to Indian children and youth with disabilities.

(2) Partnership projects between schools and local businesses for career preparation programs designed to provide Indian youth with the knowledge and skills to make an effective transition from school to a high-skill career.

Under section 6121(d)(1)(B) of the ESEA, the Department gives priority to applications that propose a plan for offering both early learning educational opportunities and career preparation opportunities as described above for a period of more than 1 year. Applicants can receive 1 point for each activity and must address both activities to receive 2 points under this priority.

Note: To receive points under paragraph (2), consistent with 34 CFR 263.22(b)(2) and application requirement (f) in this notice, applicants must include an agreement signed by the partners in the proposed project, identifying the responsibilities of each partner in the project. The agreement must include the local business and describe the local business's responsibilities as a partner in the proposed project.

6. Requirements: For FY 2025 and any future year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements from section 6121 of the ESEA (20 U.S.C. 7441) and 34 CFR 263.22.

Application Requirements:

(a) A description of how Indian Tribes and parents and families of Indian children and youth have been, and will be, involved in developing and implementing the proposed activities;

(b) Assurances that the applicant will participate, at the request of the Secretary, in any national evaluation of this program;

(c) Information demonstrating that the proposed project is evidence-based, where applicable, or is based on an existing evidence-based program that has been modified to be culturally appropriate for Indian students;

(d) A description of how the applicant will continue the proposed activities once the grant period is over;

(e) Evidence, which could be either a needs assessment conducted within the last three years or other data analysis, of—

(1) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(2) Opportunities in the local community to support Indian students; and

[2] For information about absolute priorities in general, please see 34 CFR 75.105(c)(3) at *https://www.ecfr.gov/current/title-34/part-75#p-75.105(c)(3).*

[3] For additional information about competitive preference priorities, please see 34 CFR 75.105(c)(2)(i) at *https://www.ecfr.gov/current/title-34/part-75#p-75.105(c)(2)(i).*

[4] See 34 CFR 263.21(b)(2) and 34 CFR 75.127 through 129.

(3) Existing local policies, programs, practices, service providers, and funding sources;

(f) A copy of an agreement signed by the partners in the proposed project, identifying the responsibilities of each partner in the project. The agreement can be either—

(1) A consortium agreement that meets the requirements of 34 CFR 75.128, if each of the entities are eligible entities under this program; or

(2) Another form of partnership agreement, such as a memorandum of understanding or a memorandum of agreement, if not all the partners are eligible entities under this program;

(g) A plan, which includes measurable objectives, to evaluate reaching the project goal or goals;

(h) An assurance that—

(1) Services will be supplemental to the education program provided by local schools attended by the students to be served;

(2) Funding will be supplemental to existing sources, such as Johnson O'Malley funding; and

(3) The availability of funds for supplemental special education and related services (*i.e.,* services that are not part of the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that are required to make a free appropriate public education (FAPE) available under Part B of the Individuals with Disabilities Education Act (IDEA) to a child with a disability in conformity with the child's individualized education program or the regular or special education and related aids and services required to make FAPE available under a section 504 plan, if any) does not affect the right of the child to receive FAPE under Part B of the IDEA or Section 504, and the respective implementing regulations.

Statutory Hiring Preference:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this preference, an Indian is a is a member of any federally recognized Indian Tribe.

7. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for addressing each criterion and factor within each criterion, is included in parentheses. The maximum score for these criteria is 100 points.

The selection criteria are as follows:

(a) *Need for project* (20 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project demonstrates the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (Up to 10 points)

(2) The extent to which the specific nature and magnitude of gaps or challenges are identified and the extent to which these gaps or challenges will be addressed by the services, supports, infrastructure, or opportunities described in the proposed project. (Up to 5 points)

(3) The extent to which the proposed project will focus on serving or otherwise addressing the needs of underserved populations. (Up to 5 points)

(b) *Quality of project design* (40 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program. (Up to 5 points)

(2) The extent to which the design of the proposed project demonstrates meaningful community engagement and input to ensure that the project is appropriate to successfully address the needs of the target population or other identified needs and will be used to inform continuous improvement strategies. (Up to 10 points)

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including valid and reliable information about the effectiveness of the approach or strategies employed by the project. (Up to 10 points)

(4) The quality of the proposed demonstration design, such as qualitative and quantitative design, and procedures for documenting project activities and results for underserved populations. (Up to 5 points)

(5) The extent to which the proposed project demonstrates a rationale (as defined in this notice) that is aligned with the purposes of the grant program. (Up to 10 points)

(c) *Quality of project personnel* (20 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the following factors:

(1) The extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic disadvantage; language; and living in a rural location. (Up to 1 point)

(2) The extent to which the project director or principal investigator, when hired, has the qualifications required for the project, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project. (Up to 5 points)

(3) The extent to which the key personnel in the project, when hired, have the qualifications required for the proposed project, including formal training or work experience in fields related to the objectives of the project, and represent or have lived experiences of the target population. (Up to 10 points)

(4) The extent to which the proposed project team maximizes diverse perspectives, for example by reflecting the lived experiences of project participants, or relevant experience working with the target population. (Up to 4 points)

(d) *Quality of the project evaluation or other evidence-building* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation or other evidence-building are appropriate to the context in which the project operates and the target population of the proposed project. (Up to 10 points)

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or

testing and potential implementation in other settings. (Up to 5 points)

(3) The extent to which the evaluator has the qualifications, including the relevant training, experience, and independence, required to conduct an evaluation of the proposed project, including experience conducting evaluations of similar methodology as proposed and with evaluations for the proposed population and setting. (Up to 5 points)

8. *Performance Measures:* If funded under this competition, each grantee will be required to provide data on the performance measures listed below,[5] in annual and final performance reports. These measures constitute the Department's indicators of success for this program. The performance measures for this program are:

(1) The number and percentage of the annual measurable objectives, as described in the application, that the grantees meet; and

(2) The number of, and percentage increase in, community collaborative efforts that promote college and career readiness of Indian children.

9. *Definitions:* The following definitions apply to this competition.[6]

Demonstrates a rationale means that there is a key project component included in the project's logic model that is supported by citations of high-quality research or evaluation findings that suggest that the project component is likely to significantly improve relevant outcomes.

Evidence-based, when used with respect to a State, LEA, or school activity, means an activity, strategy, or intervention that—

(1) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(i) Strong evidence from at least one well-designed and well-implemented experimental study;

(ii) Moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or

(iii) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(2)(i) Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(ii) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Indian means an individual who is—

(1) A member of an Indian Tribe or band, as membership is defined by the Indian Tribe or band, including any Tribe or band terminated since 1940, and any Tribe or band recognized by the State in which the Tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian organization means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education or TCU; and

(6) Is not an agency of State or local government.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Native youth community project means a project that is—

(1) Focused on a defined local geographic area;

(2) Centered on the goal of ensuring that Indian students are prepared for college and careers;

(3) Informed by evidence, which could be either a needs assessment conducted within the last three years or other data analysis, on—

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources;

(4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives;

(5) Designed and implemented through a partnership of various entities, which—

(i) Must include—

(A) One or more Tribes or their Tribal education agencies; and

(B) One or more BIE-funded schools, one or more LEAs, or both; and

(ii) May include other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that—

(i) Is eligible for a grant under the Demonstration program; and

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Tribal College or University (TCU) means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

[5] These are the performance measures used for purposes of Department reporting under 34 CFR 75.110.

[6] The definition of ''evidence-based'' is from section 8101(21) of the ESEA (20 U.S.C. 7801(21)), and the definitions of ''Indian,'' ''Indian organization,'' ''Parent,'' ''Native youth community project,'' and ''Tribal college or university'' are from 34 CFR 263.20. The definitions of ''demonstrates a rationale,'' ''evidence-based,'' ''relevant outcome,'' ''project component,'' and ''logic model'' are from 34 CFR 77.1.

10. *Program Authority and Applicable Regulations:*

Program Authority: 20 U.S.C. 7441.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The program regulations in 34 CFR part 263.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the Uniform Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

II. Supplemental Requirements

1. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www.ed.gov/about/ed-offices/ofo#Indirect-Cost-Division*.

c. *Administrative Cost Limitation:* Under ESEA section 6121(e), no more than five percent of the funds awarded for a grant may be used for administrative costs. Note that, since fiscal year 2020, Congress has included language in appropriations acts to clarify that the statutory 5 percent limit does not include indirect costs. In the event such language is not included in the FY 2025 appropriations act, the Department will work with successful applicants to make budget adjustments to align with administrative cost restrictions, if necessary.

2. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

3. *Other:* Projects funded under this competition should budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

III. Application and Submission Information

1. *Recommended Page Limit:* The application narrative refers to the application section that addresses the priorities and selection criteria that reviewers use to evaluate your application. We recommend that the application narrative (1) not exceed 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative. An application will not be disqualified if it exceeds the recommended page limit.

2. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs (89 FR 104528, December 23, 2024), which are available at *www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

5. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Demonstration program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we may make successful applications available to the public by posting them on our website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

6. *Intergovernmental Review:* This competition is subject to intergovernmental review under Executive Order 12372. Information about this process is in the application package.

IV. Application Review Information

1. *Review and Selection Process:* In reviewing grant applications, the Secretary may consider the applicant's prior performance on other grant awards, including whether the projects achieved their objectives and the timeliness and quality of required reporting.

To receive an award, the Secretary requires assurances, including that the recipient of Federal financial assistance will comply with all Federal civil rights and non-discrimination laws.

2. *Risk Assessment and Specific Conditions:* Before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. The Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

3. *Integrity and Performance System:* If you are selected to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In determining risk, we review the information in the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

If the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

V. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also. If your application is not evaluated or not selected for funding, we notify you.

The GAN identifies the terms and conditions and applicable regulations of your award. The GAN also incorporates your approved application as part of your binding commitments under the grant.

2. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements should you receive funding under the competition. This does not apply if you have an exception.

(b) At the end of your project period, you must submit a final performance report, including financial information. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary. The Secretary may also require more frequent performance reports. For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) The Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Continuation Awards:* In making a continuation award, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department.

VI. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *http://www.federalregister.gov/.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2025–01238 Filed 1–16–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2025–SCC–0006]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Program for International Student Assessment 2025 (PISA 2025) Main Study

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 18, 2025.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection

activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for International Student Assessment 2025 (PISA 2025) Main Study.

OMB Control Number: 1850–0755.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households. *Total Estimated Number of Annual Responses:* 59,087.

Total Estimated Number of Annual Burden Hours: 19,041.

Abstract: The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds which focuses on assessing students' reading, mathematics, and science literacy. PISA was first administered in 2000 and is conducted every three years. The ninth cycle of the study, PISA 2025, is being administered at a time when interest is increasing, both worldwide and in the United States, in how well schools are preparing students to meet the challenges of the future, and how the students perform compared with their peers in other education systems of the world. Approximately 85 education systems, including the U.S., are expected to participate in 2025. The U.S. has participated in all previous cycles and is participating in 2025 in order to track trends and to compare the performance of U.S. students with that in other education systems. PISA 2025 is sponsored by the Organization for Economic Cooperation and Development (OECD). In the U.S., PISA 2025 is conducted by the National Center for Education Statistics (NCES) of the Institute of Education Sciences (IES), U.S. Department of Education. PISA is a collaboration among the participating countries, the OECD, and a group of international organizations each under contract to the OECD (hereafter referred to as the PISA International Consortium).

In each administration of PISA, one of the subject areas (reading, mathematics, or science literacy) is the major domain and has the broadest content coverage, while the other two subjects are the minor domains. Science literacy will be the major domain in PISA 2025. Other areas may also be assessed, such as, in the case of PISA 2025, Learning in a Digital World (LDW), which will be an innovative domain in 2025. PISA assesses students' knowledge and skills gained both in and out of school environments. The focus on the ''yield'' of education in and out of school makes it different from other international assessments such as the Trends in International Mathematics and Science Study (TIMSS) and the Progress in International Reading Literacy Study (PIRLS), which are closely tied to school curriculum frameworks and assess younger and grade-based populations.

Like previous rounds of PISA in 2015, 2018, and 2022, in PISA 2025 the entire assessment and the questionnaires will be administered on computer. In addition to the cognitive assessments, PISA 2025 will include questionnaires administered to school principals and assessed students. The school questionnaire will be delivered online. The school and student questionnaires are core components of PISA and as such are required for all participating countries. The teacher questionnaire, which is optional and was administered in previous rounds (2015 and 2018), will not be administered in 2025 because the U.S. has deemed the resulting data inadequate for analyses due to the lack of weights for the teacher data.

To prepare for the main study in 2025, PISA countries conducted a field test in the spring of 2024, primarily to evaluate newly developed assessment and questionnaire items but also to test the assessment operations. The PISA 2025 field test data collection occurred in the U.S.A. March-April 2024 and the main study data collection will take place September-November 2025. This submission requests approval for all final materials associated with recruitment and data collection activities related to the PISA 2025 main study and is accompanied by a notice published in the **Federal Register** allowing a 30-day public comment period on the final details of the PISA 2025 main study data collection. In order to conduct the main study by March 2025, we are submitting this 30D revision with the final main study student video (Appendix A–2) and final school and student questionnaires (Appendix C–2), as well as refined details about changes to the design and procedures for the main study (Parts A & B).

Dated: January 14, 2025.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2025–01202 Filed 1–16–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Supporting Effective Educator Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2025 for the Supporting Effective Educator Development (SEED) program.

DATES:

Applications Available: January 17, 2025.

Deadline for Notice of Intent to Apply: Applicants are strongly encouraged, but not required, to submit a notice of intent to apply by February 18, 2025.

Deadline for Transmittal of Applications: March 18, 2025.

Deadline for Intergovernmental Review: May 19, 2025.

Pre-Application Webinars: The Office of Elementary and Secondary Education intends to conduct informational webinars designed to provide technical assistance to interested applicants for grants under the Academies Program. These informational webinars occur approximately 2 weeks after the publication of this notice in the **Federal Register** at *https://www.ed.gov/grants-and-programs/teacher-prep/supporting-effective-educator-development-grant-program#Applicant-Info.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at *www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Orman Feres, U.S. Department of Education, 400 Maryland Avenue SW,

Washington, DC 20222–5960. Email: *Orman.Feres@ed.gov* or *SEED@ed.gov.* Phone: (202) 219–1764.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SEED program, authorized under section 2242 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6672), provides funding to increase the number of highly effective educators by supporting the implementation of evidence-based practices that prepare, develop, or enhance the skills of educators. These grants will allow eligible entities to develop, expand, and evaluate practices that can serve as models to be sustained and disseminated.

Assistance Listing Number: 84.423A.

OMB Control Number: 1894–0006.

Background: The SEED program is designed to foster the use of rigorous evidence-based practices in selecting and implementing strategies and interventions that support educators' development across the continuum of their careers (*e.g.,* in preparation, recruitment, professional learning, and leadership development). The Biden-Harris Administration has made a commitment to supporting targeted efforts that will provide comprehensive, high-quality pathways, such as residency, Grow Your Own, and registered apprenticeship programs, for educator preparation and development programs focused on building a more diverse educator pipeline, and increasing the retention of a diverse educator workforce. For example, research shows that teachers who have access to pathways such as residencies into the profession are more likely to stay in the profession and have effectiveness compared to teachers who received less comprehensive preparation.[1]

This competition includes several areas of particular interest to the Department. Studies suggest that all students benefit from having teachers of color. Students of color being exposed to teachers of their race or ethnicity has a positive effect on their academic and social achievement, and increases their attendance, high school graduation rates, and college attendance. In addition to student academic performance, a diverse educator workforce can lead to improved student behavior and classroom environments for all students.[2] [3] However, only around one in five teachers [4] are people of color, compared to more than half of K–12 public school students.[5] The Department recognizes that a diverse educator workforce plays a critical role in ensuring equity in our schools, while also supporting intercultural experiences and competencies in our education system that will benefit and improve the opportunities for all students.

Access to educational resources and opportunities such as rigorous coursework and dual enrollment can have positive impacts on underserved students. For example, a December 2020 brief from the National Center for Education Statistics [6] revealed that there is a correlation between the percentage of students who qualify for free or reduced-price lunch in a school and the likelihood that those students will have access to dual enrollment opportunities. The study showed that schools with a higher percentage of students who were approved for free or reduced-price lunch were less likely to offer dual enrollment than schools with a lower rate of participation in free or reduced-price lunch programs. Such examples of inadequate or inequitable access to educational resources can lead to the students from higher poverty schools having fewer opportunities for educational enrichment.

Additionally, the Department recognizes the importance of ensuring that children and youth learn, grow, and achieve in safe and supportive environments, and in the care of responsive adults they trust.[7] In addition to allowing applicants to propose a project designed to promote educational equity and adequacy in resources and opportunity, applicants are encouraged to prepare teachers to create inclusive, supportive, equitable, unbiased, and identity-safe learning environments for their students that meet their social emotional and academic needs.

Consistent with the Department's Raise the Bar: Lead the World call to action,[8] a diverse educator workforce plays an essential role in ensuring equity in our education system, and strengthening pathways into the profession and supporting teacher professional development are critical elements. In addition to implementing strong induction and mentoring programs and improving workplace culture by creating inclusive environments and reducing job-related stress, studies show that building and maintaining strong relationships with organizations that prepare teachers of color, including Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities, and Minority-Serving Institutions, is another high-yield strategy to recruit and retain diverse educators.[9] HBCUs, for example, have been a strong pipeline for educators and leaders of color. Although they make up only 3 percent of the Nation's colleges and universities, HBCUs prepare nearly 50 percent of the Nation's African American teachers.[10] HBCUs are indispensable to producing and advancing educational opportunities for students of color, first-generation students, and other underrepresented students who are interested in the teaching profession.[11] In many urban and rural communities, HBCUs produce high numbers of teachers who work in the local school divisions.[12] Leveraging the HBCU network to recruit effective teachers of color is a high-impact strategy to diversify the educator pipeline and, in turn, advance student achievement.

Registered apprenticeships are another pathway into the profession that have the potential to be an effective, high-quality. The ''earn and learn'' apprenticeship model allows candidates to earn their teaching credential while earning pay by combining structured, paid, on-the-job learning experiences with a mentor teacher, with coursework and other components of an evidence-

[1] Silva, T., McKie, A., and Gleason, P. (2015). New Findings on the Retention of Novice Teachers from Teaching Residency Programs. Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences. *https://ies.ed.gov/ncee/pubs/20154015/pdf/20154015.pdf.*

[2] Cherng, H.-Y. S., & Davis, L.A. (2019). Multicultural Matters: An Investigation of Key Assumptions of Multicultural Education Reform in Teacher Education. Journal of Teacher Education, 70(3), 219236. *https://doi.org/10.1177/0022487117742884.*

[4] *www.bls.gov/cps/cpsaat11.htm.*

[5] *nces.ed.gov/programs/coe/indicator_cge.asp.*

[6] *nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020125.*

[7] Reyes, M.R., Brackett, M.A., Rivers, SE, White, M., & Salovey, P. (2012). Classroom Emotional Climate, Student Engagement, and Academic Achievement. Journal of Educational Psychology, 104(3), 700.

[8] *www2.ed.gov/about/inits/ed/raise-the-bar/executive-summary.pdf.*

[9] See id.

[10] See id.

[11] Fenwick, L. (2016). Teacher preparation innovation and historically black colleges and universities (HBCUs). *Teaching Works working papers.* University of Michigan. *https://www.teachingworks.org/images/files/TeachingWorks_Fenwick.pdf.*

[12] See id.

based program.[13] Registered apprenticeship programs for K–12 teachers can be used to establish, scale, and build on existing high-quality pathways into teaching that emphasize classroom-based experience, such as Grow Your Own and teacher residency programs. By reducing the cost of earning a license and offering flexible scheduling, registered apprenticeship programs are designed to open the doors to the profession to those who may otherwise face barriers, including people of color, people from low-income backgrounds, and individuals such as paraprofessionals who may already have decades of experience in the classroom but previously could not afford to become a teacher. Once registered with the U.S. Department of Labor or their State apprenticeship agency (requirements vary by State), these programs can access Federal workforce funding, such as Workforce Innovation and Opportunity Act and Carl D. Perkins Career and Technical Education Act (Perkins V) funding, in addition to other Federal, State, and local education and workforce funds, bringing additional resources to help address educator shortages.

In August of 2022, Secretary Cardona and then-Labor Secretary Marty Walsh issued a joint Dear Colleague Letter [14] calling on all States to establish registered apprenticeship programs for K–12 teachers to help eliminate educator shortages and outlining how States and other interested parties can learn more about this approach. Applicants are encouraged to explore resources on registered apprenticeship programs for teachers on the Department's Raise the Bar web page on eliminating educator shortages; [15] at the Department of Labor's apprenticeship website focused on the education industry; [16] through the Department of Labor funded Educator Registered Apprenticeship Intermediary; [17] and through the resources of the Pathways Alliance, including National Guidelines for Apprenticeship Standards for K–12 Teacher Apprenticeships, approved by the Department of Labor and previously highlighted by the Department, to support high-quality programs.[18]

Finally, the Department seeks to strengthen professional development for early elementary educators and school leaders. Given the opportunity and achievement gaps for students from low-income backgrounds that are present as they enter kindergarten and widen during the kindergarten year, and the cumulative gap that persists into and through the early grades,[19] the early elementary grades are foundational for improving 3rd grade outcomes, 4th grade National Assessment of Educational Progress scores, and laying the path for early and later school success.[20] Moreover, gains from attending high-quality preschool are not currently being sustained for these same students,[21] reinforcing the need for pre-service and ongoing professional learning and development opportunities for both early grade educators and school leaders.[22] Young learners benefit from having educators who implement early grade instructional supports that are inclusive and developmentally informed, culturally and linguistically responsive, and consistent with an understanding of the science of learning and development and who work with parents and families as partners.[23] Family engagement is associated with higher early literacy and math skills and leads to better student outcomes.[24] Yet, teachers report needing more professional development on family engagement.[25] Research has also shown that instructional alignment across K–3 mitigates the challenges many students face as they move through the early grades.[26] Training and supports for teachers and principals should elevate both pre-service and ongoing professional learning opportunities for collaboration across K–3 and effective partnerships with parents and families to meet rigorous 3rd grade reading and math standards.

To advance these critical areas of focus, this competition includes two absolute priorities. Absolute Priority 1, Supporting Effective Teachers and Absolute Priority 2, Supporting Effective Principals or Other School Leaders are from section 2242 of the ESEA (20 U.S.C. 6672) and 34 CFR 75.226. This competition also includes three competitive preference priorities. Competitive Preference Priority 1 focuses on increasing educator diversity in classrooms across the Nation. Competitive Preference Priority 2 encourages applicants to develop programs that promote equity in student access to educational resources and opportunities and that prepare teachers to create inclusive, supportive, equitable, unbiased, and identity-safe learning environments for students. Competitive Preference Priority 3 addresses the critical need to support a diverse educator workforce.

In addition, this competition includes two invitational priorities. Invitational Priority 1 promotes registered apprenticeship programs for K–12 teachers as a method to build on existing high-quality educator preparation pathways into teaching while reducing the cost of earning a teaching license. Invitational Priority 2 encourages applicants to explore professional learning supports for early elementary teachers and school leaders.

Priorities: This notice contains two absolute priorities and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 1, which requires moderate evidence, and Absolute Priority 2, which requires promising evidence, are from section 2242 of the ESEA (20 U.S.C. 6672) and 34 CFR 75.226. Competitive Preference Priority 1 is from the Effective Educator Development (EED) notice of final priorities published in the **Federal Register** on July 9, 2021 (86 FR 36217) (EED NFP). Competitive Preference Priorities 2 and 3 are from the Secretary's notice of final supplemental priorities and definitions published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

[13] *https://www.aprenticeship.gov/apprenticeship-industries/education.*

[14] *https://www.apprenticeship.gov/sites/default/files/22-0119-joint-dcl-signed-ed.pdf.*

[15] *https://www.ed.gov/raisethebar/educators.*

[16] *https://www.apprenticeship.gov/apprenticeship-industries/education.*

[17] *https://www.educatorapprenticeships.com/.*

[18] *https://www.thepathwaysalliance.org/reports; https://www.ed.gov/news/press-releases/education-labor-departments-announce-new-efforts-to-advance-teacher-preparation-programs-and-expand-registered-apprenticeships-educators.*

[19] THE EARLY ACHIEVEMENT AND DEVELOPMENT GAP (*hhs.gov*), THE PERSISTENCE OF PRESCHOOL EFFECTS FROM EARLY CHILDHOOD THROUGH ADOLESCENCE—PMC (*nih.gov*).

[20] AECF-Early_Warning_Full_Report-2010.pdf, Closing Achievement Gaps Through Preschool-To-Third-Grade Programs—PMC (*nih.gov*).

[21] THE CHALLENGE OF SUSTAINING PRESCHOOL IMPACTS Introducing ExCEL P–3, a Study from the Expanding Children's Early Learning Network.

[22] P–3TeacherEffectiveness2.pdf (*americanprogress.org*).

[23] P–3TeacherEffectiveness2.pdf (*americanprogress.org*).

[24] Sheridan, S.M., Knoche, L.L., Kupzyk, K.A., Edwards, C.P., & Marvin, C.A. (2011). A randomized trial examining the effects of parent engagement on early language and literacy: The Getting Ready intervention. Journal of school psychology, 49(3), 361–383. *https://doi.org/10.1016/j.jsp.2011.03.001* 13. Sheldon, S.B., & Epstein, J.L. (2005). Involvement counts: Family and community partnerships and mathematics achievement. The Journal of Educational Research, 98(4), 196–207. *https://doi.org/10.3200/JOER.98.4.196-207.*

[25] Engaging First: Supporting Young Learners Through Family Engagement. Engaging-First-V8.pdf (*edtrust.org*).

[26] Results in Brief: Preschool Through Third Grade Alignment and Differentiated Instruction: A Literature Review—August 1, 2016 (PDF).

Absolute Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of these absolute priorities.

Under this competition, each of the two absolute priorities constitutes its own funding category. Applicants may address only one absolute priority and must clearly indicate the specific absolute priority their project addresses.

These priorities are:

Absolute Priority 1—Supporting Effective Teachers.

This priority is for projects that will implement activities that are supported by moderate evidence. Applicants under this priority may propose one or more of the following activities:

(1) Providing teachers from nontraditional preparation and certification routes or pathways to serve in traditionally underserved local educational agencies (LEAs);

(2) Providing evidence-based professional development activities that address literacy, numeracy, remedial, or other needs of LEAs and the students the agencies serve;

or

(3) Providing teachers with evidence-based professional enhancement activities, which may include activities that lead to an advanced credential.

Absolute Priority 2—Supporting Effective Principals or Other School Leaders.

This priority is for projects that will implement activities that are supported by promising evidence. Applicants under this priority may propose one or more of the following activities:

(1) Providing principals or other school leaders from nontraditional preparation and certification routes or pathways to serve in traditionally underserved LEAs;

(2) Providing principals or other school leaders with evidence-based professional development activities that address literacy, numeracy, remedial, or other needs of LEAs and the students the agencies serve; or

(3) Providing principals or other school leaders with evidence-based professional enhancement activities, which may include activities that lead to an advanced credential.

Note on Meeting Evidence Requirements: An applicant must identify at least one, but no more than two, citations for the purposes of meeting the evidence requirements under either Absolute Priority 1 or Absolute Priority 2. An applicant should clearly identify these citations in the Evidence form. The Department will not review a citation that an applicant fails to clearly identify for review. Studies included for review may have been conducted by the applicant or by a third party.

In addition to including up to two citations, an applicant must provide a description of (1) the positive outcome(s) and practice(s) the applicant intends to replicate under its SEED grant and (2) the relevance of the outcome(s) and practice(s) to the SEED program. For those applicants seeking to address Absolute Priority 1, to meet the definition of moderate evidence the applicant must describe how the population it proposes to serve overlaps with the population or settings in the citations.

An applicant must ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time. However, if the What Works Clearinghouse (WWC)[27] determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC will submit a query to the study author(s) to gather information for use in determining a study rating. Authors are asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study will be deemed ineligible under the grant competition. After the grant competition closes, the WWC will continue to include responses to author queries and will make updates to study reviews as necessary, but no additional information will be taken into account after the competition closes and the initial timeline established for response to an author query passes.

Competitive Preference Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 13 points to an application, depending on how well the application addresses the competitive preference priorities.

If an applicant chooses to address one or more competitive preference priorities, the project narrative section of its application must identify its response to the competitive preference priorities it chooses to address.

These priorities are:

Competitive Preference Priority 1—Increasing Educator Diversity (up to 5 points).

Under this priority, applicants must develop projects that are designed to improve the recruitment, outreach, preparation, support, development, and retention of a diverse educator workforce through adopting, implementing, or expanding high-quality, comprehensive teacher preparation programs that have a track record of attracting, supporting, graduating, and placing underrepresented teacher candidates, and that include one year of high-quality clinical experiences (prior to becoming the teacher of record) in high-need schools.

Competitive Preference Priority 2—Promoting Equity in Student Access to Educational Resources and Opportunities; Meeting Student Social, Emotional, and Academic Needs (up to 3 points).

Under this priority, an applicant must develop projects that address one or more of the following—

(a) Projects designed to promote educational equity and adequacy in resources and opportunity for underserved students—

(1) In one or more of the following educational settings:

(i) Early learning programs.

(ii) Elementary school.

(iii) Middle school.

(iv) High school.

(v) Career and technical education programs.

(vi) Out-of-school-time settings.

(vii) Alternative schools and programs.

(viii) Juvenile justice system or correctional facilities;

(2) That examines the sources of inequity and inadequacy and implements responses that include pedagogical practices in educator preparation programs and professional development programs that are inclusive with regard to race, ethnicity, culture, language, and disability status so that educators are better prepared to create inclusive, supportive, equitable, unbiased, and identity-safe learning environments for their students.

(b) Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through developing and supporting educator and school capacity to support social and emotional learning and development that—

[27] *ies.ed.gov/ncee/wwc/.*

(1) Fosters skills and behaviors that enable academic progress;

(2) Identifies and addresses conditions in the learning environment, that may negatively impact social and emotional well-being for underserved students, including conditions that affect physical safety; and

(3) Is trauma-informed, such as addressing exposure to community-based violence and trauma specific to military- or veteran-connected students.

Competitive Priority 3—Supporting a Diverse Educator Workforce and Professional Growth to Strengthen Student Learning (up to 5 points).

Projects that are designed to increase the proportion of well-prepared, diverse, and effective educators serving students, with a focus on underserved students, through building or expanding high-poverty school districts' capacity to hire, support, and retain an effective and diverse educator workforce, through adopting or expanding comprehensive, strategic career and compensation systems that provide competitive compensation and include opportunities for educators to serve as mentors and instructional coaches, or to take on additional leadership roles and responsibilities for which educators are compensated.

Invitational Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Partnership Grants for the Establishment of Registered Apprenticeship Programs for K–12 Teachers.

A project implementing a new or enhanced registered apprenticeship program for K–12 teachers that—

(a) Is developed with the partner LEA (Local educational agency) to address the needs of its students and teachers;

(b) Uses data-driven strategies and evidence-based approaches to increase recruitment, successful completion, and retention of teachers supported by the project;

(c) Provides standards for participants to enter into and complete the program;

(d) Is aligned to evidence-based practices for effective educator preparation, and includes practice-based learning opportunities linked to coursework that address State requirements for full certification, professional standards for teacher preparation, culturally and linguistically sustaining pedagogies, and the established knowledge base for education, including the science of learning and development; [28]

(e) Has little to no financial burden for program participants, or provides for loan forgiveness;

(f) Requires completion of a bachelor's degree either before entering or as a result of the certification program;

(g) Results in the satisfaction of all requirements for full State teacher licensure or certification, excluding emergency, temporary, provisional, or other sub-standard licensure or certification; and

(h) Provides increasing levels of responsibility for the apprentice during at least one year of paid on-the-job learning/clinical experience, during which a mentor teacher is the teacher of record.

Invitational Priority 2—Supporting Early Elementary Educators and/or School Leaders.

Projects and initiatives that include early elementary teacher and/or school leader preparation programs, professional development and training, professional learning communities, coaching, peer learning collaboratives, and resources to support K–3 early elementary educators and/or school leaders in instructional practices that meet the wide range of developmental and linguistic strengths, needs, and experiences of students at kindergarten entry through the early grades with a focus on one or more of the following:

(a) Instruction informed by the science of learning and development in kindergarten through 3rd grade.

(b) Instruction that is inclusive and developmentally, culturally, and linguistically responsive.

(c) Intentional and effective transitions into kindergarten and through the early grades.

(d) Partnerships with parents, families, and caregivers and successful family engagement, into kindergarten and through 3rd grade.

(e) Intentional collaboration to support inclusive, linguistically responsive, and developmentally informed instructional alignment in K–3, including continuity of services, supports, assessments, relationships, and data sharing across K–3.

Definitions: The definition of ''evidence-based'' is from section 2242 of the ESEA (20 U.S.C. 6672) and section 8101 of the ESEA (20 U.S.C. 7801). The definitions of ''English learner,'' ''institution of higher education,'' which incorporates by reference section 101(a) of the Higher Education Opportunity Act (20 U.S.C. 7801(a)), ''local educational agency,'' ''professional development,'' ''school leader,'' and ''State educational agency'' are from section 8101 of the ESEA (20 U.S.C. 7801). The definitions of ''continuous improvement,'' ''evaluation,'' ''evidence-building,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''project component,'' ''promising evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbooks'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''early learning,'' ''educator,'' ''military- or veteran-connected student,'' and ''underserved student'' are from the Supplemental Priorities. The definition of ''national nonprofit entity'' is from the notice of final definition published in the **Federal Register** on April 4, 2022 (87 FR 19388) (Final Definition).

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Continuous improvement means using plans for collecting and analyzing data about a project component's implementation and outcomes (including the pace and extent to which project outcomes are being met) to inform necessary changes throughout the project. These plans may include strategies to gather ongoing feedback from participants and stakeholders on the implementation of the project component.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any—

(1) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home;

(2) Program funded by the Federal Government or State or local

[28] See, for example, for registered apprenticeship programs for teachers, the *National Guidelines for Apprenticeship Standards for K–12 Teacher Apprenticeships,* drafted by the Pathways Alliance and approved by the U.S. Department of Labor *https://www.thepathwaysalliance.org/reports.*

educational agencies (including any IDEA-funded program);

(3) Early Head Start and Head Start program;

(4) Non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and

(5) Other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

Educator means, for the purposes of Competitive Preference Priorities 2 and 3, an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

English learner means, when used with respect to an individual, an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society.

Evaluation means an assessment using systematic data collection and analysis of one or more programs, policies, practices, and organizations intended to assess their implementation, outcomes, effectiveness, or efficiency.

Evidence-based, when used with respect to a State, LEA, or school activity, means an activity, strategy, or intervention that demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(1) Strong evidence from at least one well-designed and well-implemented experimental study;

(2) Moderate evidence from at least one well designed and well-implemented quasi-experimental study; or

(3) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias.

Evidence-building means a systematic plan for identifying and answering questions relevant to programs and policies through performance measurement, exploratory studies, or program evaluation.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(1) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(2) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(3) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Institution of higher education (IHE) means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the Higher Education Act of 1965, as amended (HEA);

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Local educational agency (LEA) means:

(1) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(2) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(3) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any SEA other than the Bureau of Indian Education.

(4) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(5) State Educational Agency. The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Moderate evidence means evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''strong evidence'' or ''moderate evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''Tier 1 strong evidence'' of effectiveness or ''Tier 2 moderate evidence'' of effectiveness or a ''positive effect'' on a relevant outcome based on a sample including at least 20 students or other individuals from more than one site (such as a State, county, city, LEA, school, or postsecondary campus), or a ''potentially positive effect'' on a relevant outcome based on a sample including at least 350 students or other individuals from more than one site (such as a State, county, city, LEA, school, or postsecondary campus), with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC most recently using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks, or otherwise assessed by the Department using version 5.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (such as a State, county, city, LEA, school, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet the requirements in paragraphs (iii)(A) through (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

National nonprofit entity means an entity that—

(1) Meets the definition of ''nonprofit'' under 34 CFR 77.1(c); and

(2) Is of national scope, which requires that the entity—

(i) Provides services in three or more States; and

(ii) Demonstrates a proven record of serving or benefitting teachers, principals, or other school leaders across these States.

Professional development means activities that—

(1) Are an integral part of school and LEA strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and

(2) Are sustained (not stand-alone, 1-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include activities that—

(i) Improve and increase teachers'—

(A) Knowledge of the academic subjects the teachers teach;

(B) Understanding of how students learn; and

(C) Ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;

(ii) Are an integral part of broad schoolwide and districtwide educational improvement plans;

(iii) Allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;

(iv) Improve classroom management skills;

(v) Support the recruitment, hiring, and training of effective teachers, including teachers who became certified through State and local alternative routes to certification;

(vi) Advance teacher understanding of—

(A) Effective instructional strategies that are evidence-based; and

(B) Strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers;

(vii) Are aligned with, and directly related to, academic goals of the school or LEA;

(viii) Are developed with extensive participation of teachers, principals, other school leaders, parents, representatives of Indian Tribes (as applicable), and administrators of schools to be served under the ESEA;

(ix) Are designed to give teachers of English Learners, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

(x) To the extent appropriate, provide training for teachers, principals, and other school leaders in the use of technology (including education about the harms of copyright piracy), so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and academic subjects in which the teachers teach;

(xi) As a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to

improve the quality of professional development;

(xii) Are designed to give teachers of children with disabilities or children with developmental delays, and other teachers and instructional staff, the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

(xiii) Include instruction in the use of data and assessments to inform and instruct classroom practice;

(xiv) Include instruction in ways that teachers, principals, other school leaders, specialized instructional support personnel, and school administrators may work more effectively with parents and families;

(xv) Involve the forming of partnerships with IHEs, including, as applicable, Tribal Colleges and Universities as defined in section 316(b) of the HEA (20 U.S.C. 1059c(b)), to establish school-based teacher, principal, and other school leader training programs that provide prospective teachers, novice teachers, principals, and other school leaders with an opportunity to work under the guidance of experienced teachers, principals, other school leaders, and faculty of such institutions;

(xvi) Create programs to enable paraprofessionals (assisting teachers employed by an LEA receiving assistance under part A of title I of the ESEA) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers;

(xvii) Provide follow-up training to teachers who have participated in activities described in paragraph (2) of this definition that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom; and

(xviii) Where practicable, provide jointly for school staff and other early childhood education program providers, to address the transition to elementary school, including issues related to school readiness.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC reporting ''strong evidence'', ''moderate evidence'', or ''promising evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting ''Tier 1 strong evidence'' of effectiveness, or ''Tier 2 moderate evidence'' of effectiveness, or ''Tier 3 promising evidence'' of effectiveness, or a ''positive effect,'' or ''potentially positive effect'' on a relevant outcome, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (such as a study using regression methods to account for differences between a treatment group and a comparison group);

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome; and

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report. An intervention report prepared by the WWC reporting ''Tier 1 strong evidence'' of effectiveness, or ''Tier 2 moderate evidence'' of effectiveness, or ''Tier 3 promising evidence'' of effectiveness, or a ''positive effect,'' or ''potentially positive effect'' on a relevant outcome, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; and

(iii) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

School leader means a principal, assistant principal, or other individual who is—

(1) An employee or officer of an elementary school or secondary school, LEA, or other entity operating an elementary school or secondary school; and

(2) Responsible for the daily instructional leadership and managerial operations in the elementary school or secondary school building.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(p) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(q) A student who is working full-time while enrolled in postsecondary education.

(r) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(s) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

(t) A student performing significantly below grade level.

(u) A military- or veteran-connected student.

For the purposes of this definition only, ''English learner'' means an individual who is an English learner as defined in section 8101(20) of the ESEA, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 5.0, or in the WWC Standards Handbook, Version 4.0 or 4.1, or in the WWC Procedures Handbook, Version 4.0 or 4.1, the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference; see § 77.2). WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Program Authority: Section 2242 of the ESEA (20 U.S.C. 6672).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) EED NFP. (e) The Supplemental Priorities. (f) The Final Definition.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: As of October 1, 2024, grant applicants must follow the OMB Guidance for Federal Financial Assistance provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration requested $90,000,000 for SEED for FY 2025, of which we intend to use an estimated $75,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $1,000,000–$6,000,000 per project year.

Estimated Average Size of Awards: $3,500,000 per project year.

Estimated Number of Awards: 16–20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An IHE that provides course materials or resources that are evidence-based in increasing academic achievement, graduation rates, or rates of postsecondary education matriculation;

(b) A national nonprofit entity with a demonstrated record of raising student academic achievement, graduation rates, and rates of higher education attendance, matriculation, or completion, or of effectiveness in providing preparation and professional development activities and programs for teachers, principals, or other school leaders;

(c) The Bureau of Indian Education; or

(d) A partnership consisting of—

(i) One or more entities described in paragraph (a) or (b); and

(ii) A for-profit entity.

If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* Under section 2242 of the ESEA, each grant recipient must provide, from non-Federal sources, at least 25 percent of the total cost for each year of the project activities. These funds may be provided in cash or through in-kind contributions. Grantees must include a budget showing their matching contributions on an annual basis relative to the annual budget amount of SEED grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications.

Note: The combination of Federal and non-Federal funds should equal the total cost of the project. Therefore, grantees are generally required to support no less than 25 percent of the total cost of the project with non-Federal funds. Grantees are strongly encouraged to take this requirement into account when requesting Federal funds and limit their request appropriately and should verify that their budgets reflect the costs allocations appropriately. (Cost share formula: total program cost (the amount of the Federal grant + the amount of the non-Federal match) × .75 = Federal award amount).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 2301 of the ESEA (20 U.S.C. 6691), funds made available under title II of the ESEA must be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this title.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* (a) Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: LEAs, IHEs, State and local governments, and other

public or private entities suitable to carry out the activities proposed in the application.

(b) The grantee may award subgrants to entities it has identified in an approved application or under procedures established by the grantee.

4. *Certification:* Pursuant to section 2242 of the ESEA (20 U.S.C. 6672), applicants must include a certification that the services provided by an eligible entity under the grant to an LEA or to a school served by the LEA will not result in direct fees for participating students or parents.

5. *Renewal:* Under section 2242(b)(2) of the ESEA (20 U.S.C. 6672), the Secretary may renew a grant awarded under this section for one additional two-year period.

Note: During the course of the third year of the project period for grants awarded under this competition, we will provide details on the potential renewal process. In making decisions on whether to award a two-year renewal award, we will review performance data submitted in regularly required reporting, as well as potentially request narrative information to be assessed using selection criteria from 34 CFR 75.210.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at *www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the SEED program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application for funding by sending an email to *SEED@ed.gov* with FY 2025 SEED Intent to Apply in the subject line, by February 18, 2025. Applicants that do not send a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The criteria are as follows:

(a) *Quality of the Project Design (35 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (9 points)

(2) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (8 points)

(3) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes. (8 points)

(4) The extent to which the design of the proposed project demonstrates meaningful community engagement and input to ensure that the project is appropriate to successfully address the needs of the target population or other identified needs and will be used to inform continuous improvement strategies. (8 points)

(b) *Significance (25 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially contributions toward improving teaching practice and student learning and achievement. (7 points)

(2) The extent to which the costs are reasonable in relation to the number of persons to be served, the depth and intensity of services, and the anticipated results and benefits. (6 points)

(3) The potential for the purposes, activities, or benefits of the proposed project to be institutionalized into the ongoing practices and programs of the applicant, agency, or organization and continue after Federal funding ends. (6 points)

(4) The extent to which the resources, tools, and implementation lessons of the proposed project will be disseminated in ways to the target population and local community that will enable them and others (including practitioners, researchers, education leaders, and partners) to implement similar strategies. (6 points)

(c) *Quality of the Management Plan (20 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program. (10 points)

(2) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

(d) *Quality of the Project Evaluation or Other Evidence-Building. (20 points).*

The Secretary considers the quality of the evaluation or other evidence-building of the proposed project. In determining the quality of the evaluation or other evidence-building, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards without reservations, as described in the What Works Clearinghouse Handbooks. (5 points)

(2) The extent to which performance feedback and formative data are integral to the design of the proposed project and will be used to inform continuous improvement. (5 points)

(3) The extent to which the methods of evaluation or other evidence-building include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative. (5 points)

(4) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including valid and reliable information about the effectiveness of the approach or strategies employed by the project. (5 points)

Note: Applicants may wish to review technical assistance resources on Evaluation relevant to the SEED program available at *https://www.ed.gov/grants-and-programs/teacher-prep/supporting-effective-educator-development-grant-program.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Under section 2242 of the ESEA, we consider the following additional factors in selecting an application for an award:

(a) The Secretary must ensure that, to the extent practicable, grants are distributed among eligible entities that will serve geographically diverse areas, including urban, suburban, and rural areas.

(b) The Department must not award more than one grant under this program to an eligible entity during a grant competition. If an entity submits multiple applications for this competition, only the highest rated application will be considered for an award.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the

terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, we have established the following performance measures for the SEED program: (a) the percentage of teacher, principal, or other school leader participants who serve concentrations of high-need students; (b) the percentage of teacher and principal participants who serve concentrations of high-need students and are highly effective; (c) the percentage of teacher and principal participants who serve concentrations of high-need students, are highly effective, and serve for at least two years; (d) the cost per such participant; and (e) the number of grantees with evaluations that meet the WWC standards without reservations. Grantees will report annually on each measure.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform theFunctions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2025–01275 Filed 1–16–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs; Professional Development Program (PD)—Training Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for Indian Education Discretionary Grants Programs PD—Training Grants.

DATES:

Applications Available: January 17, 2025.

Date of Pre-Application Webinar: February 11, 2025.

Deadline for Notice of Intent to Apply: February 18, 2025.

Deadline for Transmittal of Applications: April 28, 2025.

Deadline for Intergovernmental Review: June 26, 2025.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Linda Brake, U.S. Department of Education, 400 Maryland Avenue, Washington, DC 20202–6335. Telephone: (202) 987–0796. Email: *linda.brake@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the PD Program that are relevant to this competition are to increase the number of qualified Indian individuals in professions that serve Indian students and to provide training and support to qualified Indian individuals to become teachers and administrators.

Assistance Listing Number: 84.299B.

OMB Control Number: 1810–0580.

Background: To be successful, every student should have access to

outstanding, well-prepared, well-supported educators who reflect the diversity of the students they serve. The PD Training Grants program provides critical support to increase the number of qualified Indian educators and administrators serving Indian students who can help meet the unique linguistic and cultural needs of Native American students. It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with local educational agencies (LEAs), Indian Tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality. The Department is committed to supporting opportunities for educator recruitment, preparation, and retention in a way that creates a diverse and well-prepared educator workforce.

The PD Training Grants program can support multiple types of training, including Registered Apprenticeships (RA).

We encourage applicants to consider creative ways to meet the needs of Indian students by identifying and overcoming barriers to training and supporting future Indian teachers and administrators.

Priorities: This competition includes two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priorities are from 34 CFR 263.6(b)(1) and (2), as amended pursuant to the notice of final regulations for this program published elsewhere in this issue of the **Federal Register** (Final Rule), and the competitive preference priorities are from 34 CFR 263.6(a)(1) and (2), as amended by the Final Rule.

Absolute Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of these priorities.

Note: The Department may create two funding slates—one for applicants that meet Absolute Priority 1 and one for applicants that meet Absolute Priority 2. As a result, the Department may fund applications out of the overall rank order, provided there is a sufficient number of high-quality applications, but the Department is not bound to do so. Applicants must clearly identify the specific absolute priority the proposed project addresses in the project abstract and narrative; an applicant that wishes to apply under both priorities should submit two separate applications.

These priorities are:

Absolute Priority 1: Pre-Service Training for Teachers.

Projects that—

(a) Provide support and training to Indian individuals to complete a pre-service education program before the end of the award period that enables the individuals to meet the requirements for full State certification or licensure as a teacher through—

(1) Training that leads to a degree in education;

(2) For States allowing a degree in a specific subject area, training that leads to a degree in the subject area;

(3) Training in a current or new specialized teaching assignment that requires a degree and in which a documented teacher shortage exists; or

(4) Training in the field of Native American language instruction;

(b) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for two years, while participants are completing their work-related payback in schools in local educational agencies (LEAs) that serve a high proportion of Indian students; and

(c) Include goals for the—

(1) Number of participants to be recruited each year;

(2) Number of participants to continue in the project each year;

(3) Number of participants to graduate each year; and

(4) Number of participants to find qualifying employment within 12 months of completion.

Absolute Priority 2: Pre-service Administrator Training.

Projects that—

(a) Provide support and training to Indian individuals to complete a graduate degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator;

(b) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for two years, while participants are completing their work-related payback in schools in LEAs that serve a high proportion of Indian students; and

(c) Include goals for the—

(1) Number of participants to be recruited each year;

(2) Number of participants to continue in the project each year;

(3) Number of participants to graduate each year; and

(4) Number of participants to find qualifying employment within twelve months of completion.

Competitive Preference Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets Competitive Preference Priority 1 or an additional 3 points to an application that meets Competitive Preference Priority 2. Applicants are eligible for points under either Competitive Preference Priority 1 or 2, not both; thus, the maximum number of points is 5.

These priorities are:

Competitive Preference Priority 1: Tribal Applicants (Zero or five points).

An application submitted by an Indian Tribe, Indian organization, or Tribal college or university (TCU) that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, or TCU will be considered eligible to receive preference under this priority only if the lead applicant for the consortium is the Indian Tribe, Indian organization, or TCU. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

Competitive Preference Priority 2: Consortium Applicants, Non-Tribal Lead (Zero or three points).

A consortium application of eligible entities that—

(a) Meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, or TCU; and

(b) Is not eligible to receive a preference under Competitive Preference Priority 1.

Application Requirements: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements from 34 CFR 263.5.

Each applicant must:

(a) Describe how it will—

(1) Recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders, if applicable;

(2) Use funds made available under the grant to support the recruitment, preparation, retention, and professional

development of Indian teachers or principals in LEAs that serve a high proportion of Indian students, as applicable; [1] and

(3) Assist participants who receive pre-service training in meeting the payback requirements under 34 CFR 263.9(b), if applicable;

(b) Submit one or more letters of support from LEAs that serve a high proportion of Indian students. Each letter must include—

(1) A statement that the LEA agrees to consider program graduates for employment;

(2) Evidence that the LEA meets the definition of ''LEA that serves a high proportion of Indian students''; and

(3) The signature of an authorized representative of the LEA;

(c) If applying as an Indian organization, demonstrate that the entity meets the definition of ''Indian organization'';

(d) If it is an affected LEA that is subject to the Elementary and Secondary Education Act of 1965, as amended (ESEA), consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, as required under ESEA section 8538; and

(e) Comply with any other requirements in the application package.

Statutory Hiring Preference:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this preference, an Indian is a member of any federally recognized Indian Tribe.

Definitions: The following definitions are from 34 CFR 263.3, as amended by the Final Rule, and apply to this competition.

BIE-funded school means a Bureau of Indian Education school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Dependent allowance means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

Full course load means the number of credit hours that the institution requires of a full-time student.

Graduate degree means a post-baccalaureate degree awarded by an institution of higher education.

Indian means an individual who is—

(1) A member of an Indian Tribe or band, as membership is defined by the Indian Tribe or band, including any Tribe or band terminated since 1940, and any Tribe or band recognized by the State in which the Tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian organization means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education or TCU; and

(6) Is not an agency of State or local government.

Induction services means services provided—

(1)(i) By educators, local traditional leaders, or cultural experts;

(ii) For the two years of qualifying employment; and

(iii) In LEAs that serve a high proportion of Indian students;

(2) To support and improve participants' professional performance and promote their retention in the field of education and teaching, and that include, at a minimum, these activities:

(i) High-quality mentoring, coaching, and consultation services for the participant to improve performance.

(ii) Access to research materials and information on teaching and learning.

(iii) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction.

(iv) Clear, timely, and useful feedback on performance, provided in coordination with the participant's supervisor.

(v) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

In-service training means activities and opportunities designed to enhance the skills and abilities of individuals in their current areas of employment.

Institution of higher education (IHE) has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

Local educational agency (LEA) that serves a high proportion of Indian students means—

(1) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the LEA as compared to other LEAs in the State; or

(2) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the school in which the participant works compared to other LEAs in the State, even if the LEA as a whole in which the participant works does not have a high proportion of Indian students compared to other LEAs in the State.

Native American means ''Indian'' as defined in section 6151(3) of the ESEA, which includes Alaska Native and members of federally-recognized or State-recognized Tribes; Native Hawaiian; and Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

Participant means an Indian individual who is being trained under the Professional Development program.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

Pre-service training means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree, or licensing or certification in the field of Native American language instruction.

Qualifying employment means employment in an LEA that serves a high proportion of Indian students.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room, board, and personal living expenses for participants in pre-service training who are living at or near the institution providing the training.

Tribal college or university (TCU) has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education.

Program Authority: 20 U.S.C. 7442.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 (Uniform Guidance), as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 263, as amended by the Final Rule.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the updated Uniform Guidance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration requested $72,000,000 for Special Programs for Indian Children, of which we intend to use an estimated $13,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2026 and subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $400,000–$500,000.

Estimated Average Size of Awards: $450,000.

Maximum Award: We will not make an award exceeding $500,000 for the first, second, or third 12-month budget period. The last two 12-month budget periods will be limited to induction services only, at a cost not to exceed $120,000 per year. We will not make an award exceeding $120,000 for the fourth or fifth 12-month budget period.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with the potential for renewal of up to an additional 24 months. We will award grants for an initial period of not more than three years and may renew such grants for an additional period of not more than two years if we find that the grantee is achieving the objectives of the grant. The Department requests that applicants provide budget information in their applications for the full period, up to 60 months, for which they hope to be funded.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An eligible applicant must be—

(1) An IHE, including a TCU;

(2) A State educational agency in a consortium with an IHE or a TCU;

(3) An LEA in a consortium with an IHE or a TCU;

(4) An Indian Tribe or Indian organization in a consortium with an IHE or a TCU; or

(5) A BIE-funded school in a consortium with at least one TCU, where feasible. BIE-funded schools are eligible applicants for a pre-service training program when the BIE-funded school applies in consortium with an institution of higher education that meets the requirements in paragraph(c) of this section.

(b) Eligibility of an applicant that is an IHE or a TCU, or an applicant requiring a consortium with an IHE or a TCU, requires that the IHE or TCU be accredited to provide the coursework and level of degree or Native American language certificate required by the project.

Post Award Requirements:

(a) *Requirement for payback meeting.* Prior to providing funds or services to a participant, the grantee must conduct a payback meeting with the participant to explain the costs of training and payback responsibilities following training.

(b) *Requirement for payback agreement.* (1) Prior to providing funds or services to a participant, and for each subsequent year that training funds are disbursed, the grantee must enter into a written agreement with each participant in which the participant agrees to the terms and conditions required by 34 CFR 263.12.

(2) The payback agreement must explain the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to § 263.10 and include—(i) The current Department address for purposes of the participant's compliance with § 263.11, or any other purpose under this part, and other Office of Indian Education contact information;

(ii) The estimated length of training;

(iii) The total training costs;

(iv) The total amount of assistance accrued year-to-date;

(v) The total number of months in the service obligation year-to-date;

(vi) A statement explaining that work must be in an ''LEA that serves a high proportion of Indian students,'' and the regulatory definition of that phrase; and

(vii) Information documenting that the grantee held a payback meeting with the participant that meets the requirements of this section.

(3) The grantee must submit a signed payback agreement to the Department within 30 days of the date on which the payback agreement is fully executed by the grantee and participant. The grantee must provide a copy of the payback agreement to the participant upon execution.

(c) *Exit certification.* At the time of exit from the program, the grantee must provide the below information to the participant. Upon receipt of this information from the grantee, the participant must provide written certification to the grantee that this information is correct:

(1) The name of the institution where the participant received pre-service training and the award number of the Federal grant that provided the scholarship.

(2) The number of months the participant needs to work in an LEA that serves a high proportion of Indian students to satisfy the payback requirements in 263.9.

(3) The total amount of financial assistance received.

(4) The participant's field of study and the obligation of the participant to perform the service obligation with employment that meets the requirements in § 263.9(b).

(d) *Career preparation.* During the grant period, a grantee must conduct activities to assist participants in identifying qualified employment opportunities following completion of the program.

(e) *Information and annual reporting.* The grantee must report to the Secretary all participant training and payback information in a manner specified by the Secretary as well as any other information that is necessary to carry out the Secretary's functions under section 6122 of the ESEA and 34 CFR part 263. Each grantee will make annual reports to the Secretary, unless more frequent reporting is required by the Secretary, that are necessary to carry out the Secretary's functions under 34 CFR part 263.

(f) *Standards for satisfactory progress.* The grantee must establish, publish, notify participants of, and apply reasonable standards for measuring whether a participant is making satisfactory progress in the training program. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Are the same as the institution's standards for a student enrolled in the same academic program who is not receiving assistance under this program; and

(2) Include the following elements:

(i) Grades, work projects completed, including performance tasks, or comparable factors that are measurable against a norm and are aligned with demonstrating effective practice.

(ii) A maximum timeframe in which the participant must complete the participant's educational objective, degree, or certificate.

(iii) Consistent application of standards to all participants within categories of students (*e.g.,* full-time, part-time, undergraduate students, and graduate students).

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a participant is not making satisfactory progress and for reinstatement of aid.

(g) *Requirement for Indian preference.* (1) Under section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), to the greatest extent feasible, a grantee must—

(i) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e), preference in the award of contracts in connection with the administration of the grant.

(2) For the purposes of this paragraph (g), an Indian is a member of any federally recognized Indian Tribe.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www.ed.gov/about/ed-offices/ofo#Indirect-Cost-Division.* Note, however, that consistent with 34 CFR 75.562(c)(4), this training rate limitation does not apply to agencies of Indian Tribal governments.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

d. Subgrantees: A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

3. *Other:* Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period. This meeting may be held virtually if conditions warrant such a format.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Indian Education Professional Development Program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public by posting them on our website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

The allowable costs below are from 34 CFR 263.4.

A PD program may include, as training costs, assistance to—

(1) Fully finance a student's educational expenses including tuition, books, and required fees; health insurance required by the IHE; stipend; dependent allowance; technology costs; program required travel; and instructional supplies; or

(2) Supplement other financial aid, including Federal funding other than loans, for meeting a student's educational expenses.

The maximum stipend amount is $2,300 per month for full-time students; grantees may also provide participants with a $500 allowance per month per dependent during an academic term.

The Department will reduce any stipends in excess of this amount.

Other costs that a PD program may include, but that must not be included as training costs, include costs for-

(1) Collaborating with prospective employers within the grantees' local service area to create a pool of potentially available qualifying employment opportunities;

(2) In-service training activities such as providing mentorships linking experienced teachers at job placement sites with program participants;

(3) Assisting participants in identifying and securing qualifying employment opportunities in their fields of study following completion of the program;

(4) Teacher mentoring programs, professional guidance, and instructional support provided by educators, local traditional leaders, or cultural experts, as appropriate for teachers for up to their first three years of employment as teachers; and

(5) Programs designed to train traditional leaders and cultural experts to assist participants with relevant Native language and cultural mentoring, guidance, and support.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative.

An application will not be disqualified if it exceeds the recommended page limit.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 263.7. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The criteria are as follows:

(a) *Need for project* (up to 5 points). In determining the need for the proposed project, the Secretary considers the extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated through a job market analysis.

(b) *Quality of project design* (up to 20 points). The Secretary considers the following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious but also attainable and address—

(i) The number of participants expected to be recruited in the project each year;

(ii) The number of participants expected to continue in the project each year;

(iii) The number of participants expected to graduate; and

(iv) The number of participants expected to find qualifying employment within twelve months of completion. (up to 10 points)

(2) The extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that program participants are likely to complete the program. (up to 5 points)

(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a job market analysis, by establishing partnerships and relationships with LEAs that serve a high proportion of Indian students and developing programs that meet their employment needs. (up to 5 points)

(c) *Quality of project services* (up to 20 points) The Secretary considers the following factors in determining the quality of the design of project services:

(1) The likelihood that the proposed project will provide participants with learning experiences that develop needed skills for successful teaching and/or administration in LEAs that serve a high proportion of Indian students. (up to 4 points)

(2) The extent to which the proposed project prepares participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs. (up to 4 points)

(3) The extent to which the applicant will provide job placement activities that reflect the findings of a job market analysis and needs of potential employers and that offer qualifying employment opportunities. (up to 4 points)

(4) The extent to which the applicant will offer induction services that reflect the latest research on effective delivery of such services. (up to 4 points)

(5) The extent to which the applicant will assist participants in meeting the service obligation requirements. (up to 4 points)

(d) *Quality of project personnel* (up to 15 points). In determining the quality of the personnel who will carry out the proposed project, the Secretary considers the qualifications, including relevant training, experience, and cultural competence, of key project personnel and the amount of time to be spent on the project and direct interactions with participants.

(e) *Adequacy of resources* (up to 10 points). In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (Up to 5 points)

(2) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (Up to 5 points)

(f) *Quality of the management plan* (up to 10 points). In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (Up to 5 points)

(2) The adequacy of plans for ensuring the use of quantitative and qualitative data, including meaningful community member and partner input, to inform continuous improvement in the operation of the proposed project. (Up to 5 points)

(g) *Quality of the project evaluation or other evidence-building.* (up to 20 points). In determining the quality of the evaluation or other evidence-building of the proposed project, the Secretary considers the following factors: (1) The extent to which the methods of evaluation or other evidence-building are appropriate to the context within which the project operates and the target population of the proposed project. (Up to 10 points)

(2) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative, diagnostic, or interim data that is a periodic assessment of progress toward achieving intended outcomes. (Up to 10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

The Department will screen applications that are submitted in accordance with the requirements in this notice and determine which applications are eligible to be read by peer reviewers based on whether they have met the eligibility, priorities and application requirements in this notice. The Department will use peer reviewers with knowledge and expertise on issues related to educator training and improving outcomes for Native American youth to score the selection criteria. The Department will thoroughly screen all peer reviewers for conflicts of interest to ensure a fair and competitive review.

In reviewing applications, the Department will assign points for Competitive Preference Priorities 1 and 2 based on each application's adherence to the requirements of each.

Technical scoring. Peer reviewers will read, prepare a written evaluation, and assign a technical score to the applications assigned to their panel, using the selection criteria provided in this notice. The Department will then prepare rank order(s) of applications based on the technical scores.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance

report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established the following performance measures:

(a) The number and percentage of participants in administrator preparation projects who become principals, vice principals, or other school administrators in ''LEAs that serve a high proportion of Indian students'';

(b) The number and percentage of participants in teacher preparation projects who become teachers in ''LEAs that serve a high proportion of Indian students'';

(c) The number and percentage of program participants who meet State licensure requirements;

(d) The number and percentage of program participants who complete their service requirement on schedule;

(e) The cost per individual who successfully completes an administrator preparation program, takes a position in an ''LEA that serves a high proportion of Indian students,'' and completes the service requirement in such a district; and

(f) The cost per individual who successfully completes a teacher preparation program, takes a position in an ''LEA that serves a high proportion of Indian students,'' and completes the service requirement in such a district.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to carefully consider these measures in conceptualizing the approach to, and evaluation for, its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

(a) In making continuation awards, in addition to applying the criteria in 34 CFR 75.253, the Secretary considers the extent to which a grantee has achieved its project goals to recruit, retain, graduate, and place in qualifying employment program participants.

(b) The Secretary may reduce continuation awards, including the portion of awards that may be used for administrative costs, as well as student training costs, based on a grantee's failure to achieve its project goals specified in paragraph (a) of this section.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority To Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2025–01316 Filed 1–15–25; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs; Professional Development Program—Native American Teacher Retention Initiative

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for Indian Education Discretionary Grants Programs; Professional Development Program (PD)—Native American Teacher Retention Initiative (NATRI).

DATES:

Applications Available: January 17, 2025.

Deadline for Notice of Intent to Apply: February 18, 2025.

Date of Pre-Application Webinar: February 11, 2025.

Deadline for Transmittal of Applications: April 28, 2025.

Deadline for Intergovernmental Review: June 26, 2025.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Linda Brake, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W239, Washington, DC 20202. Telephone: (202) 987–0796. Email: *linda.brake@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the PD Program that are relevant to this competition are to improve the skills of qualified Indian individuals who serve in the education field; and develop and implement initiatives to promote retention of effective teachers, principals, and school leaders who have a record of success in helping low-achieving Indian students improve their academic achievement, outcomes, and preparation for postsecondary education or employment.

Assistance Listing Number: 84.299B.

OMB Control Number: 1810–0580.

Background: To be successful, every student should have access to outstanding, well-prepared, well-supported educators who reflect the diversity of the students they serve. PD—NATRI provides critical support to retain qualified Indian educators and administrators serving Indian students who can help meet the unique linguistic and cultural needs of Native American students. It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with, and responsibility to, the Indian people for the education of Indian children. The Federal Government will continue to work with local educational agencies, Indian Tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for basic educational needs. The Department is committed to supporting opportunities for educator retention in ways that create a diverse and well-prepared educator workforce. PD—NATRI can help advance participants' skills and opportunities. We encourage applicants to consider creative ways to overcome barriers and fully meet the needs of Native American educators and administrators to support retention efforts.

One critical means of improving educational opportunities and achievement of Indian children and youth is addressing the need for Native American educators in schools that serve Native American children and youth. Ninety-three percent of all Native American students attend public schools, where they make up 1 percent of the total student population.[1] Yet only 0.5 percent of public-school educators identify as American Indian/Alaska Native.[2]

In many schools there is ''little to no exposure to Indigenous educators and funds of knowledge'' and Native American students ''are burdened with various obstacles such as low teacher expectations, inappropriate tracking into special education, and unfair disciplinary practices.'' [3] Yet, cultural acknowledgement and teaching has been linked with improved outcomes for Native American students. ''[A]cademic performance is associated with educational experiences structured around local knowledge, culture, and language.'' [4]

Research underscores that teacher quality matters more than any other school-related factor and that educators play an important role in educating students about Native American knowledge, culture, and language.[5] When Native American and Alaska Native students in the fourth and eighth grade were asked who taught them most of what they know about Native American history, language, and traditions, they ranked educators second only to their families.[6] Yet 60 percent of those students had educators who reported never attending professional development programs aimed at developing culturally specific instructional practices for American Indian/Alaska Native students over the past two years.[7] Because educators play a unique role in educating Native American students about their history, language, and traditions, which can increase cultural acknowledgement and improve educational outcomes, the Department supports projects that promote the retention of experienced, effective, and well-trained educators who can incorporate Native American knowledge, culture, and language into their work.

Due to the Federal Government's unique political and legal relationship with Tribes—as set forth in the Constitution of the United States, treaties, Federal law, and Executive orders—the Department held a virtual Tribal consultation on January 24, 2023. This consultation was announced through various external listservs and social media. The Department requested input from Tribal Nations during Tribal Consultation where leaders supported incentives for educators to stay in schools serving Native American students, including higher salaries and other benefits that could keep educators from leaving the profession or finding better opportunities in higher-paying areas. Tribal leaders said that having more Native American educators would result in Native American students being exposed to the idea of the teaching profession as an option for them. The Department aims to promote teacher retention to help address the shortage of Native American educators and expand their impact on Native American students' education.

Applicants must propose a project that is designed to retain educators in a local educational agency (LEA) that serves a high proportion of Indian students, particularly through building teacher leadership models for educators from traditionally underrepresented backgrounds and the communities they serve. Teacher leadership allows teachers to grow professionally and earn additional compensation while remaining in the classroom, and provides the opportunity to do one or more of the following:

(1) Increase the number of qualified Indian educators and administrators serving Indian students;

(2) Provide training and support to qualified Indian individuals to enable such individuals to remain effective educators, principals, other school leaders, administrators, paraprofessionals, counselors, social workers, and specialized instructional support personnel;

(3) Improve the skills of qualified Indian individuals who serve in the capacities described in paragraph (2); and

(4) Develop and implement initiatives to promote retention of effective educators, principals, and school leaders who have a record of success in helping low-achieving Indian students improve their academic achievement, outcomes, and preparation for postsecondary education or employment.

Priorities: This competition includes one absolute priority and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from regulations (34

[1] National Center for Education Statistics (NCES), Common Core of Data, Public Elementary/Secondary School Universe Survey, 2020–21 v.1a.

[2] NCES, National Teacher and Principal Survey, 2017–2018, *https://nces.ed.gov/surveys/ntps/tables/ntps1718_200724_t1n.asp*

[3] Anthony-Stevens, V., Mahfouz, J., & Bisbee, Y. (2020). Indigenous Teacher Education Is Nation Building: Reflections of Capacity Building and Capacity Strengthening in Idaho. Journal of School Leadership, 30(6), 541–564.

[4] Beaulieu, D., Figueira, A.M., Viri, D. (2005). Indigenous Teacher Education: Research-Based Model. Australian Association for Research in Education.

[5] See RAND Education, ''Teachers Matter: Understanding Teachers' Impact on Student Achievement,''

http://www.rand.org/education/projects/measuring-teacher-effectiveness/teachers-matter.html (last accessed April 26, 2023).

[6] NCES, National Indian Education Study, 2019, 13–14. *https://nces.ed.gov/nationsreportcard/subject/publications/studies/pdf/2021018.pdf.*

[7] Id. at 30.

CFR 263.6(a), (b)(5)(i) and (ii), and (b)(6), as amended pursuant to the notice of final regulations for this program published elsewhere in this issue of the **Federal Register** (Final Rule)).

Absolute Priority: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Indian Educator Retention

To meet this priority, applicants must propose projects that—

(a) Propose an educator retention initiative to help address the shortage of fully certified Indian educators to help ensure that Indian students gain knowledge and understanding of Native communities, languages, histories, traditions, and cultures, and expand their impact on Indian students' education; or

(b) Support compensated educator leadership models designed to increase the retention of effective, experienced Indian educators who take on additional leadership and peer support responsibilities such that Indian teachers have the opportunity to advance in their careers and earn additional compensation.

Competitive Preference Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets Competitive Preference Priority 1 or an additional 3 points to an application that meets Competitive Preference Priority 2 or 3. Applicants are eligible for points under Competitive Preference Priority 1, 2, or 3, but may not receive points under more than one of these competitive preference priorities; thus, the maximum number of points is 5.

These priorities are:

Competitive Preference Priority 1: Tribal Applicants (Zero or five points).

An application submitted by an Indian Tribe, Indian organization, or Tribal college or university (TCU) that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, or TCU will be considered eligible to receive preference under this priority only if the lead applicant for the consortium is the Indian Tribe, Indian organization, or TCU. To be considered a consortium application, the application must include the consortium agreement, signed by all parties.

Competitive Preference Priority 2: Consortium Applicants, Non-Tribal Lead (Zero or three points).

(1) A consortium application of eligible entities that—

(a) Meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, or TCU; and

(b) Is not eligible to receive a preference under Competitive Preference Priority 1.

Competitive Preference Priority 3: State Educational Agency or LEA or Bureau of Indian Education School Lead Applicants (Zero or three points).

An application submitted by one or more of the below types of applicants in consortia with institutions of higher education (IHEs), which could include a Tribal college or university:

(i) State educational agency.

(ii) Local educational agency.

(iii) Bureau of Indian Education school.

Application Requirements: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements from 34 CFR 263.5, as amended by the Final Rule.

Each applicant must—

(a) Describe how it will—

(1) Recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders, if applicable;

(2) Use funds made available under the grant to support the recruitment, preparation, retention, and professional development of Indian teachers or principals in LEAs that serve a high proportion of Indian students, as applicable; and

(3) Assist participants who receive pre-service training in meeting the payback requirements under 34 CFR 263.9(b), if applicable;

(b) If applying as an Indian organization, demonstrate that the entity meets the definition of ''Indian organization'';

(c) If it is an affected LEA that is subject to the requirements of section 8538 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, as required under ESEA section 8538; and

(d) Comply with any other requirements in the application package.

Note: This competition is focused on the retention of Indian educators, and the Department is conducting a separate competition focused on the recruitment, preparation, and professional development of Indian teachers or administrators. Accordingly, we expect that, of the allowable activities described in application requirements (a)(1)–(3) above, the only activities applicable to the applicant's proposed project will be the use of funds to support the retention of Indian educators in LEAs that that serve a high proportion of Indian students, which aligns with application requirement (a)(2). Therefore applicants for this program should focus on addressing application requirement (a)(2) rather than (a)(1) and (a)(3).

Statutory Hiring Preference

Awards are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). To the greatest extent feasible, a grantee must—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

For purposes of this preference, an Indian is a member of any federally recognized Indian Tribe. (25 U.S.C. 1452(b)).

Definitions: The following definitions are from 34 CFR 263.3, as amended by the Final Rule, and apply to this competition.

BIE-funded school means a Bureau of Indian Education school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Department means the U.S. Department of Education.

Educator means an individual who is one or more of—

(1) A teacher (including an early education teacher);

(2) A principal or other school leader;

(3) An administrator;

(4) Specialized instructional personnel (*e.g.,* school psychologist, school counselor, school social worker, school nurse, librarian, early intervention service personnel);

(5) A paraprofessional; or

(6) Faculty.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian organization means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education or TCU; and

(6) Is not an agency of State or local government.

Institution of higher education (IHE) has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

Local educational agency (LEA) that serves a high proportion of Indian students means—

(1) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the LEA as compared to other LEAs in the State; or

(2) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the school in which the participant works compared to other LEAs in the State, even if the LEA as a whole in which the participant works does not have a high proportion of Indian students compared to other LEAs in the State.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Program Authority: 20 U.S.C. 7442.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 263, as amended by the Final Rule.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the updated Uniform Guidance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration requested $72,000,000 for Special Programs for Indian Children, of which we intend to use an estimated $13,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2026 and subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $400,000–$500,000.

Estimated Average Size of Awards: $450,000.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with the potential for renewal of up to an additional 24 months.

Note: Under ESEA section 6122(g), the Secretary awards grants for an initial period of not more than 36 months and may renew them for up to 24 months if the Secretary determines that the grantee has made substantial progress in carrying out activities under the grant. The Department requests that applicants provide budget information in their applications for the full period, up to 60 months, for which they hope to be funded.

III. Eligibility Information

1. *Eligible Applicants:* The following entities, either alone or in a consortium, are eligible under this program:

(1) An institution of higher education, or a TCU;

(2) A State educational agency in consortium with an institution of higher education or a TCU;

(3) A local educational agency (LEA) in consortium with an institution of higher education or a TCU;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education or a TCU; or

(5) A BIE-funded school in consortium with at least one TCU, where feasible.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www.ed.gov/about/ed-offices/ofo#Indirect-Cost-Division.* Note, however, that consistent with 34 CFR 75.562(c)(4), this training rate limitation does not apply to agencies of Indian Tribal governments.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Guidance for Federal Financial Assistance.

d. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

3. *Other:* Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period. This meeting may be

held virtually if conditions warrant such format.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the PD Program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public by posting them on our website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative.

An application will not be disqualified if it exceeds the recommended page limit.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from CFR 75.210 and 263.7. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The criteria are as follows:

(a) *Need for project* (up to 5 points). In determining the need for the proposed project, the Secretary considers the extent to which the proposed project will provide support, resources, or services; or otherwise address the needs of the target population, including addressing the needs of underserved populations most affected by the issue, challenge, or opportunity, to be addressed by the proposed project and close gaps in educational opportunity.

(b) *Quality of project design* (up to 20 points). The Secretary considers the following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program. (Up to 5 points)

(2) The extent to which the design of the proposed project demonstrates meaningful community engagement and input to ensure that the project is appropriate to successfully address the needs of the target population or other identified needs and will be used to inform continuous improvement strategies. (Up to 5 points)

(3) The extent to which the proposed project demonstrates that it is designed to build capacity and yield sustainable results that will extend beyond the project period. (Up to 5 points)

(4) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards and increased social, emotional, and educational development for students, including members of underserved populations. (up to 5 points)

(c) *Quality of project services* (up to 20 points). The Secretary considers the following factors in determining the quality of the design of project services:

(1) The likelihood that the proposed project will provide participants with learning experiences that develop needed skills for successful teaching and/or administration in LEAs that serve a high proportion of Indian students. (up to 5 points)

(2) The extent to which the services to be provided by the proposed project are likely to provide long-term solutions to alleviate the personnel shortages that have been identified or are the focus of the proposed project. (Up to 5 points)

(3) The extent to which the proposed project prepares participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs. (up to 10 points)

(d) *Quality of project personnel* (up to 15 points). When determining the quality of the personnel who will carry out the proposed project, the Secretary considers the qualifications, including relevant training, experience, and

cultural competence, of the project director and the amount of time this individual will spend directly involved in the project.

(e) *Adequacy of resources* (up to 10 points). In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (Up to 5 points)

(2) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (Up to 5 points)

(f) *Quality of the management plan* (10 points). In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (Up to 5 points)

(2) The adequacy of plans for ensuring the use of quantitative and qualitative data, including meaningful community member and partner input, to inform continuous improvement in the operation of the proposed project. (Up to 5 points).

(g) *Quality of the project evaluation or other evidence-building.* (up to 20 points). In determining the quality of the evaluation or other evidence-building of the proposed project, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation or other evidence-building are appropriate to the context within which the project operates and the target population of the proposed project. (Up to 10 points)

(2) The extent to which the methods of evaluation or other evidence-building are designed to measure the fidelity of implementation of the project. (Up to 10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

The Department will screen applications that are submitted in accordance with the requirements in this notice, and determine which applications are eligible to be read based on whether they have met the eligibility, priorities and application requirements in this notice. The Department will use reviewers with knowledge and expertise on issues related to educator training and improving outcomes for Native American youth, as well as knowledge of teacher retention, to score the selection criteria. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review.

In reviewing applications, the Department will assign points for Competitive Preference Priorities 1, 2, or 3 based on each application's adherence to the requirements of each.

Technical scoring. Reviewers will read, prepare a written evaluation, and assign a technical score to the applications assigned to their panel, using the selection criteria provided in this notice. The Department will then prepare rank order(s) of applications based on their technical scores.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant

deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established the following performance measure: The unduplicated, cumulative number of Indian educators served by the grant that remained in their role or advance in their field annually and by the end of the grant period.

This measure constitutes the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to carefully consider this measure in conceptualizing the approach to, and evaluation for, its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting this measure.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority To Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2025–01315 Filed 1–15–25; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 19, 2025; 4–8:30 p.m. PST; The opportunity for public comment is at 4:10 p.m. PST. This time is subject to change; please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator (below) for confirmation of time prior to the meeting.

ADDRESSES: Molasky Corporate Center, 15th Floor Conference Room, 100 North City Parkway, Las Vegas, Nevada 89106. This meeting will be open to the public either in-person at the Molasky Corporate Center or virtually via Microsoft Teams. To attend virtually, please contact Barbara Ulmer, NSSAB Administrator, by email *nssab@emcbc.doe.gov* or phone (702) 523–0894, no later than 1 p.m. PST on Tuesday, February 18, 2025.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, NSSAB Administrator, by phone: (702) 523–0894 or email: *nssab@emcbc.doe.gov* or visit the Board's internet homepage at *www.nnss.gov/NSSAB/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda

1. Public Comment Period
2. Update from Deputy Designated Federal Officer
3. Update from National Nuclear Security Administration/Nevada Field Office
4. Updates from NSSAB Liaisons
5. Presentations to the Board
6. Planning for Spring EM SSAB National Chairs' Meeting

Public Participation: The in-person/online virtual hybrid meeting is open to the public either in-person at the Molasky Corporate Center or via Microsoft Teams. Written public comment may be filed with the NSSAB Administrator via email either before or after the meeting. Written comments received before 1 p.m. PST on Tuesday,

February 18, 2025, will be provided to the board members prior to the meeting. Written comments will be accepted after the meeting until Friday, February 28, 2025. Please submit written comments to *nssab@emcbc.doe.gov.* Individuals who wish to make oral comments during the meeting can do so in 2-minute segments for the 15 minutes allotted for public comments. The Deputy Designated Federal Officer (DDFO) is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Questioning of committee members or participants by the public is not permitted except with the approval of the DDFO and chairperson.

Minutes: Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *https://www.nnss.gov/nssab/nssab-meetings/.*

Signing Authority: This document of the Department of Energy was signed on January 14, 2025, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on January 14, 2025.

Jennifer Hartzell,

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

[FR Doc. 2025–01228 Filed 1–16–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. DOE–HQ–2023–0020]

Notice of Availability of the Draft Environmental Impact Statement for Phase 1 of the Grain Belt Express Transmission Line Project (DOE/EIS–0554)

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Notice of availability, request for comments, notice of proposed floodplain action.

SUMMARY: The Loan Programs Office (LPO), U.S. Department of Energy (DOE), announces the availability of the draft environmental impact statement (DEIS) for the proposed Phase 1 of the Grain Belt Express Transmission Project (Project), and a Notice of Proposed Floodplain Action. The DEIS analyzes the impacts associated with providing potential financial assistance (a Federal loan guarantee) to Grain Belt Express, LLC, for construction and energization of the Project. This notice of availability (NOA) announces the start of the public review and comment period, as well as the dates and times for public meetings on the DEIS. After DOE LPO holds the public meetings and addresses public comments submitted during the review period, DOE LPO will publish a final environmental impact statement. Because the Project may include activities within floodplains, this NOA also serves as a notice of proposed floodplain action.

DATES: Comments must be received no later than March 3, 2025. LPO will hold six public meetings for the Project, four in-person and two virtual, at the following dates and times (Central Time):

- Monday, February 10, 2025, 4–6 p.m., Dodge City Public Library, 1001 N 2nd Ave., Dodge City, KS 67801.
- Tuesday, February 11, 2025, 4–6 p.m., Holiday Inn Express, 2175 Lincoln St., Concordia, KS 66901.
- Wednesday, February 12, 2025, 4–6 p.m. St. Joseph Museum, Jackie Lewin Conference Roon, 3406 Frederick Ave., St. Joseph, MO 64506.
- Thursday, February 13, 2025, 4–6 p.m., La Bella Casa Event Center, 5 South Main St., Carrollton, MO 64633.
- Virtual, Wednesday, February 19, 2025, 11 a.m.–1 p.m.
- Virtual, Wednesday, February 20, 2025, 4–6 p.m.

All meetings are open to the public and free to attend. Registration for in person meetings is not required. Registration for the virtual public meetings is required and may be completed at *https://www.energy.gov/lpo/eis-0554-grain-belt-express-transmission-line.* Meeting information will be sent to registrants via their email address provided during registration.

ADDRESSES: The DEIS and detailed information about the Project can be found on DOE LPO's website at: *https://www.energy.gov/lpo/eis-0554-grain-belt-express-transmission-line.* Comments can be submitted in any of the following ways:

Online via DOE LPO's website at *https://www.energy.gov/lpo/eis-0554-grain-belt-express-transmission-line* or email: *LPO_GrainBelt_EIS@hq.doe.gov.*

Orally or in writing during any of the public meetings identified in this NOA.

In writing submitted by mail or any other delivery service, enclosed in an envelope labeled ''Grain Belt Express EIS'' and addressed to Todd Stribley, NEPA Compliance Officer, U.S. Department of Energy, Loan Programs Office—LP30, 1000 Independence Avenue SW, Washington, DC 20585.

Through the regulations.gov web portal: Navigate to *https://www.regulations.gov* and search for Docket No. DOE–HQ–2023–0020. Click on the ''Comment'' button below the document link. Enter your information and comment, then click ''Submit Comment.''

For more information about submitting comments, please see ''Information on Submitting Comments'' under the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT: Todd Stribley, U.S. Department of Energy, Loan Programs Office, 1000 Independence Avenue SW, Washington, DC 20585. Email: *LPO_GrainBelt_EIS@hq.doe.gov*. Phone: 301–525–5944.

SUPPLEMENTARY INFORMATION:

Grain Belt Express LLC (the ''Applicant''), applied for Federal financial assistance via a loan guarantee from the DOE LPO under title XVII of the Energy Policy Act of 2005 (42 U.S. Code [U.S.C.] 16511–16517), as amended. Section 1703 of title XVII (the Clean Energy Financing Program) defines eligible projects as those that, ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued'' (Pub. L. 109–58, sec. 1703(a)). Because the Project may include activities within floodplains, this NOA also serves as a notice of proposed floodplain action, in accordance with 10 Code of Federal Regulations (CFR) part 1022.

Proposed Action. The Federal financing provided by DOE LPO will apply to eligible project costs that include the design, engineering, financing, construction, startup, commissioning, and shakedown of the Project, which includes the following elements:

- A 542-mile, overhead 600-kilovolt (kV) high-voltage direct-current (HVDC) transmission line that would extend between Ford County in southwestern

Kansas and Monroe County in northeastern Missouri (HVDC Line);

- The Tiger Connector, an approximately 36-mile, overhead 345-kV alternating-current (AC) transmission line that would extend from the HVDC converter station in Monroe County, Missouri, to the existing McCredie Substation, owned and operated by Associated Electric Cooperative Incorporated, and the existing Burns Substation, owned and operated by Ameren, in Callaway County, Missouri;
- The Ford County Interconnect, an approximately 0.2-mile, overhead 345-kV AC transmission line located in Ford County, Kansas that would extend from the HVDC converter station to the existing Saddle Substation, owned and operated by ITC Great Plains;
- Two HVDC converter stations and associated infrastructure, one located in Ford County, Kansas and one located in Monroe County, Missouri;
- Optical regeneration facilities in support of the HVDC Line and associated access driveways; and
- Temporary workspaces needed for construction, including temporary access routes, workspaces around transmission structures, pull or tension sites, multi-use construction yards, concrete batch plants, and fly yards and helipads.

No Action Alternative. Under the No Action Alternative, DOE LPO would not provide Federal financial support (a loan guarantee) to the Applicant, with the assumption for the purpose of the environmental analysis that the project would not be constructed.

Availability of the DEIS: The DEIS and associated information are available on DOE LPO's website at: *https://www.energy.gov/lpo/eis-0554-grain-belt-express-transmission-line.* If you require a digital copy on a flash drive or paper copy, LPO will provide one upon request, if supplies are available. You may request a flash drive or paper copy of the DEIS by contacting DOE LPO at *LPO_GrainBElt_EIS@hq.doe.gov.* Hard copies of the DEIS are available for review at the following libraries:

- Dodge City Public Library, 1001 N 2nd Ave, Dodge City, KS 67801
- Southwest Kansas Library System, 100 Military Ave Suite 210, Dodge City, KS 67801
- Frank Carlson Library, 702 Broadway, Concordia, KS 66901
- Learning Resource Center, 2221 Campus Dr., Concordia, KS 66901
- Great Bend Public Library, 1409 Williams St., Great Bend, KS 67530
- Hays Public Library 1205 Main St., Hays, KS 67601
- Manhattan Public Library, 629 Poyntz Ave., Manhattan, KS 66502
- Kansas City Public Library, 6242 Swope Pkwy, Kansas City, MO 64130
- Mid-Continent Woodneath, 8900 NE Flintlock Rd., Kansas City, MO 64157
- Little Dixie Regional Library, 111 N. 4th St., Moberly, MO 65270
- Little Dixie Regional Library, 102 E Library St., Huntsville, MO 65259
- St. Joseph Public Library, 927 Felix Street, St., Joseph, MO 64501
- East Hills Library, 502 N Woodbine Rd., St., Joseph, MO 64506
- Carnegie Branch Library, 316 Massachusetts St., St. Joseph, MO 64504
- Carrollton Public Library, 1 North Folger St., Carrollton, MO 64633
- Trails Regional Library, 203 E Kelling Ave., Waverly, MO 64096

Cooperating Agencies: The following 4 Federal agencies participated as cooperating agencies in the preparation of the DEIS: U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, National Park Service, and U.S. Environmental Protection Agency. The Advisory Council on Historic Preservation was a participating agency.

Information on Submitting Comments: LPO requests data, comments, information, analysis, or suggestions relevant to the environmental analysis in the DEIS from the public; affected Federal, tribal, state, and local governments, agencies and offices; the scientific community; industry; or any other interested party. DOE LPO does not consider anonymous comments. To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform DOE LPO on why the issues raised are important to the consideration of potential environmental effects and/or the alternatives to the proposed action.

Please include your name and address as part of your comment. DOE LPO makes your comments, including your name and address, available for public review. You may request that DOE LPO withhold your name, address, or any other personally identifiable information (PII) included in your comment from the public record; however, DOE LPO cannot guarantee that it will be able to do so. If you wish your name, address, or other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear from its disclosure, such as unwarranted privacy invasion, embarrassment, or injury. Even if LPO withholds your information in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA) and any relevant court orders. If your comment is requested under FOIA or relevant court order, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies or if the relevant court order is challenged. Such a determination will be made in accordance with DOE's FOIA regulations and applicable law.

Please label privileged or confidential information as ''Contains Confidential Information,'' and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by DOE LPO as suitable for public release. Consistent with Section 304 of the National Historic Preservation Act (NHPA) (54 U.S.C. 307103(a)), DOE LPO is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under Section 304 of NHPA as confidential.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: 42 U.S.C. 4231 *et seq.* (National Environmental Policy Act, as amended) and 40 CFR 1501.9 and 1503.1.

Signing Authority

This document of the Department of Energy was signed on January 8, 2025, by Todd Stribley, NEPA Compliance Officer, Loan Programs Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication as an official document of DOE. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 10, 2025.

Treena V. Garrett,

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

[FR Doc. 2025–00736 Filed 1–16–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Autonomous Experimentation Platforms from Material Genome Initiative

AGENCY: Office of Critical and Emerging Technologies, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: On behalf of the Material Genome Initiative (MGI), the Department of Energy (DOE) seeks public comment on autonomous experimentation platforms to inform implementation of the MGI Challenges and Autonomous Materials Innovation Infrastructure (AMII).

DATES: Responses to the RFI are requested by March 21, 2025.

ADDRESSES: Interested parties may submit comments electronically to *info@mgi.gov* and include ''MGI RFI'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Further questions may be addressed to Charles Yang through *info@mgi.gov* or (202) 586–6116.

SUPPLEMENTARY INFORMATION:

I. Background

This is an RFI issued by DOE in support of the Material Genome Initiative (MGI) that seeks public input to inform interagency coordination around Autonomous Experimentation (AE) platform research, development, capabilities, and infrastructure. This input will support the efforts of the recently announced MGI Challenges that aim to help unify and promote adoption of the Materials Innovation Infrastructure—through the expansion and integration of capabilities including autonomy, artificial intelligence, and robotics—to realize solutions to challenges of national interest.[1] MGI is a Federal multi-agency initiative for discovering, manufacturing, and deploying advanced materials and supporting U.S. institutions in the adoption of methods for accelerating materials development, with over 15 agency participants.

For this RFI, MGI seeks input from stakeholders across the entire materials innovation ecosystem including but not limited to:

- Academic and federally funded research and development centers
- For-profit and non-profit AI developers
- Consortia, public/private partnerships, and industry groups interested in AE
- Scientific equipment manufacturers
- Robotics/automation manufacturers and developers
- Startups and investors
- Scientific workforce and education organizations
- Think tanks and science policy organizations
- And other interested entities

II. Purpose

Autonomous experimentation (AE) is defined in the MGI Workshop Report on Autonomous Materials Innovation Infrastructure [2] as ''the coupling of automated experimentation and in situ or in line analysis of results, with artificial intelligence (AI) to direct experiments in rapid, closed-loops.'' The report identifies several technological advances coupled to existing techniques that need to be integrated to realize AE:

(1) Laboratory automation, enabling robots to carry out the autonomous experimental tasks (Including transfer between instruments/experimental stations) prescribed by the decision algorithms.

(2) Automated in-line & in situ sensing, characterization, and analysis capabilities to enable closed-loop autonomous experimentation.

(3) Improved AI and autonomous experimentation decision methods for materials that enable faster and better R&D.

(4) Improved software for hardware automation, sensing and autonomous experimentation.

MGI announced five challenges to help unify and accelerate adoption of Materials Innovation Infrastructure to build scientific infrastructure to address issues national interest.[3] These challenges build off several recent announcements from across the U.S. Government in support of AE systems, including funding for AE for semiconductor materials [4] from the CHIPS office in NIST, a National Science Foundation (NSF) solicitation for material discovery,[5] and an ARPA–E funding opportunity for catalyst discovery with AE.[6] This RFI is not a Notice of Funding Opportunity (NOFO) or Funding Opportunity Announcement (FOA).

This RFI seeks public input on existing research infrastructure as well as opportunities and challenges to leverage autonomous experimentation systems to realize the MGI Challenges. This RFI also seeks input on steps the MGI and the U.S. Government can take to support a broader research and development (R&D) ecosystem for autonomous experimentation systems.

III. Questions

1. MGI Challenges

For any of the following MGI challenges, respondents may provide input on any number or all of the following topics:

- Identify and map existing autonomous experimentation infrastructure suitable to addressing the MGI challenges;
- Describe how autonomous experimentation systems should be designed and integrated to accomplish MGI challenges;
- Describe promising technical approaches to addressing a particular challenge and how AE systems can be designed to accelerate progress in those approaches;
- Describe obstacles to leveraging autonomous experimentation systems specific to a given MGI challenge that will need to be addressed.

Clearly indicate which challenge is being responded to. Further details on the challenges can be found here.[7] One response may respond to multiple challenges.

(a) MGI Challenge: Point of Care Tissue-Mimetic Materials for Biomedical Devices and Implants
(b) MGI Challenge: Agile Manufacturing of Affordable Multi-Functional Composites
(c) MGI Challenge: Quantum Position, Navigation, and Timing on a Chip
(d) MGI Challenge: High Performance, Low Carbon Cementitious Materials
(e) MGI Challenge: Sustainable Materials Design for Semiconductor Applications

2. Partnerships and Consortium

(a) How should the Material Genome Initiative (MGI) and the U.S.

[1] *https://www.mgi.gov/2024-materials-genome-initiative-mgi-challenges.*

[2] *https://www.mgi.gov/sites/default/files/documents/MGI_Autonomous_Materials_Innovation_Infrastructure_Workshop_Report.pdf.*

[3] *https://www.mgi.gov/2024-materials-genome-initiative-mgi-challenges.*

[4] *https://www.nist.gov/system/files/documents/2024/10/30/CHIPS%20CARISSMA%20NOFO.pdf.*

[5] *https://nsf-gov-resources.nsf.gov/files/nsf25508.pdf?VersionId=m260vPkM22sxSgrP2Kawqho5qTCDdHYD.*

[6] *https://arpa-e.energy.gov/technologies/programs/catalchem-e.*

[7] *https://www.mgi.gov/2024-materials-genome-initiative-mgi-challenges.*

Government more broadly partner with industry, academia, and other stakeholders to realize autonomous experimentation platforms? Are there specific models that should be considered?

(b) What role can a public-private consortium play in supporting the development of autonomous experimentation? How should a consortium be structured and who should be involved?

(c) What are the non-technical barriers to realizing the broad impact of AE that partnerships and consortia can address? For example, standards development, experimental equipment integration, etc.

(d) How can MGI and the U.S. Government more broadly work with the affected communities to support the development of AE systems for science? How can MGI and the U.S. Government work with private industry to support technology transition of innovations developed by the community?

3. Workforce

(a) How can the MGI agencies support the equitable development of an AI-ready scientific workforce, with the skills and knowledge needed to work with, operate, and leverage autonomous experimentation platforms?

(b) How do the workforce skills and knowledge needed to realize autonomous experimentation systems as a new scientific infrastructure overlap with other valuable scientific and engineering discipline needs?

4. Scientific Equipment, Automation, and Software Interfaces

(a) What types of robotic automation hardware and software are most applicable for scientific autonomous experimentation systems?

(b) What are obstacles and challenges to integrating robotic automation with scientific equipment? What role can software Application Programming Interface (API) standards play in developing autonomous experimentation systems? How can MGI and the U.S. Government work with private industry, including equipment manufacturers and autonomy developers, to develop API standards for the industry and accelerate adoption and development of AE systems?

IV. Response Guidelines

Commenters are welcome to comment on any question. RFI responses shall include:

1. RFI title;

2. Name(s), phone number(s), and email address(es) for the principal point(s) of contact;

3. Institution or organization affiliation and postal address; and

4. Clear indication of the specific question(s) to which you are responding.

Responses to this RFI must be submitted electronically to *info@mgi.gov* with the subject line ''MGI RFI'' no later than 5 p.m. (ET) on March 21, 2025. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25 MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (*.docx) or Adobe Acrobat (*.pdf) attachment to the email and should be no more than 15 pages in length, 12-point font, 1-inch margins. Only electronic responses will be accepted. Only one response per individual or organization will be accepted.

A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Confidential Business Information

Because information received in response to this RFI may be used to structure future programs and/or otherwise be made available to the public, respondents are strongly advised NOT to include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose. If your response contains confidential, proprietary, or privileged information, you must include a cover sheet marked as follows identifying the specific pages containing confidential, proprietary, or privileged information.

Notice of Restriction on Disclosure and Use of Data

Pages [list applicable pages] of this response may contain confidential, proprietary, or privileged information that is exempt from public disclosure. Such information shall be used or disclosed only for the purposes described in this RFI. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

In addition, (1) the header and footer of every page that contains confidential, proprietary, or privileged information must be marked as follows: ''Contains, Confidential, Proprietary, or Privileged Information Exempt from Public Disclosure'' and (2) every line and paragraph containing proprietary, privileged, or trade secret information must be clearly marked with [[double brackets]] or highlighting. Submissions containing CBI should be sent to *info@mgi.gov.*

Signing Authority

This document of the Department of Energy was signed on January 13, 2025, by Helena Fu, Director, Office of Critical and Emerging Technologies, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 14, 2025.

Jennifer Hartzell,

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

[FR Doc. 2025–01161 Filed 1–16–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25–38–000.

Applicants: Catalina Solar, LLC, PGR 2023 Lessee 1, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Catalina Solar, LLC, et al.

Filed Date: 1/10/25.
Accession Number: 20250110–5432.
Comment Date: 5 p.m. ET 1/31/25.

Docket Numbers: EC25–39–000.
Applicants: Dow Hydrocarbons and Resources LLC, Dow Pipeline, LLC, InfraPark Holdings, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Dow Hydrocarbons and Resources LLC, et al.
Filed Date: 1/10/25.
Accession Number: 20250110–5447.
Comment Date: 5 p.m. ET 1/31/25.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25–76–000.
Applicants: Gonzaga Ridge Wind Farm, LLC.
Description: Gonzaga Ridge Wind Farm, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 1/13/25.
Accession Number: 20250113–5061.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: EG25–77–000.
Applicants: Gonzaga Ridge Battery Facility, LLC.
Description: Gonzaga Ridge Battery Facility, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 1/13/25.
Accession Number: 20250113–5062.
Comment Date: 5 p.m. ET 2/3/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1960–008.
Applicants: Tenaska Pennsylvania Partners, LLC.
Description: Notice of Change in Status of Tenaska Pennsylvania Partners, LLC.
Filed Date: 1/10/25.
Accession Number: 20250110–5441.
Comment Date: 5 p.m. ET 1/31/25.

Docket Numbers: ER20–720–002; ER20–721–002; ER20–886–002; ER21–2140–002; ER23–1812–002; ER24–966–003.
Applicants: Eleven Mile Solar Center, LLC, Sunflower Energy Center, LLC, Haystack Wind Project, LLC, Orsted US Trading LLC, Willow Creek Wind Power LLC, Plum Creek Wind, LLC.
Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Plum Creek Wind, LLC, et al.
Filed Date: 1/10/25.
Accession Number: 20250110–5436.
Comment Date: 5 p.m. ET 3/11/25.

Docket Numbers: ER24–2566–004.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: 2025–01–10 CapX Brookings CMA—757—Errata to be effective 6/21/2024.
Filed Date: 1/10/25.
Accession Number: 20250110–5416.
Comment Date: 5 p.m. ET 1/31/25.

Docket Numbers: ER24–3112–001.
Applicants: Richland Township Solar, LLC.
Description: Notice of Non-Material Change in Status of Richland Township Solar, LLC.
Filed Date: 1/10/25.
Accession Number: 20250110–5442.
Comment Date: 5 p.m. ET 1/31/25.

Docket Numbers: ER25–699–001.
Applicants: Arizona Public Service Company.
Description: Tariff Amendment: Service Agreement No. 429—Refile to be effective 11/12/2024.
Filed Date: 1/13/25.
Accession Number: 20250113–5072.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–907–000.
Applicants: Entergy Arkansas, LLC.
Description: § 205(d) Rate Filing: EAL-Osceola WDS Agreement to be effective 3/11/2025.
Filed Date: 1/10/25.
Accession Number: 20250110–5390.
Comment Date: 5 p.m. ET 1/31/25.

Docket Numbers: ER25–908–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6534; Queue No. AE2–074 to be effective 3/15/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5035.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–909–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original GIA Service Agreement No. 7464; Project Identifier No. AG1–104 to be effective 12/12/2024.
Filed Date: 1/13/25.
Accession Number: 20250113–5064.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–910–000.
Applicants: Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2025–01–13_SA 4421 Ameren Illinois-City of Casey-IMEA WCA to be effective 3/15/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5083.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–911–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to Queue None ISA No. 2824 & W4–004B/AT11 ISA No. 3563 to be effective 3/15/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5089.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–912–000.
Applicants: Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2025–01–13_SA 4422 Ameren Illinois-City of Altamont-IMEA WCA to be effective 3/15/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5093.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–913–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6317; Queue No. AG1–499 to be effective 3/15/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5105.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–914–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Third Coast BESS 1st Amended Generation Interconnection Agreement to be effective 12/15/2024.
Filed Date: 1/13/25.
Accession Number: 20250113–5112.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–915–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original GIA, SA No. 7463; Project Identifiers AF2–433/AF2–434 to be effective 12/12/2024.
Filed Date: 1/13/25.
Accession Number: 20250113–5131.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–916–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Initial rate filing: Alabama Power Company submits tariff filing per 35.12: Southern Power Enhanced Reliability Upgrade Construction Agreement Filing to be effective 1/6/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5134.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–917–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: Southern Power ERU Construction Agreement Concurrence Filing to be effective 1/6/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5141.
Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: ER25–918–000.

Applicants: Mississippi Power Company.

Description: Initial rate filing: Southern Power ERU Construction Agreement Concurrence Filing to be effective 1/6/2025.

Filed Date: 1/13/25.

Accession Number: 20250113–5145.

Comment Date: 5 p.m. ET 2/3/25.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES25–27–000.

Applicants: Rockland Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Rockland Electric Company.

Filed Date: 1/10/25.

Accession Number: 20250110–5440.

Comment Date: 5 p.m. ET 1/31/25.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH25–3–000.

Applicants: New Jersey Resources Corporation.

Description: New Jersey Resources Corporation submits FERC–65A Notice of Change in Fact to Waiver Notification.

Filed Date: 1/10/25.

Accession Number: 20250110–5431.

Comment Date: 5 p.m. ET 1/31/25.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or

requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 13, 2025.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2025–01211 Filed 1–16–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–350–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2025–01–10 Negotiated Rate Agreement to be effective 1/11/2025.

Filed Date: 1/10/25.

Accession Number: 20250110–5365.

Comment Date: 5 pm ET 1/22/25.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 13, 2025.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2025–01212 Filed 1–16–25; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0623; FRL–12568–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NESHAP for Natural Gas Transmission and Storage (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Natural Gas Transmission and Storage (EPA ICR Number 1789.12, OMB Control Number 2060–0418) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28. 2025. Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before February 18, 2025.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0623, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to

www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 28, 2025. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period (88 FR 31749). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Natural Gas Transmission and Storage (40 CFR part 63, subpart HHH) apply to existing facilities and new facilities that are major sources of hazardous air pollutants (HAP) and that either transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company). New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart HHH.

Form Numbers: None.

Respondents/affected entities: Owners and operators of natural gas transmission and storage facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHH).

Estimated number of respondents: 91 (total).

Frequency of response: Semiannually.

Total estimated burden: 4,650 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $586,000 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most recently approved ICR is due to an adjustment(s). The adjustment increase in burden from the most recently approved ICR is not due to any program changes, but due to an increase in the number of new or modified sources.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2025–01213 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0122; FRL–12566–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NESHAP for Marine Tank Vessel Loading Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Marine Tank Vessel Loading Operations (EPA ICR Number 1679.12, OMB Control Number 2060–0289) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2025. Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before February 18, 2025.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2023–0122 to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 28, 2025. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period (88 FR 31748). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Marine Tank Vessel Loading Operations (40 CFR part 63, subpart Y) were proposed on May 13, 1994; promulgated on September 19, 1995; and amended on both April 21, 2011, and December 1, 2015. This NESHAP regulation establishes Maximum Achievable Control Technology (MACT) standards for existing facilities and new facilities that load marine tank vessels with petroleum or gasoline. These facilities have aggregate actual hazardous air pollutants (HAP) emissions of 10 tons or more of each individual HAP, or 25 tons or more of all HAP combined. This

NESHAP regulation also established reasonably available control technology (RACT) standards to such facilities with an annual throughput of 10 million or more barrels of gasoline or 200 million or more barrels of crude oil. This information is being collected to assure compliance with 40 CFR part 63, subpart Y.

Form Numbers: None.

Respondents/affected entities: Marine tank vessel loading operations at marine terminals.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart Y).

Estimated number of respondents: 804 (total).

Frequency of response: Initially, semiannually, and annually.

Total estimated burden: 10,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,350,000 (per year). There are no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup and/or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2025–01214 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–162]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed January 6, 2025 10 a.m. EST

Through January 13, 2025 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20250013, Draft, TVA, AL, Hillsboro Solar, Comment Period Ends: 03/03/2025, Contact: Elizabeth Smith 865–632–3053.

EIS No. 20250014, Draft, DOE, KS, DOE/EIS–0554: Phase 1 of the Grain Belt Express Transmission Project, Comment Period Ends: 03/03/2025, Contact: Todd Stribley 301–525–5944.

EIS No. 20250015, Draft, NMFS, FL, Amendment 59 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, Comment Period Ends: 03/03/2025, Contact: Nikhil Mehta 727–551–5098.

EIS No. 20250016, Final, TVA, IL, Sugar Camp Energy, LLC Mine No. 1 Significant Boundary Revision 8, Review Period Ends: 02/18/2025, Contact: Elizabeth Smith 865–632–3053.

Dated: January 13, 2025.

Mark Austin,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2025–01130 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0611; FRL–12564–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Toxic Substances Control Act (TSCA) Existing Chemical Risk Evaluation and Management; Generic Information Collection Request for Interview and Focus Groups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), TSCA Existing Chemical Risk Evaluation and Management; Generic ICR for Interview and Focus Groups, (EPA ICR Number 2584.03 and OMB Control Number 2070–0219) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2025. Public comments were previously requested via the **Federal Register** on May 15, 2024. This notice allows for an additional 30 days for public comments.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: Submit your comments to EPA, identified by docket identification (ID) number Docket ID No. EPA–HQ–OPPT–2018–0611, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Katherine Sleasman, Office of Program Support (7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1204; email address: *sleasman.katherine@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is approved through February 28, 2025. An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Public comments were previously requested via the **Federal Register** on May 15, 2024, establishing a 60-day comment period (89 FR 42467). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information collection activities and related estimated burden and costs that are summarized in this document, are available in the docket. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. Additional instructions on commenting

and visiting the docket is available at *https://www.epa.gov/dockets.*

Abstract: Under this generic ICR, EPA may conduct interviews and focus groups of chemical users, processors, distributors, manufacturers (including importers), and recyclers, chemical waste handlers, consumers of chemical-containing products, employees who may be exposed to the chemical evaluated, state and local regulators, non-governmental organizations, industry experts, and knowledgeable members of the public (including potentially exposed or susceptible subpopulations) related to information collection for TSCA chemical risk evaluation and risk management. These information collection efforts are intended to supplement other reasonably available information on chemicals in commerce and will provide support for the Agency's activities regarding existing chemicals under TSCA section 6.

Data collected under this generic clearance may be used in several ways during the risk evaluation and risk management processes, including establishing generic scenarios, developing models of various conditions of use of chemicals evaluated under TSCA or their alternatives, pretesting survey questions, and providing important context for publicly available information already available to EPA. By learning more about the conditions of use, hazards, exposures, potentially exposed or susceptible subpopulations, health and environmental effects, benefits, reasonably ascertainable economic consequences, alternatives, and other information for chemicals being evaluated or regulated, EPA would be able to more precisely and effectively carry out its risk evaluation and risk management obligations under TSCA.

Form number(s): None.

Respondents/affected entities: Entities potentially affected by this ICR include chemical manufacturers (including importers), chemical users (including government agencies), processors, distributors, product manufacturers, recyclers, chemical waste handlers, consumers, employees, and others with important information about the chemical being evaluated or considered for risk management under TSCA. North American Industrial Classification System (NAICS) codes identified in question 12 of the ICR.

Respondent's obligation to respond: Voluntary.

Estimated number of potential respondents: 85.

Frequency of response: On occasion.

Total estimated burden: 950 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: $ 83,229, includes $0 annualized capital investment or maintenance and operational costs.

Changes in the estimates: There are no changes to the burden hours currently approved by OMB.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2025–01109 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA- HQ–OAR–2023–0119; FRL–12567–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NESHAP for Beryllium Rocket Motor Fuel Firing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Beryllium Rocket Motor Fuel Firing (EPA ICR Number 1125.10, OMB Control Number 2060–0394) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28. 2025. Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before February 18, 2025.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2023–0119, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 28, 2025. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period (88 FR 31748). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 61, subpart D were proposed on December 7, 1971, promulgated on April 6, 1973 (38 FR 8826) and amended on both October 17, 2000 (65 FR 62151) and February 27, 2014 (79 FR 11275). These regulations apply to existing and new buildings, structures facilities, or installations where the static test firing of a beryllium rocket motor and/or the disposal of beryllium propellant is conducted. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 61, subpart D.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected

facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Beryllium rocket motor fuel firing test sites.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart D).

Estimated number of respondents: One (total).

Frequency of response: Initially, monthly.

Total estimated burden: Nine hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,450 (per year). There are no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2025–01216 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0624; FRL–12569–01–OMS

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Natural Gas Transmission and Storage (EPA ICR Number 1805.12, OMB Control Number 2060–0377) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28. 2025. Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before February 18, 2025.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0624, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 28, 2025. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period (88 FR 31749). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart MM were proposed on April 15, 1999; promulgated on January 12, 2001; and amended on April 20, 2006, October 11, 2017, November 5, 2020, and November 19, 2020. These regulations apply to new and existing chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, for which the chemical recovery combustion sources emit greater than or equal to 10 tons per year (tpy) of any one hazardous air pollutant (HAP) or greater than or equal to 25 tpy of any combination of HAPs. New affected facilities include those that commenced construction or reconstruction after the April 15, 1998 proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart MM. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Respondents/affected entities: Chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MM).

Estimated number of respondents: 96 (total).

Frequency of response: Initially, semiannually.

Total estimated burden: 108,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $14,300,000 (per year), includes $608,000 annualized

capital or operation & maintenance costs.

Changes in the estimates: The decrease in burden from the most recently approved ICR is due to an adjustment(s). The adjustment decrease in burden from the most recently approved ICR is due to a decrease in the number of sources. The number of facilities has decreased from 104 to 96. The decrease in respondents also results in a decrease in capital/startup costs.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2025–01234 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12548–01–R8]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for Suncor Energy (U.S.A.), Inc., Commerce City Refinery Plant 1 (West) & Plant 3 (Asphalt Unit)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated December 30, 2024, granting in part and denying in part a petition dated September 6, 2024, from the Center for Biological Diversity and Sierra Club. The petition requested that the EPA object to the renewal of a Clean Air Act (CAA) operating permit issued by the Colorado Department of Public Health and Environment (CDPHE) to Suncor Energy (U.S.A.), Inc. for its Commerce City Refinery, Plant 1 (West) & Plant 3 (Asphalt Unit) located in Adams County, Colorado.

FOR FURTHER INFORMATION CONTACT: Julie Merkel, Environmental Protection Agency, EPA Region 8, telephone number: (406) 457–5042, email address: *merkel.julie@epa.gov;* or Donald Law, EPA Region 8, telephone number: (303) 312–7015, email address: *law.donald@epa.gov.* The final order and petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

SUPPLEMENTARY INFORMATION: The EPA received a petition from the Center for Biological Diversity and Sierra Club dated September 6, 2024, requesting that the EPA object to the issuance of operating permit no. 96OPAD120, issued by CDPHE to Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 1 (West) & Plant 3 (Asphalt Unit) in Adams County, Colorado. On December 30, 2024, the EPA Administrator issued an order granting in part and denying in part the petition. The order itself explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than March 18, 2025.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2025–01235 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R06–OW–2023–0566; FRL–11561–02–R6]

Revised Designation Decision and Record of Decision in Response to a Petition by Amigos Bravos for a Determination That Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Water Act Permit Coverage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is providing notice of a Revised Designation Decision that storm water discharges from the Los Alamos Urban Area (as defined by the latest decennial Census) and Los Alamos National Laboratory (LANL) property in Los Alamos County and Santa Fe County, New Mexico are contributing to violations of New Mexico Water Quality Standards (WQS) and require National Pollutant Discharge Elimination System (NPDES) permit coverage under the Clean Water Act (CWA). This action is in response to a June 30, 2014, petition filed with EPA by Amigos Bravos entitled ''A Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit,'' and revises the Agency's prior December 16, 2019, designation decision, which was remanded to EPA for reconsideration by the United States Court of Appeals for the Tenth Circuit.

DATES: The ''Revised Designation Decision and Record of Decision in Response to A Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Water Act Permit Coverage'' was signed on December 9, 2024. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

ADDRESSES: For further information contact Ms. Evelyn Rosborough via email: *rosborough.evelyn@epa.gov,* or by mail at Ms. Evelyn Rosborough, Environmental Protection Agency, Region 6, Water Division (6WQ–NP), 1201 Elm Street, Suite 500, Dallas, TX 75270.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this action apply to me?

Small Municipal Separate Storm Sewer Systems (MS4s) operated by the County of Los Alamos, the New Mexico Department of Transportation (NMDOT), and Los Alamos National Laboratory (LANL), including Triad National Security, LLC and the U.S. Department of Energy's National Nuclear Security Administration, will be regulated as a result of this action. To determine whether your entity is affected by this action, you should also review the description of EPA's action in Section II.B of this notice and the Revised Designation Decision document available in Docket ID No. EPA–R06–OW–2023–0566 at the Federal eRulemaking Portal: *https://www.regulations.gov/* or online via the EPA Residual Designation web page at: *https://www.epa.gov/npdes/epas-residual-designation-authority.* If you have questions regarding the applicability of this action to a particular entity, consult the person listed in **ADDRESSES** section.

B. Summary and Availability of Revised Designation Documents

The Regional Administrator of EPA Region 6 has made a revised designation of stormwater discharges from certain MS4s for regulation under the NPDES permitting program pursuant to Section 402(p)(2)(E) and (6) of the CWA and EPA's implementing regulations at 40 CFR 122.26(a)(9)(i)(C)–(D). Those provisions authorize the Agency to designate for regulation stormwater discharges that contribute to a WQS violation or that are a significant contributor of pollutants to waters of the United States, or where controls are needed based on wasteload allocations that are part of total maximum daily loads. This authority is often referred to as ''residual designation authority'' or RDA. EPA is providing notice of its

Revised Designation Decision that storm water discharges from the Los Alamos Urban Area (as defined by the latest decennial Census) and LANL property in Los Alamos County and Santa Fe County, New Mexico are contributing to violations of New Mexico WQS and require NPDES permit coverage under the CWA.

This Revised Designation Decision revises EPA's prior December 16, 2019, decision designating stormwater discharges from small MS4s operated by the County of Los Alamos, LANL, and the New Mexico Department of Transportation for NPDES permitting. EPA has carefully considered all record information, including stormwater discharge data and other information submitted by Los Alamos County, NMED, LANL, and the Buckman Direct Diversion, NMED's water quality assessments and lists of impaired waters, and supplemental information submitted by LANL and the County regarding EPA's previous 2019 designation decision, as well as the public comments submitted on that decision when it was proposed. EPA also conducted a site visit in September 2022 to examine first-hand the effects of the discharges and waters at issue.

Upon reconsideration of the Petition on remand, EPA has determined that stormwater discharges from small MS4s located in the Los Alamos Urban Area as defined by the latest decennial Census and MS4s located on LANL property within Los Alamos and Santa Fe Counties, New Mexico require NPDES permit coverage because the discharges are contributing to violations of NM WQS in waters of the United States. The Revised Designation Decision plus supplementary information, including the response to comments document, relating to it are available in Docket ID No. EPA–R06–OW–2023–0566 at the Federal eRulemaking Portal: *https://www.regulations.gov/* or online via the EPA Residual Designation web page at: *https://www.epa.gov/npdes/epas-residual-designation-authority.*

Dated: December 19, 2024.

Troy Hill,

Director, Water Division, Region 6.

[FR Doc. 2025–01072 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0508; FRL–12565–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Threshold Setting Data Needs for the Label Program for Low Embodied Carbon Construction Materials (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Threshold Setting Data Needs for the Label Program for Low Embodied Carbon Construction Materials (EPA ICR Number 2805.01 and OMB Control Number 2070–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for a new ICR. Public comments were previously requested via the **Federal Register** on November 7, 2024. This notice allows for an additional 30 days for public comments.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: Submit your comments to EPA, identified by docket identification (ID) number Docket ID No. EPA–HQ–OPPT–2024–0508, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Connie Ocampo, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1216; email address: *ocampo.connie@epa.gov.*

SUPPLEMENTARY INFORMATION: This a new ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. Public comments were previously requested via the **Federal Register** on November 7, 2024, at 89 FR 88277, establishing a 60-day comment period). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information collection activities and related estimated burden and costs that are summarized in this document, are available in the docket. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. Additional instructions on commenting and visiting the docket is available at *https://www.epa.gov/dockets.*

Abstract: This ICR is for the EPA C–MORE (Construction Material Opportunities to Reduce Emissions) Program (previously referred to as a ''Low Embodied Carbon Construction Materials Program''). Under this ICR, the Program is seeking approval to collect data to fulfill a number of vital information needs as the Program begins operations. The Program is seeking approval to collected data from state and local government agencies, architectural and engineering (A&E) firms, Program grantees, entities that access Program technical assistance, and entities involved in salvage and reuse operations. From state and local government agencies, the Program is seeking information on the types and amounts of asphalt, concrete, cement, glass, and steel purchased, including reference to Environmental Product Declarations (EPDs) associated with these products. The Program is seeking similar information from A&E firms, but focused solely on concrete. EPD information, along with data on amounts purchased of each product, will provide EPA with data that can be used in setting threshold values to define categories for labels under the Program. The underpinnings of being able to label construction materials with substantially lower levels of embodied greenhouse gas emissions is collecting, assessing the quality of, and analyzing data on embodied greenhouse gas

emissions of products and materials and setting substantially lower embodied carbon emissions thresholds. To do so effectively, the Agency will need to supplement available data from public data sources with direct requests for information from users about the specifications for materials purchased and the volumes purchased. The Program has already issued grants to a set of entities and is seeking approval for the grantee outcome reporting forms under this ICR. The Program is also seeking approval for a survey that can be used to assess how well Program technical assistance is meeting the needs of its customers, as well as documenting outcomes associated with use of Program technical assistance. Finally, the Program is seeking approval to collect data on materials collected and used in salvage and reuse operations to better understand the potential for such materials to reduced emissions.

Form number(s): None.

Respondents/affected entities: Entities potentially affected include state government (NAICS code 9920), local governments (NAICS code 9930), construction (NAICS code 23), and construction of buildings (NAICS code 236).

Respondent's obligation to respond: Voluntary. 5 CFR 1320.5(d)(2).

Estimated number of potential respondents: 433.

Frequency of response: On occasion, annually.

Total estimated average number of responses for each respondent: 1.

Total estimated burden: 12,230 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: $2,137624 (per year), includes $0 annualized capital investment or maintenance and operational costs.

Changes in the estimates: This is a proposed new collection.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2025–01112 Filed 1–16–25; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0700 and OMB 3060–0937; FR ID 273492]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 18, 2025.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0700.

Title: Open Video Systems Provisions, FCC Form 1275.

Form Number: FCC Form 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, Local or Tribal Government.

Number of Respondents and Responses: 280 respondents; 4,672 respondents.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25 to 20 hours.

Total Annual Burden: 9,855 hours.

Total Annual Cost: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in section 302 of the Communications Act of 1934, as amended.

Needs and Uses: Section 302 of the 1996 Telecommunications Act provides for specific entry options for telephone companies wishing to enter the video programming marketplace, one option being to provide cable service over an ''open video system'' (''OVS''). The rule

sections that are covered by this collection relate to OVS.

OMB Control Number: 3060–0937.

Title: Establishment of a Class A Television Service, MM Docket No. 00–10.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion and quarterly reporting requirements.

Number of Respondents and Responses: 385 respondents; 9,850 responses.

Estimated Time per Response: 0.017 hours-52 hours.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Total Annual Burden: 172,087 hours.

Total Annual Cost: $1,851,000.

Needs and Uses: On November 29, 1999, the Community Broadcasters Protection Act of 1999 (CBPA), Public Law 106–113, 113 Stat. appendix I at pp. 1501A–594–1501A–598 (1999), codified at 47 U.S.C. 336(f), was enacted. That legislation provided that a low power television (LPTV) licensee should be permitted to convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily-established criteria by January 28, 2000. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licenses and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low power station.

For those stations that met the certification deadline, the CBPA sets out certain certification procedures, prescribes the criteria to maintain a Class A license, and outlines the interference protection Class A stations must provide to analog, digital, LPTV and TV translator stations. The CBPA directs that Class A stations must comply with the operating requirements for full-service television broadcast stations in order to maintain Class A status. Therefore, beginning on the date of its application for a Class A license and thereafter, a station must be ''in compliance'' with the Commission's operating rules for full-service television stations, contained in 47 CFR part 73.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2025–01121 Filed 1–16–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0895; FR ID 273814]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before March 18, 2025. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–0895.

Title: Numbering Resource Optimization.

Form Number: FCC Form 502.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, Local, or Tribal Government.

Number of Respondents and Responses: 8,415 respondents; 74,172 responses.

Estimated Time per Response: 1 hour–44.4 hours.

Frequency of Response: On occasion and semi-annual reporting requirements and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 153, 154, 201–205 and section 251 of the Communications Act of 1934.

Total Annual Burden: 290,637 hours.

Total Annual Cost: $5,359,029.

Needs and Uses: The data collected on FCC Form 502 helps the Commission manage the ten-digit North American Numbering Plan (NANP), which is currently being used by the United States and 19 other countries. Under the Communications Act of 1934, as amended, the Commission was given ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertains to the United States.'' Pursuant to that authority, the Commission conducted a rulemaking in March 2000 that the Commission found that mandatory data collection is necessary to efficiently monitor and manage numbering use. The Commission received OMB approval for this requirement and the following:

(1) Utilization/Forecast Report;

(2) Application for initial numbering resource;

(3) Application for growth numbering resources;

(4) Recordkeeping requirement;

(5) Notifications by state commissions;

(6) Demonstration to state commission; and

(7) Petitions for additional delegation of numbering authority.

The data from this information collection is used by the FCC, state regulatory commissions, and the NANPA to monitor numbering resource utilization by all carriers using the resource and to project the dates of area code and NANP exhaust.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2025–01108 Filed 1–16–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2025–N–3]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as ''Minority and Women Inclusion,'' which has been assigned control number 2590–0014 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on March 31, 2025.

DATES: Interested persons may submit comments on or before March 18, 2025.

ADDRESSES: Submit comments to FHFA, identified by Proposed Collection; Comment Request: ''Minority and Women Inclusion, (No. 2025–N–3)'' by any of the following methods:

- *Agency Website: https://www.fhfa.gov/regulation/federal-register?comments=open.*
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Minority and Women Inclusion, (No. 2025–N–3).'' Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FHFA will post all public comments on the FHFA public website at *https://www.fhfa.gov,* except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA may, in its discretion, redact or refrain from posting all or any portion of any comment that contains content that is obscene, vulgar, profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA's internal file and considered as required by all applicable laws. Commenters that would like FHFA to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA's *Policy on Communications with Outside Parties in Connection with FHFA Rulemakings, see https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf.* FHFA cannot guarantee that such data or information, or the identity of the commenter, will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. *See* 12 CFR 1202.8, 12 CFR 1214.2, and the FHFA *FOIA Reference Guide* at *https://www.fhfa.gov/about/foia-reference-guide* for additional information.

FOR FURTHER INFORMATION CONTACT: Takisha Koonce, Supervisory Program Manager, Office of Minority and Women Inclusion, Division of Inclusivity, Culture, and Equity, *Takisha.Koonce@fhfa.gov,* or by telephone at (202) 647–3740; or Angela Supervielle, Senior Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION: FHFA is seeking comments on its collection of information regarding the minority and gender classification of individuals serving on the boards of directors of the Federal Home Loan Banks (Banks) and of the Office of Finance under FHFA's regulations on Minority and Women Inclusion (MWI), codified at 12 CFR part 1223, which it will soon be submitting for renewal of the OMB control number under the PRA.

A. Need for and Use of the Information Collection

The Federal Home Loan Bank System consists of eleven regional Banks and the Office of Finance, which issues and services the Banks' debt securities. The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible non-member entities. Each Bank is structured as a regional cooperative that is owned and controlled by member financial institutions located within its district, which are also its primary customers. The Bank Act vests the management of each Bank in a board of directors that consists of two types of directors: (1) member directors, who are drawn from the officers and directors of member institutions located in the Bank's district and who are elected to represent members in a particular state in that district; and (2) independent directors, who are unaffiliated with any of the Bank's member institutions, but who reside in the Bank's district and are elected on an at-large basis.[1] The Office of Finance is also governed by a board of directors, which consists of the presidents of the eleven Banks and five independent directors.[2]

Section 1319A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires that each of the Banks establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters relating to diversity in its management, employment, and business activities, in accordance with requirements established by FHFA.[3] Section 1319A also requires that each Bank implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of women and minorities ''at all levels'' of its business and activities, and submit an annual report to FHFA detailing actions taken to achieve those goals.[4]

FHFA's MWI regulations implement those statutory requirements and also extend the requirements to the Office of Finance. The MWI regulations require generally that each Bank and the Office of Finance ''develop, implement, and maintain policies and procedures to ensure, to the maximum extent possible

[1] *See* 12 U.S.C. 1427(a)(1), (b), (d).

[2] *See* 12 CFR 1273.7(a).

[3] *See* 12 U.S.C. 4520(a).

[4] *See* 12 U.S.C. 4520(b), (d).

in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity, including in management, employment, procurement, insurance, and all types of contracts.'' [5] In recognition of the fact that each Bank is required by statute to promote diversity and inclusion ''at all levels'' of its business and activities, the MWI regulations further require that the Banks' policies and procedures (as well as those of the Office of Finance) ''[e]ncourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors and engage in recruiting and outreach directed at encouraging individuals who are minorities, women, and individuals with disabilities to seek or apply for employment with the regulated entity.'' [6]

In conformity with the statutory requirements, FHFA's MWI regulations require that each Bank and the Office of Finance submit to FHFA an annual report describing, among other things, its efforts to promote diversity at all levels of management and employment, and the results of those efforts.[7] In order to provide a quantitative basis upon which to assess the results of those efforts, FHFA's MWI regulations require that each Bank and the Office of Finance set forth in their respective annual reports the demographic data reported on the EEO–1 form, which they are required to file annually with the Equal Employment Opportunity Commission (EEOC).[8] The EEO–1 form requires that each respondent provide race, ethnicity and gender information for its employees, broken down into various job categories. Because the EEO–1 form does not require that a respondent provide information on board directors, FHFA cannot use the EEO–1 data to assess the effectiveness of the Federal Home Loan Bank System's efforts to ''encourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors.''

Therefore, in order to enable FHFA to assess those efforts, the MWI regulations separately require that the annual reports set forth ''[d]ata showing for the reporting year by minority and gender classification, the number of individuals on the board of directors of each Bank and the Office of Finance,'' using the same racial and ethnic classifications that are used on the EEO–1 form (which comply with OMB's ''Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting'').[9] The MWI regulations require that each Bank and the Office of Finance collect that data ''through an information collection requesting each director's voluntary self-identification of his or her minority and gender classification without personally identifiable information.'' [10]

FHFA uses the information collected under this control number to assess the effectiveness of the policies and procedures that each Bank and the Office of Finance is required to implement to promote diversity in all of its business and activities ''at all levels'' and, specifically, to encourage diversity in the nomination and solicitation of nominees for members of its boards of directors. FHFA also uses the information to establish a baseline to analyze future trends related to the diversity of the boards of directors of the Banks and the Office of Finance and to assess the effectiveness of the strategies developed by the Banks and the Office of Finance for promoting, developing, and retaining diverse board talent.

B. Burden Estimate

FHFA estimates the total annual hour burden imposed upon respondents by this information collection to be 19.8 hours. This is based on estimates that 198 Bank and Office of Finance Directors will respond annually, with each response taking an average of 0.1 hours (6 minutes) (198 respondents x 0.1 hours = 19.8 hours).

C. Comments Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[FR Doc. 2025–01061 Filed 1–16–25; 8:45 am]

BILLING CODE 8070–01–P

[5] *See* 12 CFR 1223.21(b).

[6] *See* 12 CFR 1223.21(b)(7).

[7] *See* 12 CFR 1223.22(a).

[8] *See* 12 CFR 1223.23(b)(1). As required by 29 CFR 1602.7, each Bank and the Office of Finance annually files an EEO–1 form with the EEOC.

[9] *See* 12 CFR 1223.23(b)(10)(i).

[10] *See* 12 CFR 1223.23(b)(10)(i)(A).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-25–0666; Docket No. CDC–2025–0001]

Proposed Data Collection Submitted for Public Comment and Recommendations; Correction

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: 60-Day notice; correction.

SUMMARY: The Centers for Disease Control and Prevention (CDC), submits this Notice as a correction to the 60-day FRN (CDC Docket Number CDC–2025–0001) published January 8, 2025 for the information collection project titled National Healthcare Safety Network (NHSN). This correction adds Polio to the NHSN package and extends the public comment period 60 days from the date of publication.

DATES: CDC must receive written comments on or before March 18, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2025–0001 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329;

Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666, Exp. 5/31/2025)—Revision—National Center for Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) under OMB Control Number 0920–0666. NHSN provides facilities, health departments, states, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN also allows healthcare facilities to track blood safety errors and various HAI prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates. Enrollment in NHSN has continuously increased, with over 37,000 actively reporting healthcare facilities across the U.S. Of the total enrolled healthcare facilities, there are over 6,000 acute care facilities. NHSN currently has eight components, and the collection of information is authorized by the Public Health Service Act (42 U.S.C. 242b, 242k, and 242m (d)).

A 60-day **Federal Register** Notice (FRN) was published on January 8, 2025 (90 FR 1495) for an Emergency Revision information collection request (ICR) and was submitted to add three diseases to the NHSN Pathogens of High Consequence Form: Influenza A (H5), Marburg, and Oropouche. A second 60-day **Federal Register** Notice is submitted here to add Polio to the NHSN Pathogens of High Consequence Form, as well. It is crucial for CDC to be aware of cases of these select infectious diseases of public health concern, including Polio, to help ensure that local and state authorities are equipped to contain and prevent further spread. Facilities enrolled in the NHSN Patient Safety Component will be asked to select the specific diseases they are reporting on and then provide the overall number of patients hospitalized with confirmed disease along with stratification of disease in adult and pediatric patients. The data collection will be collected electronically via the NHSN application.

As a result of these changes, this Revision requests OMB approval for an additional 111,021 estimated annual burden hours to be added to Form 57.130—Pathogens of High Consequence. This brings the total estimated burden for Form 57.130 to 777,146 burden hours, and the total estimated annual burden hours for the entire NHSN package to 4,508,255. Participation is required for healthcare facilities that report through the NHSN platform. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Infection Preventionist/Microbiologist	57.130 Pathogens of High Consequence.	3650	365	5/60	111,021
Total	.....				777,146

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2025–01154 Filed 1–16–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–25–25CQ; Docket No. CDC–2025–0004]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Healthcare Prevention and Response Workforce Development for Health Departments. The proposed workforce development evaluations will be used to assess whether the CDC-developed workforce development activities are reaching the intended audience and achieving the intended goal of strengthening public health workforce capacity to prevent and respond to Healthcare-Associated Infection and Antibiotic Resistance (HAI/AR) outbreaks at the individual trainee and program level.

DATES: CDC must receive written comments on or before March 18, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2025–0004 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Healthcare-Associated Infections and Antimicrobial Resistance (HAI/R) Programs Response and Prevention Workforce Development Activities—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC funds Healthcare-Associated Infection and Antibiotic Resistance (HAI/AR) Programs in 65 state, local, and territorial health departments. Funding is awarded through the Epidemiology and Laboratory Capacity cooperative agreements (ELC). Funds are intended to provide critical resources to recipients in support of a broad range of healthcare infection prevention and control and epidemiologic surveillance activities to detect, monitor, mitigate, and prevent the spread of HAI/AR in healthcare settings.

CDC has developed various workforce development activities including high-priority trainings requested by the health department programs and CDC site visits. The goal of these activities is to strengthen public health workforce capacity to prevent and respond to HAI/AR outbreaks in healthcare settings and prepare for other emerging healthcare threats. Additionally, the evaluation data collected will be used to improve future CDC-developed resources.

CDC requests OMB approval for an estimated 455 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Average burden per response	Total burden hours
Public Health Participants—Standard Trainings ..	Registration	600	2	5/60	100
Public Health Participants—Standard Trainings ..	Pre-test	600	2	5/60	100
Public Health Participants—Standard Trainings ..	Post-test	600	2	5/60	100
Public Health Participants—Training Programs ...	Application	30	1	120/60	60
HAI/AR Program Leads—Training Programs	Nomination Letter	30	1	60/60	30

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Average burden per response	Total burden hours
Public Health Participants—Training Programs ...	Activity Reports	13	4	45/60	39
Public Health Participants—Training Programs ...	Program Evaluation	13	1	30/60	7
HAI/AR Program Leads—Site Visits	Program Evaluation	12	1	15/60	3
HAI/AR Program Leads	Program Impact of Workforce Development Activities.	65	1	15/60	16
Total	.....	.....	.....	.....	455

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2025–01153 Filed 1–16–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10697]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 18, 2025.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number:, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10697 Medicare Coverage of Items and Services for Coverage with Evidence Development

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Medicare Coverage of Items and Services for Coverage with Evidence Development;

Use: This Paperwork Reduction Act (PRA) package is for Coverage with Evidence Development (CED). As noted above, CMS has utilized the CED pathway since 2006 under 1862(a)(1)(E) of the Act. Early on, there were only 2 CED National Coverage Determinations (NCDs) that required data collection in registries, all of which had publicly available data collection forms. Currently, there are over 120 approved CED studies involving complex data collections, most of which are proprietary to the study sponsor.

There is no specific submission form required for a CED clinical study submission. We note that CMS may publish guidance, including templates, to provide information to manufacturers or other study sponsors to assist them in creating study protocols to satisfy CED requirements (for example, guidance on developing RWD study protocols). Any approved CED study submission should satisfy each of the criteria ''1–17'' provided in the CMS Coverage with Evidence Development guidance document. CMS uses the 17 criteria listed in the 2024 CED guidance

document to ensure that the submitted CED study has a high degree of likelihood to generate the data and evidence needed to support Medicare coverage. *Form Number:* CMS–10697 (OMB control number 0938–1387); *Frequency:* Annually; *Affected Public:* Private sector—Not-for-profit institutions and Businesses or other for-profits; *Number of Respondents:* 13; *Total Annual Responses:* 13; *Total Annual Hours:* 1,300. (For policy questions regarding this collection, contact Andrew Ward at 4107–786–1794.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2025–01242 Filed 1–16–25; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Objective Work Plan/On-going Progress Report (Office of Management and Budget #0970–0452)

AGENCY: Administration for Native Americans, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families' (ACF) Administration for Native Americans (ANA) is requesting a 3-year extension to the Ongoing Progress Report (OPR) and the Objective Work Plan (OWP) (Office of Management and Budget (OMB) #0970–0452, expiration September 30, 2026). Changes are proposed only to the report.

DATES: *Comments due* February 18, 2025. OMB must decide about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The information in the OPR is collected on a semi-annual basis to monitor the performance of grantees and better gauge grantee progress.

The OPR information collection is conducted in accordance with Sec. 811 [42 U.S.C. 2992] of the Native American Programs Act and will allow ANA to report quantifiable results across all program areas. It also provides grantees with parameters for reporting their progress and helps ANA better monitor and determine the effectiveness of their projects.

The OWP information collection is conducted in accordance with 42 U.S.C. of the Native American Programs Act of 1972, as amended. This collection is necessary to evaluate applications for financial assistance and determine the relative merits of the projects for which such assistance is requested, as set forth in Section 806 [42 U.S.C. 2991–d 1](a)(1).

The report was revised based on a review by ANA and feedback from grantees, which identified some data elements that could be eliminated and areas that could be clarified.

Respondents: Federally and state recognized tribes, Native Pacific Islanders, Tribal Colleges and Universities, native non-profits, and consortia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Objective Work Plan	300	1	3	900	300
Ongoing Progress Report	200	6	1	1,200	400

Estimated Total Annual Burden Hours: 700.

Authority: Section 806 [42 U.S.C. 2991d–1](a)(1) and Section 811 [42 U.S.C. 2992].

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2025–01223 Filed 1–16–25; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; American Relief Act 2025 Disaster Supplemental Funds for Child Care (New Collection)

AGENCY: The Office of Child Care, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Care (OCC), Administration for Children and Families is requesting comment on the proposed application for disaster relief funding provided in the American Relief Act, 2025.

DATES: *Comments due* March 18, 2025. In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The American Relief Act, 2025 provided $250,000,000 in disaster relief funding to OCC to distribute to

eligible States, territories, and Tribes in response to the consequences of major disasters and emergencies declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) occurring in 2023 and 2024.

OCC will be requesting information from eligible Child Care and Development Fund (CCDF) Lead Agencies who are interested in receiving these funds. The information requested includes the relevant major disaster or emergency declaration; a detailed description of the affected area; a detailed description of the impact on children, families, staff, and child care services; a description of each proposed activity; information on previous expenses incurred related to the disaster or emergency; and the total amount of funds requested. OCC will use the information received to inform decisions about distribution of funds.

Respondents: State, territory, and Tribal Lead Agencies.

Annual Burden Estimates

Respondents would provide one response to this request and information. The following burden estimates reflect the total estimated burden, which is expected within the first year of approval.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
ACF–OCC–CCDF–PI–2025–X (Disaster Supplemental Funds for Child Care—2023 and 2024 major disasters and emergencies)	70	1	80	5,600

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

In addition, The Department solicits public comment on whether OCC should, in advance of receiving Lead Agency applications for funding, establish funding ranges for the size of grants based on certain factors, and if so, what those ranges and factors should be.

Authority: Public Law 118–158.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2025–01221 Filed 1–16–25; 8:45 am]

BILLING CODE 4184–87–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–N–0121]

Cell Therapies and Tissue-Based Products: A Public Workshop on Generating Scientific Evidence to Facilitate Development; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following virtual public workshop entitled ''Cell Therapies and Tissue-Based Products: A Public Workshop on Generating Scientific Evidence to Facilitate Development.'' The purpose of this workshop is to discuss the current state of the science for development and testing of certain cellular therapies and tissue-based products. In particular, FDA is convening this public workshop with relevant stakeholders to discuss best practices on generating scientific data necessary to further facilitate the development of cellular therapies, including stem cell products.

DATES: The public workshop will be held virtually on February 25, 2025, from 8:30 a.m. to 5 p.m. Eastern Time. Either electronic or written comments on this public workshop must be submitted by March 18, 2025. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be virtual.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 18, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2025–N–0121 for ''Cell Therapies and

Tissue-Based Products: A Public Workshop on Generating Scientific Evidence to Facilitate Development; Public Workshop; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Victoria Wagman, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's Center for Biologics Evaluation and Research (CBER) protects and enhances the public health by ensuring the safety, purity, potency, and effectiveness of biological products, including vaccines, allergenics, blood and blood products, and cellular and gene therapies for the prevention, treatment, or cure of human diseases or conditions. CBER's Office of Therapeutic Products (OTP) regulates, among others, regenerative medicine products, including human cells, tissues, and cellular and tissue-based products (HCT/Ps) intended to treat or cure diseases or medical conditions. The purpose of this workshop is to discuss the current state of the science for development and testing of certain cellular therapies and tissue-based products. In particular, FDA is convening this public workshop with relevant stakeholders to discuss best practices on generating scientific data necessary to further facilitate the development of cellular therapies, including stem cell products. Within 6 months after the meeting, FDA will issue a transcript of the meeting. This workshop will fulfill the requirement under the Food and Drug Omnibus Reform Act of 2022, section 3205.

II. Topics for Discussion at the Public Workshop

The workshop will include presentations and panel discussions with experts from research and academic institutions to identify and discuss scientific considerations, opportunities, and challenges to help inform the development of cellular therapies and tissue-based products. Topics discussed during the workshop include:

1. The current state of the science for tissue and cell-derived therapies and explore what challenges remain as the field continues to mature.
2. Nonclinical work to assess the safety of cell therapy products in support of product development.
3. Considerations for characterization of cell therapy products to help ensure manufacturing quality during product development and through commercialization.
4. Clinical considerations and future directions for locally-administered cell therapies under investigation for niche indications
5. Considerations for a revised risk-based HCT/P framework

During the workshop, attendees will be able to submit questions to the speakers and panelists for consideration during the panel discussions.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website to register: *https://www.fda.gov/news-events/otp-events-meetings-and-workshops/cell-therapies-and-tissue-based-products-public-workshop-generating-scientific-evidence-facilitate.* Please provide complete contact information for each attendee, including name, affiliation, and email.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by February 25, 2025, at 8:30 a.m. Eastern Time. Early registration is recommended. Registrants will receive confirmation when they have registered for the event.

If you need special accommodations due to a disability, please Claire Simon (*Claire.Simon@fda.hhs.gov*) no later than January 24, 2025.

No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will be webcast. Registration is available on FDA.gov: *https://www.fda.gov/news-events/otp-events-meetings-and-workshops/cell-therapies-and-tissue-based-products-public-workshop-generating-scientific-evidence-facilitate.* A recording will be available on *https://www.fda.gov/news-events/otp-events-meetings-and-workshops/cell-therapies-and-tissue-based-products-public-workshop-generating-scientific-evidence-facilitate.*

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A link to the transcript will also be available on the internet at *https://www.fda.gov/news-events/otp-events-meetings-and-workshops/cell-therapies-and-tissue-based-products-public-workshop-generating-scientific-evidence-facilitate.*

Notice of this meeting is given pursuant to 21 CFR 10.65.

Dated: January 14, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01200 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5975]

Use of a Type V Drug Master File for Model Master File Submissions To Support Abbreviated New Drug Applications; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency), Center for Drug Evaluation and Research (CDER), Office of Generic Drugs is establishing a public docket entitled ''Use of a Type V Drug Master File (DMF) for Model Master File (MMF) Submissions to Support Abbreviated New Drug Applications (ANDAs).'' The purpose of this docket to solicit input from interested parties on this topic.

DATES: Submit either electronic or written comments on the notice by April 17, 2025 to ensure that the Agency considers your comment. The docket number is FDA–2024–N–5975.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time April 17, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–5975 for ''Use of a Type V Drug Master File for Model Master File Submissions to Support Abbreviated New Drug Applications; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Lanyan (Lucy) Fang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 75, Rm. 4686, Silver Spring, MD 20993–0002, 301–796–5005, *mmf@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Computational (in silico) modeling and simulation (M&S) is a regulatory science priority at FDA given the rapid growth in drug developers' use of data science and model-based technologies. An example is the increasing use of quantitative methods and modeling (QMM) and simulation approaches by the generic drug industry and regulatory agencies, including FDA, to support generic product development and ANDA regulatory assessments.[1] These QMM approaches generally involve mechanistic modeling such as physiologically based pharmacokinetic (PBPK) modeling and computational fluid dynamics (CFD) modeling, quantitative clinical pharmacology tool sets such as population pharmacokinetics (PPK) approaches, and advanced data analytics methodologies. Generic drug developers are utilizing QMM and simulation approaches to generate MIE to, for example, support alternative BE approaches and to minimize the burden

[1] See, *e.g.,* guidance for industry ''Physiologically Based Pharmacokinetic Analyses—Format and Content'' (August 2018); see also, draft guidance for industry ''The Use of Physiologically Based Pharmacokinetic Analyses—Biopharmaceutics Applications for Oral Drug Product Development, Manufacturing Changes, and Controls'' (October 2020). When final, this guidance will represent the FDA's current thinking on this topic. FDA updates guidances periodically; the most recent version of a guidance can be found at FDA's Drugs guidance web page at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

of, or even eliminate the need for, in vivo studies to establish BE.

While QMM approaches that generate MIE provide significant value to the development, review, and approval of high-quality generic drugs, these frameworks are evolving amidst challenges and complications facing industry that are incidental to the growing use of new and complex modeling technologies. For example, the data and information needed to verify and validate a model may not be available to the general public (*e.g.,* proprietary), or if publicly available, insufficient, and generating original data for model verification and validation (V&V) can be a time-consuming and costly investment. At the same time, certain M&S approaches may provide an opportunity for certain models, once they are supported by sufficient V&V, to be viewed as shareable across different products and formulations and utilized by multiple ANDA applicants for the same context of use. For purposes of this notice, an ''MMF'' or ''MMF submission'' refers to a set of information and data on an in silico quantitative model or modeling platform supported by sufficient V&V. MMFs can be established to support MIE in a broad range of quantitative models, including, but not limited to, PBPK, CFD, PPK, and mechanistic in vitro in vivo correlation models. There are different types of MMFs, including, but not limited to, drug product-specific models, a verified and validated in silico framework for products following the same route of administration, and a recognized modeling methodology or framework for a particular context of use (Ref. 1).

FDA recognizes the evolving role MIE plays in generic drug development and other regulatory applications, as well as industry's corollary desire for an improved framework for in silico model-sharing, model acceptance, and related communication with and submission to FDA. Use of the Type V DMF to efficiently leverage MMFs within the scope of successful MIE approaches may help advance generic drug development and facilitate the ANDA review and approval processes.

A DMF is a voluntary submission that may be used to provide confidential detailed information to the Agency (Ref. 2). A DMF is submitted solely at the discretion of the DMF holder. There are several types of DMFs; a Type V is used for ''FDA-accepted reference information.'' (§ 314.420(a)(5) (21 CFR 314.420(a)(5))). The use of a DMF is not a requirement for the submission of MMFs to the Agency; however, the holder of a Type V DMF can authorize one or more ANDA applicants to incorporate by reference information and data contained in the DMF without having to disclose that information and data to the applicant(s). When authorized by the DMF holder, ANDA applicants can use information and data contained in the DMF to support, but not substitute for, their ANDA submissions. A DMF is neither approved nor disapproved. Its technical content (in this case, the MMF) is typically reviewed by FDA only in connection with the review of a premarket application (Ref. 2 at 6). A Type V DMF, including a Type V DMF for MMF submissions to support an ANDA, may be submitted on an ongoing basis.

Prospective DMF holders who are interested in using a Type V DMF, including a Type V DMF for MMF submissions to support ANDAs, must first email a letter of intent to the DMF staff (see Ref. 2 at 16 (citing § 314.420(a)(5))). The draft guidance for industry ''Drug Master Files'' provides detailed information about preparing and submitting DMFs and FDA's DMF review process, including that an emailed letter of intent should be sent to (*dmfquestion@fda.hhs.gov*) and include a clearly stated subject field and other necessary information (Ref. 2 at 16). For example, applicants that have submitted a Type V DMF for MMF submissions to support ANDAs have submitted the letter of intent with a subject field, such as ''Letter of Intent to Submit Type V DMF for MMF Submission to Support ANDAs''. For more information on submitting Type V DMFs, see FDA's DMF web page and the FDA Guidance for Industry ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions using the eCTD Specifications'' (Ref. 3).[2]

II. Request for Comments

FDA is opening a docket to solicit feedback from the public on the use of a Type V DMF for MMF submissions to support ANDAs. FDA welcomes any relevant information that interested parties and other members of the public wish to share. At the close of the comment period, the Agency will collect this feedback for consideration.

III. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. Although FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Fang, L., Y. Gong, A.C. Hooker, et al., 2024, ''The Role of Model Master Files for Sharing, Acceptance, and Communication with FDA,'' *The AAPS Journal,* 26(2):28–35 available at 10.1208/s12248–024–00897–8.

* 2. FDA Draft Guidance for Industry ''Drug Master Files,'' October 2019: *https://www.fda.gov/media/131861/download.*

* 3. FDA Guidance for Industry ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions using the eCTD Specifications,'' September 2024, Rev. 8: *https://www.fda.gov/media/135373/download.*

Dated: January 14, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01182 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

[2] See also, FDA's DMF web page, available at *https://www.fda.gov/drugs/forms-submission-requirements/drug-master-files-dmfs.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–5663]

Prevention and Treatment of Chemotherapy-Induced Peripheral Neuropathy: Developing Drug and Biological Products in Oncology; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Prevention and Treatment of Chemotherapy-Induced Peripheral Neuropathy: Developing Drug and Biological Products in Oncology.'' Chemotherapy-induced peripheral neuropathy (CIPN), a painful, disabling, and potentially irreversible condition commonly affecting patients receiving neurotoxic chemotherapies, could diminish survival by potentially increasing chemotherapy treatment interruptions, dose reductions, and discontinuations. This guidance

provides recommendations to sponsors for the clinical development of drug and biological products intended for the prevention and treatment of CIPN in oncology patient populations.

DATES: Submit either electronic or written comments on the draft guidance by March 18, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–D–5663 for ''Prevention and Treatment of Chemotherapy-Induced Peripheral Neuropathy: Developing Drug and Biological Products in Oncology.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Mirat Shah, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2135, Silver Spring, MD 20993, 301–796–8547; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Prevention and Treatment of Chemotherapy-Induced Peripheral Neuropathy: Developing Drug and Biological Products in Oncology.'' CIPN is a painful, disabling, and potentially irreversible condition commonly affecting patients receiving neurotoxic chemotherapies. CIPN could lead to chemotherapy treatment interruptions, dose reductions, and discontinuations. In addition, there is a concern that CIPN-mitigating drugs may decrease the efficacy of cancer treatment or possibly promote tumor growth. Thus, CIPN can negatively affect overall cancer treatment outcome and survival. This guidance provides recommendations to sponsors for the clinical development of drug and biological products intended for the prevention and treatment of CIPN in oncology patient populations. The recommendations include trial population, design, and selection of appropriate oncology-specific endpoints.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Prevention and Treatment of Chemotherapy-Induced Peripheral Neuropathy: Developing Drug and Biological Products in Oncology.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved

collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information related to the protection of human subjects under 21 CFR part 50 have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 10, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01197 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–3112]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarketing Adverse Experience Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by February 18, 2025.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0230. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Postmarketing Adverse Experience Reporting

OMB Control Number 0910–0230—Revision

This information collection helps support provisions found in sections 201, 502, 505, 701, and 760 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 352, 355, 371, and 379aa) governing adverse experience reporting (AER) and associated recordkeeping for FDA-regulated drug products. FDA has issued applicable regulations in part 4 and §§ 310.305, 314.80, 314.81, 314.98, and 329.100 (21 CFR part 4 and 21 CFR 310.305, 314.80, 314.81, 314.98, and 329.100) that implement the statutory requirements, identify specific content and format elements, and establish reporting and retention schedules for the required information. Postmarketing safety data collection and adverse event reporting are critical elements of FDA's monitoring of drugs. For more information, please visit *https://www.fda.gov/drugs/surveillance/postmarketing-adverse-event-reporting-compliance-program.*

Respondents to the information collection are manufacturers, packers, distributors, and applicants of FDA-regulated drug and biologic products marketed with or without an FDA-approved application, including over-the-counter (OTC) drug products marketed without an approved application; OTC drug products marketed under the OTC Drug Monograph Review process (whether subject to a final monograph or not); and drug products marketed outside the monograph system. All reports and followup reports must be submitted to FDA in electronic format, although waivers of the electronic requirements are available for good cause.

Adverse experience reporting for products associated with drug marketing applications are governed by regulations in §§ 314.80, 314.81, and 314.98. The regulations identify required reporting content and format elements, as well as establish followup reporting requirements and mandatory reporting schedules. The regulations also establish associated recordkeeping and require that written procedures be developed for the surveillance, receipt, evaluation, and reporting of postmarketing adverse experiences to FDA. The regulations require reporting in an electronic format that FDA can process, although temporary waivers may be granted on a limited basis for good cause. A final guidance for industry entitled ''Providing Submissions in Electronic Format—Postmarketing Safety Reports'' (April 2022) is available for general information pertaining to electronic submission of postmarketing safety reports for certain human drugs, biological products, and combination products. The guidance is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/providing-submissions-electronic-format-postmarketing-safety-reports.*

We have established and maintain the FDA Adverse Event Reporting System (FAERS) at *https://www.fda.gov/drugs/questions-and-answers-fdas-adverse-event-reporting-system-faers/fda-adverse-event-reporting-system-faers-electronic-submissions.* Information may be submitted via FDA's Electronic Submissions Gateway or utilizing the ''Safety Reporting Portal,'' developed by FDA and the National Institutes of Health to streamline reporting and review of adverse events.

The primary purpose of FDA's adverse drug experience reporting system is to enable identification of signals for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed product provide the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, clinical investigators, and literature. Information derived from the adverse drug experience reporting system contributes directly to increased public

health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning), to make decisions about risk evaluation and mitigation strategies; the need for postmarketing studies or clinical trials; and, when necessary, to initiate removal of a product from the market.

In the **Federal Register** of September 23, 2024 (89 FR 77515), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] [2] [3]

21 CFR section or guidance; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
310.305(c)(5); AERs for prescription products not the subject of a marketing application	36	88.8	3,197	1	3,197
314.80(c)(1); 15-day alerts for approved products	682	1,832.84	1,250,000	1	1,250,000
314.80(c)(2); periodic reports for approved products	682	1,228.73	838,000	60	50,280,000
329.100; AERs for non-prescription drug products	312	62.522	19,507	6	117,042
ICH E2C(R2) Guidance; Periodic safety updates; Applicants w/waiver for an approved application (section III.A.)	471	8.885	4,185	1	4,185
ICH E2C(R2) Guidance; Periodic safety updates; Applicants w/no waiver for an approved application (section III.B.)	1,115	16.254	18,123	2	36,246
AER During Pandemic Guidance; notifying FDA when normal reporting is not feasible (section III.C.)	1	1	1	8	8
4.103, 4.104, 4.105, 310.305, 314.80, 314.98, 329.100(c); Waiver requests from electronic reporting requirements	1	1	1	24	24
Total	[4] 2,618		2,133,014		51,690,702

[1] There are no capital costs associated with this collection. The operating and maintenance costs associated with this collection of information are approximately $25,000 annually.

[2] The reporting burdens for § 310.305(c)(1), (2), and (3), and voluntary reports by healthcare providers received under § 314.80(c)(1)(i) and (ii) are covered under OMB control number 0910–0291.

[3] Totals may not sum due to rounding.

[4] Total of unique respondents.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1] [2]

21 CFR section or guidance section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
310.305; AER records—prescription product not the subject of a marketing application	36	88.8	3,197	16	51,152
314.80(j); AER records—product associated w/marketing application	841	1,814.0606	1,525,625	16	24,410,000
Postmarket AER for Nonprescription Drug Products Guidance; (§ 329.100)	312	62.5224	19,507	8	156,056
AERs During Pandemic Guidance; Continuity of operations planning (section III.B.)	100	1	100	50	5,000
AERs During Pandemic Guidance; documenting conditions and resultant high absenteeism (section III.C.2)	350	1	350	8	2,800
AERs During Pandemic Guidance; documenting AER process (section III.C.1.)	350	1	350	8	2,800
4.105; Postmarketing safety recordkeeping for combination products and constituent parts	11	18	198	0.1 (6 minutes)	19.8
Total			1,549,327		24,627,827.8

[1] There are no capital costs associated with this collection of information. There are operating and maintenance costs associated with this collection of information of approximately $22,000 annually.

[2] Totals may not sum due to rounding.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section; activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
4.103; Postmarketing Safety reporting for combination products—Sharing information with other constituent part applicants	11	18	198	0.35 (21 minutes)	69.3

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

All applicants who have received marketing approval for drug products (including combination products that are administered as drug products) are required to report serious, unexpected adverse drug experiences (15-day ''Alert reports'') (§ 314.80(c)(1)(i)), as well as followup reports (§ 314.80(c)(1)(ii)) to FDA. These include all foreign or domestic AERs as well as AERs based on information from applicable scientific literature and certain reports from post marketing studies. Section 314.80(c)(1)(iii) pertains to AERs submitted by nonapplicants.

For operational efficiency, we have adjusted this information collection and burden table to include all 15-day alert reports submitted by applicants, manufacturers, packers, and distributors. Voluntary reports from healthcare providers are included under OMB control number 0910–0291.

Under § 314.80(c)(2), applicants (including combination products that are administered as drug products) must also provide periodic reports of adverse drug experiences. For the reporting interval, a periodic report includes reports of serious, expected adverse drug experiences, all nonserious adverse drug experiences, and an index of these reports; a narrative summary and analysis of adverse drug experiences; an analysis of the 15-day Alert reports submitted during the reporting interval; and a history of actions taken because of adverse drug experiences. Under § 314.80(j), applicants must keep records of all adverse drug experience reports known to the applicant for 10 years.

For marketed prescription drug products without approved new drug applications (NDAs) or abbreviated new drug applications (ANDAs), manufacturers, packers, and distributors of these products are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports (§ 310.305(c)). Section 310.305(c)(5) pertains to the submission of followup reports to reports forwarded to the manufacturers, packers, and distributors by FDA. Under § 310.305(g), each manufacturer, packer, and distributor shall maintain records of all adverse drug experiences required to be reported for 10 years. All 15-day Alert reports and followup reports must be submitted to FDA in electronic format.

Section 760 of the FD&C Act also provides for mandatory safety reporting for over-the-counter human drug products not subject to applications approved under section 505 of the FD&C Act (NDAs or ANDAs). These requirements apply to all OTC drug products marketed without an approved application, including those marketed under the OTC Drug Monograph Review process (whether or not subject to a final monograph), those marketed outside the monograph system, and including those that have been discontinued from marketing but for which a report of an adverse event was received. Under § 329.100, respondents must submit reports according to section 760 of the FD&C Act in an electronic format.

To assist respondents with implementation of section 760 of the FD&C Act, FDA developed the guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application'' (July, 2009), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/postmarketing-adverse-event-reporting-nonprescription-human-drug-products-marketed-without-approved.* The guidance document discusses what should be included in a serious adverse drug event report submitted under section 760(b)(1) of the FD&C Act, including how to submit these reports and followup reports under section 760(c)(2) of the FD&C Act. Section 760(e) of the FD&C Act also requires that responsible persons maintain records of nonprescription drug adverse event reports, whether the event is serious or not, for a period of 6 years. FDA's guidance recommends that respondents maintain records of efforts to obtain the minimum data elements for a report of a serious adverse drug event and any followup reports.

In addition, this information collection includes an *International Council for Harmonisation* of Technical Requirements for Pharmaceuticals for Human Use (ICH) guidance for industry entitled ''Providing Postmarketing Periodic Safety Reports in the ICH E2C(R2) Format (Periodic Benefit-Risk Evaluation Report), (November 2016)'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/providing-postmarket-periodic-safety-reports-ich-e2cr2-format-periodic-benefit-risk-evaluation.* The ICH E2C(R2) guidance describes the conditions under which applicants may use the ICH E2C(R2) Periodic Benefit-Risk Evaluation Report format for certain types of adverse event reporting.

FDA regulations in §§ 314.80(c)(2) and 600.80(c)(2) require applicants to submit postmarketing periodic safety reports for each approved application. The reports must be submitted quarterly for the first 3 years following the U.S. approval date and annually thereafter and must contain the information described in §§ 314.80(c)(2)(ii) and 600.80(c)(2)(ii) (the information collection associated with 21 CFR part 600—Biological Products, is approved under OMB control number 0910–0308). The Agency guidance assists respondents with satisfying the regulatory requirements in an alternative format, noting that the process differs depending on whether an applicable periodic safety update report waiver is in place.

Similarly, this information collection accounts for burden that may be applicable to the guidance document, ''Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During a Pandemic (May 2020),'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/postmarketing-adverse-event-reporting-medical-products-and-dietary-supplements-during-pandemic.* In response to the Coronavirus Disease

2019 public health emergency, we revised the Agency guidance document to provide recommendations for recordkeeping applicable to any pandemic, not just influenza, including recommendations for planning, notification, and documentation for continuity of operations for firms that report postmarketing adverse events during any pandemic.

For operational efficiency, on March 20, 2023, OMB approved the addition of burden attributable to provisions related to postmarketing safety reporting for combination products as outlined in part 4, subpart B, and previously included in OMB control number 0910–0834. When information regarding an event that involves a death or serious injury, or an adverse event, associated with the use of a combination product that includes a drug product, is received by the product sponsor, the information must be provided to the other constituent part applicant(s) no later than 5 calendar days after receipt under § 4.103 (21 CFR 4.103). Relatedly, 21 CFR 4.104 explains how and where to submit reports for combination products, and 21 CFR 4.105 provides for associated recordkeeping. For combination products that are administered as drug products with a constituent part, adverse event reports are submitted to the drug application under 21 CFR part 314, and constituent applicants are notified of the AER under § 4.103. These provisions are also described in the guidance document ''Postmarketing Safety Reporting for Combination Products'' (July 2019), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/postmarketing-safety-reporting-combination-products.*

Our estimates of the number of respondents and the total annual responses are based on reports submitted to the Agency. This information collection incorporates revisions to include the two guidances for industry regarding submission of adverse event reports (''Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During a Pandemic'' and ''Providing Submissions in Electronic Format—Postmarketing Safety Reports'') and adjustments to include 15-day alert reports from applicants, manufacturers, distributors, and packers that were not recorded previously in this information collection. We also believe adjustments in the information collection reflect anticipated fluctuations in burden after pandemic conditions, adjustments by reporters' and changes in electronic reporting methodologies use of updated technology including updates and redefinitions of reporting software, and changes of company business practices over time. All reports and followup reports must be submitted to FDA in electronic format. Waivers of the electronic requirements are available. As a result of these revisions and adjustments, including the additional reports, the inclusion of guidance document recommendations and the consolidation of the burden from OMB control number 0910–0834 (previously added to this information collection March 2023), the total burden hours of the information collection have increased by 61,614,921 hours and 2,546,112 responses as compared to the previous renewal. While no changes have been made to the estimates in the 60-day notice, due to a clerical error, we are clarifying in this notice that the total burden hour increase is slightly lower (a difference of 198 burden hours and 89 responses).

Dated: January 7, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01151 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0001]

Optimizing Pregnancy Registries; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''Optimizing Pregnancy Registries.'' The purpose of the public workshop is to discuss challenges in designing and implementing pregnancy registries and to consider innovative approaches to improve the design and conduct of pregnancy registries to inform the safety of drug and biological products during pregnancy. This public workshop is being held in collaboration with the University of Maryland Center of Excellence in Regulatory Science and Innovation program.

DATES: The public workshop will be held on March 27, 2025, from 9 a.m. to 4 p.m. eastern time and on March 28, 2025, from 9 a.m. to 12 p.m. eastern time. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Room 1503), Silver Spring, MD 20993 and online. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/about-fda/visitor-information.*

FOR FURTHER INFORMATION CONTACT: Denise Johnson-Lyles, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993, 301–796–6169, *OPRWorkshop@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Historically, pregnant individuals have been excluded from drug and biological product development. At the time of initial approval of a drug or biological product, there are generally limited data on the safety of the product when used during pregnancy. Therefore, postapproval pregnancy safety studies are needed to evaluate the safety of a product in the postapproval setting and to inform safety-related product labeling and clinical care.

Under the latest reauthorization of the Prescription Drug User Fee Act, FDA made a commitment to develop a framework describing how to optimally use data from different types of postapproval pregnancy safety studies. On September 18–19, 2023, FDA and the Duke-Margolis Institute for Health Policy convened a public workshop to discuss the design of postapproval pregnancy safety studies for drug and biological products.[1] Participants and interested parties discussed ways these studies can be optimized and different approaches that can be taken to bridge knowledge gaps in developing the framework. Although data were presented that suggest that pregnancy registry studies are an important source of pregnancy safety information, interested parties noted challenges with conducting single-drug, single-sponsor pregnancy registries, including low enrollment and long lag time to study completion. Similar to the Pregnant Women and Lactating Women recommendations,[2] interested parties identified the need to optimize disease-

[1] *https://healthpolicy.duke.edu/events/optimizing-use-postapproval-pregnancy-safety-studies.*

[2] *https://www.nichd.nih.gov/about/advisory/PRGLAC.*

based multi-product, multi-sponsor pregnancy registries.

This current public workshop is part of FDA's commitment to advance optimal approaches to efficient generation of high-quality human safety data for drug products used during pregnancy. The purpose of the workshop is to discuss current challenges in gathering safety data for drug and biological products used during pregnancy and to discuss approaches to optimize and improve pregnancy registries with key interested parties.

II. Topics for Discussion at the Public Workshop

The objective of the meeting is to discuss the following topics with interested parties:

- Current status of pregnancy registries and challenges in gathering data regarding the safety of drug and biological products used during pregnancy.
- Perspectives from interested parties (FDA, academia, industry, healthcare providers, and patients) on strategies to improve the design and conduct of pregnancy registries.
- Innovative approaches/models to facilitate the conduct of pregnancy registries, including disease-based multi-product, multi-sponsor pregnancy registries.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website: *https://lu.ma/bod9zouc.* Persons interested in attending this public workshop must register online by March 14, 2025, 11:59 p.m. eastern time. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number.

Registration is free and based on space availability, with priority given to early registrants. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 8:30 a.m. eastern time. We will let registrants know if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact the Optimizing Pregnancy Registries Workshop Planning Team at *OPRWorkshop@fda.hhs.gov* no later than March 14, 2025.

Virtual Streaming of the Public Workshop: This public workshop will also be streamed virtually via Zoom. Virtual attendees may register at the following website to receive the Zoom link: *https://lu.ma/bod9zouc.* Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov* (Docket No. FDA–2024–N–0001). It also may be viewed at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Notice of this meeting is given pursuant to 21 CFR 10.65.

Dated: January 10, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01164 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–2033]

Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics; Draft Guidance for Industry; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the draft guidance for industry entitled ''Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics'' that appeared in the **Federal Register** of December 6, 2024. In the notice of availability for the draft guidance, FDA requested comments on the draft guidance. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the draft guidance for industry published December 6, 2024 (89 FR 97011). Either electronic or written comments must be submitted by March 6, 2025.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 6, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–D–2033 for ''Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993–0002, 240–402–8926 or 301–796–2500, *dat.doan@fda.hhs.gov;* James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Paul Kluetz, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2223, Silver Spring, MD 20993, 301–796–9567, *Paul.Kluetz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 6, 2024, FDA published a notice of availability with a 60-day comment period to request comments on the draft guidance for industry entitled ''Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics.'' The Agency has received requests for a 30-day extension of the comment period. The requests conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the draft guidance.

FDA has considered the requests and is extending the comment period for 30 days, until March 6, 2025. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments on this draft guidance.

Dated: January 14, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01179 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3595]

Agency Information Collection Activities; Proposed Collection; Improving the Quality and Representativeness of the Treatment Center Program Data—Data Modifications to the Current Survey Instrument Format to Minimize Misclassification; Withdrawal of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a notice that was published in the **Federal Register** of October 18, 2023.

DATES: The notice is withdrawn on January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Darren Eicken, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6206, Silver Spring, MD 20993–0002, 240–402–0978.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 18, 2023 (88 FR 71875), ''Agency Information Collection Activities; Proposed Collection; Comment Request: Improving the Quality and Representativeness of the Treatment Center Program Data—Data Modifications to the Current Survey Instrument Format to Minimize Misclassification.'' FDA requested comment on the information collection associated with the proposed study entitled ''Improving the Quality and Representativeness of the Treatment Center Program Data—Data Modifications to the Current Survey Instrument Format to Minimize Misclassification.''

Under the Paperwork Reduction Act of 1995, Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

In the October 18, 2023, **Federal Register** notice, FDA proposed a new collection of information. However, FDA no longer intends to proceed with the proposed study due to circumstances and timing surrounding the execution of the study. Therefore, we are withdrawing the October 18, 2023 notice.

Dated: January 13, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01152 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5468]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration's Adverse Event and Product Experience Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA's

adverse event reports and product experience reports for FDA-regulated products.

DATES: Either electronic or written comments on the collection of information must be submitted by March 18, 2025.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 18, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–5468 for ''FDA's Adverse Event and Product Experience Reporting Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA's Adverse Event and Product Experience Reporting Program

OMB Control Number 0910–0291—Extension

This information collection supports FDA laws and regulations governing adverse event reports and product experience reports for FDA-regulated products. The Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b, 355, 360i, 360l, 379aa, and 393) and the Public Health Service Act (42 U.S.C. 262) authorize FDA to collect adverse event reports and product experience reports from regulated industry and to monitor the safety of drugs, biologics, medical devices, and dietary supplements. These reporting and recordkeeping requirements are found in FDA regulations, discussed in Agency guidance, and included in Agency forms. Although there are no laws or regulations mandating postmarket reporting for medical foods, infant formula, cosmetics, or tobacco products, we encourage voluntary

reporting of adverse experiences associated with these products.

To facilitate both consumer and industry reporting of adverse events and experiences with FDA-regulated products, we developed the MedWatch program. The MedWatch program allows anyone to submit reports to FDA on adverse events, including injuries and/or deaths, as well as other product experiences associated with the products we regulate. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 329, 600, and 803 (21 CFR parts 310, 314, 329, 600, and 803), and specified in sections 503B, 760, and 761 of the FD&C Act (21 U.S.C. 353b, 379aa, and 379aa–1). Mandatory reporting of adverse events for human cells, tissues, and cellular- and tissue-based products (HCT/Ps) have been codified in § 1271.350 (21 CFR 1271.350). Other postmarketing reporting associated with requirements found in sections 201, 502, 505, and 701 (21 U.S.C. 321, 352, 355, and 371) of the FD&C Act and applicable to certain drug products with and without approved applications are approved under OMB control number 0910–0230. Mandatory reporting under part 803, associated with medical device products, using Form FDA 3500A, is approved under OMB control number 0910–0437.

Since 1993, mandatory adverse event reporting has been supplemented by voluntary reporting by healthcare professionals, patients, and consumers via the MedWatch reporting process. To carry out its responsibilities, the Agency needs to be informed when an adverse event, product problem, error with use of a human medical product, or evidence of therapeutic failure is suspected or identified in clinical use. When FDA receives this information from healthcare professionals, patients, or consumers, the report becomes data that will be used to assess and evaluate the risk associated with the product. FDA will take any necessary action to reduce, mitigate, or eliminate the public's exposure to the risk through regulatory and public health interventions.

To implement these reporting provisions for FDA-regulated products (except vaccines) during their post-approval and marketed lifetimes, we developed the following three forms, available for download from our website or upon request to the Agency: (1) Form FDA 3500 may be used for voluntary (*i.e.,* not mandated by law or regulation) reporting by healthcare professionals; (2) Form FDA 3500A is used for mandatory reporting (*i.e.,* required by law or regulation); and (3) Form FDA 3500B, available in English and Spanish, is written in plain language and may be used for voluntary reporting (*i.e.,* not mandated by law or regulation) by consumers (*i.e.,* patients and their caregivers). Respondents to the information collection are healthcare professionals, medical care organizations and other user facilities (*e.g.,* extended care facilities, ambulatory surgical centers), consumers, manufacturers of biologicals, food products including dietary supplements and special nutritional products (*e.g.,* infant formula and medical foods), cosmetics, drug products or medical devices, and importers.

I. Use of Form FDA 3500, MedWatch—the Safety Information and Adverse Event Reporting Program (Voluntary Reporting)

This voluntary version of the form may be used by healthcare professionals to submit all reports not mandated by Federal law or regulation. Individual healthcare professionals are not required by law or regulation to submit reports to the Agency or the manufacturer, except for certain adverse events following immunization with vaccines as mandated by the National Childhood Vaccine Injury Act of 1986. Reports for vaccines are not submitted via MedWatch or MedWatch forms but are submitted to the Vaccines Adverse Event Reporting System (VAERS; see *http://vaers.hhs.gov*), which is jointly administered by FDA and the Centers for Disease Control and Prevention.

Hospitals are not required by Federal law or regulation to submit reports associated with drug products, biological products, or special nutritional products. However, hospitals and other user facilities are required by Federal law to report medical device-related deaths and serious injuries (approved under OMB control number 0910–0437).

Under Federal law and regulation (section 761(b)(1) of the FD&C Act), a dietary supplement manufacturer, packer, or distributor whose name appears on the label of a dietary supplement marketed in the United States is required to submit to FDA any serious adverse event report it receives regarding use of the dietary supplement in the United States. However, FDA bears the burden to gather and review evidence that a dietary supplement may be adulterated under section 402 of the FD&C Act (21 U.S.C 342) after that product is marketed. Therefore, the Agency depends on the voluntary reporting by healthcare professionals and especially by consumers of suspected serious adverse events and product quality problems associated with the use of dietary supplements. All dietary supplement reports were originally received by the Agency on paper versions of Form FDA 3500 (by mail or fax). Today, electronic reports may be sent to the Agency via an online submission route called the Safety Reporting Portal at *http://www.safetyreporting.fda.gov/.* In that case, the Form FDA 3500 is not used.

Form FDA 3500 may be used to report to the Agency adverse events, product problems, product use errors, and therapeutic failures. The form is provided in both paper and electronic formats. Reporters may mail or fax forms to the Agency. A fillable PDF version of the form is available at *https://www.accessdata.fda.gov/scripts/medwatch/* or respondents can electronically submit a report via the MedWatch Online Voluntary Reporting Form at *https://www.accessdata.fda.gov/scripts/medwatch/.*

Reporting using Form FDA 3500 in paper form is supported for drugs, non-vaccine biologicals, medical devices, food products, special nutritional products, cosmetics, and non-prescription human drug products marketed without an approved application, and dietary supplements. Electronic reports for FDA products may be submitted to the Agency via an online submission route called the Safety Reporting Portal at *http://www.safetyreporting.fda.gov/.* Electronic reports for tobacco products may be submitted to the Agency via the tobacco questionnaire within the online Safety Reporting Portal at *http://www.safetyreporting.fda.gov/.*

II. Use of Form FDA 3500A, MedWatch for Use by User-Facilities, Importers, Distributors, and Manufacturers (Mandatory Reporting)

A. Drug and Biological Products

Sections 503B, 505(j), and 704 of the FD&C Act (21 U.S.C. 374) require that important safety information relating to all human prescription drug products be made available to FDA in the event it becomes necessary to take appropriate action to ensure protection of the public health. Mandatory reporting of adverse events for HCT/Ps is codified in § 1271.350. Consistent with statutory requirements, information is required to be submitted electronically and therefore we account for most all reports under OMB control number 0910–0230 to support electronic reporting to our MedWatch program. At the same time,

regulations are provided for waivers from the electronic submission requirements and we therefore account for paper-based reporting in this information collection.

B. Medical Device Products

Section 519 of the FD&C Act (21 U.S.C. 360i) requires manufacturers and importers of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services (the Secretary) may by regulation reasonably require assuring that such devices are not adulterated or misbranded and to otherwise assure its safety and effectiveness. The Safe Medical Device Act of 1990 (Pub. L. 101–629), signed into law on November 28, 1990, amends section 519 of the FD&C Act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under part 803. Part 803 mandates the use of Form FDA 3500A for reporting to FDA on medical devices. Mandatory reporting associated with medical device products using Form FDA 3500A is approved under OMB control number 0910–0437.

C. Dietary Supplements

Section 502(x) of the FD&C Act implements the requirements of The Dietary Supplement and Nonprescription Drug Consumer Protection Act, which became law (Pub. L. 109–462) on December 22, 2006. These requirements apply to manufacturers, packers, and distributors of nonprescription human drug products marketed without an approved application. The law requires reports of serious adverse events to be submitted to the Agency by manufacturers of dietary supplements.

Electronic reports for dietary supplements may be submitted using the Safety Reporting Portal at *http://www.safetyreporting.fda.gov/.* Paper-based dietary supplement reports may be submitted using the MedWatch Form FDA 3500A.

III. Use of Form FDA 3500B, MedWatch Consumer Voluntary Reporting

This voluntary version of the form may be used by consumers, patients, or caregivers to submit reports not mandated by Federal law or regulation. Individual consumers, patients, or caregivers are not required by law or regulation to submit reports to the Agency or the manufacturer. FDA supports and encourages direct reporting to the Agency by consumers of suspected adverse events and other product problems associated with human medical products, food, dietary supplements, and cosmetic products, and invite these respondents to visit our website at *https://www.fda.gov/safety/report-problem-fda* for more information. Since the inception of the MedWatch program in July 1993, the program has been promoting and facilitating voluntary reporting by both the public and healthcare professionals. FDA has further encouraged voluntary reporting by requiring inclusion of the MedWatch toll-free phone number or the MedWatch website on all outpatient drug prescriptions dispensed, as mandated by section 17 of the Best Pharmaceuticals for Children Act (Pub. L. 107–109).

Section 906 of the FDA Amendments Act (FDAAA) amended section 502(n) of the FD&C Act, mandating that published direct-to-consumer advertisements for prescription drugs include the following statement printed in conspicuous text (this includes vaccine products): ''You are encouraged to report negative side effects of prescription drugs to the FDA. Visit *https://www.fda.gov/medwatch,* or call 1–800–FDA–1088.'' Most private vendors of consumer medication information, which is the drug product-specific instructions dispensed to consumers at outpatient pharmacies, remind patients to report ''side effects'' to FDA and provide contact information to permit MedWatch reporting.

Form FDA 3500B, first made available in 2013, was tailored for consumers and has been written in plain language to conform with the Plain Writing Act of 2010 (Pub. L. 111–274) (*https://www.govinfo.gov/content/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf*), and has evolved with input from human factors experts, from other regulatory agencies, and with extensive input from consumer advocacy groups and the public. It is used to report adverse events, product problems, product use errors, and problems after switching from one product maker to another maker to the Agency. The form is available in Spanish at *https://www.fda.gov/safety/medwatch-fda-safety-information-and-adverse-event-reporting-program/reporting-serious-problems-fda,* and since 2021, has been available to upload electronically at *https://www.accessdata.fda.gov/scripts/medwatch/index.cfm?action=reporting.spanish. The form is* provided in both paper and electronic formats. Respondents may submit reports by mail or fax to the Agency, or electronically submit a report via the MedWatch Online Voluntary Reporting Form at *https://www.accessdata.fda.gov/scripts/medwatch/.* A fillable PDF version of the form, available at *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM349464.pdf,* may be downloaded, completed, and mailed or faxed to the Agency. Reporting is supported for drugs, non-vaccine biologicals, medical devices, food products, special nutritional products, cosmetics, and non-prescription human drug products marketed without an approved application. The paper form may also be used to submit reports about dietary supplements. Electronic reports for dietary supplements may be submitted to the Agency via an online submission route called the Safety Reporting Portal at *https://www.safetyreporting.fda.gov/.*

IV. Use of Form FDA 3800, Safety Reporting Portal

The Safety Reporting Portal (SRP) streamlines the process of reporting product safety issues to FDA. Organizations and people in certain professional roles, such as the following, may be required by law to submit safety reports under some circumstances: food manufacturers, processors, packers, and holders; researchers; an applicant of an approved drug product or a manufacturer; distributor or packer listed on the label of any marketed drug product; drug manufacturers, sponsors, sponsor-investigators of investigational drugs and biologics; dietary supplement manufacturers, packers, and distributors; and tobacco product manufacturers.

Others, including healthcare providers, public health officials, and other professionals, as well as consumers and concerned citizens, may voluntarily submit reports if they encounter safety issues with a product and/or harmful effects that they believe are related to a product. The information collection includes the following Agency forms, available electronically, via the Safety Reporting Portal:

- Center for Veterinary Medicine (CVM)—Voluntary reporting of adverse events and product problems involving pet food or livestock food. Section 1002(b) of the FDAAA directed the Secretary to establish an early warning and surveillance system to identify

adulteration of the pet food supply and outbreaks of illness associated with pet food. We developed the Pet Food Early Warning System rational questionnaire as a user-friendly data collection tool, as well as a questionnaire for collecting voluntary adverse event reports associated with pet and livestock food. Information collected in these voluntary adverse event reports contribute to CVM's ability to identify adulteration of the pet and livestock food supply and outbreaks of illness associated with pet and livestock food. We use the information collected to help ensure that such products are quickly and efficiently removed from the market to prevent foodborne illnesses.

- Center for Tobacco Products (CTP)—Voluntary Tobacco Product Health Problem or Product Problem Reports (*i.e.,* Adverse experience reports). Voluntary adverse experience reports have been collected from consumers/concerned citizens and healthcare professionals via the SRP's Tobacco Problem Report (TPR) questionnaire since January 10, 2014, from tobacco product manufacturers via the SRP TPR since June 10, 2016, and from researchers engaged in clinical trials using investigational or legally marketed tobacco products via the SRP Tobacco Investigator Report (TIR) questionnaire since June 10, 2016.
- CTP—Mandatory Tobacco Product Health Problem or Product Problem Reports (*i.e.,* Adverse experience reports). On October 5, 2021 (86 FR 55300), FDA published a final rule entitled ''Premarket Tobacco Product Applications and Recordkeeping Requirements.'' The rule establishes regulatory definitions (21 CFR 1114.3) for adverse experience, serious adverse experience, and unexpected adverse experience associated with tobacco product use. The final rule, in effect since November 4, 2021, requires premarket applicants (manufacturers of new tobacco products) who receive marketing granted orders to report all serious and unexpected adverse experiences associated with the tobacco product (21 CFR 1114.41(a)(2)) that have been reported to the applicant or of which the applicant is aware, to the SRP or in another manner designated by FDA, within 15 calendar days of their awareness.

V. Proposed Modifications to Existing Forms 3500, 3500A, and 3500B

A. General Changes

The proposed modifications to Form FDA 3500, Form FDA 3500A, and Form FDA 3500B (English and Spanish) reflect changes that will bring the forms into conformity, since the previous authorization in 2022, with current regulations, rules, and guidances. The proposed extension to Form FDA 3500, Form FDA 3500A, and Form FDA 3500B will only have changes in the form instructions to provide clarity of reporting. The proposed changes fall into one of three categories: (1) regulatory driven revisions, (2) work improvements for the Center, and (3) report processing improvements. Formatting modifications are being proposed to several fields to enhance the quality, utility, and clarity of the information. We also propose to update the mailing address to Attn: MedWatch Program, White Oak Campus, Building 22, G0207, 10903 New Hampshire Ave., Silver Spring, MD 20993.

B. Changes Proposed for Form FDA 3500

Throughout the form, we propose to add calendar functionality to all date fields for uniformity and standardization of date format.

In the header, we propose to specify the intended reporters at the top of the form (*i.e.,* Health Professional Voluntary Reporting). In section A, we propose to revise ''Undifferentiated'' to ''Intersex'' in field 3a; combine the ''Ethnicity'' (field A5) and ''Race'' (field A6) fields as outlined in the Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15) issued on March 29, 2024; and add new text ''What is your race and/or ethnicity? Select all that apply.''

The selections will also include descriptions of each category. The data fields include the following:

- American Indian or Alaska Native—*For example, Navajo Nation, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, Aztec, Maya, etc.*
- Asian—*For example, Chinese, Asian Indian, Filipino, Vietnamese, Korean, Japanese, etc.*
- Black or African American—*For example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc.*
- Hispanic or Latino—*For example, Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, etc.*
- Middle Eastern or North African—*For example, Lebanese, Iranian, Egyptian, Syrian, Iraqi, Israeli, etc.*
- Native Hawaiian or Pacific Islander—*For example, Native Hawaiian, Samoan, Chamorro, Tongan, Fijian, Marshallese, etc.*
- White—*For example, English, German, Irish, Italian, Polish, Scottish, etc.*

In section B, we propose to reorder the outcomes attributed to the adverse events list so that ''Other Serious or Important Medical Events'' appears as the last choice of the outcomes listed in field B2, and add a field for reference ranges in the ''Relevant Test/Laboratory Data'' section (field B6).

In section C, we propose to add a field for ''Where (*e.g.,* website, pharmacy/store/state of purchase) was the suspect product obtained?'' and ''When (date) was the suspect product obtained?''

In section D, we propose to remove ''This report involves cosmetic, dietary supplement, food/medical food, and other.'' Cosmetic will now be captured under the ''Product Type'' section field D5.

We propose to add ''Usage Dates'' after ''Treatment Dates/Therapy Dates'' and add ''Usage'' after ''Treatment'' and ''Therapy'' in field D3. We propose to revise the ''Product Type'' section (field D5) as follows: (Dietary supplement and Food/medical food selections will be removed. Adverse events involving these products should be submitted through the Safety Reporting Portal)

- ○ Drug or Biologic
  - ■ Brand
  - ■ Generic or Biosimilar
  - ■ Over-the Counter (OTC)
  - ■ Compounded product (by a Pharmacy or an Outsourcing Facility)
- ○ Cosmetic
  - ■ Cosmetic for professional use only
  - ■ Cosmetic sold on a retail basis
- ○ Cannabinoid Hemp Products (such as products containing CBD)
- ○ Other

In section E, we propose to interchange the fields 2a and 2b so that ''Procode'' will now appear in field 2a and ''Common Device Name'' will appear in field 2b.

In section G, we propose to add a field entitled ''Packer'' to the list under ''Also Reported To'' in field G4.

In the ''Advice about Voluntary Reporting'' section, we propose to remove ''Special nutritional products (dietary supplements, medical foods, infant formulas)'' and ''Food (including beverages and ingredients added to foods'' and add ''If your report involves a health problem or product problem with foods or special nutritional products such as infant formulas, dietary supplements, or medical foods'', go to *https://www.safetyreporting.fda.gov* or call 1–888–723–3366 to report.

We propose to revise ''If your report involves a health problem or a product

problem with a tobacco product, go to *https://www.safetyreporting.fda.gov* or call 1–877–287–1363 to report.'' to ''If your report involves a health problem or a product problem with a tobacco product, including e-cigarettes (nicotine-containing vapes) or nicotine pouches, go to *https://www.safetyreporting.fda.gov* or call 1–877–287–1363 to report.''

C. Changes Proposed for Form FDA 3500A

Throughout the form, we propose to add calendar functionality to all date fields for uniformity and standardization of date format.

In the header, we propose to revise ''For use by user-facilities, importers, distributors and manufacturers'' to ''For use by user-facilities, importers, distributors, manufacturers and packers.'' We propose to remove the header ''FDA USE ONLY'' and revise the ''Exemption/Variance #'' field to ''Exemption/Variance/Alternative #.''

In section A, we propose to revise ''Undifferentiated'' to ''Intersex'' in field 3, combine the ''Ethnicity'' (field A5) and ''Race'' (field A6) fields as outlined in the Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15) issued on March 29, 2024, and propose to add the new text ''What is your race and/or ethnicity? Select all that apply.'' The selections will also include descriptions of each category.

The data fields include the following: combine the ''Ethnicity'' (field A5) and ''Race'' (field A6) fields as outlined in the Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15) issued on March 29, 2024 and add ''What is your race and/or ethnicity? Select all that apply.'' The selections will also include descriptions of each category.

The data fields include:

- *American Indian or Alaska Native—For example, Navajo Nation, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, Aztec, Maya, etc.*
- *Asian—For example, Chinese, Asian Indian, Filipino, Vietnamese, Korean, Japanese, etc.*
- *Black or African American—For example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc.*
- *Hispanic or Latino—For example, Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, etc.*
- *Middle Eastern or North African—For example, Lebanese, Iranian, Egyptian, Syrian, Iraqi, Israeli, etc.*
- *Native Hawaiian or Pacific Islander—For example, Native Hawaiian, Samoan, Chamorro, Tongan, Fijian, Marshallese, etc.*
- *White—For example, English, German, Irish, Italian, Polish, Scottish, etc.*

In section B, we propose to reorder the outcomes attributed to adverse events list so that ''Other Serious or Important Medical Events'' appears as the last choice of the outcomes listed in field B2, add ''Describe Event or Problem'' on page 1 and add ''Describe Event or Problem (continued)'' on page 2 (field B5), and add a field for reference ranges in the ''Relevant Test/Laboratory Data'' section (field B6)

In section C, we propose to revise the ''Name, Strength, Manufacturer/Compounder'' field under ''Manufacturer/Compounder Name'' to include a new field for ''FEI # for cosmetics''. This revision applies to ''Suspect Product #1'' and ''Suspect Product #2.'' (field C1). We propose to revise ''Usage Dates'' after ''Treatment Dates/Therapy Dates'' and add ''Usage'' after ''Treatment'' and ''Therapy.'' (field C4).

We propose to revise the ''Product Type'' section (field C6) as follows (applies to Suspect Product #1 and Suspect Product #2):

○ Drug or Biologic
  ■ Brand
  ■ Generic or Biosimilar
  ■ Over-the Counter (OTC)
  ■ Compounded product (by a Pharmacy or an Outsourcing Facility)
○ Cosmetic
  ■ Cosmetic for professional use only
  ■ Cosmetic sold on a retail basis
○ Other

In section D, we propose to interchange fields 2a and 2b. ''Procode'' will now appear in field 2a and ''Common Device Name'' will appear in field 2b.

In section F, we propose to revise the ''User Facility or Importer Name/Address'' field to ''User Facility or Importer Name/Address/Email'' (field F3), add the two selections ''Initial'' and ''Follow-up #____.'' with checkboxes in the ''Type of Report'' field (field F7), and delete the ''Date of This Report (01–JAN–1900)'' field (field F8). This information is requested in ''Report Sent to FDA?'' (field F11) or ''Report Sent to Manufacturer?'' (field F13).

In section G, we propose to revise ''Contact Office (and Manufacturing Site for Devices)'' or ''Compounding Outsourcing Facility'' to ''Contact Office (and Manufacturing Site for Devices)'' or ''Compounding Outsourcing Facility or Responsible Person'' (field G1), revise ''Use Facility'' to ''User Facility'' in the ''Report Source'' field (field G2), revise ''Date Received by Manufacturer (01–JAN–1900)'' to ''Date Received by Manufacturer (01–JAN–1900)'' or ''Responsible Person'' (field G3), revise ''ANDA #'' to ''ANDA/Pre-ANDA #.'' (field G4), revise ''Periodic'' to ''Non-expedited (periodic)'' under ''Type of Report'' field (field G6), and revise ''If action reported to FDA under 21 U.S.C. 360i(g), list correction/removal reporting number:'' to ''If action reported to FDA under 21 U.S.C. 360i(g), list FDA-assigned recall number or include a statement.'' (field H9)

VI. Changes Proposed for Form FDA 3500A Instructional Supplement

The FDA Form 3500A instructional supplement will be revised to correct grammatical errors and to clarify reporting instructions. In addition to these changes, the FDA Form 3500A instructional supplement will include revisions based on the Modernization of Cosmetics Registration Act of 2022.

A. General Instructions

The instructional supplement will include the following revisions specifically pertaining to cosmetics:

- Add ''or cosmetic product'' to ''If no suspect medical device is involved in a reported adverse event (*i.e.,* when reporting ONLY a suspect drug or, biologic) ONLY sections A, B, C, E, and G are to be filled out'';
- Remove ''or'' between drug and biologic;
- Add ''When reporting ONLY a cosmetic product, the sections and/or subsections/blocks that are not relevant to cosmetics should be left blank.'';
- Add ''Cosmetic Products: Responsible persons submitting serious adverse event reports for cosmetic products using Form FDA 3500A should include a copy of the label on or within the retail packaging of the cosmetic product, along with any information that can be provided to support the report, such as scans of labels and images of the serious adverse event. This may be submitted to FDA:'';
- Add ''via email at: *CosmeticAERS@fda.hhs.gov*''; and
- Add ''Or by mail to: FDA CDER Mail Center, Attn: Cosmetics MedWatch Reports. White Oak Campus, Building 22, G0207, 10903 New Hampshire Ave., Silver Spring, MD 20993''.

B. Front Page

For the front page, there are the following revisions:

- Add ''For cosmetic products, the User Facility/Importer Report # and Exemption/Variance # should be left blank in this section.'';
- Add ''(mfr report #): after ''Manufacturer report #'';
- Revise ''The manufacturer report number is also entered in block G9 on the back of the form'' to ''The manufacturer report number is also entered in block G8 on the back of the form.'';
- Add ''and for responsible persons for cosmetic products:'' to ''For drug and biologics manufacturers''; and
- Add ''that'' and ''or the responsible person to ''The ''mfr report #'' is the number the manufacturer chooses to uniquely identify the report, and should conform to any applicable regulations or guidances.''

C. Section B: Adverse Event or Product Problem

In section ''B1: Type of Report'' adverse event, include ''or cosmetic product'' to ''Any incident where the use of a product (drug or biologic, including human cell, tissue, or cellular or tissue-based product (HCT/P), at any dose, or a medical device (including in vitro diagnostic products), is suspected to have resulted in an adverse outcome in a patient.''

In section ''B2: Outcomes attributed to adverse event'', add ''and Cosmetic Products'' to'' Drugs and Biologics'', and include the regulatory reference ''21 CFR and section 605 of the FD&C Act, respectively.''

Under ''Disability or Permanent Damage,'' add ''or cosmetic products: Check if the adverse event resulted in a persistent or significant disability or incapacity.''

Under ''Congenital Anomaly/Birth Defect,'' remove ''medical.''

Under ''Other Serious (Important Medical Events),'' add ''*Cosmetic Products:* Check if the other categories are not applicable, such as when the adverse event results in an infection or significant disfigurement (including serious and persistent rashes, second- or third-degree burns, significant hair loss, or persistent or significant alteration of appearance) other than as intended, under conditions of use that are customary or usual. Describe the outcomes in the actual narrative of the event in block B5.''

In section ''B4: Date of this Report,'' add '', and cosmetic products'' to ''For all mandatory reports filed for Medical Devices, Drugs, and Biologics, including human cells, tissues, and cellular and tissue-based products, enter the date the report is submitted to the FDA.''

In section ''B5: Describe Event or Problem,'' add ''For cosmetics, please indicate whether the product was for professional use only; describe the amount and frequency used; for which body parts the cosmetic product was used; and outcomes.''

D. Section C: Suspect Product(s)

In section ''C: Suspect Product (s),'' add ''For cosmetic products, fill out ONLY the blocks that are relevant to cosmetic products.''

In subsection C1, add the following after the ''Name, Strength, Manufacturer/Compounder'' instruction: ''For cosmetics: In the product name field, enter the statement of identity as such name appears on the label. If the product names in the listing are not unique, then also include distinguishing information for identification purposes. For example, please include a brand name or a code that the responsible person uses to distinguish the product. Such information may also be included, in addition to the product name, even when product names in the listing are unique. If you believe certain distinguishing information is confidential, please include that distinguishing information in parentheses.''

In subsection C1, add after the ''NDC# or Unique ID'' instruction: ''For cosmetic product(s), if available, the FDA Establishment Identifier (FEI) number obtained by the owner or operator of a facility(ies), of the facility that manufactured or processed the affected cosmetic product(s). FEI is also known as the Firm or Facility Establishment Identifier.''

In section ''C2: List Medical Products and Treatment Given at the Same time of the Event and Date,'' add ''For cosmetic reports include all related cosmetic products used at the same time.''

In section ''C3: Dose, Frequency & Route Used,'' add ''or the consumer'' after ''Describe how the product was used by the patient'' and add ''or number of applications, area of application'' in the parentheses after ''(*e.g.,* 500 mg QID orally or 10 mg every other day IV).''

In section ''C4: Treatment/Therapy Start and Stop Dates,'' add ''Usage'' to the ''C4: Treatment/Therapy Start and Stop Dates'' heading, and add ''treatment/therapy'' and ''or usage'' to the following sentence: ''Provide the date of administration was started (or best estimate) and the date stopped (or best estimate).''

In section C6, add ''Cosmetics for Professional Use Only, Cosmetics Sold on a Retail Basis,'' after ''Biosimilar,'' and before ''please check the best option that best fits this medical product.''

In section C7, add ''For cosmetic products, if available, include best by/use by date'' to the ''Expiration date'' after the current instruction.

E. Section G: All Manufacturers

In section G, add ''AND RESPONSIBLE PERSONS'' to the ''SECTION G: ALL MANUFACTURERS'' heading, ''or responsible persons (in case of cosmetic products)'' to the sentence, ''This section is to be filled out by all manufacturers,'' ''or cosmetic product'' to ''NOTE: If a drug, biologic, including human cell, tissue, and cellular and tissue-based product (HCT/P),'' and ''(or responsible person in case of cosmetic product)'' to the ''manufacturer is reporting an adverse event in which no suspect medical device is involved, section G may be identically reproduced in place of section D on the front of the form so that a one-page form may be submitted.'' Also add ''For cosmetic products, fill out ONLY the blocks that are relevant to cosmetic products.''

In section, ''G1: Contact Office (and manufacturing site for devices) or Compounding Outsourcing Facility,'' add ''or Responsible Person (in case of cosmetic products)'' to ''Contact Office (and manufacturing site for devices) or Compounding Outsourcing Facility'' heading and add ''For cosmetic products, enter the information of the responsible person, which means the manufacturer, packer, or distributor of a cosmetic product whose name appears on the label of the cosmetic product'' to the last sentence

In section ''G2: Report Source,'' add ''and Cosmetic Products'' to the sentence ''Drugs and Biologics, including HCT/Ps: a separate 3500A form must be completed for each identifiable patient described in the article or manuscript.'' Remove the text '', and'' between ''Drugs and Biologics.''

In section ''G3: Date received by manufacturer,'' add ''or responsible person (in case of cosmetic product)'' to the heading and add ''responsible person,'' to the following sentence: ''This means the date when the applicant, manufacturer, corporate affiliate, etc. receives information that an adverse event or medical device malfunction has occurred.''

In section G6: Type of Report under ''15-day,'' add the following: '', and cosmetic products'' to ''As specified in

the drug, biologic, including human cell, tissue, and cellular and tissue-based product (HCT/P),'' ''or requirements'' to ''regulations for reports of serious and unexpected adverse events,'' change the ''Periodic'' label to ''Non-expedited (Periodic);'' and add ''For Cosmetic products, use this option for non-serious adverse event.''

Under Follow-up, add ''and cosmetic products'' to ''Follow-up reports on drugs, biologics, including HCT/Ps, should contain information that was submitted in the original report if the information is still correct.''

In section ''G7: Adverse Event Term(s),'' add '', and cosmetic products'' to ''[for use by drug, biologic, including human cell, tissue, and cellular and tissue-based product (HCT/P),'' add ''(or responsible persons, in case of cosmetic products)'' to ''manufacturers only]''and remove ''or WHOART'' from the list of accepted standards.

In ''G8: Manufacturer Report Number,'' remove ''If submitting a follow-up to a report originally obtained from FDA through a MedWatch to Manufacturer program transmission of a serious direct report, check the 'Other' box in block G2 and enter the FDA-assigned report number there'' and add ''For cosmetics: The manufacturer report number is the number the responsible person chooses to uniquely identify the report, and should conform to any applicable regulations or guidances. The submission will not be considered complete without this information. While FDA currently does not have a mandatory format for the Manufacturer Report Number for reporting cosmetic adverse events, we strongly encourage you to use a numbering system that provides unique information of the adverse event reported, such as the year, company name, and the case report number.''

VII. Changes Proposed for Form FDA 3500B

In the instructions section, we propose to make the following revisions:

- Under ''When do I use this form?'', revise the first bullet to ''You were hurt or had a bad side effect (including new or worsening symptoms) after taking a drug or using a medical device or product'' to ''You were hurt or had a bad side effect (including new or worsening symptoms) after using a product, drug, cosmetic or a medical device.''; and
- Add the word ''cosmetic'' after the word ''drug'' in the following bullets: ''You used a product, drug, cosmetic, or medical device incorrectly which could have or led to unsafe use'' and ''You noticed a problem with the quality of the product, drug, cosmetic, or medical device.''

Under ''Don't use this form to report:'', add the hyperlink for the Vaccine Adverse Event Reporting System, add descriptive language under tobacco products about e-cigarettes and nicotine pouches, remove the word cosmetic from the safety reporting portal language, and revise the hyperlink to the SRP. Also, add the following:

- Vaccines—report problems to the Vaccine Adverse Event Reporting System (VAERS) *http://vaers.hhs.gov.*
- Tobacco products, including e-cigarettes (nicotine-containing vapes) and nicotine pouches, report health or product problems to the Safety Reporting Portal (SRP) *https://www.safetyreporting.fda.gov/* or call 1–877–287–1363.
- Remove the word ''cosmetic'' from the last bullet—Food or dietary supplement products—report problems to the SRP *https://www.safetyreporting.fda.gov/.*

Under ''What types of products should I use this form for?'', add a comma between ''bone), allergenics'' in the first bullet, remove ''makeup'' in the third bullet, add a bullet for ''Cannabinoid Hemp Products (such as products containing CBD'', and remove the last bullet ''Foods (including beverages and ingredients added to foods).

Under ''Are there specific instructions for filling out the form?'', the first two bullets in this section will remain unchanged and new text will be added for the third and fourth bullets to read as follows:

- Including or attaching images of all sides of the product will help FDA review your report but is not required. Please do not send the products to FDA.
- The Global Unique Device Identification Database (GUDID) contains key device identification information submitted to FDA about medical devices that have Unique Device Identifiers (UDI). In collaboration with the National Library of Medicine, FDA has created a portal, called Access GUDID, to make device identification information in the GUDID available for everyone. For more information regarding the UDI#, refer to the UDI web page, *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/unique-device-identification-system-udi-system.*

Under ''How can I contact the FDA if I have questions?'' add a following toll-free phone number for cosmetics: 1–888–723–3366, and add the following language to match that of the MedWatch Online application: ''If this is a medical emergency, please call 911'' and ''If you have a mental health crisis, please call 988.''

In section ''A—About the Problem,'' we propose to add a field for reference ranges in the ''Relevant Test/Laboratory Data'' section (field A5).

In section ''B—Product Availability,'' we propose to revise the question in field B2 from ''Do you have a picture of the product? (check yes if you are including a picture)'' to ''Do you have a picture of the product including product labels if reporting cosmetics? While not required, pictures of all sides of the product will help FDA review your report. (check yes if you are including pictures).''

Under the section, ''For a problem with a product, including,'' remove ''or make-up products'' from the fourth bullet and remove the following bullets 3 and 5: ''nutrition products, such as vitamins and minerals, herbal remedies, infant formulas, and medical food'' and ''foods (including beverages and ingredients added to foods).

Under the section ''For a health or product problem with a food, cosmetic, dietary supplement or tobacco product,'' remove the word ''cosmetic'' and revise the hyperlink to the SRP to *https://www.safetyreporting.fda.gov/.*

In section ''C: About the Products,'' we propose to remove ''This report is about,'' or field ''C1. Product'' field will be updated, and add a section for a second suspect product and design the two sections for suspect product on the same page to facilitate the addition of another page if the reporter needs to report more than two products.

For field C3, we propose to add ''usage'' after ''therapy.'' The revised language will be ''Check if therapy/usage is on-going.''

We propose to revise the field ''Product Type'' (field C5) as follows: ''(Note: Dietary supplement and Food/Medical Food selections will be removed. Adverse events involving these products should be submitted through the Safety Reporting Portal)

- Drug or Biologic
  - Brand
  - Generic or Biosimilar
  - Over-the Counter (OTC)
  - Compounded product (by a Pharmacy or an Outsourcing Facility)
- Cosmetic
  - Cosmetic for professional use only
  - Cosmetic sold on a retail basis
- Cannabinoid Hemp Products (such as products containing CBD
- Other

For field C12, revise instructions from ''How was it taken or used (for example,

by mouth, injection, or on the skin)?'' to ''How was it taken or used (for example, by mouth, injection, inhaled, or on the skin)?'', add a field for ''Purchase Date'', and add a field for ''Where (*e.g.,* website, pharmacy/store/state of purchase) was the suspect product obtained?'' and ''When (date) was the suspect product obtained?'' We propose addition of fields to capture ''Place of Purchase Name,'' ''web page/URL (if purchased online),'' and ''Place of Purchase City and State/Province.''

Under section ''D—About the Medical Device,'' we propose to add text to read as ''Unique Device Identifier (UDI) number—Please record all symbols, letters and numbers located under the barcode. An example of a UDI number can be found at *https://accessgudid.nlm.nih.gov/about-gudid#what-is-udi*'' for field D7.

Under section ''E—About the Person Who Had the Problem,'' we propose to revise ''Undifferentiated'' to ''Intersex'' in field 2a, add calendar functionality to field E4 (Date of Birth) for uniformity in reporting and to ensure correct reporting of date format, and combine the ''Ethnicity'' (field E6) and ''Race'' (field E7) fields as outlined in the Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15) issued on March 29, 2024. We propose to add new text ''What is your race and/or ethnicity? Select all that apply.'' The selections will also include descriptions of each category.''

The data fields include:

- *American Indian or Alaska Native—For example, Navajo Nation, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, Aztec, Maya, etc.*
- *Asian—For example, Chinese, Asian Indian, Filipino, Vietnamese, Korean, Japanese, etc.*
- *Black or African American—For example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc.*
- *Hispanic or Latino—For example, Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, etc.*
- *Middle Eastern or North African—For example, Lebanese, Iranian, Egyptian, Syrian, Iraqi, Israeli, etc.*
- *Native Hawaiian or Pacific Islander—For example, Native Hawaiian, Samoan, Chamorro, Tongan, Fijian, Marshallese, etc.*
- *White—For example, English, German, Irish, Italian, Polish, Scottish, etc.*

Under section F, ''About the Person Filling Out This Form,'' we propose to change the title of the field from ''City and State/Province'' to ''City and State/Province (including your State/Province will help FDA review your report) for field F4, and under ''Send This Report by mail or fax,'' revise the mailing address to the following: Attn: MedWatch Program, White Oak Campus, Building 22, G0207, 10903 New Hampshire Ave., Silver Spring, MD 20993.

FDA welcomes comments from the public and interested parties on a proposed report concept.

VIII. Consumer Complaint Form

The consumer complaint form will be used by all Centers to facilitate reporting complaints and product problems from the public to FDA. The four required data elements (patient identifier, description of event or problem, product name, and reporter), demographic information, and contact information (phone number and/or email address) may be requested. This form will be available externally with the long-term goal to allow submission of streamlined reports online.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA center or 21 CFR section and/or FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CBER/CDER, FDA 3500 (voluntary reporting)	58,711	1	58,711	0.66 (40 minutes)	38,749
CBER, FDA 3500A; 600.80; 1271.350 (mandatory reporting)	599	98	58,702	1.21	71,029
CBER, FDA 3500B	13,750	1	13,750	0.46 (28 minutes)	6,325
CDER, FDA 3500B	18,961	1	18,961	0.46 (28 minutes)	8,722
CDRH, FDA 3500 and FDA 3500B	15,304	1	15,304	0.46 (28 minutes)	7,040
CTP, FDA 3500	39	1	39	0.66 (40 minutes)	26
HFP, FDA 3500	7,442	1.061	7,895	0.66 (40 minutes)	5,211
HFP, FDA 3500A	1,659	1	1,659	1.21	2,007
Written requests for temporary waiver under § 329.100(c)(2)	1	1	1	1	1
Total					139,110

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
CBER = Center for Biologics Evaluation and Research
CDER = Center for Drug Evaluation and Research
CDRH = Center for Devices and Radiological Health
HFP = Human Foods Program
CTP = Center for Tobacco Products

The estimates in table 1 are based on current Agency data and our experience with the information collection.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN E-SUBMISSIONS INCLUDING VIA SRP [1]

FDA form 3800	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reportable Foods Registry (mandatory reports)	875	1	875	0.6 (36 minutes)	525
Reportable Foods Registry (voluntary reports)	5	1	5	0.6 (36 minutes)	3
Food, Infant Formula, and Cosmetic Adverse Event Reports	1,165	1.2	1,398	0.6 (36 minutes)	839
Voluntary Dietary Supplement Adverse Event Reports	360	1.2	432	0.6 (36 minutes)	259
Mandatory Dietary Supplement Adverse Event Reports	80	12	960	1	960
Animal Food: Voluntary Pet Food Reports	1,401	1	1,401	0.6 (36 minutes)	841
Animal Food: Voluntary Livestock Food Reports	23	1	23	0.6 (36 minutes)	14
Voluntary Tobacco Product Health Problem or Product Problem (i.e., adverse experience) Reports to SRP (both questionnaires)	176	1	176	0.6 (36 minutes)	106
Mandatory Tobacco Product Health Problem or Product Problem (i.e., adverse experience) Reports 1114.41(a)(2)	3	6	18	0.6 (36 minutes)	11
Total			5,924		3,961

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents for the Voluntary Tobacco Product Health Problem or Product Problem Reports e-submissions has decreased from 204 to 176, according to an updated analysis.

Based on burden estimates associated with the Premarket Tobacco Product applications and Recordkeeping Requirements regulation, we have decreased the average burden per response from 1 hour to 36 minutes for ''1114.41(a)(2); Mandatory Tobacco Product Health Problem or Product Problem Reports.''

CVM reports a decrease in the number of submissions received over the last few years.

FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) has increased the number of direct safety reports from healthcare providers and consumers. Additionally, CDER mandatory reports Form FDA 3500A previously included in this information collection, are now reported in the approved information collection, OMB control number 0910–0230. However, increases in receipts of CBER mandatory reports have obscured any decrease in burden. Adverse event reports related to 21 CFR 310.305 from outsourcing facilities are also included in OMB control number 0910–0230 and decreases the total burden of this collection.

Based on updated data, the Center for Devices and Radiological Health (CDRH) has revised our estimate for forms FDA 3500 and FDA 3500B. Additionally, we have determined that the estimate previously reported in this information collection for mandatory reporting under part 803, associated with medical device products, using Form FDA 3500A, is redundant with our approved burden estimates in OMB control number 0910–0437 ''Medical Device Reporting (under part 803).'' We have therefore removed CDRH reporting via Form FDA 3500A from this information collection request and continue to account for its burden in OMB control number 0910–0437.

Based on Agency experience the Human Food Program's estimated burden for the information collection reflects an overall increase. We attribute this adjustment to an increase in the number of submissions we received over the last few years, due primarily to changes in the infant formula industry.

Therefore, the cumulative changes, both program changes which include form revisions, and adjustments reflecting fluctuations in submissions, as well as removing double-counted burden reflects and overall increase of 116,014 hours to the total burden for this information collection.

Dated: January 7, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01149 Filed 1–16–25; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5943]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tobacco Product Establishment Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Tobacco Product Establishment Registration and Listing.''

DATES: Either electronic or written comments on the collection of information must be submitted by March 18, 2025.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be

considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 18, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–5943 for ''Tobacco Product Establishment Registration and Listing.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Tobacco Product Establishment Registration and Listing

OMB Control Number 0910–0650—Revision

This information collection supports the Food and Drug Administration regulations and guidance. Tobacco products are generally governed by chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (sections 900 through 921) (21 U.S.C. 387 through 21 U.S.C. 387u).

Section 905 of the FD&C Act requires the annual registration of any ''establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.'' Section 905 of the FD&C Act requires this registration be completed by December 31 of each year. The Secretary of Health and Human Services (Secretary) has delegated to the Commissioner of Food and Drugs the responsibility for administering the FD&C Act, including section 905. Section 905 of the FD&C Act requires owners or operators of each establishment to register: (1) their name; (2) places of business; (3) a list of all tobacco products which are manufactured by that person; (4) a copy of all labeling and a reference to the authority for the marketing of any tobacco product subject to a tobacco

product standard under section 907 of the FD&C Act (21 U.S.C. 387g) or to premarket review under section 910 of the FD&C Act (21 U.S.C. 387j); (5) a copy of all consumer information and other labeling; (6) a representative sampling of advertisements; (7) upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and (8) upon request made by the Secretary, if the registrant has determined that a tobacco product contained in the product list is not subject to a tobacco product standard established under section 907 of the FD&C Act, a brief statement of the basis upon which the registrant made such determination.

FDA collects the information submitted pursuant to section 905 of the FD&C Act through the Tobacco Registration and Product Listing Module Next Generation (TRLM NG) electronic portal, and through paper forms; Form FDA 3741, ''Registration and Listing for Owners and Operators of Domestic Tobacco Product Establishments,'' available at *https://www.fda.gov/media/77915/download,* and Form FDA 3741a, ''Registration and Listing for Owners and Operators of Domestic Deemed Tobacco Product Establishments,'' available at *https://www.fda.gov/media/99863/download*) for those individuals who are unable to submit online through TRLM NG. TRLM NG is designed to streamline the data entry process for registration and product listing. FDA strongly encourages electronic submission through TRLM NG, available at *https://www.fda.gov/tobacco-products/manufacturing/tobacco-registration-and-listing-module-next-generation-trlm-ng-instructions,* to facilitate efficiency and timeliness of data submission and management.

FDA has also published a guidance for industry entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments'' (March 2023; *https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM191940.pdf*). This guidance is intended to assist persons making tobacco product establishment registration and product listing submissions to FDA.

At this time, FDA is proposing several updates to the information submitted pursuant to section 905 of the FD&C Act through Form FDA 3741, Form FDA 3741a, and the corresponding information submitted electronically through TRLM NG. The updates include: (1) merging the contents of Form FDA 3741a into Form FDA 3741 to create an updated and comprehensive Form FDA 3741, ''Registration and Product Listing of Tobacco Product Manufacturing Establishments''; (2) restructuring and developing sections of the updated Form FDA 3741 for ease of navigation and data input; (3) updating terminology of the updated Form FDA 3741 for clarity; (4) updating instructions of the updated Form FDA 3741 for clarity; and (5) aligning tobacco product categories and subcategories of the updated Form FDA 3741 to be consistent with other FDA tobacco forms. Finally, FDA is proposing to add a new product listing spreadsheet (Form FDA 3741b) to this information collection. FDA anticipates the new Form FDA 3741b will streamline product listing submissions and subsequent FDA review.

Although these proposed updates will increase the overall length of the updated and comprehensive Form FDA 3741 and the corresponding information submitted electronically through TRLM NG, FDA anticipates these updates will streamline the navigation and completion of Form FDA 3741, cut down on redundancies, increase overall user efficiency and ultimately enable industry to more accurately and efficiently convey the required registration and listing information to FDA as required by section 905 of the FD&C Act. Both ''Registration and Listing for Owners and Operators of Domestic Tobacco Product Establishments''; Form FDA 3741 and ''Registration and Listing for Owners and Operators of Domestic Deemed Tobacco Product Establishments''; Form FDA 3741a will be discontinued upon implementation of the updated and comprehensive Form FDA 3741; ''Registration and Product Listing of Tobacco Product Manufacturing Establishments''.

Section 904(a)(1) of the FD&C Act requires that each tobacco product manufacturer or importer submit ''a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand'' by December 22, 2009. This section applies only to those tobacco products manufactured and distributed before June 22, 2009, and which are still manufactured as of the date of the ingredient listing submission.

Section 904(c) of the FD&C Act requires that a tobacco product manufacturer: (1) provide all information required under section 904(a) of the FD&C Act to FDA ''at least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment''; (2) advise FDA in writing at least 90 days prior to adding any new tobacco additive or increasing in quantity an existing tobacco additive, except for those additives that have been designated by FDA through regulation as not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use; and (3) advise FDA in writing at least 60 days of such action of eliminating or decreasing an existing additive, or adding or increasing an additive that has been designated by FDA through regulation as not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use.

FDA collects the information submitted pursuant to section 904(a)(1) and 904(c) of the FD&C Act through an electronic portal, and through a paper form (Form FDA 3742, ''Listing of Ingredients in Tobacco Products'' available at *https://www.fda.gov/media/77661/download*) for those individuals who choose not to use the electronic portal.

In addition to the development of the electronic portal and paper form, FDA published a guidance entitled ''Listing of Ingredients in Tobacco Products'' (March 2023; *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/listing-ingredients-tobacco-products*). This guidance is intended to assist persons making tobacco product ingredient listing submissions. FDA also provides a technical guide, embedded hints, and a web tutorial to the electronic portal, available at *https://www.fda.gov/industry/fda-esubmitter/using-esubmitter-prepare-tobacco-product-submissions*.

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product [1] [2] to be subject to Chapter 9 of

[1] Tobacco Product: as stated in section 201(rr) of the FD&C Act in relevant part, a tobacco product: (1) means any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product); and (2) does not mean an article that is a drug defined under section 201(g)(1) of the FD&C Act, a device defined under section 201(h) of the FD&C Act, or a combination product described in section 503(g) of the FD&C Act, or a food under section 201(f) of the FD&C Act if it contains no nicotine, or no more than trace amounts of naturally occurring nicotine.

[2] Premium Cigars: on August 9, 2023, the U.S. District Court for the District of Columbia issued an

Continued

the FD&C Act (section 901(b) of the FD&C Act (21 U.S.C. 387a(b))). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah tobacco, pipe tobacco, nicotine gels, and dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976) (''the final deeming rule'').

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA form/activity/FD&C section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Establishment Registration (Initial), the initial registration of a tobacco product establishment (Current) Form FDA 3741, Registration and Product Listing for Owners and Operators of Domestic Establishments; Form FDA 3741a–Registration and Listing for Owners and Operators of Domestic Deemed Tobacco Product Establishments (Electronic and Paper submissions) Sections 905(b), 905(c), 905(d), 905(h), or 905(i).	75	1	75	1.6 (96 minutes)	120
Establishment Registration (Initial), the initial registration of a tobacco product establishment (Updated) Form FDA 3741, Registration and Product Listing of Tobacco Product Manufacturing Establishments Sections 905(b), 905(c), 905(d), 905(h), or 905(i).	75	1	75	1.5 (90 mins)	113
Establishment Registration (Renewal), the registration renewal of a tobacco product establishment (Current) Form FDA 3741, Registration and Product Listing for Owners and Operators of Domestic Establishments; Form 3741a–Registration and Listing for Owners and Operators of Domestic Deemed Tobacco Product Establishments (Electronic and Paper submissions) Sections 905(b), 905(c), 905(d), 905(h), or 905(i).	1,003	1	1,003	.17 (10 minutes)	171
Establishment Registration (Renewal), the registration renewal of a tobacco product establishment (Updated) Form FDA 3741, Registration and Product Listing of Tobacco Product Manufacturing Establishments Sections 905(b), 905(c), 905(d), 905(h), or 905(i).	1,003	1	1,003	.33 (20 min)	331
Product Listing (Initial), the initial listing of tobacco products (New) Form FDA 3741b, (New) Product List and Material File Information Spreadsheet.	75	1	75	2 (120 mins)	150
Product Listing (Renewal) updates to the tobacco product listings (New) Form FDA 3741b, (New) Product List and Material File Information Spreadsheet.	1,003	1	1,003	.5 (30 mins)	502
Tobacco Product Listing Form FDA 3742, Listing of Ingredients Section 904(a)(1).	16	1	16	2 (120 mins)	32
Tobacco Product Listing Form FDA 3742, Listing of Ingredients Section 904(c).	37	10	370	.40 (24 minutes)	148
Obtaining a Dun and Bradstreet D–U–N–S Number.	100	1	100	0.5 (30 minutes)	50
Total			2,642		1,617

We have revised our burden estimates to this information collection. FDA has based these estimates on experience with this information collection, information we have available from interactions with industry, registration and listing reports, and TRLM NG.

order vacating FDA's rule deeming tobacco products to be subject to FDA's tobacco product authorities ''insofar as it applies to premium cigars.'' *Cigar Ass'n of Am.* v. *FDA,* No. 16-cv-01460, Dkt. No. 277 (D.D.C. Aug. 9, 2023), appeal filed No. 23–5220 (D.C. Cir. Sep. 29, 2023).

For purposes of its ruling, the court specified that premium cigars are those cigars that: (1) are wrapped in whole tobacco leaf; (2) contain a 100 percent leaf tobacco binder; (3) contain at least 50 percent (of the filler by weight) long filler tobacco; (4) are handmade or hand rolled; (5) have no filter, nontobacco tip, or nontobacco mouthpiece; (6) do not have a characterizing flavor other than tobacco; (7) contain only tobacco, water, and vegetable gum with no other ingredients or additives; and (8) weigh more than 6 pounds per 1,000 units. FDA recognizes that, absent further relief, it is bound by the District Court's order. The Agency is continuing to evaluate the evolving legal and practical circumstances surrounding premium cigars and will provide further information as it is available.

Based on updated data, we have revised our estimate for sections 905(b), 905(c), 905(d), 905(h), or 905(i) of the FD&C Act. ''Tobacco Product Establishment Initial Registration and Listing''; Form FDA 3741: ''Registration and Product Listing for Owners and Operators of Domestic Establishments''; Form FDA 3741a: ''Registration and Listing for Owners and Operators of Domestic Deemed Tobacco Product Establishments'' (Electronic and Paper submissions) reflects a reduction from 200 to 75 respondents and ''Tobacco Product Establishment Renewal Registration and Listing''; Form FDA 3741: ''Registration and Product Listing for Owners and Operators of Domestic Establishments''; Form FDA 3741a: ''Registration and Listing for Owners and Operators of Domestic Deemed Tobacco Product Establishments'' (Electronic and Paper submissions) reflects a reduction from 2,572 to 1,003 respondents.

Under sections 905(b), 905(c), 905(d), 905(h), or 905(i) of the FD&C Act, FDA estimates up to 75 new establishments will submit one initial establishment registration and product listing report each year. These estimates reflect the burden that will be associated with this information collection upon OMB approval of the revision and implementation of the proposed updates. The Agency estimates that up to 75 tobacco establishments will each submit 1 initial establishment registration and product listing report each year using the new Form FDA 3741, ''Registration and Product Listing of Tobacco Product Manufacturing Establishments'', which is expected to take 1.5 hours, for a total 113 burden hours.

FDA estimates up to 75 establishments will submit one initial listing of tobacco products report each year. These estimates reflect the burden that will be associated with this information collection upon OMB approval of the revision and implementation of the proposed updates. The Agency estimates that up to 75 tobacco establishments will each submit 1 initial product list and material file information spreadsheet each year using the new Form FDA 3741b, which is expected to take 2 hours, for a total 150 burden hours.

FDA estimates that the confirmation or updating of establishment registration and product listing information as required by section 905 of the FD&C Act will take 20 minutes annually per confirmation or update per establishment. These estimates reflect the burden that will be associated with this information collection upon OMB approval of the revision and implementation of the proposed updates. Based on FDA's experience with current establishment registration and product listings submitted to the Agency, the Agency estimates that on average 1,003 establishments will each submit one confirmation or updated report each year, using the new Form FDA 3741, which is expected to take 0.33 hour (20 minutes) for a total 331 burden hours.

FDA estimates that the confirmation or updating of listing of tobacco products will take 30 minutes annually per confirmation or update per establishment. These estimates reflect the burden that will be associated with this information collection upon OMB approval of the revision and implementation of the proposed updates. Based on FDA's experience with current establishment registration and product listings submitted to the Agency, the Agency estimates that on average 1,003 establishments will each submit one confirmation or updated report each year, using the new Form FDA 3741b, which is expected to take 0.5 hour (30 minutes) for a total 502 burden hours.

FDA estimates that the submission of ingredient listings required by section 904(a)(1) of the FD&C Act for each establishment will take 2 hours initially. Ingredients may be submitted electronically through the CTP portal or if unable to submit ingredients electronically then by mail using Form FDA 3742. FDA estimates that 16 establishments will initially submit one report annually at 2 hours per report, for a total of 32 hours.

Based on FDA's experience and the number of new products authorized to be introduced or delivered for introduction into interstate commerce submitted over the past 3 years, FDA estimates that 37 establishments will each submit 10 reports (one every 6 months). FDA also estimates that the confirmation or updating of product (ingredient) listing information required by section 904(c) of the FD&C Act is expected to take 0.40 hour (24 minutes) for a total 148 burden hours. FDA estimates that obtaining a DUNS (data universal numbering system) number will take 30 minutes. FDA assumes that all new establishment facilities that will be required to initially register under section 905 of the FD&C Act would obtain a DUNS number. FDA estimates that up to 100 establishments that would need to obtain this number each year. The total industry burden to obtain a DUNS number is 50 hours.

Our estimated burden for the information collection reflects an overall increase of 655 hours and a decrease of 616 responses. We attribute this adjustment to the proposed revisions to this information collection to add the updated and comprehensive Form FDA 3741, ''Registration and Product Listing of Tobacco Product Manufacturing Establishments'' and add Form FDA 3741b, ''Product List and Material File Information Spreadsheet''.

Dated: January 14, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01217 Filed 1–16–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Maternal and Child Health Jurisdictional Survey Instrument for the Title V MCH Block Grant Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at

paperwork@hrsa.gov or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal and Child Health Jurisdictional Survey Instrument for the Title V MCH Block Grant Program, OMB No. 0906–0042—Revision.

Abstract: The purpose of the Title V Maternal and Child Health (MCH) Services Block Grant is to improve the health of the nation's mothers, infants, children, including children with special health care needs, and their families by creating Federal/State partnerships that provide each State/jurisdiction with needed flexibility to respond to its individual MCH population needs. Unique to the MCH Block Grant is a commitment to performance accountability, while assuring State flexibility. Using a three-tiered national performance measure framework, which includes National Outcome Measures, National Performance Measures, and Evidence-Based and -Informed Strategy Measures, State MCH Block Grant programs report annually on their performance relative to the selected national performance and outcome measures. Such reporting enables the State and Federal program offices to assess the progress achieved in key MCH priority areas and to document MCH Block Grant program accomplishments.

By legislation (section 505(a) and 506(a) of title V of the Social Security Act), the MCH Block Grant Application/Annual Report must be developed by, or in consultation with, the State MCH health agency. In establishing State reporting requirements, HRSA considers the availability of national data from Federal agencies. Data for the National Performance and Outcome Measures are pre-populated for States in the Title V Information System. Such national data sources often do not include data from the title V jurisdiction grantees, with the exception of the District of Columbia. As a result, the eight remaining jurisdictions (*i.e.,* American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and U.S. Virgin Islands) have limited access to significant data and MCH indicators, with limited resources for collecting these data.

Sponsored by HRSA, the MCH Jurisdictional Survey is designed to produce data on the physical and emotional health of mothers and children under 18 years of age in the following eight jurisdictions: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and U.S. Virgin Islands. More specifically, the MCH Jurisdictional Survey collects information on factors related to the well-being of children, including health status, visits to health care providers, health care costs, and health insurance coverage. In addition, the MCH Jurisdictional Survey collects information on factors related to the well-being of mothers, including health risk behaviors, health conditions, and preventive health practices. Collecting these data will enable the jurisdictions to meet Federal performance reporting requirements and demonstrate the impact of MCH Block Grant funding on MCH outcomes.

The MCH Jurisdictional Survey was designed based on information-gathering activities with title V leadership and program staff in the jurisdictions, Federal experts, and organizations with relevant data collection experience. Survey items are based on the National Survey of Children's Health, the Behavioral Risk Factor Surveillance System, the Youth Behavior Surveillance System, and selected other Federal studies. The Survey is designed as a core questionnaire to be administered across all jurisdictions with a supplemental set of survey questions customized to the needs of each jurisdiction.

The MCH Jurisdictional Survey has been conducted annually since 2019, with several modifications to address emerging issues and challenges related to survey questions and methods. The 2022 extension (ICR 202203–0906–002) enhanced the detail in collecting demographic data through race and ethnicity survey questions in response to jurisdictional feedback. Since the 2022 extension, two non-substantive change requests (ICRs: 202211–0906–001, and 202404–0906–002) allowed for adjustments, such as refining hurricane-related questions, to make them more general and increasing sample sizes.

A 60-day notice published in the **Federal Register** on October 31, 2024, 89 FR 86822 and 86823. There were no public comments.

Need and Proposed Use of the Information: There is an ongoing need for future data collections, as data from the MCH Jurisdictional Survey is used to measure progress on national performance and outcome measures under the Title V MCH Services Block Grant Program. This survey instrument is critical to collect information on factors related to the well-being of all mothers, children, and their families in the jurisdiction MCH Block Grant programs, which address their unique MCH needs.

This revision enables continued data collection for Federal reporting and to show the impact of MCH Block Grant funding on jurisdiction MCH priorities. The current request proposes further updates to survey questions to align with new Federal data standards, including updated guidance from OMB on collecting information on race and ethnicity.[1] Updates also reflect program oversight and administration needs.

To continue improving the precision of the data in all jurisdictions, HRSA also seeks to increase the sample size. Given the varying populations of children in each jurisdiction, the increased sample size varies for each jurisdiction. While the target number of interviews for each jurisdiction may be limited by funding, the maximum number of completed interviews possible for each jurisdiction is as follows: American Samoa, 450; Guam, 450; Commonwealth of the Northern Mariana Islands, 500; Republic of Palau, 250; Puerto Rico, 1,250; Republic of the Marshall Islands, 300; Federated States of Micronesia, 450; and U.S. Virgin Islands, 350.

Likely Respondents: The respondent universe is women age 18 or older who live in one of the eight targeted jurisdictions and who are mothers or guardians of at least one child aged 0–17 years living in the same household.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden

[1] Office of Management and Budget, ''Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity,'' **Federal Register**, 89 FR 22182 through 22190 (March 29, 2024), *https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and/*.

hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Burden hours per form	Total burden hours
Adults—Puerto Rico	Screener	5,205	1	5,205	0.03	156.15	1,093.65
	Core	1,250	1	1,250	0.75	937.50	
Adults—U.S. Virgin Islands	Screener	1,457	1	1,457	0.03	43.71	288.71
	Core	350	1	350	0.70	245	
Adults—Guam	Screener	1,334	1	1,334	0.03	40.02	337.02
	Core	450	1	450	0.66	297	
Adults—American Samoa	Screener	564	1	564	0.03	16.92	345.42
	Core	450	1	450	0.73	328.50	
Adults—Federated States of Micronesia.	Screener	625	1	625	0.03	18.75	324.75
	Core	450	1	450	0.68	306.00	
Adults—Republic of the Marshall Islands.	Screener	360	1	360	0.03	10.80	205.80
	Core	300	1	300	0.65	195.00	
Adults—Commonwealth of the Northern Mariana Islands.	Screener	670	1	670	0.03	20.10	395.10
	Core	500	1	500	0.75	375	
Adults—Republic of Palau	Screener	285	1	285	0.03	8.55	183.55
	Core	250	1	250	0.70	175	
Total	Screener	10,500	1	10,500	0.03	315.00	[2] 3,155
	Core	4,000	1	4,000	0.71	2,840.00	

The table above shows a total annual burden of 3,155 hours, a decrease from the previously estimated 3,480.52 hours in ICR 202404–0906–002. Although the total number of interviews has increased, the burden hours have declined due to two factors: (1) survey timings have been adjusted to reflect actual survey times from the three completed rounds of data collection, rather than prior estimates and (2) eligibility assumptions and response rates have been updated based on actual results from the same three rounds of data collection experience.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2025–01150 Filed 1–16–25; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Environmental Information and Documentation (EID), OMB No. 0915–0324, Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: HRSA Environmental Information and Documentation, OMB No. 0915–0324—Extension.

Abstract: HRSA proposes an extension of the Paperwork Reduction Act approval for the Environmental Information and Documentation (EID) checklist, which consists of information that the agency is required to obtain to comply with the National Environmental Policy Act (NEPA) of 1969 as amended by the Fiscal Responsibility Act of 2023. NEPA establishes the federal government's national policy for protection of the environment. The EID checklist must be completed and submitted by applicants for HRSA funds that plan to engage in construction or other projects that will potentially impact the environment. HRSA uses the checklist to ensure that decision-making processes are consistent with NEPA and other related environmental and historic preservation laws. The extension will support HRSA's implementation of programs with capital improvements that have the potential to significantly affect the human environment, such as construction/expansion and alteration/renovation activities, as defined in the associated HRSA program guidance, or installation of fixed equipment.

A 60-day notice published in the **Federal Register** on October 24, 2024, 89 FR 84898, No. 2024–24732; pp. 84898 and 84899. There were no public comments.

Need and Proposed Use of the Information: Applicants for HRSA funds must provide information and assurance of compliance with NEPA on the EID checklist. This information is reviewed during the Pre-Award stage (and/or prior to the implementation of the project). The information is reviewed in the Post Award stage for project changes and the information is reviewed before the implementation of the project changes.

[2] For the purposes of this table, we have rounded to the nearest hundredth decimal place, which may result in slight discrepancies in the total burden hours.

Likely Respondents: HRSA applicants applying for federal loan guarantees, federal construction grants, and cooperative agreements.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
NEPA EID Checklist	1,500	1	1,500	1	1,500
Total	1,500		1,500		1,500

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2025–01114 Filed 1–16–25; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee) has scheduled a public meeting. Information about ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: Thursday, February 13, 2025, from 10 a.m. to 4 p.m. eastern time (ET) and Friday, February 14, 2025, from 10 a.m. to 4 p.m. ET.

ADDRESSES: This meeting will be held via webinar. While this meeting is open to the public, advance registration is required. Please visit the ACHDNC website for information on registration, *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html,* not later than 12 p.m. ET on February 12, 2025. Instructions on how to access the meeting via webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: CDR Leticia Manning, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room, Rockville, Maryland 20857; 301–443–8335; or *ACHDNC@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of Health and Human Services (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. The ACHDNC reviews and reports regularly on newborn and childhood screening practices, recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing legislation. In addition, ACHDNC's recommendations regarding inclusion of additional conditions for screening on the Recommended Uniform Screening Panel, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

During the February 13–14, 2025, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Possible agenda items may include the following topics:

(1) An interim update on the evidence review of metachromatic leukodystrophy,

(2) A presentation on the Newborn Screening Contingency Plan framework,

(3) A panel discussion on genomic sequencing in newborns,

(4) A presentation on the National Institutes of Health Newborn Screening by Whole Genome Sequencing Collaboratory, and

(5) An update from the ACHDNC Naming and Counting Condition ad hoc topic group and potential Committee vote on a list of conditions that should be considered for evidence review.

Although the agenda includes updates relating to evidence review of conditions that may lead to future votes, the meeting will not include any Committee votes to add conditions to the Recommended Uniform Screening Panel. Agenda items are subject to change as priorities dictate. Information about ACHDNC, including a roster of members and past meeting summaries, is also available on the ACHDNC website.

Members of the public will have the opportunity to provide comments on any or all of the above agenda items. Public participants may request to provide general oral comments and may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to provide a written statement or make oral comments to ACHDNC must be submitted via the registration website by 12 p.m. ET on Thursday, January 30, 2025. Written comments will be shared with the Committee prior to the meeting so that they have an opportunity to consider them in advance of the meeting.

Individuals who need special assistance or another reasonable accommodation should notify CDR Leticia Manning at the address and

phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2025–01218 Filed 1–16–25; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year's increase in prices as measured by the Consumer Price Index.

DATES: January 15, 2025 unless an office administering a program using the guidelines specifies a different effective date for that particular program.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, State, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact Kendall Swenson, Office of the Assistant Secretary for Planning and Evaluation, Room 404E.3, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 795–7309—or visit *http://aspe.hhs.gov/poverty/.*

For general questions about the poverty guidelines themselves, visit *https://aspe.hhs.gov/poverty/.*

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283. You also may visit *https://www.uscis.gov/i-864.*

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), visit *https://www.hrsa.gov/get-health-care/affordable/hill-burton/index.html.*

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's website at *https://www.census.gov/topics/income-poverty/poverty.html* or contact the Census Bureau's Customer Service Center at 1–800–923–8282 (toll-free) or visit *https://ask.census.gov* for further information.

SUPPLEMENTARY INFORMATION:

Background

Section 673(2) of the Community Services Block Grant (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI–U). The poverty guidelines are used by Medicaid and a number of other Federal programs as a criterion for some or all eligibility determinations. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the applicable percentage change in the Consumer Price Index for All Urban Consumers (CPI–U). The guidelines in this 2025 notice reflect the 2.9 percent price increase between calendar years 2023 and 2024. After updating for inflation, the guidelines are rounded and standardized to establish the same interval between each family size. In rare circumstances, rounding and standardizing in the formula result in small decreases in the poverty guidelines for some household sizes even when the inflation factor is not negative. In cases where the year-to-year change in inflation is not negative and rounding and standardizing in the formula result in reductions to the guidelines from the previous year for some household sizes, the guidelines for the affected household sizes are fixed at the prior year's guidelines. As in prior years, these 2025 guidelines are roughly equal to the poverty thresholds for calendar year 2024, which the Census Bureau expects to publish in final form in September 2025.

The poverty guidelines continue to be derived from the Census Bureau's current official poverty thresholds; they are not derived from the Census Bureau's Supplemental Poverty Measure (SPM).

The following guideline figures represent annual income.

2025 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household	Poverty guideline
1	$15,650
2	21,150
3	26,650
4	32,150
5	37,650
6	43,150
7	48,650
8	54,150

For families/households with more than 8 persons, add $5,500 for each additional person.

2025 POVERTY GUIDELINES FOR ALASKA

Persons in family/household	Poverty guideline
1	$19,550
2	26,430
3	33,310
4	40,190
5	47,070
6	53,950
7	60,830
8	67,710

For families/households with more than 8 persons, add $6,880 for each additional person.

2025 POVERTY GUIDELINES FOR HAWAII

Persons in family/household	Poverty guideline
1	$17,990
2	24,320
3	30,650
4	36,980
5	43,310
6	49,640
7	55,970
8	62,300

For families/households with more than 8 persons, add $6,330 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The

poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the ''OMB'' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as ''the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).''

Some Federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-Federally-funded activities also may choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged and non-aged one-person and two-person units.)

This notice does not provide definitions of such terms as ''income'' or ''family'' as there is considerable variation of these terms among programs that use the poverty guidelines. The legislation or regulations governing each program define these terms and determine how the program applies the poverty guidelines. In cases where legislation or regulations do not establish these definitions, the entity that administers or funds the program is responsible to define such terms as ''income'' and ''family.'' Therefore, questions such as net or gross income, counted or excluded income, or household size should be directed to the entity that administers or funds the program.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2025–01377 Filed 1–16–25; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group Integrative Myocardial Physiology/Pathophysiology B Study Section.

Date: February 12–13, 2025.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive ,Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kirk E. Dineley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 806E, Bethesda, MD 20892, (301) 867–5309, *dineleyke@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Drug and Biologic Therapeutic Delivery Study Section.

Date: February 18–19, 2025.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Janice Duy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3139, *janice.duy@nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group Cancer Genetics Study Section.

Date: February 18–19, 2025.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications..

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301 435 1256, *biesj@mail.nih.gov*..

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: February 18–19, 2025.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.nih.gov*.

Name of Committee: Social and Community Influences on Health Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: February 18–19, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health Rockledge II 6701 Rockledge Drive Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Joshua J. Matacotta, Psy.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–7498, *josh.matacotta@nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cell Signaling and Molecular Endocrinology Study Section.

Date: February 18–19, 2025.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health Rockledge II 6701 Rockledge Drive Bethesda, MD 20892.

Meeting Format: Virtual Meeting

Contact Person: Latha Malaiyandi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, *malaiyandilm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01097 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis; Panel PAR 22–069 High Impact, Interdisciplinary Science in NIDDK Research Areas (RC2).

Date: March 7, 2025.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Tori Stone, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6707 Democracy Boulevard, Rm 7013, Bethesda, MD 20892–5452, (301) 827–0994, *tori.stone@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 14, 2025.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01233 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Applied Therapeutics for Cancer Integrated Review Group; Advancing Therapeutics A Study Section.

Date: February 13–14, 2025.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Phoenix Park Hotel, 520 North Capitol St. NW, Washington, DC 20001.

Meeting Format: In Person.

Contact Person: Maureen Shuh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4097, *maureen.shuh@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Informatics and Digital Health Study Section.

Date: February 13–14, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Paul Hewett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room Bethesda, MD 20892, (240) 672–8946, *hewettmarxpn@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neuronal Communications Study Section

Date: February 13–14, 2025.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Prithi Rajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 435–1042, *prithi.rajan@nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interdisciplinary Clinical Care in Specialty Care Settings Study Section.

Date: February 13–14, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Abu Saleh Mohammad Abdullah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–4043, *abuabdullah.abdullah@nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: February 13–14, 2025.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC, 7717 Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cardiovascular and Respiratory Diseases Study Section.

Date: February 13–14, 2025.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Raquel L Velazquez-Kronen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (513) 301–9047, *velazquezrl@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Lifestyle Change and Behavioral Health Study Section.

Date: February 13–14, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 10J08 Bethesda, MD 20892, (301) 827–6401, *pamela.jeter@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Human Studies of Diabetes and Obesity Study Section.

Date: February 13–14, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Hui Chen, M.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, (301) 435–1044, *chenhui@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01098 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be held virtually and is open to the public as indicated below. Individuals who plan to attend the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be access from the NIH Videocasting and Podcase website *http://videocast.nih.gov/* or *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 4, 2025.

Closed: 9:00 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Rockville, MD 20892.

Open: 9:30 a.m. to 3:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting

Virtual Access: The meeting will be videocast and can be accessed from the NIH Videocast. *http://videocast.nih.gov/* or *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.* Please note, the link to the videocast meeting will be posted within a week of the meeting date.

Contact Person: Charisee Lamar, Ph.D., M.P.H., R.R.T., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–C, Bethesda, MD 20892–7924. (301) 827–5517. *Email: lamarc@mail.nih.gov*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 13, 2025.

Bruce A. George

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01077 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Repository and Genomics Resource (NRGR).

Date: February 6, 2025.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Liza Litvina, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20852. 301–827–5829, email: *liza.litvina@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 13, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01075 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Single-Site and Pilot Clinical Trials Study Section.

Date: February 26–27, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–P, Bethesda, MD 20892–7924, 301–827–7942, email: *lismerin@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 14, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01141 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group Pediatrics Study Section.

Date: February 26, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Anita Szajek, Ph.D., Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, NIH, 6701 Rockledge Drive, Room 2131D, Bethesda, MD 20892, 301–496–5966, *anita.szajek@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 13, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01096 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications or contract proposals discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Small Grant Program for NHLBI K Award Recipients (R03).

Date: February 18, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Dan Yu, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–D, Bethesda, MD 20817, (301) 402–1081, *email: dan.yu@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; iPSC Contract Review.

Date: February 25, 2025.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kristen Page, BS, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 209B, Bethesda, MD 20892; (301) 827–7953; *email: kristen.page@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI TOPMed: Omics Phenotypes of Heart, Lung, and Blood Disorders.

Date: February 26, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kazuyo Kegan, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892, (301) 402–1334, *email: kazuyo.kegan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 13, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01076 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis; Panel Review of Clinical Study Applications.

Date: February 20, 2025.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute of Dental & Craniofacial Research, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 31 Center Drive, Bethesda, MD 20892, (301) 827–4639, *email: yun.mei@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 13, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01078 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Study Section.

Date: March 25, 2025.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Chi-Tso Chiu, Ph.D., Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, NIH 6710B Rockledge Drive, Rm 2127B Bethesda, MD 20817 (301) 435–7486 *chiuc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 13, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01094 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group Developmental Biology Study Section.

Date: March 14, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.*Contact Person:* Jolanta Maria Topczewska, Ph.D. Scientific Review Branch *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, NIH 6710B Rockledge Drive, Rm. 2131B Bethesda, MD 20892 (301) 451–0000 *jolanta.topczewska@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 13, 2025.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01095 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

This is a virtual meeting and will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute On Deafness And Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: March 17, 2025.

Open: 1:00 p.m. to 1:25 p.m.

Agenda: Reports from the institute staff.

Address: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892,

Virtual Meeting.

Closed: 1:25 p.m. to 6:05 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Address: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892, Virtual Meeting.

Contact Person: Lisa L Cunningham, Ph.D., Scientific Director, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 35A Convent Drive, Rockville, MD 20850, (301) 443–2766, *lisa.cunningham@nih.gov*

Information is also available on the Institute's/Center's home page: *https://www.nidcd.nih.gov/about/advisory-committees,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 14, 2025.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01232 Filed 1–16–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2025–0041]

National Offshore Safety Advisory Committee; Vacancy

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice; request for applications.

SUMMARY: The Coast Guard is re-soliciting applications from persons interested in membership on the National Offshore Safety Advisory Committee (Committee) to fill a vacant position representing entities engaged in offshore oil exploration and production on the Outer Continental Shelf adjacent to Alaska. The Committee advises the Secretary of the Department of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the U.S. Coast Guard.

DATES: Complete applications must reach the Coast Guard on or before February 18, 2025.

ADDRESSES: Applications must include (a) a cover letter expressing interest in an appointment to the Committee and detailing their qualifications to serve as representative in entities engaged in offshore oil exploration and production on the Outer Continental Shelf adjacent to Alaska, (b) a resume detailing the applicant's relevant experience for the position applied for, and (c) a brief 2–3 paragraph biography written in third-person perspective. Applications should be submitted via email with the subject line ''Application for NOSAC'' to *Justin.P.Goff@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Justin Goff, Alternate Designated Federal Officer of the National Offshore Safety Advisory Committee; Telephone (571) 610–0130; or email at *Justin.P.Goff@uscg.mil.*

SUPPLEMENTARY INFORMATION: On February 20, 2024, the Coast Guard published a request in the **Federal Register** (89 FR 12853) soliciting applications for membership in the National Offshore Safety Advisory Committee. The U.S. Coast Guard is re-soliciting applications from persons interested in membership on the National Offshore Safety Advisory Committee to represent entities engaged in offshore oil exploration and production on the Outer Continental Shelf adjacent to Alaska. Applicants who responded to the previous notices do not need to reapply.

The National Offshore Safety Advisory Committee is a Federal advisory committee. The Committee operates under the provisions of the *Federal Advisory Committee Act,* 5 U.S.C. ch. 10 and 46 U.S.C. 15109. The Committee was established on December 4, 2018, by sec. 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* Public Law 115–282, 132 Stat. 4192 and amended by sec. 8331 of the *Elijah E. Cummings Coast Guard Authorization Act of 2020,* Public Law 116–283, and is codified in 46 U.S.C. 15106.

The Committee will advise the Secretary of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the U.S. Coast Guard.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently. The meetings are generally held in cities that have high concentrations of maritime personnel and related marine industry businesses.

All members serve at their own expense and receive no salary or other compensation from the Federal Government.

Under the provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31 of the third full year after the effective date of your appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

In this re-solicitation for Committee member, we will consider applications for one position representing entities engaged in offshore oil exploration and production on the Outer Continental Shelf adjacent to Alaska. The member who fills the position will be appointed to represent the interest as described above.

If you are appointed as a member of the Committee, you will be required to sign a Non-Disclosure Agreement and a Gratuitous Service Agreement.

In order for the Department, to fully leverage broad-ranging experience and education, the National Offshore Safety Advisory Committee must be diverse with regard to professional and technical expertise. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the Nation's people.

If you are interested in applying to become a member of the Committee, email your complete application to *Justin.P.Goff@uscg.mil* as provided in the **ADDRESSES** section of this notice.

The U.S. Coast Guard will not consider incomplete or late applications.

Privacy Act Statement

Purpose: To obtain qualified applicants to fill one vacancy on the National Offshore Safety Advisory Committee. When you apply for appointment to the DHS' National Offshore Safety Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. DHS will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly available Committee documents, membership lists, and Committee reports.

Authorities: 14 U.S.C. 504; 46 U.S.C. 15106 and 15109; and 18 U.S.C. 202(a), and Department of Homeland Security Delegation No. 00915.

Routine Uses: Authorized U.S. Coast Guard personnel will use this information to consider and obtain qualified candidates to serve on the Committee. Any external disclosures of information within this record will be made in accordance with DHS/ALL–009, Department of Homeland Security Advisory Committee (73 FR 57639, October 3, 2008).

Consequences of Failure to Provide Information: Furnishing this information is voluntary. However, failure to furnish the requested information may result in your application not being considered for the Committee.

Dated: January 14, 2025.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2025–01148 Filed 1–16–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2024–0038; OMB No. 1660–0132]

Agency Information Collection Activities: Proposed Collection; Comment Request; Consolidated FEMA-National Training and Education Division (NTED) Level 3 Training Evaluation Forms

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the consolidation of all previous instruments into two evaluation forms to be shared by three FEMA offices to evaluate training programs.

DATES: Comments must be submitted on or before March 18, 2025.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2024–0038. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Samuel Phillips, Supervisory Emergency Management Specialist, NTED, (202) 786–9573, and *Samuel.Phillips@fema.dhs.gov.* Dr. Pamela Moore, Assistant Director, Center for Domestic Preparedness (CDP), (256) 847–2629, and *Pamela.Moore@fema.dhs.gov.* Dalia Abdelmeguid, Supervisory Instructional Systems Specialist, National Disaster and Emergency Management University (NDEMU), (202) 212–8524, and *Dalia.Abdelmeguid@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Training and Education Division (NTED), the Center for Domestic Preparedness (CDP) and the National Disaster and Emergency Management University (NDEMU) are geographically separated components of FEMA's National Preparedness Directorate. As such, all three organizations are part of the National Preparedness Directorate Training Enterprise with unique training missions for specific target audiences and are responsible for supporting and enabling national preparedness Core Capability, Community Lifelines, and Recovery Sector Preparedness performance outcomes described in Presidential Policy Directive (PPD) 8 National Preparedness, the National Preparedness Goal (NPG), the National Preparedness System (NPS), and 2022–2026 FEMA Strategic Plan objectives 1.3, 2.1, 2.2, and 3.1.

Like other Federal training organizations, the NTED, CDP and NDEMU utilize the Kirkpatrick Training Evaluation Model Level 3 survey results as one of several training evaluation tools to inform component program managers and leadership with metrics that monitor and report organizational performance and compliance with the Government Performance, Results and Modernization Act of 2010 (the ''GPRA Modernization Act of 2010''). 31 U.S.C. 1115(b)(6) requires ''. . .a balanced set of performance indicators to be used in measuring or assessing progress toward each performance goal, including, as appropriate, *customer service, efficiency, output, and outcome indicators* [emphasis added].'' Due to the qualitative nature of participants' feedback obtained from this survey measuring impact or changes in course graduates work performance, their occupations or organizational performance behavior the results, with other data, are used to monitor performance of NTED, CDP and NDEMU training programs. NTED and CDP are members of the National Domestic Preparedness Consortium (NDPC). Per 6 U.S.C. 1102(c),the NDPC ''shall identify, develop, *test,* and deliver training to State, local, and tribal emergency response providers, provide on-site and mobile training at the performance and management and planning levels, and facilitate the delivery of training by the training partners of the Department [emphasis added].'' FEMA interprets this authority to ''test training'' as the ability to assess its effectiveness, which this survey directly facilitates.

6 U.S.C. 748(a)(1) directs the FEMA Administrator to, ''in coordination with heads of appropriate Federal agencies, the National Council on Disability, and the National Advisory Council, [ ] carry out a national training program to implement the national preparedness goal, National Incident Management System, National Response Plan, and other related plans and strategies.'' In addition, 6 U.S.C. 748(a)(2) directs the FEMA Administrator, in developing and implementing the national training program, to ''work with government training facilities, academic institutions, private organizations, and other entities that provide specialized, state-of-the-art training for emergency managers or emergency response providers; and utilize, as appropriate, training courses provided by community colleges, State and local public safety academies, State and private universities, and other facilities.''

The Level 3 data collected from course graduates three to six months following training provides NTED, CDP and NDEMU with information and data on how training knowledge, skill and attitudes (KSA's) gained from training transfer to the student's job and organization and if the training was applied to the job, an exercise, or during an operational mission. Note: The

number of NTED CTG training providers may fluctuate, increase, or decrease based on fiscal year grant funding levels approved by Congress.

This revision consolidates all evaluation forms for all offices into two shared instruments.

Collection of Information

Title: Consolidated FEMA-National Training and Education Division (NTED) Level 3 Training Evaluation Forms.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0132.

FEMA Forms: CDP, NDEMU, and NTED Level 3 Student Evaluation Form, FEMA Form FF–008–FY–25–100; CDP, NDEMU, and NTED Level 3 Supervisor Evaluation Form, FEMA Form FF–008–FY–25–101.

Abstract: NTED, CDP, and NDEMU all utilize the Kirkpatrick Four Level Training Evaluation Model to assess training effectiveness. Donald Kirkpatrick developed the four-level model of training evaluation: Level 1 evaluation captures the students' perception or reaction to training. Level 2 completes a pre-post comparison of learning via tests/examinations and performance assessment checklists of the student learning (change in behavior). Level 3 evaluation instruments capture how the training transfers to the students' work environment and their particular job. Lastly, Level 4 captures information about the return on key stakeholder expectations of the course or training program. The data collected by these training evaluation forms is shared with representatives from each course/program's respective target audience during three-year course/program reviews. All three organizations analyze the data to determine what revisions are needed in curriculum, delivery, and to elicit inputs to improve training while providing documentation as to how training was applied, and how it impacts the individual and organization.

Affected Public: State, Local, and Tribal Government; Private Sector.

Estimated Number of Respondents: 20,224.

Estimated Number of Responses: 20,224.

Estimated Total Annual Burden Hours: 5,057.

Estimated Total Annual Respondent Cost: $302,117.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $41,797.

Comments

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Rasco-Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2025–01203 Filed 1–16–25; 8:45 am]

BILLING CODE 9111–72–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2025–0003]

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, the Administrator of FEMA is publishing this notice describing the fiscal year (FY) 2024 Assistance to Firefighters Grant (AFG) Program application process, deadlines, and award selection criteria. This notice explains the differences, if any, between these guidelines and those recommended by representatives of the national fire service leadership during the annual meeting of the Criteria Development Panel (CDP), which was held July 9, 2024. The application period for the FY 2024 AFG Program was Nov. 12, 2024–Dec. 20, 2024, and was announced on the FEMA AFG Program website at *https://www.fema.gov/grants/preparedness/firefighters,* as well as at *https://www.grants.gov.*

DATES: Grant applications for the FY 2024 AFG Program are being accepted electronically through the FEMA Grants Outcomes (FEMA GO) system at *https://go.fema.gov/,* through 5 p.m. ET on Dec. 20, 2024.

ADDRESSES: DHS/FEMA/Grant Programs Directorate, Assistance to Firefighters Grants Branch, 400 C St. SW, 3N, FEMA Headquarters, Washington, DC 20472–3635.

FOR FURTHER INFORMATION CONTACT: Paul Parsons, Chief, Assistance to Firefighters Grants Branch, 1–866–274–0960 or *FireGrants@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The AFG program awards grants directly to fire departments, nonaffiliated emergency medical service (EMS) organizations, and state fire training academies (SFTA) for enhancing the health and safety of first responders and improving their abilities to protect the public from fire and fire-related hazards. Applications for the FY 2024 AFG Program are submitted and processed online through *https://go.fema.gov/.* Before the application period started, the FY 2024 AFG Program Notice of Funding Opportunity (NOFO) was published on FEMA's AFG Program website at *https://www.fema.gov/grants/preparedness/firefighters/assistance-grants.* The AFG Program website provides additional information and materials useful for FY 2024 AFG Program applicants, including Frequently Asked Questions, Application Checklist, AFG Narrative Development Toolkit, Self-Evaluation Sheets for Vehicle Acquisition and Operations Safety, and a Cost-Share Calculator. Based on past AFG Program application periods, FEMA anticipates receiving 8,000 to 10,000 AFG applications this year and $291,600,000 in available funding will support approximately 2,000 grant awards.

Congressional Appropriations

For the FY 2024 AFG Program, Congress appropriated $324 million through the Department of Homeland Security Appropriations Act, 2024, Public Law 118–47, Title III, Protection, Preparedness, Response, and Recovery, Federal Emergency Management Agency, Federal Assistance (2024 DHS Appropriations Act). From this amount, $291.6 million will be made available for FY 2024 AFG Program awards. In addition, section 33 of the Federal Fire

Prevention and Control Act of 1974, as amended (*15 U.S.C. 2229*), requires that a minimum of 10% of available funds be expended for Fire Prevention and Safety (FP&S) Program grants. FP&S Program awards will be made directly to local fire departments and to local, regional, state, or national entities recognized for their expertise in the fields of fire prevention and firefighter safety research and development. The funds appropriated for FY 2024 are available for obligation and award until Sept. 30, 2025. The Federal Fire Prevention and Control Act of 1974 further directs FEMA to administer these appropriations according to the following requirements:

- *Career fire departments:* Not less than 25% of available grant funds.
- *Volunteer fire departments:* Not less than 25% of available grant funds.
- *Combination fire departments and departments using paid-on-call firefighting personnel:* Not less than 25% of available grant funds.
- *Open competition (career, volunteer, and/or combination fire departments and departments using paid-on-call firefighting personnel):* Not less than 10% of available grant funds awarded.
- *EMS providers including fire departments and nonaffiliated EMS organizations:* Not less than 3.5% of available grant funds awarded.
- *Nonaffiliated EMS providers:* Not more than 2% of the total available grant funds.
- *State Fire Training Academies (SFTAs):* Not more than 3% of available grant funds shall be collectively awarded to SFTA applicants, with a maximum of $500,000 per applicant.
- *Vehicles:* Not more than 25% of available grant funds may be used for the purchase of vehicles; by policy and based on recommendations, FEMA intends to dedicate 10% of those vehicle funds for ambulances.
- *Micro grants:* This is a voluntary funding limitation choice made by the applicant for requests submitted within the operations and safety activity. It is not an additional funding opportunity. Micro grants are awards that have a Federal participation (share) that does not exceed $75,000. Applicants that select micro grants may receive additional consideration for award. If an applicant selects micro grants in their application, they will be limited in the total amount of funding their organization can be awarded. If they are requesting funding in excess of $75,000 Federal participation, they should not select micro grants.

Background of AFG

Since 2001, AFG has awarded approximately $8.7 billion in grant funding to help firefighters and other first responders obtain critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel from fire and fire-related hazards. FEMA awards grants on a competitive basis to the applicants that best address the AFG Program's priorities and provide the most compelling justification. Applications that best address AFG Program priorities, as identified in the Application Evaluation Criteria, are reviewed by a panel composed of fire service personnel. The AFG Program has three program activities:

- Operations and Safety;
- Vehicle Acquisition; and
- Regional Projects.

The priorities for each activity are fully outlined in the funding notice.

Application Evaluation Criteria

Before making a grant award, FEMA is required by *31 U.S.C. 3354,* as amended by the Payment Integrity Information Act of 2019, *Public Law 116–117* (2020), *41 U.S.C. 2313,* and *2 CFR 200.206* to review information available through any Office of Management and Budget-designated repositories of government-wide eligibility qualification or financial integrity information. Therefore, application evaluation criteria may include the following risk-based considerations of the applicant: (1) Financial stability; (2) quality of management systems and ability to meet management standards; (3) history of performance in managing Federal awards; (4) reports and findings from audits; and (5) ability to effectively implement statutory, regulatory, or other requirements.

FEMA will rank all complete and submitted applications based on how well they align with program priorities for the type of jurisdiction(s) served. Answers to activity-specific questions provide information used to determine each application's ranking relative to the stated program priorities.

Funding priorities and criteria for evaluating AFG applications are established by FEMA based on the recommendations from the Criteria Development Panel (CDP). The CDP is composed of fire service professionals who make recommendations to FEMA regarding creating new, or modifying previously established, funding priorities, as well as developing criteria for awarding grants. The content of the funding notice reflects implementation of the CDP's recommendations with respect to the priorities and evaluation criteria for awards.

The nine major fire service organizations represented on the CDP:

- Congressional Fire Service Institute
- International Association of Arson Investigators
- International Association of Fire Chiefs
- International Association of Fire Fighters
- International Society of Fire Service Instructors
- National Association of State Fire Marshals
- National Fire Protection Association
- National Volunteer Fire Council
- North American Fire Training Directors

Review and Selection Process

AFG applications are reviewed through a multi-phase process. All applications are electronically pre-scored and ranked based on how well they align with the funding priorities outlined in the funding notice. Applications with the highest pre-score rankings are then scored competitively by no less than three members of a Peer Review Panel. Applications are also evaluated through a series of internal FEMA review processes for completeness, adherence to programmatic guidelines, technical feasibility, and anticipated effectiveness of the proposed project(s). Below is the process by which applications are reviewed:

1. Pre-Scoring Process

The application undergoes an electronic pre-scoring process based on established program priorities listed in the funding notice and answers to activity-specific questions within the online application. Application narratives are not reviewed during pre-scoring. Request details and budget information should comply with program guidance and statutory funding limitations. The pre-score is 50% of the total application score.

2. Peer Review Panel Process

Applications with the highest pre-score undergo peer review. The peer review is comprised of fire service representatives recommended by the organizations represented on the CDP. The panelists assess the merits of each application based on the narrative section of the application, including the evaluation elements listed in the Narrative Evaluation Criteria below. Panelists independently score each project within the application, discuss

the merits and/or shortcomings of the application with their peers, and document the findings. A consensus is not required. The panel score is 50% of the total application score.

3. Technical Evaluation Process

The highest ranked applications will be considered within the fundable range. Applications that are in the fundable range will undergo both a Technical Review by a subject-matter expert as well as a FEMA Program Office review before being recommended for award. The FEMA Program Office will assess the request with respect to costs, quantities, feasibility, eligibility, and recipient responsibility prior to recommending any application for award. Once the Technical Evaluation Process is complete, each application's cumulative score will be determined, and a final ranking of applications will be created. FEMA will award grants based on this final ranking and the ability to meet statutorily required funding limitations outlined in the funding notice.

Narrative Evaluation Criteria

1. Financial Need (25%)

Applicants should describe their financial need and how consistent it is with the intent of the AFG Program. This statement should include details describing the applicant's financial distress, summarized budget constraints, unsuccessful attempts to secure other funding, and proof that their financial distress is out of their control.

2. Project Description and Budget (25%)

This statement should clearly explain the applicant's project objectives and the relationship between those objectives and the applicant's budget and risk analysis. The applicant should describe the activities, including program priorities or facility modifications, ensuring consistency with project objectives, the applicant's mission, and any national, state and/or local requirements. Applicants should link the proposed expenses to operations and safety, as well as the completion of the project goals.

3. Cost Benefit (25%)

Applicants should describe how they plan to address the operations and personal safety needs of their organization, including cost effectiveness and sharing assets. This statement should also include details about gaining the maximum benefits from grant funding by citing reasonable or required costs, such as specific overhead and administrative costs. The applicant's request should also be consistent with their mission and identify how funding will benefit their organization and personnel.

4. Statement of Effect on Daily Operations (25%)

This statement should explain how these funds will enhance the applicant's overall effectiveness. It should address how an award will improve daily operations and reduce the applicant's risks. Applicants should include how frequently the requested items will be used, and in what capacity. Applicants should also indicate how the requested items will help the community and increase the organization's ability to save additional lives or property. Jurisdictions that demonstrate their commitment and proactive posture to reducing fire risk, by explaining their code enforcement (to include Wildland Urban Interface code enforcement) and mitigation strategies (including whether the jurisdiction has a FEMA-approved mitigation strategy) may receive stronger consideration under this criterion.

Eligible Applicants

Fire Departments: Fire departments operating in any of the 50 states, as well as fire departments in the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally recognized Indian Tribe or tribal organization. A fire department is an agency or organization having a formally recognized arrangement with a state, territory, local (city, county, parish, fire district, township, town or other governing body), or tribal authority to provide fire suppression to a population within a geographically fixed primary first due response area.

Nonaffiliated EMS organizations: Nonaffiliated EMS organizations operating in any of the 50 states, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally recognized Indian Tribe or tribal organization. A nonaffiliated EMS organization is an agency or organization that is a public or private nonprofit emergency medical services entity providing medical transport that is not affiliated with a hospital and does not serve a geographic area in which emergency medical services are adequately provided by a fire department. FEMA considers the following as hospitals under the AFG Program:

- Clinics;
- Medical centers;
- Medical colleges or universities;
- Infirmaries;
- Surgery centers; and
- Any other institutions, associations, or foundations providing medical, surgical, or psychiatric care and/or treatment for the sick or injured.

State Fire Training Academies: SFTAs operating in any of the 50 states, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of Puerto Rico. Applicants must be designated either by legislation or by a Governor's declaration as the sole fire service training agency within a state, territory, or the District of Columbia and recognized by the National Fire Academy. The designated SFTA shall be the only agency/bureau/division, or entity within that state, territory, or the District of Columbia to be an eligible SFTA applicant under the AFG Program.

Non-Federal airport and/or port authority fire or EMS organizations: These entities are eligible only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression or emergency medical services on a first-due basis outside the confines of the airport or port facilities. Airport or port authority fire and EMS organizations whose sole responsibility is suppression of fires or EMS response on the airport grounds or port facilities are not eligible for funding under the AFG Program.

Ineligibility

FEMA considers two or more separate fire departments or nonaffiliated EMS organizations with different funding streams, personnel rosters, and Employer Identification Numbers (EIN) but sharing the same facilities, as being separate organizations for the purposes of AFG eligibility. If two or more organizations share facilities and each submits an application in the same program area (*i.e.,* Equipment, Modifications to Facilities, Personal Protective Equipment (PPE), Training, or Wellness and Fitness Programs), FEMA reserves the right to review all of those program area applications for eligibility. This determination is designed to avoid the duplication of benefits.

Examples of ineligible applications and/or organizations include:

- Nonaffiliated EMS organization requests for any activity that is specific or unique to structural/proximity/wildlands firefighting gear.
- Fire departments that are a Federal Government entity, or contracted by the Federal Government, and are solely

responsible under a formally recognized agreement for suppression of fires on Federal installations or land.

- Fire departments or nonaffiliated EMS organizations that are not independent entities but are part of, controlled by, or under the day-to-day operational command and control of a larger department, agency or Authority Having Jurisdiction (AHJ).
  - However, if a fire department is considered to be the same legal entity as a municipality or other governmental organization, and otherwise meets the eligibility criteria, that municipality or other governmental organization may apply on behalf of that fire department as long as the application clearly states that the fire department is considered part of the same legal entity.
- Fire-based EMS organization applying as a nonaffiliated EMS organization.
- Auxiliaries, hospitals or fire service associations or interest organizations that are not the AHJ over the applicant.
- Dive teams, search and rescue squads, or similar organizations that do not provide medical transport.
- Fire departments, regional or nonaffiliated EMS organizations that are for profit.
- State or local agencies, or subsets of any governmental entity, or any authority that do not meet the requirements as defined by 15 U.S.C. 2229(a), (c).
- If an applicant submits two or more applications for the same equipment or other eligible activity (for example, if an applicant submits two or more applications, one under the Regional activity, and one under the Operations and Safety activity for self-contained breathing apparatus [SCBA]), both applications may be disqualified. If an applicant submits two separate applications for the same activity (*i.e.,* two separate vehicle applications for the same vehicle) during the same application period, both applications may be disqualified.
  - This is different from when an entity is applying on behalf of other organizations that are agencies or instrumentalities of the applicant (*e.g.,* multiple fire departments under the same county, city, borough, parish, or other municipality). In that situation, the applicant may request similar or the same equipment as long as the application clearly states which equipment (including quantities) is for which agency/instrumentality. This is permissible even if that entity submits multiple applications across regional versus direct applications.
  - Eligible Fire Department and nonaffiliated EMS applicants may submit only one application for each of the following application types: Individual Operations and Safety, Individual Vehicle, Regional Operations and Safety, and Regional Vehicle. Under the Operations and Safety applications, applicants may submit for multiple activities and for multiple items within each activity. Under the Vehicle application, applicants may submit one application for a vehicle activity (or activities) for their department and one separate application for a regional vehicle (the same vehicle(s) may not be requested for both purposes). All duplicate application submissions may be disqualified.

Statutory Limits to Funding

Congress has enacted statutory limits to the amount of funding that a grant recipient may receive from AFG in any single fiscal year based on the population served (*15 U.S.C. 2229(c)(2)*). Awards will be limited based on the size of the population protected by the applicant, as indicated below. Notwithstanding the annual limits stated below, the FEMA Administrator may not award a grant in an amount that exceeds 1% of the available grant funds in such fiscal year, except where it is determined that such recipient has an extraordinary need for a grant in an amount that exceeds the 1% aggregate limit.

- In the case of a recipient that serves a jurisdiction with 100,000 people or fewer, the amount of available grant funds awarded to such recipient shall not exceed $1 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, the amount of available grant funds awarded to such recipient shall not exceed $2 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 500,000 people, but not more than 1 million people, the amount of available grant funds awarded to such recipient shall not exceed $2.91 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 1 million people, but not more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the 1% aggregate cap of $2.91 million for FY 2024. FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap. If FEMA waives the aggregate cap, the amount of grant funds awarded to such a recipient shall not exceed $6 million for any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the 1% aggregate cap of $2.91 million for FY 2024. FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap. If FEMA waives the aggregate cap, the amount of grant funds awarded to such recipient shall not exceed $9 million for any fiscal year.
- FEMA may not waive the population-based limits on the amount of grant funds awarded as set by *15 U.S.C. 2229(c)(2)(A).*

The cumulative total of the Federal share of awards in Operations and Safety, Regional, and Vehicle Acquisition activities will be considered when assessing award amounts and any limitations thereto. Applicants may request funding up to the statutory limit on each of their applications.

For example, an applicant that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, may request up to $2 million on their Operations and Safety Application and up to $2 million on their Vehicle Acquisition request. However, should both grants be awarded, the applicant would have to choose which award to accept if the cumulative value of both applications exceeds the statutory limits.

Cost Sharing and Maintenance of Effort

Grant recipients must share in the costs of the projects funded under this grant program as required by *15 U.S.C. 2229(k)(1)* and in accordance with applicable Federal regulations at *2 CFR part 200,* but they are not required to have the cost-share at the time of application nor at the time of award. However, before a grant is awarded, FEMA validates that the grant recipient has provided sufficient evidence that the cost-share requirement will be fulfilled during the performance period of the grant award.

In general, an eligible applicant seeking a grant shall agree to make available non-Federal funds equal to not less than 15% of the grant awarded. However, the cost share will vary as follows based on the size of the population served by the organization, with exceptions to this general requirement for entities serving smaller communities:

- Applicants that serve populations of 20,000 or less shall agree to make available non-Federal funds in an amount equal to not less than 5% of the grant awarded.

• Applicants serving areas with populations above 20,000, but not more than 1 million, shall agree to make available non-Federal funds in an amount equal to not less than 10% of the grant awarded.

• Applicants serving areas with populations above 1 million shall agree to make available non-Federal funds in an amount equal to not less than 15% of the grant awarded.

The cost share for SFTAs will apply the requirements above based on the total population of the state.

The cost share for a regional application will apply the requirements above based on the aggregate population of the primary first due response areas of the host and participating partner organizations that execute a Memorandum of Understanding as described in Appendix B, Section g., Regional Applications, of the FY 2024 AFG funding notice.

On a case-by-case basis, FEMA may allow a grant recipient that may already own assets (equipment or vehicles), acquired with non-Federal cash, to use the trade-in allowance/credit value of those assets as ''cash'' for the purpose of meeting the cost-share obligation of their AFG Program award. In-kind, cost-share matches are not allowed. Grant recipients under this grant program must also agree to a maintenance of effort requirement as required by *15 U.S.C. 2229(k)(3)* (referred to as a ''maintenance of expenditure'' requirement in that statute). A grant recipient shall agree to maintain during the term of the grant the applicant's aggregate expenditures relating to the activities allowable under the funding notice at not less than 80% of the average amount of such expenditures in the two fiscal years preceding the fiscal year in which the grant amounts are received.

In cases of demonstrated economic hardship, and at the request of the grant recipient, the Administrator of FEMA may waive or reduce a grant recipient's cost-share requirement or maintenance of effort requirement. AFG applicants for FY 2024 must indicate at the time of application whether they are requesting a waiver and whether the waiver is for the cost-share requirement, for the maintenance of effort requirement, or both. As required by statute, the Administrator of FEMA is required to establish guidelines for determining what constitutes economic hardship. FEMA has published these guidelines on FEMA's website at *https://www.fema.gov/sites/default/files/2020-04/Eco_Hardship_Waiver_FPS_SAFER_AFG_IB_FINAL.pdf.*

Before the start of the FY 2024 AFG application period, FEMA conducted applicant internet webinars to inform potential applicants. In addition, FEMA provided applicants with information at the AFG website, *https://www.fema.gov/grants/preparedness/firefighters,* to help them prepare quality grant applications. The AFG Program Help Desk is staffed throughout the application period to assist applicants with the automated application process as well as answer any questions. Applicants can reach the AFG Program Help Desk through a toll-free telephone number Monday through Friday, 8 a.m.–4:30 p.m. ET at 866–274–0960 or electronic mail at *firegrants@fema.dhs.gov.*

Application Process

Organizations may submit one application per application period in each of the three AFG Program activities (*e.g.,* one application for Operations and Safety, one for Vehicle Acquisition, and/or a separate application to be a Joint/Regional project host). If an organization submits more than one application for any single AFG Program activity (*e.g.,* two applications for Operations and Safety, two for Vehicles), either intentionally or unintentionally, both applications may be disqualified.

Applicants may access the grant application electronically at *https://go.fema.gov/.* New applicants must register and establish a username and password for secure access to the grant application. Previous AFG Program applicants must use their previously established username and password.

Applicants are expected to answer questions about their grant request that reflect the AFG Program funding priorities. In addition, each applicant must complete four separate narratives for each project or grant activity requested. Grant applicants will also provide relevant information about their organization's characteristics, call volume, and existing organizational capabilities.

System for Award Management (SAM)

Per *2 CFR 25.200,* all Federal grant applicants and recipients must register at *https://sam.gov/content/home.* SAM is the Federal Government's System for Award Management, and registration is free of charge.

Effective April 4, 2022, the Federal Government transitioned from using the Data Universal Numbering System or DUNS number, to a new, non-proprietary identifier known as a Unique Entity Identifier or UEI. For entities that had an active registration in *SAM.gov* before this date, the UEI has automatically been assigned and no action is necessary. For all entities filing a new registration in *SAM.gov*, the UEI will be assigned to that Entity as part of the *SAM.gov* registration process.

FEMA will not make a Federal award until the applicant has complied with all applicable SAM requirements. Therefore, an applicant's SAM registration must be active not only at the time of application, but also during the application review period and when FEMA is ready to make a Federal award.

Criteria Development Panel Recommendation

If there are any differences between the published AFG Program guidelines and the recommendations made by the CDP, FEMA must explain them and publish the information in the **Federal Register** before awarding any AFG grant.

Adopted Recommendations for FY 2024

Below is a list of changes between FY 2023 and FY 2024 to the AFG Program. The FY 2024 AFG Program funding notice contains some changes to definitions, descriptions, and priority categories. Changes include:

• *Under Narrative Evaluation Criteria:* A character count for each narrative section and a link to the Narrative Development Toolkit and Self-Evaluation sheets was added.

• *Under Application Tips:* Clarification that scores for applications with a mix of ''High,'' ''Medium,'' and ''Low'' priorities may be negatively impacted was added to this section. Applicants must consider priorities under each Activity listed in the NOFO when applying.

• *Under Equipment Activity:*

○ Clarification that FEMA will consider only ''High'' priority items for funding was added.

○ The following EMS equipment was added as High Priority:

- Suction Unit (non-disposable)
- CPAP Device
- Power Stair Chair
- Patient Carbon Monoxide Monitor
- Capnography/capnometer Device
- The following EMS equipment was added as Medium Priority:
- O2 Kit
- Non-disposable Splints

○ The following EMS equipment was added as Low Priority:

- Stretcher
- Backboard
- Trauma Bag
- Mass Casualty Kit

○ A clarification that non-construction repairs to fixed and mobile props for SFTA applicants cannot affect the building structure was added.

• *Under Wellness and Fitness Activity:* A clarification that Priority 1 programs must be already in place or requested in the application before Priority 2 programs will be considered for funding. In addition, the following items were added as ineligible:
• Saunas (including infrared)
• Hyperbaric chambers
• Ice baths
• Purchase of medical equipment
• *Under Grant Writer/Preparation Fees:* Clarification that the grant writer fee is subject to the cost share requirement was added.
• References in the funding notice to wildland fire were updated to wildfire where applicable.
• Eligible expenses for travel were updated to ensure uniformity within various activities funded.
• Minor updates to the AFG application were implemented to ensure equipment items are listed similarly to the funding notice.
• The following topics were discussed at the criteria development meeting but did not result in a recommendation for implementation:
• Changes to current equipment priority levels.
• Changes to Personal Protective Equipment activity, specific to replacement of air cylinders, PPE alternatives, and procurement of a second set of PPE gear.
• Changes to some of the existing definitions and guidance in the funding notice, specifically to the definition of a Combination fire department and changes to guidance for regional applications hosted by fire departments with nonaffiliated EMS organizations as partners.
• Additional considerations for applicants with little to no structural fire calls.

Recommendations Not Adopted for FY 2024

Below is a list of recommendations that were not adopted for FY 2024. These recommendations are considered long-term goals and are being evaluated for future consideration.
• CDP recommended utilizing technology (*e.g.,* artificial intelligence) within the application that will collect data sets entered by each applicant to generate a Cost Benefit narrative.
• CDP recommended reorganization of Priority 2 Wellness and Fitness activities into high, medium, and low priorities with specific dropdowns in the application.
• CDP recommended that FEMA investigate the scoring elements/metrics used in vehicle application and vehicle pre-score calculation to ensure that various vehicle types being requested receive equal consideration.

Authority: 15 U.S.C. 2229.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2025–01303 Filed 1–16–25; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold an in-person public meeting with a virtual option on Wednesday, February 19, 2025, and Thursday, February 20, 2025. The meeting will be open to the public both in-person and via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Wednesday, February 19, 2025, and Thursday, February 20, 2025, from 8 a.m. to 5 p.m. eastern time (ET) each day. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in-person at 400 C St. SW, Washington, DC 20472 and virtually using the following Microsoft Teams Video Communications links:
• Wednesday, February 19 Link: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDdhNGZhNmItZTc3YS00M2EyLTlkNTYtZjRkZjdkYWE2NDA0%40thread.v2/0?context=%7b%22Tid%22%3a%22ff59a812-dbf7-4b26-b9fd-bb02aaa6c719%22%2c%22Oid%22%3a%22b626e4e6-c859-4772-9920-c60d2aa40277%22%7d.*
• Thursday, February 20 Link: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjdjMWQ1YTktMDFkNS00ODJkLWJiOGYtMDdmOGRkMDAxMTYz%40thread.v2/0?context=%7b%22Tid%22%3a%22ff59a812-dbf7-4b26-b9fd-bb02aaa6c719%22%2c%22Oid%22%3a%22b626e4e6-c859-4772-9920-c60d2aa40277%22%7d.*

Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper) by 5 p.m. ET on Friday, February 14, 2025.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request on Friday, February 14, 2025. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Friday, February 14, 2025, 5:00 p.m. ET identified by Docket ID FEMA–2014–0022, and submitted by the following methods:
• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
• *Email:* Address the email to *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact information in the body of the email.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice via a link on the homepage of *https://www.regulations.gov.*

Docket: For docket access to read background documents or comments received by the TMAC, go to *https://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Wednesday, February 19, 2025, from 11:30 a.m. to 12 p.m. ET and Thursday, February 20, 2025, from 11:30 a.m. to 12 p.m. ET. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Friday, February 14, 2025, 5 p.m. ET. Please be prepared to submit a written version of your public comment by Tuesday, February 18, 2025, 5 p.m. ET.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you

require reasonable accommodation to fully participate due to a disability, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C St. SW, Washington, DC 20472, telephone 202–646–3085, and email *brian.koper@fema.dhs.gov.* The TMAC website is: *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* Pub. L. 117–286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss and vote on the content of the 2024 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public with an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Friday, February 14, 2025. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper).

Nicholas A. Shufro,

Assistant Administrator (Acting), Risk Analysis, Planning & Information Directorate, Resilience, Federal Emergency Management Agency.

[FR Doc. 2025–01158 Filed 1–16–25; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet virtually on Thursday, March 20, 2025. The meeting will be open to the public.

DATES: The meeting will take place on Thursday, March 20, 2025, 1 p.m. to 3 p.m. Eastern Standard Time (EST). Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the virtual conference should contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section by 5 p.m. EST on March 10, 2025, to obtain the call-in number and access code for the March 20th virtual meeting. The Board is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Participants seeking to have their comments considered during the meeting should submit them in advance or during the public comment segment. Comments submitted up to 30 days after the meeting will be included in the public record and may be considered at the next meeting. Comments submitted in advance must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- Electronic Delivery: Email Deborah Gartrell-Kemp at *Deborah.Gartrell-Kemp@fema.dhs.gov* no later than March 10, 2025, for consideration at the March 20th, meeting.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the Docket ID for this action. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to view the Privacy and Security Notice via a link on the homepage of *https://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received by the National Fire Academy Board of Visitors, go to *https://www.regulations.gov,* insert ''FEMA–2008–0010'' in the search box and then click ''Search.''

FOR FURTHER INFORMATION CONTACT:

Designated Federal Officer: Eriks Gabliks, telephone (301) 447–1308, email *Eriks.Gabliks@fema.dhs.gov.*

Logistical Information: Deborah Gartrell-Kemp, telephone (301) 447–7230, email *Deborah.Gartrell-Kemp@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board will meet virtually on Thursday, March 20, 2025. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. chapter 10.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed

comments and recommendations regarding the operation of the Academy.

Agenda

On Thursday, March 20, 2025, there will be four sessions, with deliberations and voting at the end of each session as necessary:

1. The Board will discuss United States Fire Administration Data, Emergency Medical Services (EMS), Research, Prevention and Response.
2. The Board will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2025 and beyond Budget Request/Budget Planning.
3. The Board will deliberate and vote on recommendations on Academy program activities to include developments, deliveries, staffing, admissions, and strategic plan.
4. There will also be an update on the Board of Visitors Subcommittee Groups for the Professional Development Initiative Update and the National Fire Incident Report System.

There will be a 10-minute public comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated following the last call for comments. Contact Deborah Gartrell-Kemp to register as a speaker. Meeting materials will be posted by March 10, 2025, at *https://www.usfa.fema.gov/nfa/about/board-of-visitors.html.*

Eriks J. Gabliks,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2025–01237 Filed 1–16–25; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Request for applicants for appointment to the Board of Visitors for the National Fire Academy.

SUMMARY: The National Fire Academy (Academy) is requesting individuals who are interested in serving on the Board of Visitors for the National Fire Academy (Board) to apply for appointments as identified in this notice.

DATES: Resumes will be accepted until 11:59 p.m. eastern daylight time (EDT) February 18, 2025.

ADDRESSES: The preferred method of submission is via email. However, resumes may also be submitted by mail. Please choose one submission method only:

- *Email: FEMA-NFABOV@fema.dhs.gov.*
- *Mail:* National Fire Academy, U.S. Fire Administration, Attention: Debbie Gartrell-Kemp, 16825 South Seton Avenue, Emmitsburg, Maryland 21727–8998.

FOR FURTHER INFORMATION CONTACT: *Designated Federal Officer:* Eriks Gabliks, (301) 447–1117, *Eriks.Gabliks@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Fire Prevention and Control Act of 1974, the Board shall review annually the programs of the Academy and shall make recommendations to the Federal Emergency Management Agency (FEMA) Administrator, through the United States Fire Administrator, regarding the operation of the Academy and any improvements that the Board deems appropriate. The Board is composed of eight members, all of whom have national or regional leadership experience in the fields of fire safety, fire prevention (such as community risk reduction to include wildland urban interface), fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management, which includes emergency medical services. The Academy seeks to appoint three individuals to a position on the Board that will be open due to term expiration. If other positions are vacated during the application process, candidates may be selected from the pool of applicants to fill the vacated positions.

The Board is an advisory committee established in accordance with the provision of the Federal Advisory Committee Act (FACA), 5 U.S.C. ch.10. The purpose of the Board is to review annually the programs of the Academy and advise the FEMA Administrator on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions approved by the FEMA Administrator, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines funding levels for Academy programs. The Board submits a written report through the United States Fire Administrator to the FEMA Administrator annually. The report provides detailed comments and recommendations regarding the Academy's operations.

Individuals interested in serving on the Board are invited to apply for consideration for appointment. There is no application form; however, (1) a current resume and (2) statement of interest will be required. The appointment shall be for a term of up to three years. Individuals selected for the appointment shall serve as Special Government Employees (SGEs), defined in section 202(a) of title 18, United States Code. Appointments may impact the ability to receive certain federal contracts. Candidates selected for the appointment will be required to complete a Confidential Financial Disclosure Form (U.S. Office of Government Ethics (OGE) Form 450) every year and receive yearly ethics training from the Component Ethics Office.

The Board shall meet as often as needed to fulfill its mission, but not less than twice each fiscal year to address its objectives and duties. The Board will meet in person at least once each fiscal year with additional meetings held via teleconference. Board members may be reimbursed for travel and per diem incurred in the performance of their duties as members of the Board. All travel for Board business must be approved in advance by the Designated Federal Officer. To the extent practical, Board members shall serve on any subcommittee that is established.

FEMA does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. FEMA strives to achieve a diverse candidate pool for all its recruitment actions.

Current DHS employees, contractors, and potential contractors will not be considered for membership. Federally registered lobbyists will not be considered for appointments.

Eriks Gabliks,

Superintendent, National Fire Academy,United States Fire Administration,Federal Emergency Management Agency.

[FR Doc. 2025–01236 Filed 1–16–25; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0035]

National Security Telecommunications Advisory Committee

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of open Federal advisory committee meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the President's National Security Telecommunications Advisory Committee (NSTAC) meeting on February 26, 2025. The public can access the meeting via teleconference.

DATES: *Meeting Registration:* Registration to attend the meeting via teleconference is required and must be received no later than 5 p.m. eastern standard time (EST) on February 24, 2025. For more information on how to participate, please contact *NSTAC@mail.cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5 p.m. EST on February 19, 2025.

Written Comments: Written comments must be received no later than 5 p.m. EST on February 19, 2025.

Meeting Date: The NSTAC will meet via teleconference on February 26, 2025, from 2 to 3 p.m. EST. The meeting may close early if the committee has completed its business.

ADDRESSES: The NSTAC meeting will be open to the public, per 41 CFR 102–3.150 and will be held via teleconference. For access to the teleconference, or to request special assistance, please email *NSTAC@mail.cisa.dhs.gov* by 5 p.m. EST on February 24, 2025. The NSTAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Comments: Members of the public are invited to provide comments on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/nstac* prior to the day of the meeting. Comments should be submitted by 5:00 p.m. EST on February 19, 2025, and must be identified by Docket Number CISA–2024–0035. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@mail.cisa.dhs.gov.* Include the Docket Number CISA–2024–0035 in the subject line of the email.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security Notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2024–0035.

A public comment period is scheduled to be held during the meeting from 2:30 to 2:35 p.m. EST. Speakers who wish to participate in the public comment period must email *NSTAC@mail.cisa.dhs.gov* to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Christina Berger, 202–701–6354, *NSTAC@mail.cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC is established under the authority of Executive Order (E.O.) 12382, dated September 13, 1982, as amended by E.O. 13286 and 14048, continued under the authority of E.O. 14109, dated September 30, 2023. Notice of this meeting is given under Federal Advisory Committee Act (FACA), 5 U.S.C. chapter 10. The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a meeting via teleconference on Tuesday, February 26, 2025, from 2 to 3 p.m. EST to discuss current NSTAC activities and the government's ongoing cybersecurity and NS/EP communications initiatives. This meeting is open to the public and will include: (1) remarks from the administration and CISA leadership on salient NS/EP and cybersecurity efforts; (2) a status update on the current NSTAC study; and (3) a deliberation and vote on the *NSTAC Report to the President on Principles for Baseline Security Offerings from Cloud Service Providers.*

Dated: January 13, 2025.

Christina Berger,

Designated Federal Officer, National Security Telecommunications Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2025–01193 Filed 1–16–25; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Incident Reporting Form

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-day notice and request for comment; new information collection request.

SUMMARY: The Cybersecurity Division (CSD) within the Cybersecurity and Infrastructure Security Agency (CISA) will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance. CISA previously published this information collection request (ICR) in the **Federal Register** on October 7, 2024, for a 60-day public comment period. Three (3) comments were received by CISA. One unrelated public comment was submitted. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments will be accepted until February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. All submissions received must include the agency name ''CISA'' and docket number CISA–2024–0025.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Brian DeWyngaert, 202–297–7639, *brian.dewyngaert@mail.cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: CISA serves as ''a Federal civilian interface for the multi-directional and cross-sector sharing of information related to cyber threat indicators, defensive measures, cybersecurity risks, incidents, analysis, and warnings for Federal and non-Federal entities.'' 6 U.S.C. 659(c)(1).

As such, CISA is responsible for performing, coordinating, and supporting response to information security incidents, which may originate outside the Federal community and affect users within it, or originate within the Federal community and affect users outside of it. CISA uses the information from incident reports to develop timely and actionable information for distribution to Federal departments and agencies; State, local, Tribal, and territorial (SLTT) governments; critical infrastructure owners and operators; private industry; and international organizations. Often, the effective handling of security incidents relies on information sharing among individual users, industry, and the Federal Government, which may be facilitated by and through CISA.

Pursuant to the *Federal Information Security Modernization Act of 2014 (FISMA), 44 U.S.C. 3552 et seq.,* CISA operates the Federal information security incident center for the United States Federal Government. 44 U.S.C. 3556. Federal agencies notify and consult with CISA regarding information security incidents involving Federal information systems. CISA provides Federal agencies with technical assistance and guidance on detecting and handling security incidents, compiles and analyze incident information that threatens information security, informs agencies of current and potential threats and vulnerabilities, and provides intelligence or other information about cyber threats, vulnerabilities, and incidents to agencies. 44 U.S.C. 3556(a). CISA also receives incident reports from non-Federal entities who are reporting to satisfy existing regulatory, statutory, and/or contractual requirements. Finally, CISA receives voluntary incident reports from non-Federal entities.

CISA's website (at *https://www.cisa.gov/*) is a primary tool used by constituents to report incident information, access information sharing products and services, and interact with CISA. Constituents, which may include anyone or any entity in the public, use forms located on CISA's website to complete these activities. Incident reports are primarily submitted using CISA's current Incident Reporting Portal, available at *https://www.cisa.gov/forms/report.* This proposed collection instrument will replace the current form if it is approved by the Office of Management and Budget.

By accepting incident reports and feedback, and interacting among Federal agencies, industry, the research community, State and local governments, and others to disseminate reasoned and actionable cybersecurity information to the public, CISA has provided a way for citizens, businesses, and other institutions to communicate and coordinate directly with the Federal Government about cybersecurity.

Incident reports are collected through the Incident Reporting Portal, which enables end users to report incidents and indicators as well as submit malware artifacts associated with incidents to CISA. This information is used by CISA to conduct analyses and provide warnings of system threats and vulnerabilities, and to develop mitigation strategies as appropriate. This ICR also requests the user's name, email address, organization, infrastructure sector and sub-sector. The primary purpose for the collection of this contact and industry information is to allow CISA to contact requestors regarding their report.

In addition to web-based electronic forms, information may be collected through email or telephone. These methods enable individuals, private sector entities, personnel working at other Federal or state agencies, and international entities, including individuals, companies and other nations' governments to submit information.

This proposed collection of information will replace CISA's current incident reporting form. The questions included in this proposed new incident reporting form represent the universe of all possible questions that CISA may use for incident report information collection purposes across the multiple use cases outlined above. In no circumstance would a respondent be presented all the questions in this proposed collection. In CISA's Incident Reporting Portal respondents will be directed to answer only an applicable subset of the questions based on the characteristics of the reporting entity, the reasons for which they are reporting, and the nature of the incident. The dynamic design of the Incident Reporting Portal means that the user experience flow from question to question is driven by the individual respondent's responses. No respondent will be prompted to answer all the questions included in this package for review and approval.

This collection of information is distinct from CISA's efforts to implement the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) covered cyber incident and ransom payment reporting requirements. On April 4, 2024, CISA published the CIRCIA notice of proposed rulemaking (NPRM). 89 FR 23644 (Apr. 4, 2024). Among other aspects of the proposed rulemaking, the CIRCIA NPRM described the proposed required content of CIRCIA reports. The public comment for that NPRM closed on July 3, 2024, and CISA is currently reviewing and considering comments as it develops the CIRCIA final rule. However, CISA clarifies that reporting under CIRCIA will not go into effect until the effective date of the CIRCIA final rule, which is anticipated to be late 2025 or early 2026.

As described above, the purpose of this ICR is to replace CISA's current Incident Reporting Form (approved under OMB control number 1670–0037) which is used to collect incident reports under CISA's non-CIRCIA authorities (including FISMA) or other existing regulatory, statutory, and/or contractual requirements that provide for reporting of incidents to CISA. This collection is intended to replace the current Incident Reporting Form, prior to the effective date of the CIRCIA final rule, with a revised question set that will enrich the value and analytical capabilities on the data collected under these other incident reporting and information sharing authorities. In other words, CIRCIA incident reports will utilize their own set of questions, rather than the question set for this information collection request.

Because this effort is distinct from the CIRCIA final rule development, comments submitted in response to this **Federal Register** notice will not be

considered comments on the CIRCIA NPRM or otherwise considered as part of the development of the CIRCIA final rule. Further, because CISA is still actively in the process of considering comments received in response to the CIRCIA NPRM, this ICR should not be viewed as indicating how CISA will resolve such comments as part of the final rule.

CISA Proposed Revisions to This Collection

CISA proposes to revise this collection as follows:

• CISA maintains most of the questions from the 60-day notice, however, based on comments received, CISA proposes to streamline and consolidate some of the originally proposed questions to reduce burden for respondents that is derived from the collection originally proposed during the 60-day public comment period. CISA proposes to use a further streamlined minimum collection set and augment this minimum set with questions to address the specific data collection needs for FISMA, Federal Risk and Authorization Management Program (FEDRAMP), or regulations whose regulators use this information collection request to collect reporting information. The dynamic nature of the information collection request will allow CISA to use combinations of the questions, as appropriate, to address reporting needs based upon the context of the report. Overall, the revised question set streamlines and consolidates previously proposed questions, accordingly CISA does not anticipate in increase in burden for this collection.

Responses to Comments Received During 60-Day Comment Period

CISA received three comments during the 60-day public comment period in response to the information collection request (ICR) published in the **Federal Register** on October 7, 2024.[1] 89 FR 81097. The three comments received are summarized below along with CISA's response to those comments.

Comment: One commenter suggested that a common issue among critical water infrastructure operations is a need for education on cyberattacks and resilience strategies based on their vulnerabilities. To address this concern and to spot trends affecting these types of entities, the commenter proposed updating the form to collect information on affected organizations' preparedness for the type of incident reported.

Response: CISA agrees with the commenter's suggestion that the additional data would be a valuable way to gauge readiness across sectors or other groups. Further, CISA agrees that this data will improve CISA's ability to draw clearer conclusions about incident impact trends. Therefore, CISA proposes to add an additional question to the collection to gauge across a spectrum the impacted entity's readiness level to handle and respond to the cyber incident. The new question asks, how prepared the entity was to handle and respond to the incident? Answer choices are [Unprepared, Minimally Prepared, Moderately Prepared, Well Prepared] The below are example text which aims to help entities pick the correct choice.

1. Unprepared

• No incident response plan: No documented procedures for handling cyberattacks.

• Lack of awareness: Employees are not trained on cybersecurity best practices or how to identify threats.

• Basic or no security measures: Weak passwords, outdated software, no firewall or antivirus protection.

• No backups or disaster recovery plan: Data loss is a significant risk.

2. Minimally Prepared

• Basic incident response plan: A rudimentary document outlining basic steps to take in case of an incident.

• Some security measures: Antivirus software installed, basic firewall, some password policies in place.

• Occasional security awareness training: Employees receive some training, but it may be infrequent or inadequate.

• Basic backups: Some data is backed up, but the process may be inconsistent or incomplete.

3. Moderately Prepared

• Documented incident response plan: A comprehensive plan with defined roles, responsibilities, and procedures for various incident types.

• Regular security awareness training: Employees receive regular training on cybersecurity best practices, phishing awareness, and incident reporting.

• Robust security measures: Strong passwords, multi-factor authentication, up-to-date software, firewalls, intrusion detection systems, and regular vulnerability scanning.

• Regular backups and disaster recovery plan: Data is regularly backed up and a plan is in place to restore systems and data in case of a major incident.

• Incident response team: A designated team responsible for handling cyber incidents.

4. Well Prepared

• Advanced incident response plan: A detailed and regularly tested plan that includes incident simulation exercises and post-incident analysis.

• Continuous security awareness training: Ongoing training and education to keep employees up to date on the latest threats and best practices.

• Advanced security measures: Proactive threat hunting, security information and event management (SIEM) systems, advanced malware protection, and penetration testing.

• Comprehensive backups and disaster recovery plan: Multiple backup locations, automated backups, and a detailed plan for business continuity and disaster recovery.

• Dedicated incident response team with external support: A well-trained internal team with access to external cybersecurity experts for specialized assistance.

• Cyber insurance: Coverage for potential financial losses resulting from cyber incidents.

Further CISA will add these key terms as a hover over/tool tip as they relate to cyber incident preparedness:

• Prevention: Implementing security measures to prevent incidents from occurring in the first place.

• Detection: Identifying and detecting incidents as quickly as possible.

• Response: Taking appropriate actions to contain the incident, minimize damage, and restore systems and data.

• Recovery: Restoring normal operations and implementing measures to prevent future incidents.

By understanding these levels of preparedness, we can assess the entities current state and identify areas for improvement to better protect entities with like preparedness profiles.

Comment: One commenter raised the role of Domain Name System (DNS) security logs, Dynamic Host Configuration Protocol (DHCP) data, and internet Protocol (IP) address management log data in incident response and reporting. The commenter proposed updating the Data Sharing and Logging Readiness section of the form so that respondents could indicate whether they have current and historical DNS security data, DHCP log data, and IP address management log data to share with CISA.

Response: CISA concurs with this suggestion and proposes to add the

[1] The unrelated public comment may be viewed at *https://www.regulations.gov/comment/CISA-2024-0025-0005.* This comment applies to the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) covered cyber incident and ransom payment reporting requirements which is out of scope of this proposed collection.

recommended language to the Data Sharing and Logging Readiness section of the collection.

Comment: One commenter raised that CISA should reduce the number of requested fields and the amount of detail requested in the proposed collection to reduce burden on reporters. Specifically, the commenter suggested that CISA delete or reshape questions pertaining to: ''Violation of Law and Policy'' (*i.e.,* whether the incident breaches a law or private industry or policy standard), ''Identify the impacted users'' (*i.e.,* the types of users impacted by the incident), and ''Instance of Impacted Systems'' (*i.e.,* a set of questions asking for details on each impacted system, including system type, location, and services provided).

Response: CISA partially agrees with the commenter's suggestions. As detailed above, CISA is proposing a streamlined and consolidated minimum question set to reduce burden for respondents that is derived from and covers the same scope of questions the collection originally proposed during the 60-day public comment period. CISA also agrees that the content surrounding the ''Violation of Law and Policy'' was unnecessary and proposed removing it from this collection. CISA agrees in part with the suggestion to reshape or eliminate the detailed system information on impacted systems because it could be overly burdensome, in some cases, as suggested by the commentor. When incidents involving destructive (*e.g.,* ransomware) or denial effects are reported, the impacted entity should not be required to provide the full details for each system, and that like systems should be grouped together. However, if specific details of a system or a group of systems lead and/or contributed to the destructive or denial effects experienced by the impacted entity(ies) then, CISA proposes to collect those system details and any associated vulnerabilities. CISA has updated the proposed collection to reflect this change. Finally, CISA partially agrees with the suggestion to eliminate or reshape the proposed the Impacted User content in the proposed collection. CISA has updated the streamlined question set to query for the number of impacted users and not the user type or impact. However, for entities reporting under FISMA, FEDRAMP, or entities covered by other regulations whose regulators who require it, CISA proposes to ask the question as proposed in the 60-day notice. CISA believes that these types of reporting entities should describe the data impact differences of internal users and external users, if both user types had data impacts during the incident, in the incident description and updated as appropriate in supplemental reports. For FISMA, FEDRAMP, and other regulations, this information is necessary for the Federal Government to determine the impact and scale of the incident, as well as necessary for the Federal Government to determine the appropriate response.

This collection of information will not have a significant economic impact on a substantial number of small entities. Based on an average of 26,000 respondents and the current hourly compensation rates, the burden and cost estimates are as follows: the burden hour estimate for an initial report is 52,000 hours and 146,250 hours for subsequent updates to the initial report. The annual burden cost is $8,870,611. The annual Government cost is $$4,351,162.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Clearance for the Collection of Information through CISA Reporting Form.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments, Private Sector, and Academia..

Number of Respondents: 26,000

Estimated Time Per Respondent: 3 hours (Initial Report) 7.5 hours (Updated Report).

Total Burden Hours: 198,250.

Total Annualized Respondent Cost: $8,870,611.

Total Annualized Government Cost: $4,351,162.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2025–01165 Filed 1–16–25; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2795–25; DHS Docket No. USCIS–2022–0003]

RIN 1615–ZB91

Extension of the Designation of Ukraine for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Ukraine for Temporary Protected Status (TPS) for 18 months, beginning on April 20, 2025, and ending on October 19, 2026. Existing TPS beneficiaries who wish to extend their status through October 19, 2026, must re-register during the 60-day re-registration period described in this notice.

DATES: *Extension of Designation of Ukraine for TPS* begins on April 20, 2025, and will remain in effect for 18 months. For registration instructions, see the Registration Information section below.

FOR FURTHER INFORMATION CONTACT:

- You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240–721–3000.
- For more information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* You can find specific information about Ukraine's TPS designation by selecting ''Ukraine'' from the menu on the left side of the TPS web page.
- If you have additional questions about TPS, please visit *https://uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you cannot find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at uscis.gov, or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.*
- You can also find more information at local USCIS offices, listed on the USCIS website at *https://www.uscis.gov/about-us/find-a-uscis-office,* after this notice is published.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security

DoS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Documents, Parole Documents, and Arrival/Departure Records
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–797C—Notice of Action (Receipt Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
PDF—Portable Document Format
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Registration Information

Extension of Designation of Ukraine for TPS: The 18-month extension of Ukraine's TPS designation begins on April 20, 2025, and will remain in effect for 18 months, ending on October 19, 2026. The extension allows existing TPS beneficiaries to retain TPS through October 19, 2026, if they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through October 19, 2026, must re-register during the 60-day re-registration period described in this notice.

Re-registration: The 60-day re-registration period for existing beneficiaries runs from January 17, 2025, through March 18, 2025. (Note: It is important for re-registrants to timely re-register during the re-registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Purpose of this Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Ukraine (or individuals having no nationality who last habitually resided in Ukraine) to re-register for TPS and apply to renew their EAD with USCIS.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Ukraine and whose applications have been granted. If you do not re-register properly within the 60-day re-registration period, USCIS may withdraw your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Ukraine's designation, the 60-day re-registration period runs from January 17, 2025, through March 18, 2025. USCIS will issue new EADs with an October 19, 2026, expiration date to eligible beneficiaries granted TPS under Ukraine's designation who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive a new EAD before their current EAD expires. Accordingly, through this **Federal Register** notice, DHS automatically extends through April 19, 2026, the validity of certain EADs previously issued under the TPS designation of Ukraine. As proof of continued employment authorization through April 19, 2026, TPS beneficiaries can show their EAD with the notation A12 or C19 under Category and a ''Card Expires'' date of April 19, 2025 or October 19, 2023. This notice explains how TPS beneficiaries and their employers may determine if an EAD is automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have an Application for Temporary Protected Status (Form I–821) for Ukraine or TPS-related Application for Employment Authorization (Form I–765) that was still pending as of January 17, 2025, do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through October 19, 2026. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date.

What Is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, are authorized to work, and may obtain EADs if they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, if it is still valid beyond the date TPS terminates.

When was Ukraine designated for TPS?

Ukraine was initially designated on April 19, 2022 on the basis of ongoing armed conflict and extraordinary and temporary conditions in Ukraine that prevented nationals of Ukraine from returning in safety. *See Designation of Ukraine for Temporary Protected Status,* 87 FR 23211 (Apr. 19, 2022). Following the initial designation, TPS for Ukraine was extended and redesignated based on ongoing armed conflict and extraordinary and temporary conditions from October 20, 2023, through April 19, 2025. *See Extension and Redesignation of Ukraine for Temporary Protected Status,* 88 FR 56872 (Aug. 21, 2023).

What authority does the Secretary have to extend the designation of Ukraine for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The

[1] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and

Continued

decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). The Secretary, in their discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the conditions in the foreign state continue to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Ukraine through October 19, 2026?

DHS has reviewed country conditions in Ukraine. Based on the review, including input received from Department of State (DoS) and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because ongoing armed conflict and extraordinary and temporary conditions supporting Ukraine's TPS designation remain.

Overview

Ukraine is in its third year of war with Russia, which has involved large-scale attacks on major cities and has resulted in increased civilian casualties and significant damage and destruction to critical infrastructure.[2] The humanitarian suffering is widespread with increased poverty levels and humanitarian assistance needs.[3] Access to social infrastructure, such as schools and healthcare facilities, also remain an issue because of attacks that result in damage or destruction to infrastructure.[4]

Armed Conflict and Civilian Casualties

Since February 24, 2022, Russia has been conducting a full-scale invasion of Ukraine.[5] Russia's missile and drone strikes continue to hit Ukraine's population centers and critical infrastructure.[6] In 2024, Russian armed forces intensified their coordinated large-scale attacks on major Ukrainian cities, regardless of whether the city was near the frontline.[7] Since the end of March 2024, Russian armed forces have been attacking energy related infrastructure across Ukraine, damaging and destroying power generation facilities and electricity substations.[8] The consequences include civilian casualties and interrupted access to electricity, gas and water.[9] Russian forces have also increased their attacks on the Dnipro Dam and the Ukrainian railway system.[10] The U.N. Office of the High Commissioner for Human Rights (OHCHR) reports that since February 24, 2022, 11,743 civilians have been killed and 24,614 civilians have been injured from conflict-related violence, as of August 31, 2024.[11] The July 8, 2024 large-scale attack across Ukraine made July 2024 the deadliest month for civilians since October 2022.[12]

Humanitarian Situation

The ongoing war has created a humanitarian crisis in Ukraine with over 14.6 million people (about 40% of the Ukrainian population) requiring humanitarian assistance in 2024.[13] The World Bank reports that over 9 million Ukrainians are living in poverty, which is an increase of 1.8 million people since the full-scale invasion began.[14] In areas close to the front-line, particularly in the south and east, and including Russian occupied territories, the humanitarian situation is dire and growing in severity with over 3.3 million people in need of aid.[15]

UNHCR reports that as of October 2024, more than 6.7 million Ukrainians have fled Ukraine and been recorded as refugees across the world,[16] while nearly 3.7 million people are internally displaced as of August 2024.[17] Approximately 90 percent of those fleeing the crisis are women and children, and they are at risk of gender-based violence and sexual exploitation and abuse.[18] Older people account for almost 25 percent of all internationally

temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

[2] Office for Democratic Institutions and Human Rights (ODIHR), Fifth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, July 22, 2024, 4, available at *https://www.osce.org/files/f/documents/a/e/573346_1.pdf*.

[3] *See* UNOCHA, Ukraine: Projected situation, available at *https://www.unocha.org/ukraine* (last visited Oct. 28, 2024).

[4] The World Health Organization, Surveillance System for Attacks on Health Care SSA, available at *https://extranet.who.int/ssa/Index.aspx* (last visited Oct. 28, 2024); Human Rights Watch, ''Tanks on the playground,'' Attacks on schools and military use of schools in Ukraine, Nov. 9, 2023, available at *https://www.hrw.org/report/2023/11/09/tanks-playground/attacks-schools-and-military-use-schools-ukraine* (last visited Oct. 28, 2024).

[5] Center for Preventive Action, War In Ukraine, Oct. 16, 2024, available at *https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine* (last visited Oct. 30, 2024).

[6] U.S. Department of State, 2023 Country Reports on Human Rights Practices: Ukraine, Apr. 22, 2024, available at *https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/ukraine/* (last visited Oct. 25, 2024).

[7] Office for Democratic Institutions and Human Rights (ODIHR), Fifth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, July 22, 2024, 8, available at *https://www.osce.org/files/f/documents/a/e/573346_1.pdf*.

[8] Office for Democratic Institutions and Human Rights (ODIHR), Fifth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, July 22, 2024, 10, available at *https://www.osce.org/files/f/documents/a/e/573346_1.pdf*.

[9] Office for Democratic Institutions and Human Rights (ODIHR), Fifth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, July 22, 2024, 10, available at *https://www.osce.org/files/f/documents/a/e/573346_1.pdf*.

[10] Office for Democratic Institutions and Human Rights (ODIHR), Fifth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, July 22, 2024, 10, available at *https://www.osce.org/files/f/documents/a/e/573346_1.pdf*.

[11] OHCHR, Ukraine: Worsening impact on civilians of Russia's attack, torture of prisoners of war, Oct. 1, 2024, 17, available at *https://www.ohchr.org/en/press-briefing-notes/2024/10/ukraine-worsening-impact-civilians-russias-attack-torture-prisoners* (last visited Oct. 25, 2024).

[12] OHCHR, Treatment of Prisoners of War and Update on the Human Rights Situation in Ukraine, 1 June 2024–31 August 2024, Oct. 1, 2024, 18, available at *https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/Ukraine-OHCHR-40th-periodic-report.pdf*.

[13] *See* UNOCHA, Ukraine: Projected situation, December 2023, available at *https://www.unocha.org/ukraine* (last visited Oct. 28, 2024).

[14] The World Bank Group, The World Bank in Ukraine: Overview, last updated Aug. 1, 2024, available at *https://www.worldbank.org/en/country/ukraine/overview* (last visited Oct. 28, 2024).

[15] UNOCHA, Ukraine: Projected situation, December 2023, available at *https://www.unocha.org/ukraine* (last visited Oct. 28, 2024).

[16] UNHCR, Ukraine refugee situation, the Office of the United Nations High Commissioner for Refugees Operational Data Portal, last updated Oct. 15, 2024, available at *https://data.unhcr.org/en/situations/ukraine* (last visited Oct. 27, 2024).

[17] IOM UN Migration, Global Data Institute Displacement Tracking Matrix, Ukraine, available at *http://dtm.iom.int/ukraine* (last visited Oct. 28, 2024).

[18] USA for UNHCR, Ukraine emergency, available at *https://www.unrefugees.org/emergencies/ukraine/* (last visited Oct. 28, 2024).

displaced persons and are struggling to meet their basic needs.[19]

Educational and healthcare infrastructure continue to be attacked by Russian forces. Between February 2022 and October 2023, 3,428 educational facilities had been damaged and 365 destroyed.[20] As such, Ukrainian children's access to education has been disrupted, and it is projected that repair and reconstruction of schools will take time and require significant resources.[21] Access to effective health care continues to be severely limited. The World Health Organization's Surveillance System for Attacks on Health Care has confirmed 1,778 attacks on health care facilities in Ukraine since the start of the invasion in 2022.[22] Continuous attacks to civilian infrastructure that impact electricity, water and telecommunications, have also affected the country's ability to deliver health-care services and critical public health functions.[23]

In summary, Russia's unrelenting attacks on Ukraine continue to cause civilian casualties and a worsening humanitarian crisis, from mass displacement to the destruction of critical infrastructure.

Based on this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Ukraine's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Ukraine and, due to such conflict, requiring the return to Ukraine of Ukrainian nationals (or individuals having no nationality who last habitually resided in Ukraine) would pose a serious threat to their personal safety. *See* INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Ukraine that prevent Ukrainian nationals (or individuals having no nationality who last habitually resided in Ukraine) from returning to Ukraine in safety, and it is not contrary to the national interest of the United States to permit Ukrainian TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Ukraine for TPS should be extended for an 18-month period, beginning on April 20, 2025, and ending on October 19, 2026. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 103,700 current Ukraine TPS beneficiaries who are eligible to re-register for TPS under the extension.

Notice of the Designation of Ukraine for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Ukraine's designation for TPS on the basis of ongoing armed conflict and extraordinary and temporary conditions are met, and it is not contrary to the national interest of the United States to permit Ukrainian TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(A)(C), 8 U.S.C. 1254a(b)(1) (A)(C). On the basis of this determination, I am extending the existing designation of Ukraine for TPS for 18 months, beginning on April 20, 2025, and ending on October 19, 2026. *See* INA sec. 244(b)(1) and (b)(2); 8 U.S.C. 1254a(b)(1), and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees to Re-Register for TPS:

To re-register for TPS based on the designation of Ukraine, you must submit Form I–821. When filing an application to re-register for TPS, you do not need to pay the application fee; however, you are required to pay the biometric services fee. If you cannot pay the biometric services fee, you may ask USCIS to waive the fee. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an EAD, which proves their authorization to work in the United States. You are not required to submit Form I–765 or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Ukraine TPS application (Form I–821) that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through October 19, 2026.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 106.2 and the fee waiver-related regulations in 8 CFR 106.3. In addition, USCIS Form G–1055, Fee Schedule, provides the current fees required for the Form I–821 and Form I–765 for existing TPS beneficiaries who are re-registering.

How Can TPS Beneficiaries Obtain an EAD?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. If you want to obtain an EAD, you must file Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912). TPS applicants may file this form with their TPS application, or separately later, if their TPS application is still pending or has been approved.

Beneficiaries with a Ukraine TPS-related Form I–765 that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through October 19, 2026.

Can My TPS-Related EAD Be Automatically Extended?

Yes. There are two ways for your TPS-related EAD to be automatically extended. First, if you already have an EAD with a ''Card Expires'' date of April 19, 2025 or October 19, 2023, this **Federal Register** notice automatically extends it through April 19, 2026 without any further action on your part. You do not need to present this FRN or any other additional documentation

[19] Internal Displacement Monitoring Centre, Global report on internal displacement, Apr. 2024, 57, available at *https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf.*

[20] Human Rights Watch, ''Tanks on the playground,'' Attacks on schools and military use of schools in Ukraine, Nov. 9, 2023, available at *https://www.hrw.org/report/2023/11/09/tanks-playground/attacks-schools-and-military-use-schools-ukraine* (last visited Oct. 28, 2024).

[21] Human Rights Watch, ''Tanks on the playground,'' Attacks on schools and military use of schools in Ukraine, Nov. 9, 2023, available at *https://www.hrw.org/report/2023/11/09/tanks-playground/attacks-schools-and-military-use-schools-ukraine* (last visited Oct. 28, 2024).

[22] The World Health Organization, Surveillance System for Attacks on Health Care SSA, available at *https://extranet.who.int/ssa/Index.aspx* (last visited Oct. 28, 2024).

[23] The World Health Organization, World Health Organization's Country Cooperation Strategy, Ukraine 2024–2030, Feb. 20, 2024, 7, available at *https://www.who.int/publications/i/item/WHO-EURO-2024-9329-49101-73236* (last visited Oct. 28, 2024).

other than your EAD to use this automatic extension.

Second, you may also be eligible for a longer automatic extension of up to 540 days from the ''Card Expires'' date on the EAD if you file your Form I–765 EAD renewal application during the re-registration period of January 17, 2025, through March 18, 2025(''Up to 540-Day Automatic EAD Extension'').[24] See the section ''How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')? of this **Federal Register** notice for more information. Your EAD may be eligible for both types of extensions, but in no case will your EAD automatic extension be valid past October 19, 2026. If you take advantage of both types of EAD extensions, the automatic extension periods run concurrently.

Filing Information

USCIS offers the option to applicants for TPS under Ukraine's designation to file Form I–821 and related requests for EADs online or by mail. However, if you file Form I–912, Request for Fee Waiver or a written fee waiver request for any applications filed together with your Form I–821, you must submit your applications by mail. When filing a TPS application, you can also request an EAD by submitting a completed Form I–765 with your Form I–821. Under certain circumstances, you may also upload a completed Form I–765 with a fee or fee waiver request, in Portable Document Format (PDF) through your USCIS online account. More information about filing your Form I–765 and fee waiver request through a PDF upload is available at *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option.*

Online filing: Form I–821 and Form I–765 are available for concurrent filing online.[25] To file these forms online, you must first create a USCIS online account.[26]

PDF upload: Form I–765, if applicable, and Form I–912, if applicable, are available for PDF upload. To upload these documents, you must first create a USCIS online account.[27]

Mail filing: Mail your completed Form I–821; Form I–765, if applicable; Form I–912, if applicable; and supporting documentation to the proper address in Table 1—Mailing Addresses.

TABLE 1—MAILING ADDRESSES

If you are applying for TPS under the designation for Ukraine and you live in:	Then mail your application to:
○ Alabama	USCIS Chicago Lockbox.
○ Alaska	U.S. Postal Service (USPS):
○ American Samoa ○ Arizona ○ Arkansas ○ Colorado ○ Connecticut ○ Delaware ○ District of Columbia ○ Florida ○ Georgia ○ Guam ○ Hawaii ○ Idaho ○ Illinois ○ Indiana ○ Iowa ○ Kansas ○ Kentucky ○ Louisiana ○ Maine ○ Maryland ○ Massachusetts ○ New York ○ Ohio	U.S. Citizenship and Immigration Services, Attn: TPS Ukraine, P.O. Box 4464, Chicago, IL 60680–4464. FedEx, UPS, or DHL: U.S. Citizenship and Immigration Services, Attn: TPS Ukraine (Box 4464), 131 S Dearborn St., 3rd Floor, Chicago, IL 60603–5517.
○ California	USCIS Phoenix Lockbox.
○ Michigan	U.S. Postal Service (USPS):
○ Minnesota ○ Mississippi ○ Missouri ○ Montana ○ Nebraska ○ Nevada	U.S. Citizenship and Immigration Services, Attn: TPS Ukraine, P.O. Box 24047, Phoenix, AZ 85074–4047.
○ New Hampshire	FedEx, UPS, or DHL:
○ New Jersey ○ New Mexico ○ North Carolina ○ North Dakota ○ Northern Mariana Islands. ○ Oklahoma ○ Oregon ○ Pennsylvania ○ Puerto Rico ○ Rhode Island ○ South Carolina ○ South Dakota ○ Tennessee ○ Texas ○ Utah ○ Vermont ○ Virgin Islands ○ Virginia ○ Washington ○ West Virginia ○ Wisconsin ○ Wyoming	U.S. Citizenship and Immigration Services, Attn: TPS Ukraine (Box 24047), 2108 E Elliot Rd., Tempe, AZ 85284–1806.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you want to request an EAD, you may submit Form I–765 one of three ways: online, mail your Form I–765 to the appropriate address in Table 1, or upload a completed PDF through your USCIS online account. If you file online, you will be prompted to include the fee. If you file by mail, you must include the fee or fee waiver request. If you file by PDF upload, you must include the fee or a fee waiver request. When you request an EAD based on an IJ or BIA grant of TPS, include with your application a copy of the order from the IJ or BIA granting you TPS. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions for Form I–821 list all the documents you need to re-register for TPS. You may also find information on the acceptable documentation and other requirements for re-registering for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''Ukraine.''

Travel

TPS beneficiaries and TPS applicants with pending Form I–821 applications may also apply for travel authorization, which USCIS may grant as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If USCIS grants travel authorization, it gives you

[24] Under 8 CFR 274a.13(d), EADs with category A12 and C19 are eligible for an automatic extension of up to 540 days from the date on the face of the EAD if the bearer's Form I–765 application is properly filed under either the A12 or C19 category and during the re-registration period described in the applicable **Federal Register** notice.

[25] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[26] *https://myaccount.uscis.gov/users/sign_up.*

[27] *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option.* Sign up to create a new USCIS online account at *https://myaccount.uscis.gov/users/sign_up.*

permission to leave the United States and to return to a U.S. port of entry to request re-entry during a specific period. To request travel authorization, you must file Form I–131, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing Form I–131, a TPS beneficiary must:

- Select Item Number 4 in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

When filing Form I–131, a TPS applicant with a pending initial Form I–821 must:

- Select Item Number 5C in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797, Notice of Action, or Form I–797C, Notice of Action, indicating either approval or receipt of Form I–821. Form I–131 may not be filed by PDF upload.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with Form I–821	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821..	USCIS, Attn: I–131 TPS, 2501 S. State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS:

Biometrics (such as fingerprints) are required for all applicants, in addition to a biometric services fee. As previously stated, if you cannot pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* USCIS may require you to visit an Application Support Center to have your biometrics collected. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *https://uscis.gov* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through April 19, 2026, through this Federal Register notice (''FRN-Based Automatic EAD Extension'')?

Yes. Regardless of your country of birth, if you currently have a Ukraine TPS-based EAD with the notation A12 or C19 under Category and a ''Card Expires'' date of April 19, 2025, or October 19, 2023, this **Federal Register** notice automatically extends your EAD through April 19, 2026, without any further action on your part. Although this **Federal Register** notice automatically extends your EAD through April 19, 2026, you still must timely re-register for TPS by filing Form I–821 in accordance with the procedures described in this **Federal Register** notice to maintain your TPS. You also should file your Form I–765 timely to avoid possible gaps in your employment authorization documentation.

How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')?

You qualify for this other type of automatic EAD extension if:

- You properly file your renewal Form I–765 during the TPS re-registration period which is January 17, 2025, through March 18, 2025; and
- Your Form I–765 EAD renewal application is under category A12 or C19.

As long as the categories listed on your EAD and Form I–797C receipt notice are A12 or C19, they don't need to be the same. (For example, your EAD may still be automatically extended for up to 540 days if your facially expired or expiring EAD says C19 and your renewal application says A12.)

For purposes of your employer verifying your employment eligibility on the Form I–9, if you choose to complete your Form I–9 using the ''Up to 540-Day Automatic EAD Extension,'' the automatic extension period starts from the ''Card Expires'' date on your EAD. You may use the EAD Automatic Extension Calculator available at *https://www.uscis.gov/eadautoextend* to determine the automatically extended expiration date.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three business days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present one selection from List A (which provides evidence of both identity and employment authorization) or one selection from List B (which

provides evidence of your identity) together with one selection from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in these lists. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If your EAD states A12 or C19 under Category and has a ''Card Expires'' date of April 19, 2025 or October 19, 2023, this **Federal Register** notice extends it automatically, and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through April 19, 2026. Your country of birth noted on the EAD does not have to reflect the TPS-designated country of Ukraine for you to be eligible for this extension. You may, but are not required to, show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through April 19, 2026.

B. Up to 540-day Automatic EAD Extension. To show that you qualify for this extension, present:

1. Your EAD with a Category Code of A12 or C19 and

2. Your Form I–797C, Notice of Action, for your Form I–765 renewal EAD application showing a Category Code of A12 or C19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from January 17, 2025, through March 18, 2025.

The A12 or C19 categories on your Form I–797C, Notice of Action, and facially expired or expiring A12 or C19 EAD do not need to match, as long as each lists A12 or C19 as the category. (For example, your EAD may still be automatically extended for up to 540 days if your EAD says C19 and your renewal application says A12.)

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Your employer is required by law to ask you about your continued employment authorization. Your employer may need to reexamine your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, they should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If you choose to use the automatic EAD extension based on this **Federal Register** notice, you may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through April 19, 2026; however, you are not required to do so. The last day of this automatic EAD extension is April 19, 2026. Before you start work on April 20, 2026, your employer is required by law to reverify your employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD, but no later than October 19, 2026, present:

1. Your facially expired or expiring EAD with a Category Code of A12 or C19, and

2. The Form I–797C, Notice of Action, showing a Category Code of A12 or C19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from January 17, 2025, through March 18, 2025.

By the end date of your automatic EAD extension, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in these lists to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, even if you already have an EAD or employment authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through October 19, 2026, you must file Form I–765 and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation to complete Form I–9, such as evidence of my status, proof of my Ukrainian citizenship, or a Form I–797 showing that I registered for TPS?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request other documentation, such as proof of Ukrainian citizenship or proof of registration for TPS, when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document if the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

A. FRN-based Automatic EAD Extension. When using this this type of automatically extended EAD to complete Form I–9 for a new job before April 20, 2026:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until'' and enter October 19, 2026, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine whether the EAD is auto-extended by ensuring it is in category A12 or C19 and has a ''Card Expires'' date of April 19, 2025, or October 19, 2023;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write April 19, 2026, as the expiration date.

Before the start of work on April 20, 2026, employers must reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until;'' and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

c. Enter October 19, 2026, as the expiration date.

2. In Section 2, in the List A column, the employer must:

a. Determine whether the EAD is automatically extended by ensuring it is in category A12 or C19 and that your Form I–797C indicates that you filed your Form I–765 renewal EAD application under Category A12 or C19 and during the re-registration period indicated in this **Federal Register** notice;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. In the Expiration Date field, enter the date 540 days from the ''Card Expires'' date on the EAD. This date may not be later than October 19, 2026. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

f. Employers should also enter ''EAD EXT'' in the Additional Information field.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine whether your EAD is automatically extended by ensuring that it contains Category A12 or C19.

A. FRN-based automatic EAD Extension. If you are relying on an FRN-based automatic EAD extension, your employer should examine your EAD to see if it has a ''Card Expires'' date of April 19, 2025 or October 19, 2023. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD through this **Federal Register** notice, they should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and April 19, 2026, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By April 20, 2026, when the employee's automatically extended EAD expires, employers are required by law to reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you are relying on an up to 540-day automatic EAD extension, your employer must also examine your Form I–797C indicating receipt of your Form I–765 renewal EAD application to determine if it was filed under Category A12 or C19 and during the re-registration period indicated in this **Federal Register** notice. Your employer will need to update Form I–9 by entering the appropriate automatic EAD extension expiration date and ''EAD EXT'' in the Section 2 Additional Information field. The new up to 540-day EAD extension expiration date starts from the ''Card Expires'' date on the face of your current EAD, not to exceed the TPS designation end date indicated in this **Federal Register** notice. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

Note: This information also applies if you initially presented a TPS-related EAD that was automatically extended by the FRN-Based Automatic EAD Extension and later obtained an up to 540-day automatic EAD extension.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the EAD document number and expiration date from Section 2 of Form I–9 into the corresponding fields in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you have an employee who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. You must reverify your employee's employment authorization on Form I–9 by the date their automatic EAD extension ends. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English, Spanish, and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in many languages. Employers may also email IER at *IER@usdoj.gov* or get more information online at *https://www.justice.gov/ier.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English, Spanish and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin,

including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in many languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in these lists. Employers may not require extra or additional documentation other than what is required to complete Form I–9. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give these employees an opportunity to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result occurs if E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Employment-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an EAD that has been automatically extended by this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action, reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. If you are presenting an EAD extended by an up to 540-day extension, you will need to show your Form I–797C, Notice of Action, reflecting receipt of your Form I–765. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary or applicant, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A12 or C19, even if your country of birth noted on the EAD does not reflect the TPS-designated country of Ukraine;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821, if you received one from USCIS.

Check with the government agency requesting documentation about which document(s) the agency will accept.

Some state and local government agencies use SAVE, *https://www.uscis.gov/save,* to confirm the current immigration status of applicants for public benefits. While SAVE can verify that an individual has TPS or a pending TPS application, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-Number, USCIS number, or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://www.uscis.gov/save/save-casecheck.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as your A-Number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must allow you to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save/for-benefit-applicants,* has detailed information on how to correct or update your immigration record, make an appointment, or submit a written request to correct records.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2794–25; DHS Docket No. USCIS–2014–0003]

RIN 1615–ZB92

Extension of the Designation of Sudan for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Sudan for Temporary Protected Status (TPS) for 18 months, beginning on April 20, 2025, and ending on October 19, 2026. Existing TPS beneficiaries who wish to extend their status through October 19,

2026, must re-register during the 60-day re-registration period described in this notice.

DATES: *Extension of Designation of Sudan for TPS* begins on April 20, 2025, and will remain in effect for 18 months. For registration instructions, see the Registration Information section below.

FOR FURTHER INFORMATION CONTACT:

- You may contact René Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240–721–3000.
- For more information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* You can find specific information about Sudan's TPS designation by selecting ''Sudan'' from the menu on the left side of the TPS web page.
- If you have additional questions about TPS, please visit *https://uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you cannot find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.*
- You can also find more information at local USCIS offices after this notice is published.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DoS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Documents, Parole Documents, and Arrival/Departure Records
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–797C—Notice of Action (Receipt Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
PDF—Portable Document Format
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Registration Information

Extension of Designation of Sudan for TPS: The 18-month extension of the designation of Sudan for TPS begins on April 20, 2025, and will remain in effect for 18 months, ending on October 19, 2026. The extension allows existing TPS beneficiaries to retain TPS through October 19, 2026, if they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through October 19, 2026, must re-register during the 60-day re-registration period described in this notice.

Re-registration: The 60-day re-registration period for existing beneficiaries runs from January 17, 2025, through March 18, 2025. (Note: It is important for re-registrants to timely re-register during the re-registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Purpose of this Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Sudan (or individuals having no nationality who last habitually resided in Sudan) to re-register for TPS and apply to renew their EAD with USCIS.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Sudan and whose applications have been granted. If you do not re-register properly within the 60-day re-registration period, USCIS may withdraw your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Sudan's designation, the 60-day re-registration period runs from January 17, 2025, through March 18, 2025. USCIS will issue new EADs with an October 19, 2026, expiration date to eligible beneficiaries granted TPS under Sudan's designation who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive a new EAD before their current EAD expires. Accordingly, through this **Federal Register** notice, DHS automatically extends through April 19, 2026, the validity of certain EADs previously issued under the TPS designation of Sudan. As proof of continued employment authorization through April 19, 2026, TPS beneficiaries can show their EAD with the notation A–12 or C–19 under Category and a ''Card Expires'' date of April 19, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, April 2, 2019, Nov. 2, 2018, or Nov. 2, 2017. This notice explains how TPS beneficiaries and their employers may determine if an EAD is automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have an Application for Temporary Protected Status (Form I–821) for Sudan or Application for Employment Authorization (Form I–765) that was still pending as of January 17, 2025, do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through October 19, 2026. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date.

What Is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, are authorized to work, and may obtain EADs if they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:

○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, if it is still valid beyond the date TPS terminates.

When was Sudan designated for TPS?

Sudan was initially designated for TPS on November 4, 1997, on the dual bases of ongoing armed conflict and extraordinary and temporary conditions in Sudan that prevented nationals of Sudan from safely returning. *See Designation of Sudan Under Temporary Protected Status,* 62 FR 59737 (Nov. 4, 1997). Sudan's designation was extended and/or it was redesignated numerous times from its initial designation in 1997 until former Acting Secretary of Homeland Security Elaine Duke provided notice in the **Federal Register** on October 11, 2017, that she was terminating Sudan's TPS designation, effective November 2, 2018.[1] This termination decision was the subject of litigation and a court order.[2] As a result, the termination did not take effect.[3] In April 2022, Secretary Mayorkas newly designated Sudan on the basis of extraordinary and temporary conditions effective April 19, 2022, through October 19, 2023.[4] In August 2023, the Secretary extended this designation and also redesignated Sudan for TPS on the basis of ongoing armed conflict and extraordinary and temporary conditions.[5]

What authority does the Secretary have to extend the designation of Sudan for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[6] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). The Secretary, in their discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the conditions in the foreign state continue to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *e* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Sudan through October 19, 2026?

DHS has reviewed country conditions in Sudan. Based on the review, including input received from Department of State (DoS) and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions supporting Sudan's TPS designation remain.

Overview

Sudan continues to endure an armed conflict and a humanitarian crisis in which millions of individuals are exposed to violence, illness, and forced displacement. The conflict between the Sudanese Armed Forces (SAF) and Rapid Support Forces (RSF) that began in April 2023 has spread to most Sudanese states, devastating the civilian population across the country. 11.4 million Sudanese—over 20 percent of the population—have been forcibly displaced, with 2.3 million having fled the country, resulting in the worst displacement crisis in the world.[7] High levels of food insecurity, including famine, as well as the decimation of health care facilities, accompanied by multiple disease outbreaks, have contributed to a humanitarian emergency in Sudan. Further, Sudanese women and girls face widespread sexual and gender-based violence.

Armed Conflict

Political instability and power struggles following the October 2021 dissolution of the transitional government established after the removal of former president Omar al-Bashir from office resulted in an outbreak of fighting between the SAF, led by General Abdel Fatah al-Burhan, and the RSF, led by General Mohamed Hamden Daglo, in April 2023.[8] Since then, almost 15,000 people have been killed in the conflict.[9]

While Khartoum has continued to be the epicenter of the fighting, the warring factions, along with various allied militia, have engaged in violent attacks throughout the country, with Darfur being the locus of particularly deadly violence.[10] According to the U.S. Department of State, RSF-affiliated militias have reportedly committed killings, abductions, rape, sexual slavery, and other physical abuses and

[1] *Termination of the Designation of Sudan for Temporary Protected Status,* 82 FR 47228 (Oct. 11, 2017).

[2] *Ramos* v. *Nielsen,* No. 18-cv-01554 (N.D. Cal. October 3, 2018).

[3] *Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal,* 87 FR 68717 (Nov. 16, 2022).

[4] *Designation of Sudan for Temporary Protected Status,* 87 FR 23202 (Apr. 19, 2022).

[5] *Extension and Redesignation of Sudan for Temporary Protected Status,* 88 FR 56864 (Aug. 21, 2023).

[6] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

[7] Sudan Situation, UNHCR, *https://data.unhcr.org/en/situations/sudansituation* (last visited on Oct. 31, 2024).

[8] Dozens of civilians are dead as rival military factions battle for control of Sudan, National Public Radio, April 17, 2023, *https://www.npr.org/2023/04/16/1170289462/sudans-army-and-rsf-are-doing-battle-leaving-56-civilians-dead.*

[9] Civil War in Sudan, Council on Foreign Relations, *https://www.cfr.org/global-conflict-tracker/conflict/power-struggle-sudan,* (last visited on Oct. 31, 2024).

[10] Sudan: Conflict Intensifies Following the Breakdown of Jeddah Talks, Armed Conflict Location & Event Data (ACLED), June 23, 2023, *https://acleddata.com/2023/06/23/sudan-situation-update-june-2023-conflict-intensifies-following-the-breakdown-of-jeddah-talks/;* 2023 Country Reports on Human Rights Practices: Sudan, U.S. Dep't of State, Mar. 30, 2024, *https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/sudan.*

mistreatment of civilians across Sudan.[11] The Secretary of State has determined that members of the SAF and RSF committed war crimes in Sudan and that members of the RSF and allied militias committed crimes against humanity and ethnic cleansing.[12] On January 7, 2025, Secretary Blinken concluded that members of the RSF and allied militias have committed genocide in Sudan.[13] According to the U.N. Secretary General, the conflict in Sudan has been marked by human rights violations and breaches of international humanitarian law, with civilians targeted by air strikes, aerial bombardments, heavy artillery and indiscriminate shelling.[14] The conflict has also featured looting, arbitrary arrests, torture, and the recruitment of child soldiers.[15]

Forced Displacement

In October 2024, the U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that ''[a]n estimated 10.9 million [of a total estimated population of 50 million] [16] were now internally displaced within Sudan, of whom 8.1 million were displaced after 15 April 2023.'' [17] UNOCHA also noted that, by September 2024, about 2.2 million Sudanese had fled from Sudan to Egypt, Chad, the Central African Republic, Ethiopia, Libya, and South Sudan.'' [18]

Access to Food

The World Food Program (WFP) has noted that increased food prices—a ''28 percent increase in the cost of the WFP local food basket from June to July 2024, driven by a sharp rise in the prices of basic commodities''—have worsened ''the already dire food security situation across the country.'' [19] UNOCHA and UNCHR reported in September 2024 that ''Sudan is now also the world's largest hunger crisis, with over half of the country's population—nearly 26 million people—facing high levels of acute hunger.'' [20] Global food security experts have confirmed famine conditions in North Darfur.[21] According to the WFP, ''13 other areas in Sudan, primarily in Darfur, Kordofan, Khartoum, and Gezira are at risk of famine.'' [22]

Disease and Access to Healthcare

In September 2024, the World Health Organization (WHO) ''estimated 70—80% of health facilities in areas worst affected by conflict, such as Al Jazirah, Kordofan, Darfur and Khartoum, and about 45% in other parts of the country, are now barely operational or closed, impacting millions of people living through one of the worst humanitarian disasters in recent memory.'' [23] Sudan is also experiencing outbreaks of multiple diseases, such as cholera, malaria, dengue fever, measles, and rubella resulting from the ''lack of operational health facilities, treatment, and medicines.'' [24] In October 2024, UNOCHA stated that ''an estimated 3.4 million children under five years are at high risk of epidemic diseases'' stemming from ''significant declines in vaccination rates and the destruction of health, water, sanitation and hygiene infrastructure as a result of the ongoing conflict.'' [25]

Gender-Based Violence

In Sudan, women and girls face widespread threats of sexual and gender-based violence.[26] According the U.S. Department of State ''[s]ince April [2023], humanitarian workers received an increasing number of reports of gender-based violence, including sexual violence, particularly against IDPs and women and girls in conflict areas.'' [27] UNOCHA has reported that survivors of gender-based violence ''are facing life-threatening consequences such as strong suicidal tendencies.'' [28] Armed Conflict Location & Event Data (ACLED) has reported surging sexual violence and its use as a weapon in the conflict by armed groups that ''disproportionately target women and girls with multiple cases of sexual assault, including rape and sexual slavery, in the absence of authorities to curb the abuse and medical facilities to treat both the physical and mental effects of sexual violence.'' [29]

Based on this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Sudan's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Sudan and, due to such conflict, requiring the return to Sudan of Sudanese nationals (or individuals having no nationality who last habitually resided in Sudan) would pose a serious threat to their personal safety. *See* INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Sudan that prevent Sudanese nationals (or individuals having no nationality who last habitually resided in Sudan) from returning to Sudan in safety, and it is not contrary to the national interest of the United States to permit Sudanese TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Sudan for TPS should be extended for an 18-month period, beginning on April 20, 2025, and ending on October 19, 2026. *See*

[11] 2023 Country Reports on Human Rights Practices: Sudan, U.S. Dep't of State, Mar. 30, 2024, *https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/sudan.*

[12] 2023 Country Reports on Human Rights Practices: Sudan, U.S. Dep't of State, Mar. 30, 2024, *https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/sudan.*

[13] Genocide Determination in Sudan and Imposing Accountability Measures, January 7, 2025 *https://www.state.gov/genocide-determination-in-sudan-and-imposing-accountability-measures/* (last visited on Jan. 9, 2025).

[14] Situation in the Sudan, U.N. Security Council, Feb. 29, 2024, pg. 7, *https://www.ecoi.net/en/file/local/2105958/n2405132.pdf.*

[15] Situation in the Sudan, U.N. Security Council, Feb. 29, 2024, pg. 7, *https://www.ecoi.net/en/file/local/2105958/n2405132.pdf.*

[16] Health data overview for the Republic of Sudan, World Health Organization, *https://data.who.int/countries/729* (last visited on Oct. 31, 2024).

[17] Sudan Humanitarian Update, UNOCHA, Oct. 1, 2024, *https://reliefweb.int/report/sudan/sudan-humanitarian-update-1-october-2024.*

[18] Sudan Humanitarian Update, UNOCHA, Oct. 1, 2024, *https://reliefweb.int/report/sudan/sudan-humanitarian-update-1-october-2024.*

[19] WFP Sudan Regional Crisis External Situation Report #8, WFP, Sept. 19, 2024, *https://reliefweb.int/report/sudan/wfp-sudan-regional-crisis-external-situation-report-8-31-august-2024.*

[20] Global community to urge action on escalating Sudan crisis at UN General Assembly, UNOCHA, UNHCR, Sept. 25, 2024, *https://reliefweb.int/report/sudan/global-community-urge-action-escalating-sudan-crisis-un-general-assembly-25-september-2024-enar.*

[21] Sexual violence and famine stalk Sudan's displaced, U.N. News, Aug. 13, 2024, *https://reliefweb.int/report/sudan/sexual-violence-and-famine-stalk-sudans-displaced.*

[22] WFP Sudan Regional Crisis External Situation Report #8, WFP, Sept. 19, 2024, *https://reliefweb.int/report/sudan/wfp-sudan-regional-crisis-external-situation-report-8-31-august-2024.*

[23] Sudan surpasses 100 attacks on healthcare since 2023 armed conflict began, WHO, Sept. 24, 2024, *https://reliefweb.int/report/sudan/sudan-surpasses-100-attacks-healthcare-2023-armed-conflict-began.*

[24] Sudan Humanitarian Update, UNOCHA, Oct. 1, 2024, *https://reliefweb.int/report/sudan/sudan-humanitarian-update-1-october-2024.*

[25] Sudan Humanitarian Update, UNOCHA, Oct. 1, 2024, *https://reliefweb.int/report/sudan/sudan-humanitarian-update-1-october-2024.*

[26] Report of the Independent International Fact-Finding Mission for the Sudan, U.N. Human Rights Council, September 6, 2024, pg. 10, *https://www.ohchr.org/en/hr-bodies/hrc/ffm-sudan/index.*

[27] 2023 Country Reports on Human Rights Practices: Sudan, U.S. Dep't of State, Mar. 30, 2024, *https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/sudan.*

[28] Gender-based Violence Sub-cluster Response, UNOCHA, Oct. 15, 2023, *https://reports.unocha.org/en/country/sudan/card/5HPjTQBSaq/.*

[29] Sudan Protection Concerns: ten months into the war, ACAPS, Feb. 29, 2024, pg. 3, *https://www.acaps.org/fileadmin/Data_Product/Main_media/20240229_ACAPS_Sudan_analysis_hub_protection_concerns_10_months_into_the_war.pdf.*

INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

- There are approximately1,900 current Sudanese TPS beneficiaries who are eligible to re-register for TPS under the extension.

Notice of the Designation of Sudan for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Sudan's designation for TPS on the basis of ongoing armed conflict and extraordinary and temporary conditions are met, and it is not contrary to the national interest of the United States to permit Sudanese TPS beneficiaries to remain in the United States temporarily. *See* INA secs. 244(b)(1)(A) and (b)(1)(C), 8 U.S.C. 1254a(b)(1)(A) and (b)(1)(C). On the basis of this determination, I am extending the existing designation of Sudan for TPS for 18 months, beginning on April 20, 2025, and ending on October 19, 2026. *See* INA sec. 244(b)(1) and (b)(2); 8 U.S.C. 1254a(b)(1), and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees to register or re-register for TPS:

To re-register for TPS based on the designation of Sudan, you must submit a Form I–821. When filing an application to re-register for TPS, you do not need to pay the application fee; however, you are required to pay the biometric services fee. If you cannot pay the biometric services fee, you may ask USCIS to waive the fee. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an EAD, which proves their authorization to work in the United States. You are not required to submit Form I–765 or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Sudan TPS application (Form I–821) that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through October 19, 2026.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 106.2 and the fee waiver-related regulations in 8 CFR 106.3. In addition, USCIS Form G–1055, Fee Schedule, provides the current fees required for the Form I–821 and Form I–765 for existing TPS beneficiaries who are re-registering.

How Can TPS Beneficiaries Obtain an EAD?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. If you want to obtain an EAD, you must file Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912). TPS applicants may file this form with their TPS application, or separately later, if their TPS application is still pending or has been approved.

Beneficiaries with a Sudan TPS-related Form I–765 that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through October 19, 2026.

Can My TPS-Related EAD Be Automatically Extended?

Yes. There are two ways for your TPS-related EAD to be automatically extended. First, if you already have an EAD with a ''Card Expires'' date of April 19, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, April 2, 2019, Nov. 2, 2018, or Nov. 2, 2017, this **Federal Register** notice automatically extends it through April 19, 2026 without any further action on your part. You do not need to present this FRN or any other additional documentation other than your EAD to use this automatic extension.

Second, you may also be eligible for a longer automatic extension of up to 540 days from the ''Card Expires'' date on the EAD if you file your Form I–765 EAD renewal application during the re-registration period of January 17, 2025, through March 18, 2025 (''Up to 540-Day Automatic EAD Extension'').[30] See the section ''How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')?'' of this **Federal Register** notice for more information. Your EAD may be eligible for both types of extensions. If you take advantage of both types of EAD extensions, the automatic extension periods run concurrently.

Filing Information

USCIS offers the option to applicants for TPS under Sudan's designation to file Form I–821 and related requests for EADs online or by mail. However, if you file Form I–912, Request for Fee Waiver or a written fee waiver request for any applications filed together with your Form I–821, you must submit your applications by mail. When filing a TPS application, you can also request an EAD by submitting a completed Form I–765 with your Form I–821. Under certain circumstances, you may also upload a completed Form I–765 with a fee or fee waiver request, in Portable Document Format (PDF) through your USCIS online account. More information about filing your Form I–765 and fee waiver request through a PDF upload is available at *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option.*

Online filing: Form I–821 and Form I–765 are available for concurrent filing online.[31] To file these forms online, you must first create a USCIS online account.[32]

PDF upload: Form I–765, if applicable, and Form I–912, if applicable, are available for PDF upload. To upload these documents, you must first create a USCIS online account.[33]

Mail filing: Mail your completed Form I–821; Form I–765, if applicable; Form I–912, if applicable; and supporting documentation to the proper address in Table 1—Mailing Addresses.

[30] Under 8 CFR 274a.13(d), EADs with category A–12 and C–19 are eligible for an automatic extension of up to 540 days from the date on the face of the EAD if the bearer's Form I–765 application is properly filed under either the A–12 or C–19 category and during the re-registration period described in the applicable **Federal Register** notice.

[31] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[32] *https://myaccount.uscis.gov/users/sign_up.*

[33] *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option.* Sign up to create a new USCIS online account at *https://myaccount.uscis.gov/users/sign_up.*

TABLE 1—MAILING ADDRESSES

If you send your paper application via:	Then, mail your application to:
U.S. Postal Service USPS	USCIS, Attn: TPS Sudan, P.O. Box 6943, Chicago, IL 60680–6943.
FedEx, UPS, or DHL deliveries	USCIS, Attn: TPS Sudan (Box 6943), 131 S Dearborn St., 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, you may file Form I–765 online, mail your Form I–765 to the appropriate address in Table 1, or submit a PDF upload. If you file online, you will be prompted to include the fee. If you file by mail, you must include the fee or fee waiver request. If you file by PDF upload, you must include the fee or a fee waiver request. When you request an EAD based on an IJ or BIA grant of TPS, please include with your application a copy of the order from the IJ or BIA granting you TPS. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions for Form I–821 list all the documents you need to re-register for TPS. You may also find information on the acceptable documentation and other requirements for re-registering) for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''Sudan.''

Travel

TPS beneficiaries and TPS applicants with pending Form I–821 applications may also apply for travel authorization, which USCIS may grant as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If USCIS grants travel authorization, it gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing Form I–131, a TPS beneficiary must:

- Select Item Number 4 in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

When filing Form I–131, a TPS applicant with a pending initial Form I–821 must:

- Select Item Number 5C in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797, Notice of Action, or Form I–797C, Notice of Action, indicating either approval or receipt of Form I–821. Form I–131 may not be filed by PDF upload.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with Form I–821	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS). You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL. You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821.	USCIS, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants, in addition to a biometric services fee. As previously stated, if you cannot pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* USCIS may require you to visit an Application Support Center to have your biometrics collected. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *https://uscis.gov* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through April 19, 2026, through this Federal Register notice (''FRN-Based Automatic EAD Extension'')?

Yes. Regardless of your country of birth, if you currently have a Sudan TPS-based EAD with the notation A–12 or C–19 under Category and a ''Card Expires'' date of April 19, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, April 2, 2019, Nov. 2, 2018, or Nov. 2, 2017, this **Federal Register** notice automatically extends your EAD through April 19, 2026 without any further action on your part. Although this **Federal Register** notice automatically extends your EAD through April 19, 2026, you still must timely re-register for TPS in accordance with the procedures described in this

Federal Register notice to maintain your TPS. You also should file your form I–765 timely to avoid possible gaps in your employment authorization documentation.

How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')?

You qualify for this other type of automatic EAD extension if:

- You properly file your renewal Form I–765 during the TPS re-registration period which is January 17, 2025, through March 18, 2025; and
- Your Form I–765 EAD renewal application is under category A–12 or C–19.

As long as the categories listed on your EAD and Form I–797C receipt notice are A–12 or C–19, they don't need to be the same. (For example, your EAD may still be automatically extended for up to 540 days if your facially expired or expiring EAD says C–19 and your renewal application says A–12.)

For purposes of your employer verifying your employment eligibility on the Form I–9, if you choose to complete your Form I–9 using the ''Up to 540-Day Automatic EAD Extension,'' the automatic extension period starts from the ''Card Expires'' date on your EAD. You may use the EAD Automatic Extension Calculator available at *https://www.uscis.gov/eadautoextend* to determine the automatically extended expiration date.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within business three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present one selection from List A (which provides evidence of both identity and employment authorization) or one selection from List B (which provides evidence of your identity) together with one selection from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in these lists. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If your EAD states A–12 or C–19 under Category and has a ''Card Expires'' date of April 19, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, April 2, 2019, Nov. 2, 2018, or Nov. 2, 2017, this **Federal Register** notice extends it automatically, and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through April 19, 2026. Your country of birth noted on the EAD does not have to reflect the TPS-designated country of Sudan for you to be eligible for this extension. You may, but are not required to, show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through April 19, 2026.

B. Up to 540-day Automatic EAD Extension. To show that you qualify for this extension, present:

1. Your EAD with a Category Code of A–12 or C–19 and
2. Your Form I–797C, Notice of Action, for your Form I–765 renewal EAD application showing a Category Code of A–12 or C–19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from (January 17, 2025,through March 18, 2025).

The A–12 or C–19 categories on your Form I–797C, Notice of Action, and facially expired or expiring A–12 or C–19 EAD do not need to match, as long as each lists A–12 or C–19 as the category. (For example, your EAD may still be automatically extended for up to 540 days if your EAD says C–19 and your renewal application says A–12.)

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Your employer is required by law to ask you about your continued employment authorization. Your employer may need to reexamine your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, they should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If you choose to use the automatic EAD extension based on this **Federal Register** notice, you may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through April 19, 2026; however, you are not required to do so. The last day of this automatic EAD extension is April 19, 2026. Before you start work on April 20, 2026, your employer is required by law to reverify your employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD, present:

1. Your facially expired or expiring EAD with a Category Code of A–12 or C–19, and
2. The Form I–797C, Notice of Action, showing a Category Code of A–12 or C–19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from (January 17, 2025, through March 3, 2025).

By the end date of your automatic EAD extension, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in these lists to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, even if you already have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through October 19, 2026, you must file Form I–765 and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation to complete Form I–9, such as evidence of my status, proof of my Sudanese citizenship, or a Form I–797 showing that I registered for TPS?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request other documentation, such as proof of Sudanese citizenship or proof of registration for TPS, when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document if the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before April 20, 2026:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until'' and enter October 19, 2026, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine whether the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a ''Card Expires'' date of April 19, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, April 2, 2019, Nov. 2, 2018, or Nov. 2, 2017;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write April 19, 2026, as the expiration date.

Before the start of work on April 20, 2026, employers must reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until;'' and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

c. Enter October 19, 2026 as the expiration date.

2. In Section 2, in the List A column, the employer must:

a. Determine whether the EAD is automatically extended by ensuring it is in category A–12 or C–19 and that your Form I–797C indicates that you filed your Form I–765 renewal EAD application under Category A12 or C19 and during the re-registration period indicated in this **Federal Register** notice;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. In the Expiration Date field, enter the date 540 days from the ''Card Expires'' date on the EAD. This date may not be later than October 19, 2026. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

f. Employers should also enter ''EAD EXT'' in the Additional Information field.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine whether your EAD is automatically extended by ensuring that it contains Category A–12 or C–19.

A. FRN-based automatic EAD Extension. If you are relying on an FRN-based automatic EAD extension, your employer should examine your EAD to see if it has a ''Card Expires'' date of April 19, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, April 2, 2019, Nov. 2, 2018, or Nov. 2, 2017. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, they should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and April 19, 2026, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By April 20, 2026, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you are relying on an up to 540-day automatic EAD extension, your employer must also examine your Form I–797C indicating receipt of your Form I–765 renewal EAD application to determine if it was filed under Category A–12 or C–19 and during the re-registration period indicated in this **Federal Register** notice. Your employer will need to update Form I–9 by entering the appropriate automatic EAD extension expiration date and ''EAD EXT'' in the Section 2 Additional Information field. The new up to 540-day EAD extension expiration date starts from the ''Card Expires'' date on the face of your current EAD, not to exceed the TPS designation end date indicated in this **Federal Register** notice. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

Note: This information also applies if you initially presented a TPS-related EAD that was automatically extended by the FRN-Based Automatic EAD Extension and later obtained an up to 540-day automatic EAD extension.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the EAD document number and expiration date from Section 2 of Form I–9 into the corresponding fields in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you have an employee who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. You must reverify your employee's employment authorization on Form I–9 by the date their automatic EAD extension ends. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English, Spanish and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in many languages. Employers may also email IER at *IER@usdoj.gov* or get more information online at *https://www.justice.gov/ier.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts and emails calls in English, Spanish and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in many languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in these lists. Employers may not require extra or additional documentation other than what is required to complete Form I–9. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give these employees an opportunity to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result occurs if E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an EAD that has been automatically extended by this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action, reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. If you are presenting an EAD extended by an up to 540-day extension, you will need to show your Form I–797C, Notice of Action, reflecting receipt of your Form I–765. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary or applicant, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A–12 or C–19, even if your country of birth noted on the EAD does not reflect the TPS-designated country of Sudan;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821, if you received one from USCIS.

Check with the government agency requesting documentation about which document(s) the agency will accept.

Some state and local government agencies use SAVE, *https://www.uscis.gov/save,* to confirm the current immigration status of applicants for public benefits. While SAVE can verify that an individual has TPS or a pending TPS application, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-Number, USCIS number, or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://www.uscis.gov/save/save-casecheck.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as your A-Number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must allow you to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save/for-benefit-applicants,* has detailed information on how to correct or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2025–00770 Filed 1–13–25; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2787–25; DHS Docket No. USCIS–2008–0034]

RIN 1615–ZB71

Extension of the Designation of El Salvador for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security is extending the designation of El Salvador for Temporary Protected Status (TPS) for 18 months, beginning on March 10, 2025, and ending on September 9, 2026. This extension allows eligible TPS beneficiaries to retain TPS though September 9, 2026, so long as they otherwise continue to meet eligibility requirements for TPS.

DATES: *Extension of Designation of El Salvador for TPS* begins on March 10, 2025, and will remain in effect for 18 months. For registration instructions, see the Registration Information section below.

FOR FURTHER INFORMATION CONTACT:

- You may contact Renáa Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240–721–3000.
- For more information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* You can find specific information about El Salvador's TPS designation by selecting ''El Salvador'' from the menu on the left side of the TPS web page.
- If you have additional questions about TPS, please visit *https://uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you cannot find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.*
- You can also find more information at local USCIS offices, listed on the USCIS website at *https://www.uscis.gov/about-us/find-a-uscis-office,* after this notice is published.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DoS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Documents, Parole Documents, and Arrival/Departure Records
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
PDF—Portable Document Format
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Registration Information

Extension of Designation of El Salvador for TPS: The 18-month extension of El Salvador's TPS designation begins on March 10, 2025, and will remain in effect for 18 months, ending on September 9, 2026. The extension allows existing TPS beneficiaries to retain TPS through September 9, 2026, if they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through September 9, 2026, must re-register during the 60-day re-registration period described in this notice.

Re-registration: The 60-day re-registration period for existing beneficiaries runs from January 17, 2025, through March 18, 2025. (*Note:* It is important for re-registrants to timely re-register during the re-registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of El Salvador (or individuals having no nationality who last habitually resided in El Salvador) to re-register for TPS and apply to renew their EAD with USCIS.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of El Salvador and whose applications have been granted. If you do not re-register properly within the 60-day re-registration period, USCIS may withdraw your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under El Salvador's designation, the 60-day re-registration period runs from January 17, 2025, through March 18, 2025. USCIS will issue new EADs with a September 9,

2026 expiration date to eligible beneficiaries granted TPS under El Salvador's designation who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive a new EAD before their current EAD expires. Accordingly, through this **Federal Register** notice, DHS automatically extends through March 9, 2026, the validity of certain EADs previously issued under the TPS designation of El Salvador. As proof of continued employment authorization through March 9, 2026, TPS beneficiaries can show their EAD with the notation A12 or C19 under Category and a ''Card Expires'' date of March 9, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, Sept. 9, 2019, or March 9, 2018. This notice explains how TPS beneficiaries and their employers may determine if an EAD is automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have an Application for Temporary Protected Status (Form I–821) for El Salvador or TPS-related Application for Employment Authorization (Form I–765) that was still pending as of January 17, 2025, do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through September 9, 2026. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs if they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, if it is still valid beyond the date TPS terminates.

When was El Salvador designated for TPS?

El Salvador was initially designated for TPS on the basis of environmental disaster, following two separate massive earthquakes in 2001 [1] that resulted in a substantial disruption of living conditions, at the request of the country's government, and because El Salvador temporarily was unable to handle adequately the return of its nationals. *See Designation of El Salvador Under Temporary Protected Status Program,* 66 FR 14214 (Mar. 9, 2001). After its initial designation, El Salvador's TPS designation was extended 11 consecutive times [2] (for periods of 12 or 18 months at a time) under the same statutory basis of environmental disaster. Following the statutorily required review of the country conditions in 2018, former Secretary Kirstjen Nielsen announced the termination of the TPS designation for El Salvador effective September 9, 2019.[3] As the result of federal litigation challenging the termination, this termination did not take effect.[4] [5] On June 13, 2023, Secretary Alejandro Mayorkas announced the reconsideration and rescission of the termination of TPS designation for El Salvador and extended the TPS designation on the basis of environmental disaster through March 9, 2025.[6]

What authority does the Secretary have to extend the designation of El Salvador for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[7] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the

[1] *El Salvador—Earthquakes Final Fact Sheet, Fiscal Year (FY) 2001,* US Agency for International Development Situation Report, Sept. 7, 2001, available at *https://reliefweb.int/report/el-salvador/el-salvador-earthquakes-final-fact-sheet-fiscal-year-fy-2001* (last visited Nov. 26, 2024). (The first earthquake on January 13, 2001, registered 7.6 in magnitude on the standard seismic scale; the earthquake on February 13, 2001, one month later, measured 6.6 in magnitude.)

[2] *Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans,* 67 FR 46000 (July 11, 2002); *Extension of the Designation of El Salvador Under Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for El Salvador,* 68 FR 42071 (July 16, 2003); *Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvador TPS Beneficiaries,* 70 FR 1450 (Jan. 7, 2005); *Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvadorian TPS Beneficiaries,* 71 FR 34637 (June 15, 2006); *Extension of the Designation of El Salvador for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries,* 72 FR 46649 (Aug. 21, 2007); *Extension of the Designation of El Salvador for Temporary Protected Status,* 73 FR 57128 (Oct. 1, 2008); *Extension of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries,* 75 FR 39556 (July 9, 2010); *Extension of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries,* 77 FR 1710 (Jan. 11, 2012); *Extension of the Designation of El Salvador for Temporary Protected Status,* 78 FR 32418, (May 30, 2013); *Extension of the Designation of El Salvador for Temporary Protected Status,* 80 FR 893 (Jan. 7, 2015); *Extension of the Designation of El Salvador for Temporary Protected Status,* 81 FR 44645 (July 8, 2016).

[3] *Termination of the Designation of El Salvador for Temporary Protected Status,* 83 FR 2654 (Jan. 18, 2018).

[4] *Ramos* v. *Nielsen,* 336 F. Supp. 3d 1075 (N.D. Cal. 2018), *appeal dismissed,* No. 18–16981 (9th Cir. June 29, 2023).

[5] *Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal,* 87 FR 68717 (Nov. 16, 2022).

[6] *Reconsideration and Rescission of Termination of the Designation of El Salvador for Temporary Protected Status; Extension of the Temporary Protected Status Designation for El Salvador,* 88 FR 40282 (June 21, 2023).

[7] Although INA section 244(b)(1) ascribes this power to the Attorney General, Congress transferred this authority from the Attorney General to the Secretary of Homeland Security in the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, an environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1). For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must officially request a TPS designation. INA sec. 244(b)(1)(B); 8 U.S.C. 1254a(b)(1)(B). A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the national interest of the United States. INA sec. 244(b)(1)(C); 8 U.S.C. 1254a(b)(1)(C).

designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). The Secretary, in their discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary Extending the TPS Designation for El Salvador Through September 9, 2026?

DHS has reviewed country conditions in El Salvador. Based on the review, including input received from the Department of State (DoS) and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because the conditions supporting El Salvador's 2001 designation for TPS on the basis of environmental disaster remain.

Overview

Geological and weather events, including significant storms and heavy rainfall in 2023 and 2024, have continued to affect El Salvador, including some of the areas most heavily impacted by the 2001 earthquakes. In addition, a significant percentage of El Salvador's population continues to lack access to adequate clean water and lives in conditions similar to those described in previous TPS designations for El Salvador.

While progress has been made in repairing physical damage caused by the 2001 earthquakes, subsequent environmental disasters, infrastructure challenges, continued climate risks, a weak macroeconomic environment, and food insecurity underscore that the country conditions underlying the original designation continue to significantly disrupt living conditions in El Salvador.

Environmental Considerations

El Salvador continues to experience significant climate and geological events, including in regions that were severely impacted in the 2001 earthquakes. Parts of El Salvador are located in Central America's ''Dry Corridor,'' an area that experiences dangerously long periods of drought alternating with periods of significant rainfall that negatively impact the livelihoods and food security of its inhabitants.[8] The Atlantic hurricane season, spanning from approximately May or June to November, frequently impacts El Salvador and results in significant flooding as well as the destruction of crops and infrastructure.''[9] In addition to climate events, El Salvador is prone to significant geological events, such as earthquakes and volcanic eruptions.[10] The United Nations International Organization for Migration reports that the ''recurrent shocks are becoming more intense; in the last seven years, storms and hurricanes have increased both in number and destructive force.''[11] In January 2023, Salvadoran authorities reported a series of 219 earthquakes, which caused at least 20 landslides in El Salvador in the span of 24 hours.[12]

In June 2024, increased humidity off the Pacific coast of El Salvador led to exceptionally heavy and persistent rainfall, resulting in multiple landslides and flooding.[13] The landslides affected homes and roads,[14] causing 1,542 families (more than 4,000 people) to be evacuated.[15] Among the areas most impacted by heavy rains were regions that were significantly impacted by the 2001 earthquakes, including both the San Miguel and San Vicente departments.[16] While those areas were some of the most heavily affected, there was disastrous flooding throughout the entire country.[17] The rains resulted in volatile conditions causing infrastructure damage and ultimately led to nationwide ''red alerts,'' warnings issued in response to dangerous weather conditions, and a declaration of a national state of emergency.[18]

Water and Food

El Salvador experiences extreme weather events that impact its ability to meet certain basic needs, like access to water and food, for impacted Salvadorans.[19] El Salvador currently lacks sufficient clean water to meet the needs of its population.[20] Over 1.6 million Salvadorans are estimated to have no access to clean water at home.[21] Industrial and agricultural runoff are responsible for causing exceptionally high water pollution levels, and water is often left untreated due to poor state infrastructure, which leads to diseases such as dysentery and limits poor Salvadorans' ability to work and go to school.[22] People who live in the 144 municipalities in El Salvador located in the Dry Corridor at times have to buy water, which can be difficult for the large percentage of the population that lives in poverty.[23] In addition to lack of

[8] Helping farmers beat the climate crisis in Central America's Dry Corridor, United Nations Environment Program (UNEP), June 16, 2023, available at: *https://www.unep.org/news-and-stories/story/helping-farmers-beat-climate-crisis-central-americas-dry-corridor* (last visited Nov. 26, 2024).

[9] Country Analysis: El Salvador, ACAPS, Feb. 2024, available at: *https://www.acaps.org/en/countries/el-salvador#* (last visited Nov. 26, 2024).

[10] El Salvador Crisis Response Plan 2023–2025, International Organization for Migration (IOM), Jan. 22, 2024, available at: *https://reliefweb.int/report/el-salvador/el-salvador-crisis-response-plan-2023-2025* (last visited Nov. 26, 2024).

[11] *Id.*

[12] Slew of earthquakes in El Salvador affects over 100 homes, Reuters, Jan. 16, 2023, available at: *https://www.reuters.com/world/americas/slew-earthquakes-el-salvador-affects-over-100-homes-2023-01-16/* (last visited Nov. 26, 2024).

[13] El Salvador: Floods—DREF operational Update (MDRSV016), International Federation of Red Cross and Red Crescent Societies (IFRC), Aug. 15, 2024, available at: *https://reliefweb.int/report/el-salvador/el-salvador-floods-dref-operational-update-mdrsv016* (last visited Nov. 26, 2024).

[14] *Id.*

[15] Emergency Response Plan Severe Weather And Floods—El Salvador June 2024, ChildFund Alliance & Educo, pg. 2, July 2, 2024, available at: *https://reliefweb.int/report/el-salvador/emergency-response-plan-severe-weather-and-floods-el-salvador-june-2024* (last visited Nov. 26, 2024).

[16] The departments of San Miguel and San Vicente were among the most affected by the earthquakes of January and February 2001. *See:* El Salvador—Earthquakes Final Fact Sheet, *supra* note 1; El Salvador: Floods—DREF operational Update (MDRSV016), *supra* note 13.

[17] *Supra* note 15.

[18] *Id.*

[19] Witnessing climate change: The voices of El Salvador, United Nations Development Program (UNDP), June 8, 2023, available at: *https://climatepromise.undp.org/news-and-stories/witnessing-climate-change-voices-el-salvador* (last visited Sep. 20, 2024).

[20] Mackey, Danielle, The true cost of El Salvador's new gold rush, The Guardian, Apr. 4, 2024, available at: *https://www.theguardian.com/environment/2024/apr/04/el-salvador-gold-rush-environmental-activists-metal-mining-ban-nayib-bukele* (last visited Nov. 26, 2024).

[21] El Salvador's Water Crisis, The Borgen Project, Nov. 30, 2023, available at: *https://borgenproject.org/el-salvadors-water-crisis/* (last visited Nov. 26, 2024).

[22] *Id.*

[23] Rural Women's Constant Struggle for Water in Central America, Inter Press Service, May 2, 2023, available at: *https://reliefweb.int/report/el-salvador/*

Continued

access to clean water, El Salvador is experiencing deep-rooted food insecurity and malnutrition, with approximately one-fifth of El Salvador's population experiencing moderate to severe food insecurity.[24] El Salvador faces a multitude of challenges in combating hunger, including the socioeconomic impact of COVID–19, ongoing natural hazards and climate variability and the increase in global food, fuel and fertilizer prices.[25]

In summary, though progress has been made in recovery from the 2001 earthquakes, El Salvador continues to be encumbered by natural disasters, environmental challenges, lack of access to clean water, and high food insecurity, all of which continue to render El Salvador unable to handle the return of its nationals.

Based on this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting El Salvador's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There has been an earthquake, flood, drought, epidemic, or other environmental disaster in El Salvador resulting in a substantial, but temporary, disruption of living conditions in the area affected that continues to prevent Salvadoran nationals (or individuals having no nationality who last habitually resided in El Salvador) from returning to El Salvador in safety; El Salvador is unable, temporarily, to handle adequately the return of its nationals; and El Salvador has officially requested designation of TPS. *See* INA sec. 244(b)(1)(B), 8 U.S.C. 1254a(b)(1)(B);
- The designation of El Salvador for TPS should be extended for an 18-month period, beginning on March 10, 2025, and ending on September 9, 2026. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 232,000 current El Salvador TPS beneficiaries who are eligible to re-register for TPS under the extension.

Notice of the Designation of El Salvador for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting El Salvador's designation for TPS based on environmental disaster continue to be met. *See* INA sec. 244(b)(1)(B), (b)(3)(A); 8 U.S.C. 1254a(b)(1)(B), (b)(3)(A). On the basis of this determination, I am extending the existing designation of El Salvador for TPS for 18 months, beginning on March 10, 2025, and ending on September 9, 2026. *See* INA sec. 244(b)(1)–(2); 8 U.S.C. 1254a(b)(1)–(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees to Re-Register for TPS

To re-register for TPS based on the designation of El Salvador, you must submit Form I–821. When filing an application to re-register for TPS, you do not need to pay the application fee; however, you are required to pay the biometric services fee. If you cannot pay the biometric services fee, you may ask USCIS to waive the fee. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an EAD, which proves their authorization to work in the United States. You are not required to submit Form I–765 or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have an El Salvador TPS application (Form I–821) that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through September 9, 2026.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 106.2 and the fee waiver-related regulations in 8 CFR 106.3. In addition, USCIS Form G–1055, Fee Schedule, provides the current fees required for the Form I–765, as well as for the Form I–821 for existing TPS beneficiaries who are re-registering.

How can TPS beneficiaries obtain an EAD?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. If you want to obtain an EAD, you must file Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912). TPS applicants may file this form with their TPS application, or separately later, if their TPS application is still pending or has been approved.

Beneficiaries with an El Salvador TPS-related Form I–765 that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through September 9, 2026.

Can my TPS-related EAD be automatically extended?

Yes. There are two ways for your TPS-related EAD to be automatically extended. First, if you already have an EAD with a ''Card Expires'' date of March 9, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, Sept. 9, 2019, or March 9, 2018, this **Federal Register** notice automatically extends it through March 9, 2026 without any further action on your part. You do not need to present this FRN or any other additional documentation other than your EAD to use this automatic extension.

Second, you may also be eligible for an automatic extension of up to 540 days from the ''Card Expires'' date on the EAD if you file your Form I–765 EAD renewal application during the re-registration period of January 17, 2025, through March 18, 2025 (''Up to 540-Day Automatic EAD Extension'').[26] See the section ''How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')?'' of this **Federal Register** notice for more information. Your EAD may be eligible for both types of extensions, but in no case will your EAD automatic extension be valid past September 9, 2026. If you take advantage of both types of EAD extensions, the automatic extension periods run concurrently.

Filing Information

USCIS offers the option to applicants for TPS under El Salvador's designation

rural-womens-constant-struggle-water-central-america (last visited Nov. 26, 2024).

[24] El Salvador Annual Country Report 2023, World Food Programme (WFP), p. 3, Mar. 2024, available at: *https://www.wfp.org/publications/annual-country-reports-el-salvador* (last visited Nov. 26, 2024).

[25] *Id.*

[26] Under 8 CFR 274a.13(d), EADs with category A12 and C19 are eligible for an automatic extension of up to 540 days from the date on the face of the EAD if the bearer's Form I–765 application is properly filed under either the A12 or C19 category and during the re-registration period described in the applicable **Federal Register** notice.

to file Form I–821 and related requests for EADs online or by mail. However, if you file Form I–912, Request for Fee Waiver or a written fee waiver request for your Form I–821 or any applications filed together with your Form I–821, you must submit your applications by mail. When filing a TPS application, you can also request an EAD by submitting a completed Form I–765 with your Form I–821. You may also upload a completed Form I–765 with a fee or fee waiver request, in Portable Document Format (PDF) through your USCIS online account. More information about filing your Form I–765 and fee waiver request through a PDF upload is available at *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option.*

Online filing: Form I–821 and Form I–765 are available for concurrent filing online.[27] To file these forms online, you must first create a USCIS online account.[28]

PDF upload: Form I–765, if applicable, and Form I–912, if applicable, are available for PDF upload. To upload these documents, you must first create a USCIS online account.[29]

Mail filing: Mail your completed Form I–821; Form I–765, if applicable; Form I–912, if applicable; and supporting documentation to the proper address in Table 1—Mailing Addresses.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You live in Texas and are using U.S. Postal Service (USPS)	USCIS, Attn: TPS El Salvador, P.O. Box 660864, Dallas, TX 75266–0864.
You live in Texas and are using are using FedEX, UPS, or DHL	USCIS, Attn: TPS El Salvador (Box 660864), 2501 S State Highway, 121 Business, Suite 400, Lewisville, TX 75067–8003.
You live in American Samoa, Arizona, California, Connecticut, Delaware, District of Columbia, Georgia, Guam, Illinois, Indiana, Kentucky, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, North Carolina, Northern Mariana Islands, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virgin Islands, Virginia, Washington, or West Virginia and you are using the U.S. Postal Service (USPS)	USCIS, Attn: TPS El Salvador, P.O. Box 8635, Chicago, IL 60680–8635.
You live in American Samoa, Arizona, California, Connecticut, Delaware, District of Columbia, Georgia, Guam, Illinois, Indiana, Kentucky, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, North Carolina, Northern Mariana Islands, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virgin Islands, Virginia, Washington, or West Virginia and you are using FedEx, UPS, or DHL	USCIS, Attn: TPS El Salvador (Box 8635), 131 S Dearborn St.—3rd Floor, Chicago, IL 60603–5517.
You live in Alabama, Alaska, Arkansas, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, Wisconsin, Wyoming and you are using the U.S. Postal Service (USPS)	USCIS, Attn: TPS El Salvador, P.O. Box 4091, Carol Stream, IL 60197–4091.
You live in Alabama, Alaska, Arkansas, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, Wisconsin, Wyoming and you are using FedEx, UPS, or DHL	USCIS, Attn: TPS El Salvador (Box 4091), 2500 Westfield Drive, Elgin, IL 60124–7836.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you want to request an EAD, you may submit Form I–765 one of three ways: online, mail your Form I–765 to the appropriate address in Table 1, or upload a completed PDF through your USCIS online account. If you file online, you must include the fee. If you file by mail, you must include the fee or fee waiver request. If you file by PDF upload, you must include the fee or a fee waiver request. When you request an EAD based on an IJ or BIA grant of TPS, include with your application a copy of the order from the IJ or BIA granting you TPS. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions for Form I–821 list all the documents you need to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (also called registering) for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''El Salvador.''

Travel

TPS beneficiaries and TPS applicants with pending Form I–821 applications may also apply for travel authorization, which USCIS may grant as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If USCIS grants travel authorization, it gives you permission to leave the United States and to return to a U.S. port of entry to request re-entry during a specific period. To request travel authorization, you must file Form I–131, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately.

When filing Form I–131, a TPS beneficiary must:

- Select Item Number 4 in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

When filing Form I–131, a TPS applicant with a pending initial Form I–821 must:

- Select Item Number 5C in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797, Notice of Action, or Form I–797C, Notice of Action, indicating either

[27] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[28] *https://myaccount.uscis.gov/users/sign_up.* Sign up to create a new USCIS online account at *https://myaccount.uscis.gov/users/sign_up.*

[29] *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option.*

approval or receipt of Form I–821. Form I–131 may not be filed by PDF upload.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with Form I–821	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821	USCIS, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants, in addition to a biometric services fee. As previously stated, if you cannot pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* USCIS may require you to visit an Application Support Center to have your biometrics collected. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *https://uscis.gov* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through March 9, 2026, through this Federal Register notice (''FRN-Based Automatic EAD Extension'')?

Yes. Regardless of your country of birth, if you currently have an El Salvador TPS-based EAD with the notation A12 or C19 under Category and a ''Card Expires'' date of March 9, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, Sept. 9, 2019, or March 9, 2018, this **Federal Register** notice automatically extends your EAD through March 9, 2026 without any further action on your part. Although this **Federal Register** notice automatically extends your EAD through March 9, 2026, you still must timely re-register for TPS by filing Form I–821 in accordance with the procedures described in this **Federal Register** notice to maintain your TPS. You also should file your I–765 timely to avoid possible gaps in your employment authorization documentation.

How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')?

You qualify for this other type of automatic EAD extension if:

- You properly file your renewal Form I–765 during the TPS re-registration period which is January 17, 2025, through March 18, 2025; and
- Your Form I–765 EAD renewal application is under category A12 or C19.

As long as the categories listed on your EAD and I–797C receipt notice are A12 or C19, they do not need to be the same. (For example, your EAD may still be automatically extended for up to 540 days if your EAD says C19 and your renewal application says A12.)

For purposes of your employer verifying your employment eligibility on the Form I–9, if you choose to complete your Form I–9 using the ''Up to 540-Day Automatic EAD Extension,'' the automatic extension period starts from the ''Card Expires'' date on your EAD. You may use the EAD Automatic Extension Calculator available at *https://www.uscis.gov/eadautoextend* to determine the automatically extended expiration date.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three business days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present one selection from List A (which provides evidence of both identity and employment authorization) or one selection from List B (which provides evidence of your identity) together with one selection from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in these lists. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If your EAD states A12 or C19 under Category and has a ''Card Expires'' date of March 9, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, Sept. 9, 2019, or March 9, 2018, this **Federal Register** notice extends it automatically, and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through March 9, 2026. Your country of

birth noted on the EAD does not have to reflect the TPS-designated country of El Salvador for you to be eligible for this extension. You may, but are not required to, show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through March 9, 2026.

B. Up to 540-day Automatic EAD Extension. To show that you qualify for this extension, present:

1. Your EAD with a Category Code of A12 or C19 and

2. Your Form I–797C, Notice of Action, for your Form I–765 renewal EAD application showing a Category Code of A12 or C19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from (January 17, 2025, through March 18, 2025).

The A12 or C19 categories on your Form I–797C, Notice of Action, and facially expired or expiring A12 or C19 EAD do not need to match, as long as each lists A12 or C19 as the category. (For example, your EAD may still be automatically extended for up to 540 days if your EAD says C19 and your renewal application says A12.)

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Your employer is required by law to ask you about your continued employment authorization. Your employer may need to reexamine your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, they should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If you choose to use the automatic EAD extension based on this **Federal Register** notice, you may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through March 9, 2026; however, you are not required to do so. The last day of this automatic EAD extension is March 9, 2026. Before you start work on March 10, 2026, your employer is required by law to reverify your employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD, but no later than September 9, 2026, present:

1. Your EAD with a Category Code of A12 or C19, and

2. The Form I–797C, Notice of Action, showing a Category Code of A12 or C19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from (January 17, 2025, through March 18, 2025).

By the end date of your automatic EAD extension, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in these lists to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, even if you already have an EAD or employment authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through September 9, 2026, you must file Form I–765 and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation to complete Form I–9, such as evidence of my status, proof of my Salvadoran citizenship, or a Form I–797C showing that I registered for TPS?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request other documentation, such as proof of Salvadoran citizenship or proof of registration for TPS, when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document if the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

A. FRN-based Automatic EAD Extension. When using this this type of automatically extended EAD to complete Form I–9 for a new job before March 10, 2026:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until'' and enter September 9, 2026, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine whether the EAD is auto-extended by ensuring it is in category A12 or C19 and has a ''Card Expires'' date of March 9, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, Sept. 9, 2019, or March 9, 2018;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write March 9, 2026, as the expiration date.

Before the start of work on March 10, 2026, employers must reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until;'' and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

c. Enter September 9, 2026 as the expiration date.

2. In Section 2, in the List A column, the employer must:

a. Determine whether the EAD is automatically extended by ensuring your EAD is in category A12 or C19 and that your Form I–797C indicates that you filed your Form I–765 renewal EAD application under Category A12 or C19 and during the re-registration period indicated in this **Federal Register** notice;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. In the Expiration Date field, enter the date 540 days from the ''Card Expires'' date on the EAD. This date may not be later than September 9, 2026. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

f. Employers should also enter ''EAD EXT'' in the Additional Information field.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine whether your EAD is automatically extended by ensuring that it contains Category A12 or C19.

A. FRN-based automatic EAD Extension. If you are relying on an FRN-based automatic EAD extension, your employer should examine your EAD to see if it has a ''Card Expires'' date of March 9, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, Sept. 9, 2019, or March 9, 2018. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD through this **Federal Register** notice, they should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and March 9, 2026 as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By the date that the employee's automatically extended EAD expires, employers are required by law to reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you are relying on an up to 540-day automatic EAD extension, your employer must examine your Form I–797C indicating receipt of your Form I–765 renewal EAD application to determine if it was filed under Category A12 or C19 and during the re-registration period indicated in this **Federal Register** notice. Your employer will need to update Form I–9 by entering the appropriate automatic EAD extension expiration date and ''EAD EXT'' in the Section 2 Additional Information field. The new up to 540-day EAD extension expiration date starts from the ''Card Expires'' date on the face of your current EAD. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

Note: This information also applies if you initially presented a TPS-related EAD that was automatically extended by the FRN-Based Automatic EAD Extension and later obtained an up to 540-day automatic EAD extension.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the EAD document number and expiration date from Section 2 of Form I–9 into the corresponding fields in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you have an employee who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. You must reverify your employee's employment authorization on Form I–9 by the date their automatic EAD extension ends. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English, Spanish, and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in many languages. Employers may also email IER at *IER@usdoj.gov* or get more information online at *https://www.justice.gov/ier.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English, Spanish, and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in many languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in these lists. Employers may not require extra or additional documentation other than what is required to complete Form I–9. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give these employees an opportunity to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a

mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result occurs if E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Employment-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an EAD that has been automatically extended by this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action, reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. If you are presenting an EAD extended by an up to 540-day extension, you will need to show your Form I–797C, Notice of Action, reflecting receipt of your Form I–765. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary or applicant, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A12 or C19, even if your country of birth noted on the EAD does not reflect the TPS-designated country of El Salvador;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821, if you received one from USCIS.

Check with the government agency requesting documentation about which document(s) the agency will accept.

Some state and local government agencies use SAVE, *https://www.uscis.gov/save,* to confirm the current immigration status of applicants for public benefits. While SAVE can verify that an individual has TPS or a pending TPS application, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-Number, USCIS number, or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://www.uscis.gov/save/save-casecheck.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as your A-Number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must allow you to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save/for-benefit-applicants,* has detailed information on how to correct or update your immigration record, make an appointment, or submit a written request to correct records.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2790–25; DHS Docket No. USCIS–2021–0003]

RIN 1615–ZB86

Extension of the 2023 Designation of Venezuela for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the 2023 designation of Venezuela for Temporary Protected Status (TPS) for 18 months, beginning on April 3, 2025, and ending on October 2, 2026. Existing TPS beneficiaries who wish to extend their status through October 2, 2026, must re-register during the re-registration period described in this notice.

DATES: *Extension of the 2023 Designation of Venezuela for TPS* begins on April 3, 2025, and will remain in effect for 18 months. For registration instructions, see the Registration Information section below.

FOR FURTHER INFORMATION CONTACT:

- You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240–721–3000.
- For more information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* You can find specific information about Venezuela's TPS designation by selecting ''Venezuela'' from the menu on the left side of the TPS web page.

• If you have additional questions about TPS, please visit *https://uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you cannot find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

• Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.*

• You can also find more information at local USCIS offices, listed on the USCIS website at *https://www.uscis.gov/about-us/find-a-uscis-office,* after this notice is published.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DoS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Documents, Parole Documents, and Arrival/Departure Records
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–797C—Notice of Action (Receipt Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—**Federal Register**
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
PDF—Portable Document Format
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Registration Information

Extension of the 2023 Designation of Venezuela for TPS: The 18-month extension of Venezuela's October 3, 2023 TPS designation begins on April 3, 2025, and will remain in effect for 18 months, ending on October 2, 2026. The extension allows existing TPS beneficiaries to retain TPS through October 2, 2026, if they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries, including those registered under the October 3, 2023 TPS designation or the prior March 9, 2021 TPS designation, who wish to extend their status through October 2, 2026, must re-register during the re-registration period described in this notice.

Re-registration: The re-registration period for existing beneficiaries runs from January 17, 2025, through September 10, 2025. (Note: It is important for re-registrants to timely re-register during the re-registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Purpose of this Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Venezuela (or individuals having no nationality who last habitually resided in Venezuela) to re-register for TPS and apply to renew their EAD with USCIS.

Re-registration is limited to individuals who have previously registered for TPS under either of the two prior designations of Venezuela and whose applications have been granted. If you registered for TPS under the October 23, 2023 designation and do not re-register properly within the re-registration period, USCIS may withdraw your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under either of Venezuela's designations, the re-registration period runs from January 17, 2025, through September 10, 2025. USCIS will issue new EADs with an October 2, 2026 expiration date to eligible beneficiaries granted TPS under either of Venezuela's designations who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive a new EAD before their current EAD expires. Accordingly, through this **Federal Register** notice, DHS automatically extends through April 2, 2026, the validity of certain EADs previously issued under the TPS designations of Venezuela. As proof of continued employment authorization through April 2, 2026, TPS beneficiaries can show their EAD with the notation A12 or C19 under Category and a ''Card Expires'' date of September 10, 2025, April 2, 2025, March 10, 2024, or September 9, 2022. This notice explains how TPS beneficiaries and their employers may determine if an EAD is automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have an Application for Temporary Protected Status (Form I–821) for Venezuela or TPS-related Application for Employment Authorization (Form I–765) that was still pending as of January 17, 2025, do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through October 2, 2026. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date.

What Is Temporary Protected Status (TPS)?

• TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.

• During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, are authorized to work, and may obtain EADs if they continue to meet the requirements of TPS.

• TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.

• To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).

• When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:

○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, if it is still valid beyond the date TPS terminates.

When was Venezuela designated for TPS?

Venezuela was initially designated on March 9, 2021, on the basis of extraordinary and temporary conditions in Venezuela that prevented nationals of Venezuela from returning in safety. *See Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred*

Enforced Departure, 86 FR 13574 (Mar. 9, 2021). The TPS designation was extended for 18 months on September 8, 2022. *See Extension of the Designation of Venezuela for Temporary Protected Status,* 87 FR 55024 (Sept. 8, 2022). On October 3, 2023, the TPS designation was extended for 18 months and separately redesignated for 18 months based upon the same factual circumstances and legal considerations pursuant to section 244 of the INA, 8 U.S.C. 1254a. *See Extension and Redesignation of Venezuela for Temporary Protected Status,* 88 FR 68130 (Oct. 3, 2023).

What authority does the Secretary have to extend the designation of Venezuela for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). The Secretary, in their discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the conditions in the foreign state continue to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Will there continue to be two separate filing processes for TPS designations for Venezuela?

No. USCIS has evaluated the operational feasibility and resulting impact on stakeholders of having two separate filing processes. Operational challenges in the identification and adjudication of Venezuela TPS filings and confusion among stakeholders exist because of the two separate TPS designations. To date, USCIS has created operational measures to process Venezuela TPS cases for both designations; however, it can most efficiently process these cases by consolidating the filing processes for the two Venezuela TPS populations. To decrease confusion among stakeholders, ensure optimal operational processes, and maintain the same eligibility requirements, upon publication of this Notice, individuals registered under either the March 9, 2021 TPS designation or the October 3, 2023 TPS designation will be allowed to re-register under this extension. This would not, however, require that a beneficiary registered under the March 9, 2021 designation to re-register at this time. Rather, it would provide such individuals with the option of doing so. Venezuela TPS beneficiaries who appropriately apply for TPS or re-register under this Notice and are approved by USCIS will obtain TPS through the same extension date of October 2, 2026.

Why is the Secretary extending the TPS designation for Venezuela through October 2, 2026?

DHS has reviewed country conditions in Venezuela. Based on the review, including input received from Department of State (DoS) and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because extraordinary and temporary conditions supporting Venezuela's TPS designation remain, and it is not contrary to the national interest of the United States to permit Venezuelan TPS beneficiaries to remain in the United States temporarily.

Overview

Venezuela is experiencing ''a complex, serious and multidimensional humanitarian crisis.'' [2] The crisis has reportedly disrupted every aspect of life in Venezuela. ''Basic services like electricity, internet access, and water are patchy; malnutrition is on the rise; the healthcare system has collapsed; and children receive poor or no education. Inflation rates are also among the highest in the world.'' [3] Venezuela's ''complex crisis'' has pushed Venezuelans into ''poverty, hunger, poor health, crime, desperation and migration.'' [4] Moreover, Nicolás Maduro's declaration of victory in the July 28, 2024 presidential election—which has been contested as fraudulent by the opposition—''has been followed by yet another sweeping crackdown on dissent.'' [5]

Food Insecurity

Food insecurity is also a significant challenge in Venezuela.[6] ''Despite a recent economic recovery [. . .], many families are going hungry and depending on aid to feed themselves.'' [7] Reports indicate that Venezuela ''suffers the second-highest level of hunger in South America,'' with ''[s]ome 5.1 million people [. . .] not getting enough

[1] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

[2] Annual Report 2023—Chapter IV.B—Venezuela, Inter-American Commission on Human Rights (IACHR), Apr. 25, 2024, pg. 730, available at: *https://www.oas.org/en/iachr/docs/annual/2023/chapters/IA2023_Cap_4B_Venezuela_ENG.PDF* (last visited Aug. 20, 2024).

[3] Iván Reyes, As election looms, Venezuelans see-saw between hope and fear, The New Humanitarian, Jul. 8, 2024, available at: *https://www.thenewhumanitarian.org/photo-feature/2024/07/08/election-looms-venezuela-see-saw-between-hope-and-fear* (last visited Aug. 20, 2024).

[4] Regina Garcia Cano, As Maduro shifts from migration denier to defender, Venezuelans consider leaving if he is reelected, The Associated Press, updated May 29, 2024, available at: *https://apnews.com/article/venezuela-election-migrants-maduro-9ba01c2cd7246adb9369bf69941d986a* (last visited Aug. 20, 2024).

[5] Sergio Martínez-Beltrán and Marian Carrasquero, Venezuelans in US anxiously watch home crisis, brace for new migration surge, Morning Edition, National Public Radio (NPR), Aug. 12, 2024, available at: *https://www.npr.org/2024/08/11/nx-s1-5066867/venezuela-maduro-election-migration-usborder-immigration* (last visited Aug. 12, 2024).

[6] Clare Ribando Seelke, Venezuela: Political Crisis and U.S. Policy, Congressional Research Service (CRS), updated Sep. 1, 2023, pg. 1, available at: *https://crsreports.congress.gov/product/pdf/IF/IF10230* (last visited Aug. 22, 2024).

[7] Mariela Nava, In Venezuela, hunger stalks presidential election, Reuters, Jul. 9, 2024, available at: *https://www.reuters.com/world/americas/venezuela-hunger-stalks-presidential-election-2024-07-09/* (last visited Aug. 22, 2024).

to eat.'' [8] The U.N. Special Rapporteur on the right to food reported that ''[f]ood insecurity, malnutrition and deterioration in livelihoods is cited as the primary cause for the mass migration out of the country.'' [9]

Notably, the problem of food shortages and scarcity has abated; [10] however, ''supply issues have been replaced by affordability ones.'' [11] In 2023, ''86% of the population reported not having enough money to buy the food needed in their household,'' while around 22% ''went permanently hungry at times during the year.'' [12] Additionally, ''chronic malnutrition is surging among children, leading to stunting, wasting, delayed cognitive development, and higher risks of illness more generally.'' [13]

Access to Basic Services (Including Electricity, Water, and Fuel)

The lack of access to basic services including electricity, water, and fuel represents another component of Venezuela's crisis.[14] Venezuela ''experiences regular power outages,'' [15] and ''interruptions in electrical service'' are common and reportedly occur daily.[16] The population suffering intermittent and prolonged power failures increased from 25.9% to 61.9% between 2022 and 2023.'' [17] Additionally, Venezuelans face ''growing challenges to access water and sanitation since the water supply is not continuous, and the quality of water has deteriorated.'' [18] ''Potable water is frequently not available for long periods,'' [19] and many households lack reliable access to potable water.[20]

Venezuela is also impacted by fuel shortages.[21] Venezuela experienced ''years of painful fuel shortages that kept drivers in line for sometimes days to fill up their cars and severely restricted Venezuela's industrial and agricultural activity.'' [22] Natural gas—''the fuel essential for cooking, generating power and feeding petrochemical plants and factories—has also been frequently scarce.'' [23] In 2023, 69.4% of households were impacted by failures in the availability of domestic gas service.[24] Furthermore, most Venezuelans without direct gas in their homes for cooking instead ''rely on domestic gas services that households pay for by filling gas cylinders at state plants, one per family per month.'' [25] However, ''[t]he capacity of each cylinder averages about 25 days and cannot always be replenished regularly.'' [26]

Health Crisis

The collapse of Venezuela's healthcare system is one of the most severe aspects of its humanitarian crisis.[27] Venezuela's health system is marked by deteriorated infrastructure, lack of medical equipment, poor maintenance, lack of public services,

[8] Mariela Nava, In Venezuela, hunger stalks presidential election, Reuters, Jul. 9, 2024, available at: *https://www.reuters.com/world/americas/venezuela-hunger-stalks-presidential-election-2024-07-09/* (last visited Aug. 22, 2024).

[9] End of Mission Statement; U.N. Special Rapporteur on the right to food by Mr. Michael Fakhri; Visit to Venezuela (Bolivarian Republic of), 1–14 February 2024, Office of the High Commissioner for Human Rights (OHCHR), Feb. 14, 2024, pg. 3, available at: *https://www.ecoi.net/en/file/local/2104669/20240214-eom-statement-venezuela-sr-food-en.pdf* (last visited Aug. 22, 2024).

[10] Regina Garcia Cano, Venezuelans turn to odd jobs and gambling to stretch meager wages they hope will grow after election, The Associated Press, updated July 24, 2024, available at: *https://apnews.com/article/venezuela-presidential-election-maduro-crisis-machado-edmundo-4c7f83a5a44a6d80f12d8cad8b67b026* (last visited Aug. 20, 2024); Gabriela Mesones Rojo and Iván Reyes, Hunger, healthcare, and schools: Reasons to leave Venezuela (along with a Maduro poll win), The New Humanitarian, Jun. 25, 2024, available at: *https://www.thenewhumanitarian.org/analysis/2024/06/25/hunger-healthcare-schools-reasons-leave-venezuela-maduro-poll-win* (last visited Aug. 22, 2024); Follow-Up Report on the Complex Humanitarian Emergency in Venezuela, HumVenezuela, Nov. 2023, pg. 27, available at: *https://humvenezuela.com/wp-content/uploads/2024/02/FOLLOW-UP-REPORT-ON-THE-COMPLEX-HUMANITARIAN-EMERGENCY-IN-VENEZUELA-2023-2.pdf* (last visited Aug. 22, 2024).

[11] Regina Garcia Cano, UN-backed food expert calls on Venezuela to tackle hunger and urges end to economic sanctions, The Associated Press, Feb. 14, 2024, available at: *https://apnews.com/article/venezuela-food-insecurity-hunger-malnutrition-un-maduro-afb4af4978c09cf0f3e54e1cfef981b5* (last visited Aug. 22, 2024).

[12] Gabriela Mesones Rojo and Iván Reyes, Hunger, healthcare, and schools: Reasons to leave Venezuela (along with a Maduro poll win), The New Humanitarian, Jun. 25, 2024, available at: *https://www.thenewhumanitarian.org/analysis/2024/06/25/hunger-healthcare-schools-reasons-leave-venezuela-maduro-poll-win* (last visited Aug. 22, 2024).

[13] Gabriela Mesones Rojo and Iván Reyes, Hunger, healthcare, and schools: Reasons to leave Venezuela (along with a Maduro poll win), The New Humanitarian, Jun. 25, 2024, available at: *https://www.thenewhumanitarian.org/analysis/2024/06/25/hunger-healthcare-schools-reasons-leave-venezuela-maduro-poll-win* (last visited Aug. 22, 2024).

[14] Florantonia Singer, Caracas: The ordeal of living in a city with failed public services, El País (Spa.), Sep. 24, 2023, available at: *https://english.elpais.com/international/2023-09-24/caracas-the-ordeal-of-living-in-a-city-with-failed-public-services.html* (last visited Aug. 23, 2024).

[15] Venezuela Country Security Report, Overseas Security Advisory Council (OSAC), U.S. Dep't of State, last updated Mar. 26, 2024, available at: *https://www.osac.gov/Content/Report/34f99e62-2161-412d-bfeb-1e752539f6bf* (last visited Aug. 23, 2024).

[16] Clare Ribando Seelke, Venezuela: Political Crisis and U.S. Policy, Congressional Research Service (CRS), updated Sep. 1, 2023, pg. 1, available at: *https://crsreports.congress.gov/product/pdf/IF/IF10230* (last visited Aug. 23, 2024); Gabriela Mesones Rojo and Iván Reyes, Hunger, healthcare, and schools: Reasons to leave Venezuela (along with a Maduro poll win), The New Humanitarian, Jun. 25, 2024, available at: *https://www.thenewhumanitarian.org/analysis/2024/06/25/hunger-healthcare-schools-reasons-leave-venezuela-maduro-poll-win* (last visited Aug. 23, 2024).

[17] Follow-Up Report on the Complex Humanitarian Emergency in Venezuela, HumVenezuela, Nov. 2023, pg. 21, available at: *https://humvenezuela.com/wp-content/uploads/2024/02/FOLLOW-UP-REPORT-ON-THE-COMPLEX-HUMANITARIAN-EMERGENCY-IN-VENEZUELA-2023-2.pdf* (last visited Aug. 23, 2024).

[18] Annual Report 2023—Chapter IV.B—Venezuela, Inter-American Commission on Human Rights (IACHR), Apr. 25, 2024, pg. 732, available at: *https://www.oas.org/en/iachr/docs/annual/2023/chapters/IA2023_Cap_4B_Venezuela_ENG.PDF* (last visited Aug. 26, 2024).

[19] Venezuela Country Security Report, Overseas Security Advisory Council (OSAC), U.S. Dep't of State, last updated Mar. 26, 2024, available at: *https://www.osac.gov/Content/Report/34f99e62-2161-412d-bfeb-1e752539f6bf* (last visited Aug. 26, 2024).

[20] Clare Ribando Seelke, Venezuela: Political Crisis and U.S. Policy, Congressional Research Service (CRS), updated Sep. 1, 2023, pg. 1, available at: *https://crsreports.congress.gov/product/pdf/IF/IF10230* (last visited Aug. 26, 2024).

[21] Luke Taylor, 'To be reunited . . . would be a dream': Venezuelan exiles' fate hangs on vote, The Guardian, Jul. 25, 2024, available at: *https://www.theguardian.com/global-development/article/2024/jul/25/venezuelan-exiles-election-maduro* (last visited Aug. 27, 2024).

[22] Fabiola Zerpa and Lucia Kassai, Oil Majors Fill Venezuela Gas Pumps, Easing Years of Shortages, Bloomberg, Feb. 9, 2024, available at: *https://www.rigzone.com/news/wire/oil_majors_fill_venezuela_gas_pumps_easing_years_of_shortages-09-feb-2024-175693-article/* (last visited Sep. 6, 2024).

[23] Marianna Parraga, Deisy Buitrago, and Mircely Guanipa, Whoever wins election, Venezuela faces natural gas problem, Reuters, Jul, 24, 2024, available at: *https://www.reuters.com/world/americas/gas-rich-venezuela-next-president-faces-problem-producing-it-2024-07-24/* (last visited Aug. 26, 2024).

[24] Follow-Up Report on the Complex Humanitarian Emergency in Venezuela, HumVenezuela, Nov. 2023, pg. 22, available at: *https://humvenezuela.com/wp-content/uploads/2024/02/FOLLOW-UP-REPORT-ON-THE-COMPLEX-HUMANITARIAN-EMERGENCY-IN-VENEZUELA-2023-2.pdf* (last visited Aug. 26, 2024).

[25] Follow-Up Report on the Complex Humanitarian Emergency in Venezuela, HumVenezuela, Nov. 2023, pg. 22, available at: *https://humvenezuela.com/wp-content/uploads/2024/02/FOLLOW-UP-REPORT-ON-THE-COMPLEX-HUMANITARIAN-EMERGENCY-IN-VENEZUELA-2023-2.pdf* (last visited Aug. 26, 2024).

[26] Follow-Up Report on the Complex Humanitarian Emergency in Venezuela, HumVenezuela, Nov. 2023, pg. 22, available at: *https://humvenezuela.com/wp-content/uploads/2024/02/FOLLOW-UP-REPORT-ON-THE-COMPLEX-HUMANITARIAN-EMERGENCY-IN-VENEZUELA-2023-2.pdf* (last visited Aug. 26, 2024).

[27] Gabriela Mesones Rojo and Iván Reyes, Hunger, healthcare, and schools: Reasons to leave Venezuela (along with a Maduro poll win), The New Humanitarian, Jun. 25, 2024, available at: *https://www.thenewhumanitarian.org/analysis/2024/06/25/hunger-healthcare-schools-reasons-leave-venezuela-maduro-poll-win* (last visited Aug. 21, 2024).

deficiencies in the provision of medicines and medical supplies, and power and water cuts, in addition to corruption in the health sector, and underfunded and understaffed health centers.[28] Consequently, health indicators in Venezuela have worsened since the collapse of the Venezuelan health system in 2016.[29]

Venezuela's public health system has reportedly lost an estimated ''70 percent of its capacity since 2016,'' and ''millions of individuals are unable to access adequate health care'' in Venezuela.[30] Additionally, Venezuela faces ''persistent shortages and deficiencies in the supply of medicines, supplies, equipment and medical treatments.'' [31]

Education

Reports indicate that ''dilapidated infrastructure, the lack of teachers and of public transportation—combined with the shortcomings of the school meals programme—are driving many students away. The impoverishment of families due to high inflation is also forcing children to drop out of school to work. In 2023, 40% of students between the ages of three and 17 attended school irregularly.'' [32]

Economic Crisis

Venezuela ''has faced a long-running economic crisis,'' [33] with its economy suffering from ''a prolonged meltdown marked by triple-digit inflation and a mass exodus of millions of migrants seeking better prospects elsewhere.'' [34] Reporting in July 2024 indicated that over the last 10 years, gross domestic product in Venezuela has declined by about 73%.[35] Though Venezuela experienced some economic improvement in 2024,[36] it is ''insufficient for an economy like Venezuela's, urgently in need of double-digit growth for several years in order to return to what it once was.'' [37]

Political Repression & Human Rights

According to the Inter-American Commission on Human Rights (IACHR), Maduro and his representatives have ''systematically violated human rights, including freedom of expression, to facilitate the concentration of power in the executive branch, to discourage political participation and to undermine the independence of institutions.'' [38] Conditions have grown worse due to harsher crackdowns by Maduro and his representatives on the opposition and their use of thoroughly flawed elections to seize full control of state institutions. Maduro and his representatives have closed off virtually all channels for political dissent, restricting civil liberties and prosecuting perceived opponents without regard for due process.[39] Furthermore, the IACHR has reported allegations that ''serious human rights violations'' have been committed in Venezuela, which, it asserts, ''may amount to crimes against humanity.'' [40] In late June 2023, International Criminal Court judges ''authorized the resumption of an investigation into alleged crimes against humanity in Venezuela.'' [41] Human Rights Watch reported that, in September 2023, ''the United Nations Fact-Finding Mission (FFM) found serious human rights violations that continued the same patterns of conduct that the FFM had previously qualified as crimes against humanity.'' [42]

Reports indicate that leading up to the recent Venezuelan presidential election, the electoral process was marred by human rights abuses and irregularities that kept the playing field uneven, with reports of Maduro and his representatives repeatedly committing ''systematic human rights violations against critics and opposition leaders.'' [43] According to Amnesty International, the election period was marked with escalating repression with ''incessant attacks on civic space, tens of arbitrary detentions, enforced disappearances, torture, reprisals against businesses and contractors providing services to opposition figures, and arbitrary and abusive administrative measures.'' [44]

On July 31, 2024, the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela reported that, since the National Electoral Council's declaration that Maduro had won the presidential election in the early morning hours of July 29, ''thousands of people—including men, women, children, and the elderly—have taken to the streets across the country to protest the

[28] Venezuela—Country Focus, European Union Agency for Asylum (EUAA), Nov. 2023, pg. 33, available at: *https://coi.euaa.europa.eu/administration/easo/PLib/2023_11_EUAA_COI_Report_Venezuela_Country_Focus.pdf* (last visited Aug. 21, 2024).

[29] International Protection Needs of Venezuelan Nationals, Amnesty International, Oct. 2023, pg. 5, available at: *https://www.ecoi.net/en/file/local/2099475/AMR5373312023ENGLISH.pdf* (last visited Aug. 21, 2024).

[30] Annual Report 2023—Chapter IV.B—Venezuela, Inter-American Commission on Human Rights (IACHR), Apr. 25, 2024, pg. 731, available at: *https://www.oas.org/en/iachr/docs/annual/2023/chapters/IA2023_Cap_4B_Venezuela_ENG.PDF* (last visited Aug. 21, 2024).

[31] Annual Report 2023—Chapter IV.B—Venezuela, Inter-American Commission on Human Rights (IACHR), Apr. 25, 2024, pg. 731, available at: *https://www.oas.org/en/iachr/docs/annual/2023/chapters/IA2023_Cap_4B_Venezuela_ENG.PDF* (last visited Aug. 21, 2024).

[32] Gabriela Mesones Rojo and Iván Reyes, Hunger, healthcare, and schools: Reasons to leave Venezuela (along with a Maduro poll win), The New Humanitarian, Jun. 25, 2024, available at: *https://www.thenewhumanitarian.org/analysis/2024/06/25/hunger-healthcare-schools-reasons-leave-venezuela-maduro-poll-win* (last visited Sep. 3, 2024).

[33] Mayela Armas, Venezuela's government doubles down on inflation control ahead of election, Reuters, Feb. 28, 2024, available at: *https://www.reuters.com/world/americas/venezuelas-government-doubles-down-inflation-control-ahead-election-2024-02-28/* (last visited Aug. 20, 2024).

[34] Mayela Armas, Venezuela economy grew 5% in 2023, will reach 8% this year-Maduro, Reuters, Jan. 15, 2024, available at: *https://www.reuters.com/world/americas/venezuela-economy-grew-5-2023-will-reach-8-this-year-maduro-2024-01-15/* (last visited Aug. 20, 2024).

[35] Mariela Nava, In Venezuela, hunger stalks presidential election, Reuters, Jul. 9, 2024, available at: *https://www.reuters.com/world/americas/venezuela-hunger-stalks-presidential-election-2024-07-09/* (last visited Aug. 20, 2024).

[36] Alonso Moleiro, Venezuela experiences an economic recovery in times of electoral uncertainty, El País (Spa.), Jul. 22, 2024, available at: *https://english.elpais.com/economy-and-business/2024-07-22/venezuela-experiences-an-economic-recovery-in-times-of-electoral-uncertainty.html* (last visited Aug. 20, 2024).

[37] Alonso Moleiro, Venezuela experiences an economic recovery in times of electoral uncertainty, El País (Spa.), Jul. 22, 2024, available at: *https://english.elpais.com/economy-and-business/2024-07-22/venezuela-experiences-an-economic-recovery-in-times-of-electoral-uncertainty.html* (last visited Aug. 20, 2024).

[38] Annual Report 2023—Chapter IV.B—Venezuela, Inter-American Commission on Human Rights (IACHR), Apr. 25, 2024, pg. 720, available at: *https://www.oas.org/en/iachr/docs/annual/2023/chapters/IA2023_Cap_4B_Venezuela_ENG.PDF* (last visited Aug. 30, 2024).

[39] Freedom in the World 2024—Venezuela, Freedom House, Feb. 29, 2024, available at: *https://freedomhouse.org/country/venezuela/freedom-world/2024* (last visited Aug. 29, 2024).

[40] Annual Report 2023—Chapter IV.B—Venezuela, Inter-American Commission on Human Rights (IACHR), Apr. 25, 2024, pg. 720, available at: *https://www.oas.org/en/iachr/docs/annual/2023/chapters/IA2023_Cap_4B_Venezuela_ENG.PDF* (last visited Aug. 30, 2024); International Protection Needs of Venezuelan Nationals, Amnesty International, Oct. 2023, pg. 3, available at: *https://www.ecoi.net/en/file/local/2099475/AMR5373312023ENGLISH.pdf* (last visited Aug. 30, 2024).

[41] World Report 2024—Venezuela, Human Rights Watch, Jan. 11, 2024, available at: *https://www.hrw.org/world-report/2024/country-chapters/venezuela* (last visited Aug. 30, 2024).

[42] World Report 2024—Venezuela, Human Rights Watch, Jan. 11, 2024, available at: *https://www.hrw.org/world-report/2024/country-chapters/venezuela* (last visited Aug. 30, 2024).

[43] Venezuela: Repression Mars Key Upcoming Election, Human Rights Watch, Jul. 25, 2024, available at: *https://www.hrw.org/news/2024/07/25/venezuela-repression-mars-key-upcoming-election* (last visited Sep. 3, 2024).

[44] Venezuela: After an electoral period marked by repression, a commitment to human rights is imperative, Amnesty International, Jul. 25, 2024, available at: *https://www.amnesty.org/en/latest/news/2024/07/venezuela-after-electoral-period-marked-repression-commitment-human-rights-imperative/* (last visited Sep. 3, 2024).

results.'' [45] In the aftermath of the election, Maduro and his representatives ''mounted a furious campaign against anyone challenging the declared results of the vote, unleashing a wave of repression that human rights groups say is unlike anything the country has seen in recent decades.'' [46]

Crime & Insecurity

Venezuela was once considered the most dangerous country in Latin America.[47] However, ''a discernible reduction in the overall levels of violence could be observed'' in 2023 and 2024.[48] Various factors behind the apparent decline in crime include the country's ''ongoing economic crisis,'' which has reportedly reduced ''opportunities for extortion and ransom kidnappings,'' and led Venezuelan criminal groups to ''infiltrate Venezuelan diasporas settled in other Latin American countries.'' [49] The ''monopolization of violence in some regions'' by ''non-state armed groups,'' as well as pacts between Maduro representatives and some criminal groups, have also reportedly contributed to improved perceptions of security in certain areas.[50]

Nevertheless, Venezuelans continue to ''face physical insecurity and violence from several sources, including irregular armed groups, security forces, and organized gangs.'' [51] The European Union Agency for Asylum (EUAA) reported that ''Criminal armed groups often operate with the cooperation, or tolerance of state security forces'' in Venezuela.[52] Moreover, security forces in Venezuela have been ''accused of committing human rights abuses such as torture and cruel, inhuman and degrading treatment, including sexual and gender-based violence, and killings consistent with extrajudicial executions.'' [53]

In summary, extraordinary and temporary conditions, including a severe humanitarian emergency marked by an economic contraction, deepening poverty, reduced access to food and medicine, a collapse in basic services, fuel shortages, human rights abuses and political repression, crime and violence continue to prevent Venezuelan nationals from returning in safety.

Based on this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Venezuela's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continue to be extraordinary and temporary conditions in Venezuela that prevent Venezuelan nationals (or individuals having no nationality who last habitually resided in Venezuela) from returning to Venezuela in safety, and it is not contrary to the national interest of the United States to permit Venezuelan TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Venezuela for TPS should be extended for an 18-month period, beginning on April 3, 2025, and ending on October 2, 2026. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 607,000 current Venezuelan TPS beneficiaries who are eligible to re-register for TPS under the extension.

Notice of the Designation of Venezuela for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Venezuela's designation for TPS on the basis of extraordinary and temporary conditions are met, and it is not contrary to the national interest of the United States to permit Venezuelan TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). On the basis of this determination, I am extending the existing October 3, 2023 designation of Venezuela for TPS for 18 months, beginning on April 3, 2025, and ending on October 2, 2026. *See* INA sec. 244(b)(1) and (b)(2); 8 U.S.C. 1254a(b)(1), and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees to re-register for TPS:

To re-register for TPS based on the designation of Venezuela, you must submit Form I–821. When filing an application to re-register for TPS, you do not need to pay the application fee; however, you are required to pay the biometric services fee. If you cannot pay the biometric services fee, you may ask USCIS to waive the fee. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an EAD, which proves their authorization to work in the United States. You are not required to submit Form I–765 or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Venezuela TPS application (Form I–821) that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through October 2, 2026.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 106.2 and the fee waiver-related regulations in 8 CFR 106.3. In addition, USCIS Form G–1055, Fee Schedule,

[45] Venezuela: UN Fact-Finding Mission expresses alarm over human rights violations in post-election context, Office of the High Commissioner for Human Rights (OHCHR), Jul. 31, 2024, available at: *https://www.ohchr.org/en/press-releases/2024/07/venezuela-un-fact-finding-mission-expresses-alarm-over-human-rights* (last visited Sep. 3, 2024).

[46] Frances Robles, 'Operation Knock-Knock': Venezuela Sweeps Up Dissenters After Disputed Vote, The New York Times, Aug. 10, 2024, available at: *https://www.nytimes.com/2024/08/10/world/americas/venezuela-election-maduro.html* (last visited Sep. 3, 2024).

[47] Venezuela Investigative Unit, Why Is Venezuela's Crime Rate Falling?, InSight Crime, May 28, 2024, available at: *https://insightcrime.org/news/venezuela-crime-rate-falling/* (last visited Sep. 3, 2024).

[48] Annual Report Violence 2023, Venezuelan Violence Observatory (OVV), Dec. 28, 2023, pg. 30, available at: *https://observatoriodeviolencia.org.ve/wp-content/uploads/2024/01/OVV-Violence-in-Venezuela-Annual-Report-2023-.pdf* (last visited Sep. 3, 2024); Venezuela Investigative Unit, Why Is Venezuela's Crime Rate Falling?, InSight Crime, May 28, 2024, available at: *https://insightcrime.org/news/venezuela-crime-rate-falling/* (last visited Sep. 3, 2024).

[49] Venezuela Investigative Unit, Why Is Venezuela's Crime Rate Falling?, InSight Crime, May 28, 2024, available at: *https://insightcrime.org/news/venezuela-crime-rate-falling/* (last visited Sep. 3, 2024).

[50] Venezuela Investigative Unit, Why Is Venezuela's Crime Rate Falling?, InSight Crime, May 28, 2024, available at: *https://insightcrime.org/news/venezuela-crime-rate-falling/* (last visited Sep. 3, 2024).

[51] Freedom in the World 2024—Venezuela, Freedom House, Feb. 29, 2024, available at: *https://freedomhouse.org/country/venezuela/freedom-world/2024* (last visited Sep. 3, 2024).

[52] Venezuela—Country Focus, European Union Agency for Asylum (EUAA), Nov. 2023, pg. 42, available at: *https://coi.euaa.europa.eu/administration/easo/PLib/2023_11_EUAA_COI_Report_Venezuela_Country_Focus.pdf* (last visited Sep. 3, 2024).

[53] Venezuela—Country Focus, European Union Agency for Asylum (EUAA), Nov. 2023, pg. 26, available at: *https://coi.euaa.europa.eu/administration/easo/PLib/2023_11_EUAA_COI_Report_Venezuela_Country_Focus.pdf* (last visited Sep. 3, 2024).

provides the current fees required for the Form I–821 and Form I–765 for existing TPS beneficiaries who are re-registering.

How Can TPS Beneficiaries Obtain an EAD?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. If you want to obtain an EAD, you must file Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912). TPS applicants may file this form with their TPS application, or separately later, if their TPS application is still pending or has been approved.

Beneficiaries with a Venezuela TPS-related Form I–765 that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through October 2, 2026.

Can My TPS-Related EAD Be Automatically Extended?

Yes. There are two ways for your TPS-related EAD to be automatically extended. First, if you already have an EAD with a ''Card Expires'' date of September 10, 2025, April 2, 2025, March 10, 2024, or September 9, 2022, this **Federal Register** notice automatically extends it through April 2, 2026 without any further action on your part. You do not need to present this FRN or any other additional documentation other than your EAD to use this automatic extension.

Second, you may also be eligible for a longer automatic extension of up to 540 days from the ''Card Expires'' date on the EAD if you file your Form I–765 EAD renewal application during the re-registration period of January 17, 2025, through September 10, 2025 (''Up to 540-Day Automatic EAD Extension'').[54] See the section ''How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')?'' of this **Federal Register** notice for more information. Your EAD may be eligible for both types of extensions, but in no case will your EAD automatic extension be valid past October 2, 2026. If you take advantage of both types of EAD extensions, the automatic extension periods run concurrently.

Filing Information

USCIS offers the option to applicants for TPS under Venezuela's designation to file Form I–821 and related requests for EADs online or by mail. However, if you file Form I–912, Request for Fee Waiver or a written fee waiver request for any applications filed together with your Form I–821, you must submit your applications by mail. When filing a TPS application, you can also request an EAD by submitting a completed Form I–765 with your Form I–821. Under certain circumstances, you may also upload a completed Form I–765 with a fee or fee waiver request, in Portable Document Format (PDF) through your USCIS online account. More information about filing your Form I–765 and fee waiver request through a PDF upload is available at *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option*.

Online filing: Form I–821 and Form I–765 are available for concurrent filing online.[55] To file these forms online, you must first create a USCIS online account.[56]

PDF upload: Form I–765, if applicable, and Form I–912, if applicable, are available for PDF upload. To upload these documents, you must first create a USCIS online account.[57]

Mail filing: Mail your completed Form I–821; Form I–765, if applicable; Form I–912, if applicable; and supporting documentation to the proper address in Table 1—Mailing Addresses.

TABLE 1—MAILING ADDRESSES

If. . .	Mail to. . .
You live in California or Texas and are using U.S. Postal Service (USPS).	USCIS, Attn: TPS Venezuela, P.O. Box 20300, Phoenix, AZ 85036–0300.
You live in California or Texas and are using FedEX, UPS, or DHL	USCIS, Attn: TPS Venezuela (Box 20300), 2108 E. Elliot Rd., Tempe, AZ 85284–1806.
You live in Florida, and you are using the U.S. Postal Service (USPS)	USCIS, Attn: TPS Venezuela, P.O. Box 660864, Dallas, TX 75266–0864.
You live in Florida, and you are using FedEx, UPS, or DHL	USCIS, Attn: TPS Venezuela (Box 660864), 2501 S. State Highway, 121 Business, Suite 400, Lewisville, TX 75067–8003.
You live in Illinois, Indiana, Massachusetts, New Jersey, New York, North Carolina, Utah, or Virginia, and you are using the U.S. Postal Service (USPS).	USCIS, Attn: TPS Venezuela, P.O. Box 4091, Carol Stream, IL 60197–4091.
You live in Illinois, Indiana, Massachusetts, New Jersey, New York, North Carolina, Utah, or Virginia, and you are using FedEx, UPS, or DHL.	USCIS, Attn: TPS Venezuela (Box 4091), 2500 Westfield Drive, Elgin, IL 60124–7836.
You live in any other state or territory, and you are using the U.S. Postal Service (USPS).	USCIS, Attn: TPS Venezuela, P.O. Box 805282, Chicago, IL 60680–5285.
You live in any other state or territory, and you are using FedEx, UPS, or DHL.	USCIS, Attn: TPS Venezuela (Box 805282), 131 South Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you want to request an EAD, you may submit Form I–765 one of three ways: online, mail your Form I–765 to the appropriate address in Table 1, or upload a completed PDF through your USCIS online account. If you file online, you will be prompted to include the fee. If you file by mail, you must include the fee or fee waiver request. If you file by

[54] Under 8 CFR 274a.13(d), EADs with category A12 and C19 are eligible for an automatic extension of up to 540 days from the date on the face of the EAD if the bearer's Form I–765 application is properly filed under either the A12 or C19 category and during the re-registration period described in the applicable **Federal Register** notice.

[55] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[56] *https://myaccount.uscis.gov/users/sign_up.*

[57] *https://www.uscis.gov/newsroom/stakeholder-messages/uscis-launches-online-pdf-filing-option.* Sign up to create a new USCIS online account at *https://myaccount.uscis.gov/users/sign_up.*

PDF upload, you must include the fee or a fee waiver request. When you request an EAD based on an IJ or BIA grant of TPS, include with your application a copy of the order from the IJ or BIA granting you TPS. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions for Form I–821 list all the documents you need to re-register for TPS. You may also find information on the acceptable documentation and other requirements for re-registering for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''Venezuela.''

Travel

TPS beneficiaries and TPS applicants with pending Form I–821 applications may also apply for travel authorization, which USCIS may grant as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If USCIS grants travel authorization, it gives you permission to leave the United States and to return to a U.S. port of entry to request re-entry during a specific period. To request travel authorization, you must file Form I–131, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing Form I–131, a TPS beneficiary must:

- Select Item Number 4 in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

When filing Form I–131, a TPS applicant with a pending initial Form I–821 must:

- Select Item Number 5C in Part 1 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797, Notice of Action, or Form I–797C, Notice of Action, indicating either approval or receipt of Form I–821. Form I–131 may not be filed by PDF upload.

TABLE 2—MAILING ADDRESSES

If you are. . .	Mail to. . .
Filing Form I–131 together with Form I–821	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS). You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL. You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS received or approved your Form I–821.	USCIS, Attn: I–131 TPS, 2501 S. State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS:

Biometrics (such as fingerprints) are required for all applicants, in addition to a biometric services fee. As previously stated, if you cannot pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* USCIS may require you to visit an Application Support Center to have your biometrics collected. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *https://uscis.gov* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through April 2, 2026, through this Federal Register notice (''FRN-Based Automatic EAD Extension'')?

Yes. Regardless of your country of birth, if you currently have a Venezuela TPS-based EAD with the notation A12 or C19 under Category and a ''Card Expires'' date of September 10, 2025, April 2, 2025, March 10, 2024, or September 9, 2022, this **Federal Register** notice automatically extends your EAD through April 2, 2026, without any further action on your part. Although this **Federal Register** notice automatically extends your EAD through April 2, 2026, you still must timely re-register for TPS by filing Form I–821 in accordance with the procedures described in this **Federal Register** notice to maintain your TPS. You also should file your Form I–765 timely to avoid possible gaps in your employment authorization documentation.

How can I receive an automatic extension of my current TPS EAD for up to 540 days from the ''Card Expires'' date on the EAD by filing an EAD renewal application (''Up to 540-Day Automatic EAD Extension'')?

You qualify for this other type of automatic EAD extension if:

- You properly file your renewal Form I–765 during the TPS re-registration period which is January 17, 2025, through September 10, 2025; and
- Your Form I–765 EAD renewal application is under category A12 or C19.

As long as the categories listed on your EAD and Form I–797C receipt notice are A12 or C19, they don't need to be the same. (For example, your EAD may still be automatically extended for up to 540 days if your facially expired or expiring EAD says C19 and your renewal application says A12.)

For purposes of your employer verifying your employment eligibility on the Form I–9, if you choose to complete your Form I–9 using the ''Up

to 540-Day Automatic EAD Extension,'' the automatic extension period starts from the ''Card Expires'' date on your EAD. You may use the EAD Automatic Extension Calculator available at *https://www.uscis.gov/eadautoextend* to determine the automatically extended expiration date.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three business days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present one selection from List A (which provides evidence of both identity and employment authorization) or one selection from List B (which provides evidence of your identity) together with one selection from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in these lists. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If your EAD states A12 or C19 under Category and has a ''Card Expires'' date of September 10, 2025, April 2, 2025, March 10, 2024, or September 9, 2022, this **Federal Register** notice extends it automatically, and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through April 2, 2026. Your country of birth noted on the EAD does not have to reflect the TPS-designated country of Venezuela for you to be eligible for this extension. You may, but are not required to, show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through April 2, 2026.

B. Up to 540-day Automatic EAD Extension. To show that you qualify for this extension, present:

1. Your EAD with a Category Code of A12 or C19 and

2. Your Form I–797C, Notice of Action, for your Form I–765 renewal EAD application showing a Category Code of A12 or C19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from January 17, 2025, through September 10, 2025.

The A12 or C19 categories on your Form I–797C, Notice of Action, and facially expired or expiring A12 or C19 EAD do not need to match, as long as each lists A12 or C19 as the category. (For example, your EAD may still be automatically extended for up to 540 days if your EAD says C19 and your renewal application says A12.)

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Your employer is required by law to ask you about your continued employment authorization. Your employer may need to reexamine your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, they should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for more information.

A. FRN-based Automatic EAD Extension. If you choose to use the automatic EAD extension based on this **Federal Register** notice, you may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through April 2, 2026; however, you are not required to do so. The last day of this automatic EAD extension is April 2, 2026. Before you start work on April 3, 2026, your employer is required by law to reverify your employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD, but no later than October 2, 2026, present:

1. Your facially expired or expiring EAD with a Category Code of A12 or C19, and

2. The Form I–797C, Notice of Action, showing a Category Code of A12 or C19. The ''Received Date'' on this notice must fall within the re-registration period described in this FRN, which is from January 17, 2025, through September 10, 2025.

By the end date of your automatic EAD extension, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in these lists to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, even if you already have an EAD or employment authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through October 2, 2026, you must file Form I–765 and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation to complete Form I–9, such as evidence of my status, proof of my Venezuelan citizenship, or a Form I–797 showing that I registered for TPS?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request other documentation, such as proof of Venezuelan citizenship or proof of registration for TPS, when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document if the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or

immigration status or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

A. FRN-based Automatic EAD Extension. When using this this type of automatically extended EAD to complete Form I–9 for a new job before April 3, 2026:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until'' and enter October 2, 2026, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine whether the EAD is auto-extended by ensuring it is in category A12 or C19 and has a ''Card Expires'' date of September 10, 2025, April 2, 2025, March 10, 2024, or September 9, 2022;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write April 2, 2026, as the expiration date.

Before the start of work on April 3, 2026, employers must reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you filed your EAD renewal application during the re-registration period indicated in this **Federal Register** notice and choose to have your EAD automatically extended for up to 540 days from the ''Card Expires'' date on your EAD:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until;'' and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

c. Enter October 2, 2026 as the expiration date.

2. In Section 2, in the List A column, the employer must:

a. Determine whether the EAD is automatically extended by ensuring it is in category A12 or C19 and that your Form I–797C indicates that you filed your Form I–765 renewal EAD application under Category A12 or C19 and during the re-registration period indicated in this **Federal Register** notice;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. In the Expiration Date field, enter the date 540 days from the ''Card Expires'' date on the EAD. This date may not be later than October 2, 2026. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

f. Employers should also enter ''EAD EXT'' in the Additional Information field.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine whether your EAD is automatically extended by ensuring that it contains Category A12 or C19.

A. FRN-based automatic EAD Extension. If you are relying on an FRN-based automatic EAD extension, your employer should examine your EAD to see if it has a ''Card Expires'' date of September 10, 2025, April 2, 2025, March 10, 2024, or September 9, 2022. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD through this **Federal Register** notice, they should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and April 2, 2026, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By the date that the employee's automatically extended EAD expires, employers are required by law to reverify the employee's employment authorization on Form I–9.

B. Up to 540-day Automatic EAD Extension. If you are relying on an up to 540-day automatic EAD extension, your employer must also examine your Form I–797C indicating receipt of your Form I–765 renewal EAD application to determine if it was filed under Category A12 or C19 and during the re-registration period indicated in this **Federal Register** notice. Your employer will need to update Form I–9 by entering the appropriate automatic EAD extension expiration date and ''EAD EXT'' in the Section 2 Additional Information field. The new up to 540-day EAD extension expiration date starts from the ''Card Expires'' date on the face of your current EAD, not to exceed the TPS designation end date indicated in this **Federal Register** notice. Use the Automatic Extension Eligibility Calculator at *https://www.uscis.gov/eadautoextend* to calculate your new EAD expiration date.

Note: This information also applies if you initially presented a TPS-related EAD that was automatically extended by the FRN-Based Automatic EAD Extension and later obtained an up to 540-day automatic EAD extension.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the EAD document number and expiration date from Section 2 of Form I–9 into the corresponding fields in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you have an employee who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. You must reverify your employee's employment authorization on Form I–9 by the date their automatic EAD extension ends. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and

emails in English, Spanish, and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in many languages. Employers may also email IER at *IER@usdoj.gov* or get more information online at *https://www.justice.gov/ier.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English, Spanish and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in many languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in these lists. Employers may not require extra or additional documentation other than what is required to complete Form I–9. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give these employees an opportunity to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result occurs if E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Employment-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an EAD that has been automatically extended by this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action, reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. If you are presenting an EAD extended by an up to 540-day extension, you will need to show your Form I–797C, Notice of Action, reflecting receipt of your Form I–765. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary or applicant, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A12 or C19, even if your country of birth noted on the EAD does not reflect the TPS-designated country of Venezuela;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821, if you received one from USCIS.

Check with the government agency requesting documentation about which document(s) the agency will accept.

Some state and local government agencies use SAVE, *https://www.uscis.gov/save,* to confirm the current immigration status of applicants for public benefits. While SAVE can verify that an individual has TPS or a pending TPS application, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-Number, USCIS number, or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://www.uscis.gov/save/save-casecheck.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as your A-Number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must allow you to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save/for-benefit-applicants,* has detailed information on how to correct or update your immigration record, make an

appointment, or submit a written request to correct records.

[FR Doc. 2025–00769 Filed 1–13–25; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7092–N–02]

30-Day Notice of Proposed Information Collection; Record of Employee Interview; OMB Control No.: 2501–0009

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: February 18, 2025.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email *Anna.P.Guido@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 11, 2024 at 89 FR 73705.

A. Overview of Information Collection

Title of Information Collection: Record of Employee Interview.

MB Approval Number: 2501–0009.

Type of Request: Reinstatement of a currently approved collection.

Form Number: HUD 22019.

Description of the need for the information and proposed use:

All federal agencies administering programs subject to Davis-Bacon wage provisions are required to enforce Federal Wage and reporting provisions in accordance with Department of Labor (DOL) regulations (29 CFR part 5, Section 5.6 paragraphs (1)(2) and (a)(3), respectively).

HUD, state, and local agencies administering HUD-assisted programs must enforce Federal Wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include conducting interviews with laborers and mechanics employed on HUD-assisted projected concerning their employment on covered projects. The HUD–11 and HUD–11–SP (Spanish version) are used to assist in the conducting of on-site interviews and to record the information provided by the respondent. The forms may be supplemented with additional pages, as needed. Responses and the provision of supplemental information are voluntary on the part of respondents. (*See* HUD Handbook 1344.1 REV–3 (Federal Labor Standards Requirements in Housing and Urban Development Programs), Sections 5–9, 5–10 (January 2023).

Information collection	Number of respondents	Frequency of response	Responses per annum	Total burden hours per response	Annual burden hours	Hourly cost per response	Total cost
HUD–11/11SP Respondent's Time	37,944	1	37,944.00	0.25	9,486.00	$23.69 *	$224,723.34

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna Guido,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2025–01139 Filed 1–16–25; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6086–C–10]

National Standards for the Physical Inspection of Real Estate and Associated Protocols, Scoring Notice; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Office of the Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice; correction.

SUMMARY: The Department of Housing and Urban Development (HUD) is correcting a final notice entitled, ''National Standards for the Physical Inspection of Real Estate and Associated Protocols, Scoring Notice'' that published in the **Federal Register** on July 7, 2023.

DATES: Applicable January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Kirby C. Kornegay Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 200, Washington, DC 20410–4000, telephone number (202) 708–1112 (this is not a toll-free number), email *NSPIRERegulations@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: On July 7, 2023, (88 FR 43371), HUD published a final notice establishing the physical inspection scoring and ranking methodology to implement HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) rule for Public Housing and Multifamily Housing programs, including Section 8 Project-Based Rental Assistance (PBRA) and other Multifamily assisted housing, Section 202/811 programs, and HUD-insured Multifamily as described in the NSPIRE rule. HUD provided the model used to calculate inspection sample sizes and calculated the sample size for every possible population of units by applying the model. In reviewing the July 7, 2023, final notice, HUD identified two inadvertent errors in Table 9 in Section V entitled, ''Number of Units Sampled Under NSPIRE Scoring and Sampling Methodology Based on Property Size.'' Specifically, the rows listing number of units in the property in the following two rows are in error.

Units in property	UPCS sample	NSPIRE sample
111–132	22–23	26
133–166	23–24	27

HUD is correcting the error so that these rows read as follows:

Units in property	UPCS sample	NSPIRE sample
111–133	22–23	26
134–166	23–24	27

The UPCS and NSPIRE sample sizes are unchanged.

For the convenience of the public, HUD is correcting this error by republishing Table 9 in its entirety.

Correction

In the **Federal Register** of July 7, 2023, in FR Doc. 2023–14362, on pages 43379–43380, replace Table 9 titled, ''Number of Units Sampled Under NSPIRE Scoring and Sampling Methodology Based on Property Size'' with the following:

TABLE 9—NUMBER OF UNITS SAMPLED UNDER NSPIRE SCORING AND SAMPLING METHODOLOGY BASED ON PROPERTY SIZE

Units in property	UPCS sample	NSPIRE sample
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	5	6
7	6	6
8	7	7
9	7	8
10	8	8
11–12	8	9
13–14	9	10
15–16	10	11
17–18	11	12
19–21	12	13
22–24	13	14
25–27	14	15
28–30	14	16
31–35	15	17
36–39	16	18
40–45	17	19
46–51	18	20
52–59	18	21
60–67	19	22
68–78	20	23
79–92	21	24
93–110	21–22	25
111–133	22–23	26
134–166	23–24	27
167–214	24–25	28
215–295	25	29
296–455	25–26	30
456–920	26	31
921+	27	32

Aaron Santa Anna,

Associate General Counsel, Office of Legislation and Regulations.

[FR Doc. 2025–01116 Filed 1–16–25; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–C2–64]

30-Day Notice of Proposed Information Collection: Application for the Community Development Block Grant (ICDBG) Program for Indian Tribes and Alaska Native Villages: OMB Control No.: 2577–0191; Correction

AGENCY: Office of Policy Development and Research, Chief Data Officer, Housing and Urban Development (HUD).

ACTION: Notice; correction.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment. This notice is a correction to the notice HUD published on December 26, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Anna.P.Guido@hud.gov,* telephone 202–402–5534. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or

communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: HUD published an information collection notice in the **Federal Register** on December 26, 2024 at 89 FR 105064 entitled ''Indian Community Development Block Grant Information Collection''. This notice corrects the title and the burden hours.

This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 21, 2024 at 89 FR 84184.

A. Overview of Information Collection

Title of Information Collection: Indian Community Development Block Grant Information Collection.

OMB Approval Number: 2577–0191.

Type of Request: Extension of currently approved collection.

Form Number: SF–425, HUD–2516, and Annual Status and Evaluation Report (ASER).

Description of the need for the information and proposed use: Title I of the Housing and Community Development Act of 1974 authorizes Indian Community Development Block Grants (ICDBG) and requires that grants be awarded annually on a competitive basis. The purpose of the ICDBG program is to develop viable Indian and Alaska Native communities by creating decent housing, suitable living environments, and economic opportunities primarily for low- and moderate-income persons. Consistent with this objective, not less than 70 percent of the expenditures are to benefit low-and- moderate income persons. Eligible applicants include Federally recognized tribes, which includes Alaska Native communities, and tribally authorized tribal organizations. Eligible categories of funding include housing rehabilitation, land acquisition to support new housing, homeownership assistance, public facilities and improvements, economic development, and microenterprise programs. For a complete description of eligible activities, please refer to 24 CFR part 1003, subpart C.

The ICDBG program regulations are at 24 CFR part 1003. The ICDBG program requires eligible applicants to submit information to enable HUD to select the best projects for funding during annual competitions. Additionally, the information submitted is essential for HUD in monitoring grants to ensure that grantees are complying with applicable statutes and regulations and implementing activities as approved.

ICDBG recipients are required to submit annually a Federal Financial Report (SF–425) that describes the use of grant funds drawn from the recipient's line of credit. The reports are used to monitor cash transfers to the recipients and obtain expenditure data from the recipients. (2 CFR 200.327)

The regulations at 24 CFR part 200 require that grantees and sub-grantees take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Consistent with these regulations, 24 CFR 1003.506(b) requires that ICDBG grantees report on these activities on an annual basis, with Contract and Subcontract Activity Report being due to HUD on October 10 of each year (HUD–2516).

The regulations at 24 CFR 1003.506 instruct recipients to submit to HUD an Annual Status and Evaluation Report (ASER) that describes the progress made in completing approved activities with a listing of work to be completed; a breakdown of funds expended; and when the project is completed, a program evaluation expressing the effectiveness of the project in meeting community development needs. The ASER is due by November 15 each year and at grant closeout. The information collected will allow HUD to accurately audit the program.

Respondents: Federally recognized Native American Tribes, Alaska Native communities and corporations, and tribal organizations.

ESTIMATED NUMBER OF RESPONDENTS, RESPONSES, AND BURDEN HOURS PER ANNUM

Type of submission	Number of respondents	Frequency of submissions	Total responses	Estimate average time (hours)	Estimate annual burden (hours)	Hourly Rate*	Total annual cost
Federal Financial Report (SF-425)	75	1	0	0	0	0	0
Contract and Subcontract Activity Report (HUD-2516)	75	1	75	1	75	43.55	3,266
Annual Status and Evaluation Report (ASER)	75	1.25	94	4	376	43.55	16,375
Total	225		169		451		19,641

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna Guido,

Clearance Officer, Office of Policy Development and Research.

[FR Doc. 2025–01144 Filed 1–16–25; 8:45 am]

BILLING CODE 4210–67–P

Department of Housing and Urban Development

[Docket No. FR–6486–N–02]

Modifying HUD's Elevated Blood Lead Level Threshold for Children Under Age 6 Who Are Living in Certain HUD-Assisted Target Housing Covered by the Lead Safe Housing Rule

AGENCY: Office of Lead Hazard Control and Healthy Homes, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice announces HUD's modifying its elevated blood lead level (EBLL) threshold under its Lead Safe Housing Rule from to 5 to 3.5 micrograms of lead per deciliter of blood (µg/dL) for a child under the age of 6, consistent with the Centers for Disease Control and Prevention's current blood lead reference value of 3.5 µg/dL. This notice also describes the required compliance dates for implementing this modification, which depend on whether the applicable State, State-level jurisdiction, territory, or local jurisdiction has already incorporated a blood lead level action threshold equal to or lower than the CDC's current blood lead reference value.

DATES: The provisions of this notice relating to HUD's revision to its EBLL take effect on January 17, 2025.

Compliance Dates: Compliance with the provisions of this notice relating to HUD's revision to its EBLL threshold is required as described in this notice at section V, ''Compliance dates for change to the EBLL threshold.''

FOR FURTHER INFORMATION CONTACT: Warren Friedman, Office of Lead Hazard Control and Healthy Homes, Department of Housing and Urban Development, 451 7th Street SW, Room 8236, Washington, DC 20410–3000, telephone 202–402–7698 (this is not a toll-free number), and email *LeadRegulations@HUD.gov.* HUD invites that any further comments on this notice be sent to HUD using the contact information provided in this section. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

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Abbreviations

BLRV: blood lead reference value
CDC: Centers for Disease Control and Prevention
EBLL: elevated blood lead level
EPA: U.S. Environmental Protection Agency
HHS: U.S. Department of Health and Human Services
HUD: U.S. Department of Housing and Urban Development
OLHCHH: Office of Lead Hazard Control and Healthy Homes
µg/dL: micrograms of lead per deciliter of blood

I. Background and HUD's Lead Safe Housing Rule

On September 15, 1999, HUD published a final rule entitled ''Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance.'' [1] HUD's September 15, 1999 final rule, including revisions made through subsequent rulemakings since the rule's original publication, is referred to throughout this notice as the ''Lead Safe Housing Rule.'' [2] The Lead Safe Housing Rule's purpose is to implement the Lead-Based Paint Poisoning Prevention Act, as amended,[3] and the Residential Lead-Based Paint Hazard Reduction Act of 1992,[4] and specifically ''to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children.'' [5]

Under the Lead Safe Housing Rule, when a child under age 6 residing in certain housing built before 1978—*i.e.,* ''target housing'' [6]—that is HUD-assisted is identified as having an EBLL, the ''designated party''—the property owner or other entity (*e.g.,* Federal agency, State, local government, public housing agency, Indian Tribe, tribally designated housing entity, sponsor) responsible for complying with applicable requirements of the Lead Safe Housing Rule for that assistance [7]—is required to undertake certain actions. These required actions are generally the same for each of the four applicable Lead Safe Housing Rule subparts in 24 CFR part 35 regarding HUD assistance:

- Subpart H, Project-Based Assistance,
- Subpart I, HUD-Owned and Mortgagee-in-Possession Multifamily Property,
- Subpart L, Public Housing Programs, and
- Subpart M, Tenant-Based Rental Assistance.

Additionally, subpart D, which covers project-based assistance provided by a Federal agency other than HUD, has slightly narrower requirements. Under subpart D, other Federal agencies are not required to report instances of

[1] 64 FR 50140.

[2] *See* 24 CFR part 35, subparts B through R.

[3] 42 U.S.C. 4821 *et seq.*

[4] 42 U.S.C. 4851 *et seq.; see also* 24 CFR 35.100(a).

[5] 64 FR 50140, 50199 (Sept. 15, 1999).

[6] Most housing built before 1978 is considered ''target housing,'' which is the focus of the Lead Safe Housing Rule and other HUD and EPA rules and programs on lead safety in housing. The Lead Safe Housing Rule defines ''target housing,'' in part, as ''any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.'' 24 CFR 35.110, target housing. HUD is preparing to amend the definition of ''target housing'' in 24 CFR part 35 to reflect the slight expansion of the scope of the term by the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, enacted May 5, 2017) to include the small number of pre-1978 zero-bedroom dwellings in which a child under age 6 resides or is expected to reside. *See* the Office of Information and Regulatory Affairs, Fall 2024 Unified Agenda of Regulatory and Deregulatory Actions, HUD Regulatory Identification Number 2501–AE03, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202410&RIN=2501-AE03.*

[7] *See* 24 CFR 35.110, designated party.

children under age 6 being identified with an EBLL to HUD.

During an environmental investigation, certified lead risk assessors or professionals from the local public health department check the child's environment for possible causes of lead exposure and recommend ways to prevent further lead exposure. If the environmental investigation identifies any lead-based paint hazards in the HUD-assisted housing unit of the child, a designated party associated with the assistance must arrange for the hazards to be controlled in accordance with HUD and EPA requirements, as applicable, on a schedule specified in the Lead Safe Housing Rule.[8] If any of the building's other HUD-assisted target housing units have a child under age 6 residing in the housing, those units and common areas servicing those units are also required to have a risk assessment conducted. Where a risk assessment is conducted, a designated party associated with the assistance must arrange for any lead-based paint hazards in those units or common areas to be controlled in accordance with HUD and EPA requirements, as applicable, on a schedule specified in the Lead Safe Housing Rule.[9]

II. EBLL Notice for Comment

On September 11, 2024, HUD published a notice for comment in the **Federal Register** (the EBLL Notice for Comment) that provided background on HUD's requirements for responding to an EBLL in children under the age of 6 since 2017 and HUD's process in considering CDC's recommendations regarding an EBLL in children under the age of 6.[10] In the EBLL Notice for Comment, HUD explained its intention to revise its EBLL threshold to 3.5 µg/dL for a child under age 6 and invited public comment regarding HUD's intended revision to its EBLL threshold for a child under age 6. For additional background, see the EBLL Notice for Comment.

III. Public Comments

As described in the EBLL Notice for Comment, HUD explained its intention to decrease its EBLL threshold from its current level of 5 µg/dL for a child under age 6[11] to 3.5 µg/dL, consistent with CDC's current BLRV of 3.5 µg/dL for a child under age 6.[12] In the EBLL Notice for Comment, HUD requested public input regarding HUD's intention to make the described update to its EBLL threshold for the Lead Safe Housing Rule. In addition to welcoming all public input in response to the EBLL Notice for Comment, HUD also specifically requested input on certain topics. These specific requests for input related to HUD's reasoning for the EBLL threshold revision, including the described justification and whether there were other considerations and how HUD should address other considerations relating to revising the EBLL threshold. In addition, HUD also specifically requested input regarding the compliance period for the revision of the EBLL threshold and potential impacts to ongoing program activities because of the revision.

HUD received 25 public comments in response to the EBLL Notice for Comment.[13] All of the commenters supported the revision of the EBLL threshold to a level lower than the current level. A summary of the public comments received in response to the EBLL Notice for Comment is provided in the text that follows.

Reasoning and Justification for the EBLL Threshold Change

A majority of commenters agreed that HUD's modification of the EBLL threshold would be reasonable and justified. Many commenters noted that they work in the healthcare field, while many other commenters work in environmental health advocacy, the legal profession, education, and rental housing management fields. Reasons that commenters provided for supporting the decrease of HUD's EBLL threshold included the need to protect children, with some commenters noting that primary prevention is critical and that there are geographic, socioeconomic, and racial/ethnic disparities in lead exposure. Several commenters noted that they felt there was no safe level of lead for children. One commenter stated that HUD's change was long overdue, and that 37 States have already implemented a change to 3.5 µg/dL for EBLL response. Another commenter asserted that 23 States had adopted the lower CDC level as of June 2023, and that six of those States provide environmental investigations starting at 3.5 µg/dL.

HUD Response: HUD agrees with commenters that the change to an EBLL threshold level to align with CDC's 2021 recommendation is reasonable and justified and is consistent with CDC's positions that, ''[n]o safe level of lead in children has been identified,'' and that early intervention is important to reduce harm.[14] HUD notes that CDC has found that, of its childhood lead poisoning prevention program's [15] State-level grantees,[16] about three quarters used the CDC's current BLRV in 2023 to initiate at least one public health action described on CDC's Recommended Actions Based on Blood Lead Level web page,[17] with the most common barrier reported by the other quarter of State-level grantees being lack of resources for follow-up activities and for the program.[18] About two-thirds of jurisdictions perform educational interventions, caregiver-lead education, and follow-up blood lead monitoring and testing at or above the BLRV. Based on the CDC's finding that using its BLRV is generally—if not universally, because of resource limitations—implementable, HUD is selecting the BLRV as the threshold to which it is changing the EBLL under the Lead Safe Housing Rule. For HUD-assisted target housing, for which designated parties are receiving HUD funds with Lead Safe Housing Rule compliance being a condition of the assistance, HUD has determined that selecting the BLRV as its EBLL threshold is feasible and appropriate.

Compliance Period for the EBLL Threshold Change

Comments regarding the compliance period for the change to the EBLL threshold and potential impacts to

[8] For additional information on required actions where a child has an EBLL, *see* 24 CFR 35.325 (subpart D); 24 CFR 35.730; (subpart H), 24 CFR 35.830 (subpart I); 24 CFR 35.1130 (subpart L); and 24 CFR 35.1225 (subpart M).

[9] *Id.*

[10] 89 FR 73702.

[11] CDC. CDC response to Advisory Committee on Childhood Lead Poisoning Prevention recommendations in ''Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention. June 7, 2012. *https://stacks.cdc.gov/view/cdc/37586. See, also,* Advisory Committee on Childhood Lead Poisoning Prevention. Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention. January 4, 2012. *https://stacks.cdc.gov/view/cdc/11859.*

[12] *https://www.cdc.gov/lead-prevention/php/data/blood-lead-surveillance.html.*

[13] The public comments submitted in response to the EBLL Notice for Comment can be viewed at *Regulations.gov*, docket number HUD–2024–0069.

[14] *See https://www.cdc.gov/lead-prevention/prevention/index.html.*

[15] Through the childhood lead poisoning prevention program's cooperative agreements, ''CDC supports state and local health departments, or their bona fide agents, through cooperative agreements to support childhood lead poisoning prevention. Prevention efforts include strengthening: blood lead testing and reporting, surveillance, linking children to recommended follow-up services, and targeted population-based interventions.'' *See https://www.cdc.gov/lead-prevention/success-stories-by-state/index.html.*

[16] The State-level grantees are made up of nearly all States, the District of Columbia, and the Commonwealth of Puerto Rico.

[17] *https://www.cdc.gov/lead-prevention/hcp/clinical-guidance/index.html.*

[18] Personal communication. P. Ruckart, CDC Division of Environmental Health and Science Practice.

ongoing program activities were diverse. Numerous commenters stated that a compliance period of six months or longer to meet the revised EBLL threshold was appropriate to allow housing providers time to change their operations and receive technical assistance and training. One commenter suggested that a compliance period of nine months to meet the revised EBLL threshold would be more highly favored by rental housing owners and may help ensure that recertifications in HUD's Housing Choice Voucher program occur without disruption, so that families can continue to live in their current residences if they wish. Another commenter advocating for a six-month compliance period to meet the revised EBLL threshold noted that the time would help ensure availability of certified professionals to meet the increased demand for environmental investigations and lead hazard control. Commenters noted that a longer compliance period would provide HUD and other agencies working in lead poisoning prevention more time to communicate and train on the EBLL threshold related changes before compliance is required.

Several commenters recommended a compliance period shorter than six months to meet the revised EBLL threshold, suggesting a range of time from immediate implementation to three months. For the commenters recommending a three month compliance period, one commenter noted that the shorter compliance period would be adequate because responding to findings of EBLL cases in children under age 6 who reside in HUD-assisted target housing is not a new activity for providers of such target housing. Another commenter noted the significant risk of not intervening where young children are exposed to lead and having blood lead levels between the current and intended EBLL thresholds (*i.e.,* below 5.0 μg/dL but at or above 3.5 μg/dL).

Commenters recommending a compliance period shorter than three months also emphasized the importance of preventing harm to young children, asserting that HUD had taken a long time in implementing a change from CDC's BLRV recommendations made in 2021. These commenters also suggested that future EBLL threshold revisions be automatic if and when CDC revises its BLRV, and that HUD consider changing the EBLL definition in the Lead Safe Housing Rule to remove the requirement for notice and comment before implementing an EBLL threshold change. These commenters also stated that, given that so many States and State-level jurisdictions have already revised their blood lead action level to the CDC's current BLRV, HUD did not need to allow additional time for designated parties with HUD-assisted target housing in those States to adapt to a change already covering their properties. Lastly, a commenter noted that HUD-assisted housing providers have had almost four years to learn about the CDC's guidance on responses to its lowered BLRV, meaning that HUD's revision to its EBLL threshold should not be a surprise to them.

HUD Response: Based on the comments received, HUD agrees that a compliance period of more than six months is not necessary because of how long it has been since the release of CDC's 2021 BLRV guidance. This is especially true given that there is existing infrastructure and training already available to HUD-assisted housing providers to respond to children with an EBLL. In addition to the regulatory revisions in 2017, HUD has published guidance and technical assistance resources regarding the Lead Safe Housing Rule on HUD Exchange.[19] Responding to children with EBLLs is not a new activity for HUD-assisted housing providers, and many have already responded to EBLL cases among families they serve. HUD also appreciates that a significant proportion of States and territories have already adopted a lower blood lead level action threshold for response in advance of Federal action for HUD-assisted target housing. HUD agrees that a shorter compliance implementation period is appropriate in these States. HUD is designating, in section V, Compliance, two compliance implementation periods based on whether the blood lead level action threshold for the jurisdiction in which a property is located is greater than the CDC's current BLRV or is less than or equal to that BLRV.

HUD does not agree with recommendations for immediate implementation of the EBLL threshold change. For HUD's programs, issuing a change with a required programmatic effect differs from CDC issuing guidance on clinical and public health practices, such as CDC revising its BLRV. In particular, the designated parties affected by HUD changing its EBLL threshold for children under age 6 need to be notified of the change and given time to prepare to comply with the change. Comments suggesting that HUD should fully eliminate the Lead Safe Housing Rule's requirements for notice and comment for future EBLL threshold changes are outside of the scope of this notice; however, for reasons similar to those already stated, HUD disagrees that the notice and comment process should be eliminated from the Lead Safe Housing Rule. As noted above, HUD is designating, in section V, Compliance, two compliance implementation periods.

Training, Technical Assistance, and Support

Some commenters recommended additional training, technical assistance, and support for HUD-assisted housing providers and jurisdictions implementing the EBLL threshold change.

HUD Response: To the extent feasible within HUD's budgetary and staffing resource limitations, HUD will provide such consultations, including within the Community Compass Technical Assistance [20] funds that have been allocated to the OLHCHH's lead safety program. Further, where appropriate, HUD will continue to update the guidance and instructional materials on the HUD Exchange's Lead-Based Paint website and will provide staff time for online and in-person trainings.

Monitoring and Enforcement

A few commenters recommended additional ''accountability'' for landlords, and several commenters noted the need for compliance monitoring and enforcement of HUD's regulations regarding lead-based paint.

HUD Response: HUD notes that the Lead Safe Housing Rule requires that landlords whose target housing is covered by the Lead Safe Housing Rule's EBLL provisions must comply with those provisions as well as with State, Tribal or local laws, ordinances, codes or regulations governing evaluation and hazard reduction pertaining to blood lead levels of children residing in such housing.[21]

HUD's OLHCHH will coordinate with the HUD program offices that provide the housing assistance covered by this notice to update their monitoring and

[19] HUD Exchange is a website that provides resources and assistance to support HUD's community partners and their partners (*https://www.hudexchange.info/about/*). HUD Exchange includes a Lead-Based Paint sub-site with information on lead-based paint safety in HUD-assisted target housing (*https://www.hudexchange.info/programs/lead-based-paint/*), which includes a toolkit on responding to cases of a child residing in such housing who has an EBLL (*https://www.hudexchange.info/programs/lead-based-paint/lshr-toolkit/respond-to-a-child-with-an-ebll/*).

[20] *See, e.g., https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps/fy22_23_ccta;* and *https://www.hud.gov/program_offices/cfo/gmomgmt/grantsinfo/fundingopps/24-25_cctacb.*

[21] 24 CFR 35.1350(b).

enforcement policies and programs to reflect the modified EBLL threshold.

Funding

Some commenters asserted that this change to the EBLL threshold will prompt a need for adequate additional funding and resources for its implementation.

HUD Response: HUD will continue to request sufficient funding to support designated parties in implementing the revised EBLL threshold. HUD notes, however, that this change restores the percentage of target housing expected to include children under age 6 with EBLLs to the percentage anticipated under the 2017 amendment to the Lead Safe Housing Rule. Therefore, apart from inflation since 2017, the associated costs for designated parties are expected to remain comparable.

Environmental Investigations and Lead Hazard Control Workforce

One commenter noted that it will be stressful for parents if they cannot access lead remediation services once their child is identified as having an EBLL.

HUD Response: HUD agrees that the availability of certified lead-based paint professionals and firms to perform environmental investigations and lead hazard control is important, and HUD will continue to make development of this workforce a priority under OLHCHH's lead hazard reduction grant programs.[22]

IV. Change to the EBLL Threshold

Based on the history, comments, and reasoning above, HUD is changing the EBLL threshold under the Lead Safe Housing Rule from its current value of 5 µg/dL for a child under age 6 to 3.5 µg/dL for a child under age 6. HUD's revision to its EBLL threshold will encourage healthcare providers and public health professionals to use the CDC-recommended follow-up actions that include arranging for an environmental investigation of the home to identify potential sources of lead.[23] The revisions will require an environmental investigation by the designated party, unless the public health department has already evaluated the home in connection with the child's EBLL case, when the child resides in HUD-assisted target housing covered by the Lead Safe Housing Rule's EBLL provisions.

V. Compliance Dates for Change to the EBLL Threshold

HUD-Assisted Target Housing in States, State-Level Jurisdictions, Territories, and Local Jurisdictions With a Blood Lead Level Action Threshold Equal to or Lower Than the CDC's Current BLRV

For HUD-assisted target housing in States, State-level jurisdictions, territories, and local jurisdictions that have a blood lead level action threshold equal to or lower than the CDC's current BLRV (*i.e.,* equal to or lower than 3.5 µg/dL for a child under age 6), HUD is requiring compliance with this change of the Lead Safe Housing Rule's EBLL threshold to 3.5 µg/dL for a child under age 6 by April 17, 2025. This compliance date provides HUD program offices the necessary time to advise the designated parties under their respective programs and for those designated parties to formalize their property management plans to reflect the change to HUD's EBLL threshold.

HUD-Assisted Target Housing in States, State-Level Jurisdictions, Territories, and Local Jurisdictions With a Blood Lead Level Action Threshold Greater Than the CDC's Current BLRV or That Do Not Have Such a Threshold

HUD believes that there may be less demand for and capacity of certified lead-based paint professionals to perform the work associated with HUD's revision to its EBLL threshold where there is no blood lead level action threshold for a child under age 6 or a threshold that is above the CDC's current BLRV. For HUD-assisted target housing in such States, State-level jurisdictions, territories, and local jurisdictions, HUD is requiring compliance with this change of the Lead Safe Housing Rule's EBLL threshold to 3.5 µg/dL for a child under age 6 by July 16, 2025. HUD agrees with commenters that this longer compliance period may have a negative impact on the health of lead-exposed children; however, HUD believes this longer period is necessary and reasonable given the challenges relating to local capacity of lead-based paint professionals and firms.

Matthew Ammon,

Director, Office of Lead Hazard Control and Healthy Homes.

[FR Doc. 2025–01305 Filed 1–16–25; 8:45 am]

BILLING CODE 4210–67–P

[22] *See, e.g., https://apply07.grants.gov/apply/opportunities/instructions/PKG00287135-instructions.zip* and *https://www.hud.gov/program_offices/healthy_homes/grant_opportunities.*

[23] For additional information, *see* CDC, Childhood Lead Poisoning Prevention, Recommended Actions Based on Blood Lead Level, *https://www.cdc.gov/lead-prevention/hcp/clinical-guidance/index.html.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2024–N070; FXRS12630900000–256–FF09R81000; OMB Control Number 1018–0102]

Agency Information Collection Activities; Submission to the Office of Management and Budget; National Wildlife Refuge Special Use Permit Applications and Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to revise an existing collection of information.

DATES: Interested persons are invited to submit comments on or before February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0102'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us

assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On August 14, 2024, we published in the **Federal Register** (89 FR 66133) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on October 15, 2024. The Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–NWRS–2024–0094) to provide the public with an additional method to submit comments (in addition to the typical U.S. mail submission method). We received five comments in response to that notice; however, four of the comments did not address the information collection requirements. The following comment did address the information collection requirements:

Comment: Anonymous electronic comment received on September 15, 2024, via *Regulations.gov* (FWS–HQ–NWRS–2024–0094–0011). The commenter states that FWS policy 620 FW 2.4D describes a cooperative agreement relationship between the Service and agricultural cooperators. This same policy states that Form 3–1383–C must be used to document these agreements. This form is legally insufficient as an instrument by which to administer cooperative agreements as described in the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301–08).

Agency Response to Comment: The purpose of Form 3–1383C is not to document financial assistance agreements such as cooperative agreements described in 31 U.S.C. 6301–08. Service policy 620 FW 2.2E states that cooperative agriculture agreements are not financial assistance awards and are not subject to the regulations in 2 CFR part 200. Certain agricultural uses are permitted on Service property through Form 3–1383C, as described in this docket. Activities such as cooperative agricultural uses are permitted under the authority described in 16 U.S.C. 668dd, so no further changes to the form will be made as part of this revision.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed information collection request (ICR) that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Wildlife Refuge System Administration Act of 1966 (Administration Act; 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, consolidated all refuge units into a single National Wildlife Refuge System (system). It also authorized us to offer visitor and public programs, including those facilitated by commercial visitor and management support services, on lands of the system when we find that the activities are appropriate and compatible with the purpose(s) for which the refuge was established and the system's mission. The Refuge Recreation Act of 1962 (Recreation Act; 16 U.S.C. 460k–460k–4) allows the use of refuges for public recreation when it is not inconsistent with or does not interfere with the primary purpose(s) of the refuge. The Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3101 *et seq.*) provides specific authorization and guidance for the administration and management of national wildlife refuges within the State of Alaska. Its provisions provide for the issuance of permits under certain circumstances.

We issue special use permits for a specific period as determined by the type and location of the management activity or visitor service provided. These permits authorize activities such as:

- Agricultural activities (haying and grazing, 50 CFR 29.1 and 50 CFR 29.2).
- Beneficial management tools that we use to provide the best habitat possible on some refuges (50 CFR 30.11, 50 CFR 31.14, 50 CFR 31.16, and 50 CFR 36.41).
- Special events, group visits, and other one-time events (50 CFR 25.41, 50 CFR 25.61, 50 CFR 26.36, and 50 CFR 36.41).
- Recreational visitor service operations (50 CFR 25.41, 50 CFR 25.61, and 50 CFR 36.41).
- Guiding for fishing, hunting, wildlife education, and interpretation (50 CFR 25.41 and 50 CFR 36.41).
- Commercial filming (43 CFR 5, 50 CFR 27.71) and other commercial activities (50 CFR 29.1 and 50 CFR 36.41).
- Building and using cabins to support subsistence or commercial activities (in Alaska) (50 CFR 26.35 and 50 CFR 36.41).
- Research, inventory and monitoring, and other noncommercial activities (50 CFR 26.36 and 50 CFR 36.41).

We currently use three types of special use permits to collect applicant information:

- Form 3–1383–G (General Activities Special Use Permit Application);
- Form 3–1383–C (Commercial Activities Special Use Permit Application); and
- Form 3–1383–R (Research and Monitoring Special Use Permit Application).

The information we collect helps ensure that:

- applicants are aware of the types of information that may be needed for permit issuance;
- requested activities are appropriate and compatible with the purpose(s) for which the refuge was established and the system's mission; and
- the applicant is eligible or is the most qualified applicant to receive the special use permit.

We may collect the necessary information in a non-form format (through discussions in person or over the phone, over the internet, by email, or by letter). In some instances, respondents will be able to provide information verbally. Often, a simple email or letter describing the activity will suffice. For activities that might have a large impact on refuge resources (*e.g.,* commercial visitor services, research, etc.), we may require applicants to provide more detail on

operations, techniques, and locations. Because of the range of activities covered by special use permits and the different management needs and resources at each refuge, respondents may not be required to answer all questions. Depending on the requested activity, refuge managers have the discretion to ask for less information than appears on the forms. However, refuge managers must not ask for more or different information.

We issue permits for a specific period as determined by the type and location of the use or service provided. We use these permits to ensure that the applicant is aware of the requirements of the permit and the permit holder's legal rights. Refuge-specific special conditions may be required for the permit. We identify conditions as an addendum to the permit. Most of the special conditions pertain to how a permitted activity may be conducted and do not require the collection of information. However, some special conditions, such as activity reports, before and after site photographs, or data sharing, would qualify as an information collection, and we have included the associated burden below.

We also use FWS Form 3–1384, ''Bid Sheet—National Wildlife Refuge System,'' to streamline collection of the necessary pre-award information from applicants during bidding processes to conduct economic uses on Service lands, such as grazing livestock, harvesting hay and stock feed, or removing timber (50 CFR 29.21). This form simplifies the pre-award selection/bidding process for bidders and for refuge staff by enabling them to understand what information the refuge needs in order to select bids for economic use, and, therefore, reduces the time and burden for the public and Service staff in the pre-award selection bidding process. This form is customizable to the individual economic use being awarded. We will use the Commercial Special Use Permit (FWS Form 3–1383–C) as the actual award document that will outline the terms and conditions of the economic use on Service lands.

Proposed Revisions to This Information Collection

With this submission, we propose to revise OMB Control No. 1018–0102 as follows:

1. With this submission, we propose to add an additional form, Form 3–1383–EZ, General Activities Special Use Permit Simplified Application, which is a simplified version of 3–1383–G, General Activities Special Use Permit Application. The intent of this form is to provide a less intimidating and less intensive application for individuals wishing to engage in common, non-economic activities such as recreational berry picking or boat mooring.

We expect this optional ''EZ'' form will reduce public burden, because, filling out form 3–1383–G, applicants will often consider even questions that are not relevant to them in order to determine whether a response is warranted. Our staff will have the option to offer this form after an initial request is received if the majority of questions on the full 1383–G form are expected to be left blank.

Finally, there are no new questions on this new form. We pulled the questions on the streamlined Form 3–1383–EZ from the currently approved Form 3–1383–G. It simply asks fewer questions than the regular Form 3–1383–G in order to reduce burden on respondents, where appropriate.

2. We are making alterations to the options available to select on question 13a in Form 3–1383–C, Commercial Activities Special Use Permit Application. Some of the existing options are rarely selected and certain types of activity are often entered as ''Other.'' We are adding some of these common activities in an effort to streamline completion of the form and collection of the activity type.

Specifically, Form 3–1383–C includes an option for mineral lease that is rarely used. We propose to strike that option and add an option for food and beverage vendors such as food trucks. We propose to change ''Recreation Events '' to ''Events'' to make it more broadly applicable. We also propose to remove ''Cabins'' and add ''Fishing/Frogging'' to cover these types of commercial use.

On Form 3–1383–C, we also propose to modify the wording of question 14 to clarify the requested information. The present wording often leads to an answer which provides only a portion of the timing information that we require. The new question is worded, ''Describe the specific dates, times, and frequency of activities. Provide an occupancy timeline showing how the activity is expected to proceed.''

We highlighted the updated fields on the Form 3–1383–C uploaded to the ICR posted to *https://www.reginfo.gov/public/do/PRAMain.*

3. Non-substantive changes are being made to Forms 3–1383–G, 3–1383–R, or 3–3–1384; however, we plan to make minor updates to the forms' layout to improve readability and functionality. The order of questions will be altered to improve the flow, keeping related questions together. In some cases, selection boxes come after an option and in other cases the boxes come before; we will make the presentation consistent. We are also updating the forms to be more consistent with other DOI forms.

Title of Collection: National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, 36, and 43 CFR 5.

OMB Control Number: 1018–0102.

Form Numbers: 3–1383–EZ, 3–1383–G, 3–1383–C, 3–1383–R, and 3–1384.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and households; businesses and other for-profit organizations; nonprofit organizations; farms; and State, local, or Tribal governments.

Total Estimated Number of Annual Respondents: 14,511.

Total Estimated Number of Annual Responses: 14,511.

Estimated Completion Time per Response: Varies from 10 minutes to 5 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 22,495.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Nonhour Burden Cost: $370,100 for fees associated with applications for commercial use activities ($100.00 per application for individuals and private sector respondents only).

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2025–01089 Filed 1–16–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/A0A501010.999900]

Land Acquisitions; Koi Nation of Northern California, Shiloh Site, Sonoma County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Director, Bureau of Indian Education, exercising authority

by delegation of the Assistant Secretary—Indian Affairs, made a final agency determination to acquire in trust 68.60 acres, more or less, of land known as the Shiloh Site in Sonoma County, California, for the Koi Nation of Northern California for gaming and other purposes.

DATES: This final determination was made January 13, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov;* (202) 219–4066.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Director, Bureau of Indian Education, exercising authority by delegation of the Assistant Secretary—Indian Affairs, made a final agency determination to acquire the Shiloh Site (Site), consisting of 68.60 acres, more or less, in trust for the Koi Nation of Northern California under the authority of the section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. 2719 (b)(1)(B)(iii).

The Director, Bureau of Indian Education, exercising authority by delegation of the Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire the title to the Site in the name of the United States of America in trust for the Koi Nation of Northern California upon fulfillment of all Departmental requirements. The 68.60 acres, more or less, are described as follows:

Legal Description of Property

For APN/Parcel ID(s): 059–300–003–000

The land referred to herein below is situated in the unincorporated area in County of Sonoma, State of California and is described as follows:

Being a tract of land in Section 20, Township 8 North, Range 8 West, M.D.B. and M. and beginning at a iron pin which marks the ¼ section corner between Sections 19 and 20; thence East along the Northerly line of the Southwest ¼ of said Section 20, a distance of 40.00 chains, more or less, to the center of Section 20; thence South, along the Easterly line of said Southwest ¼, 17.01 chains, more or less, to the Northeast corner of a tract of land conveyed by Elisha C. Mayo to Charles T. Mathisen and Cynthia E. Mathisen, his wife, by Deed dated January 28, 1905 in Book 216 of Deeds at Page 298, Sonoma County Records; thence South 76° 15′ West, along the Northerly boundary of said tract of land conveyed to said Mathison, 25.69 chains, more or less, to the center of the State Highway leading from Santa Rosa to Healdsburg; thence Northwesterly along the center of said State Highway, 26.85 chains, more or less, to the section line between Section 19 and 20; thence North along said section line, 1.62 chains, more or less, to the point of beginning.

Excepting therefrom that portion thereof conveyed to the County of Sonoma by deed recorded April 25, 1950 in Book 955 at Page 376, Sonoma County Records.

Also excepting therefrom that portion conveyed to the County of Sonoma by Deed recorded October 27, 2006 as Instrument No. 2006132956, of Official Records.

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by the Departmental Manual in part 209, chapter 8, paragraph 8.1 and is published to comply with the requirements of 25 CFR 151.13 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Tony Dearman,

Director, Bureau of Indian Education,Exercising authority by delegation of the Assistant Secretary—Indian Affairs.

[FR Doc. 2025–01083 Filed 1–16–25; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[MO4500181943]

National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice announces the Department of the Interior's (Department) proposal to revise the National Environmental Policy Act (NEPA) implementing procedures for the Bureau of Land Management (BLM) at chapter 11 of part 516 of the Departmental Manual (DM) to add a new categorical exclusion (CX) for geothermal resource exploration operations.

DATES: Comments must be postmarked (for mailed comments), delivered (for personal or messenger delivery comments), or filed (for electronic comments) no later than February 18, 2025.

ADDRESSES: The public can review the substantiation report for the new proposed CX online at: *http://eplanning.blm.gov/eplanning-ui/project/2034945/510.* Comments can be submitted using:

BLM National NEPA Register: http://eplanning.blm.gov/eplanning-ui/project/2034945/510. Follow the instructions at this website.

Mail: U.S. Department of the Interior, Bureau of Land Management, Attention: BLM HQ330 Geothermal Exploration Operations Categorical Exclusion, 1849 C Street NW, Washington, DC 20240.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, Attention: BLM HQ330 Geothermal Exploration Operations Categorical Exclusion, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Heather Bernier, Division Chief, Decision Support, Planning, and NEPA, at (303) 239–3635, or *hbernier@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Bernier. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

NEPA, 42 U.S.C. 4321 *et seq.,* requires Federal agencies to consider the environmental effects of their proposed actions in their decision-making processes and inform and engage the public in that process. Section 101(a) of NEPA sets forth a national policy to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can exist in productive harmony, and to fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. 4331(a). Section 102 of NEPA directs agencies to interpret and administer Federal policies, regulations, and laws consistent with NEPA's policies. 42 U.S.C. 4332.

To comply with NEPA, agencies determine the appropriate level of review for a proposed action: an environmental impact statement (EIS), an environmental assessment (EA), or a CX. 40 CFR 1501.3(c). If a proposed action is likely to have significant

environmental effects, the agency will prepare an EIS and document its decision in a record of decision. 40 CFR part 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or where the level of significance is unknown, the agency will prepare an EA, which involves a more concise analysis and process than an EIS. 40 CFR 1501.5. Following preparation of an EA, the agency may reach a finding of no significant impact (FONSI) if the analysis shows that the action will have no significant effects. 40 CFR 1501.6. If, following preparation of an EA, the agency finds that the proposed action will have significant effects, it will prepare an EIS before authorizing the action. 40 CFR 1501.6(a)(3).

Under NEPA and Council on Environmental Quality's (CEQ's) implementing regulations, a Federal agency must establish CXs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment, individually or in the aggregate—in its agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3(c)(8), 1508.1(e). If an agency determines that a CX covers a proposed action, the agency then evaluates the proposed action for any extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b), 1508.1(o). Responsible officials in the Department's bureaus evaluate proposed actions for the existence of extraordinary circumstances in accordance with the Department's NEPA implementing regulations at 43 CFR 46.205 and 46.215; *see also* 40 CFR 1501.4(b), (b)(1)–(2).

Under NEPA, a CX is defined as ''a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment.'' 42 U.S.C. 4336e. The CEQ recognizes that CXs increase efficiency by reducing the resources spent analyzing proposals that normally do not have potentially significant environmental effects, thereby allowing those resources to be focused on proposals that are more likely to have significant environmental effects.[1] The appropriate use of CXs allows NEPA compliance, in the absence of extraordinary circumstances that merit further consideration, to be concluded without preparing either an EA or an EIS.

The Department's revised NEPA procedures were published in the **Federal Register** on October 15, 2008 (73 FR 61292) and are codified at 43 CFR part 46. Additional Department-wide NEPA policy may be found in the DM, in chapters 1 through 4 of part 516. The NEPA procedures for the Department's bureaus are published as additional chapters of this DM part 516. Chapter 11 of 516 DM covers the BLM's procedures. The BLM's current procedures can be found at: *https://www.doi.gov/sites/doi.gov/files/elips/documents/516-dm-11_0.pdf.* These procedures address policy as well as procedure to assure compliance with the spirit and intent of NEPA.

Rationale for the Proposed New CX

The establishment of this new Geothermal Exploration Operations (GEO) CX is intended to facilitate the approval of notices of intent (NOIs) to conduct geothermal resource exploration operations that do not have the potential to result in significant environmental effects and to expedite renewable energy development on public lands. BLM currently prepares an EA to comply with NEPA for approval of an NOI to permit any pre-leasing geothermal resource exploration operation that includes construction of roads and/or well pads. The BLM's goal is to shift its analytical resources away from preparing EAs for actions that have been demonstrated to result in no significant effects towards those actions that may result in significant effects. BLM has long experience with approval of NOIs for exploration activities and is familiar with the environmental effects of this activity, none of which are normally significant.

To substantiate a determination that the proposed new GEO CX describes a category of actions that does not normally have a significant effect on the environment, individually or in the aggregate, BLM assessed the environmental effects of similar previously implemented actions by evaluating 57 BLM EAs that supported FONSIs and validating these environmental reviews by conducting post-implementation evaluations that confirmed the findings.

A record of the BLM's review can be found in the substantiation report for the proposed new CX (''Substantiation of Proposed National Environmental Policy Act Categorical Exclusion for Geothermal Resource Exploration Operations,'' dated October 15, 2024), which is incorporated by reference here and summarized in ''Justification for Change'' section below. Based upon this information, the BLM has found that the establishment of a CX is appropriate because of the evidence that no significant effects normally result from geothermal exploration operations conducted within the proposed parameters. Establishing the new CX as proposed would ensure a timely process towards implementing geothermal exploration projects that do not have significant effects.

Description of Change

The Department proposes to add one CX to the BLM chapter of the Departmental Manual 516 DM 11 at paragraph 11.9.B, ''Oil, Gas and Geothermal Energy.'' The language of the proposed new CX citation at 516 DM 11.9.B(8) is:

Approval of a Notice of Intent to Conduct Geothermal Resource Exploration Operations that:

- Does not include the direct testing of geothermal resources or resource utilization;
- Does not exceed 10 acres of total (contiguous or noncontiguous) surface disturbance;
- Requires reclamation of surface disturbances when their intended purpose has been fulfilled;
- Requires reclamation of temporary routes when their intended purpose(s) has been fulfilled, unless through a separate review and decision-making process the BLM incorporates and appropriately designates the route as part of its transportation system;
- Does not make a temporary route available for public use unless the temporary route is specifically intended to accommodate public use;
- Requires temporary routes to be constructed or used so as to allow for the reclamation, by artificial or natural means, of vegetative cover on the temporary route and areas where the vegetative cover was disturbed by the construction or use of the route, and requires such treatment to be designed to reestablish vegetative cover as soon as possible, but at most within 10 years after approved reclamation commences; and,
- Includes design elements to protect resources and resource uses consistent with the applicable Resource Management Plan, laws, regulations, and any lease terms (as applicable).

The BLM's intent in establishing this CX is to improve the efficiency of routine environmental review processes for pre-leasing geothermal resource exploration operations. The scope of geothermal resource exploration operations allowed under an NOI is defined at 43 CFR 3200.1.

[1] Council on Environmental Quality (CEQ), *Establishing, Applying, and Revising Categorical Exclusions under the Environmental Policy Act.* November 23, 2010, at 2–3. *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CX_Guidance_Nov232010.pdf.*

When applying this CX, responsible officials at the BLM will evaluate the proposed actions to determine whether there are any extraordinary circumstances. The Department's extraordinary circumstances are listed at 43 CFR 46.215.

Responsible officials in the BLM are required to review any proposed action for which they intend to rely on a CX, as provided at 43 CFR 46.205, by comparing it with the list at 43 CFR 46.215 and to document that review in accordance with any applicable BLM NEPA or program guidance. The responsible official will assess whether an extraordinary circumstance exists. If the responsible official cannot rely on a CX to support a decision on a particular proposed action due to extraordinary circumstances, the responsible official will prepare an EA or EIS, consistent with 40 CFR 1501.4(b)(2) and 43 CFR 46.205(c).

The public is asked to review and comment on the newly proposed CX. To be considered, any comments on this proposed addition to the list of CXs in the DM must be received by the date listed in the **DATES** section of this notice at the location listed in the **ADDRESSES** section. Comments received after that date will be considered only to the extent practicable. Comments, including names and addresses of respondents, will be part of the public record and available for public review at the BLM address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Justification for Change

The BLM proposes the GEO CX after reviewing existing BLM NEPA analyses and available scientific research on the effects of routine actions that would be included in the proposed new CX over time and over different geographic areas. The BLM has documented in detail the justification for establishing this new CX in its substantiation report, which is available to review in full at the websites shown in **ADDRESSES**.

Pursuant to the Geothermal Steam Act of 1970, the BLM is responsible for issuing leases for and managing geothermal resource development, in part by processing permit applications for exploration, drilling, production, and utilization (electrical generation) on the Federal mineral estate. This authority encompasses approximately 700 million acres of Federal minerals, including BLM managed public lands, National Forest System lands, other Federal lands, as well as split estate (*e.g.,* non-Federal surface) lands where the Federal Government has retained the subsurface mineral estate.

Geothermal energy offers the nation a clean, domestic, and abundant renewable energy resource. Conventional (hydrothermal) geothermal power plants use heat energy found in rock formations containing hot water or steam below the Earth's surface to turn a turbine and generate electrical power. Geothermal energy is a baseload source of electricity, generating energy 24 hours a day, regardless of changing weather patterns; as such, geothermal energy can help bridge the gap created by the intermittent generation of power from other renewable energy sources like solar and wind. Among renewable energy sources, geothermal power plants also have the smallest amount of surface disturbance relative to electricity produced, with a generation-weighted average of 0.34 acre/Gigawatt hour. Currently, approximately 70 percent of geothermal installed capacity includes Federal resources (Richter 2019). For these reasons, the BLM's geothermal energy program is a critical component to the efforts of the administration and various western states to advance and diversify the nation's energy portfolio.

A CX to support streamlined project authorization at the exploration operations phase would simplify and focus the NEPA process. Establishment of a CX that could support more efficient authorization of geothermal exploration could be vital to the expansion of the geothermal industry.

To support the development of the CX, the BLM examined 28 geothermal projects analyzed in EAs that all supported FONSIs, and that were completed between 2003 and 2019, to identify potential effects resulting from the kinds of activities normally included in NOIs, as outlined in 43 CFR 3200.1 and the 43 CFR part 3200, subpart 3250 regulations. As explained in the accompanying substantiation report, these 28 geothermal projects represent the majority of geothermal resource exploration projects that have been approved by BLM and implemented in full over the last 21 years, and the entire universe of projects that are suitable for comparison to the actions covered by the proposed CX. A team, which included geothermal and planning and environmental subject matter experts from the BLM, the Department's Office of the Solicitor, and the National Renewable Energy Laboratory, reviewed the NEPA documents to determine the scope of environmental consequences anticipated to result from the proposed actions. The team evaluated the actions' scope (*e.g.,* construction of temporary routes for site access, drilling of TGWs or shallow wells, construction of well pads) and potential effects (*e.g.,* no long-term effects to natural resources) in the geothermal EAs to inform the types of projects that may be approved pursuant to the proposed GEO CX. As discussed in the ''Methods'' section of the substantiation report, the BLM currently authorizes NOI permit projects that include construction of roads and/or well pads supported by EAs. In the EAs reviewed, no significant individual or cumulative effects were predicted to result from the kinds of activities included in the proposed CX for geothermal exploration operations, nor were any unanticipated effects observed after projects were implemented. Actual effects were the same as predicted effects in all cases.

The projects evaluated for establishment of this proposed CX include ''design elements'' to minimize any effects to other resources. As part of the Resource Management Plan (RMP) conformance process and application of relevant Federal laws, the BLM employs design elements specified in the RMP to minimize effects as it considers proposals that fit its category of excluded actions, and often coordinates with applicants to revise their proposals to minimize effects prior to or during the review process. ''Design elements'' refers to mitigation measures that are outlined in RMPs, as well as geothermal lease stipulations that are attached to individual lease parcels and applicable laws. The design elements are applicable to all NOIs, and the BLM will impose them, to the extent applicable, as conditions of approval (COAs) if not already included in the proposal. The regulations at 43 CFR 3251.12 provide authority for BLM to require COAs on permit authorizations to provide protections for resource values.

There were no instances where any of the projects evaluated in EAs would have required completion of an EIS had these measures not been applied as design elements of the proposed action or alternatives. In all instances projects were designed such that the proposed action or alternatives minimized

adverse effects. Each project proposed in reliance on the new CX would be evaluated to determine if extraordinary circumstances apply. If the BLM's review determines that extraordinary circumstances exist for an action that might otherwise be categorically excluded, or where the level of effects cannot be ascertained, the BLM would either require modification of the proposed action or would prepare an EA or EIS to support its decision making. Departmental and BLM regulations, manuals, handbooks, policies, and applicable land use plans provide direction and requirements regarding project design.

As described in the substantiation report, the BLM has experience analyzing and authorizing geothermal exploration projects in an environmentally sustainable manner and considers the activities described in this proposal to be routine and their effects to be non-significant. Expediting permit approvals for geothermal exploration projects is essential to respond to the need to combat climate change using renewable resources managed on BLM-administered lands. Establishment of this proposed new CX would also facilitate implementation of BLM priorities for identifying steps to establish and implement a program to improve Federal permit coordination with respect to eligible projects, with the goal of accelerating responsible development of renewable energy (*i.e.,* geothermal) on public lands. See 43 U.S.C. 3002.

Authorities: NEPA (42 U.S.C. 4321 *et seq.*); Executive Order (E.O.) 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ regulations (40 CFR 1507.3).

Stephen G. Tryon,

Director,Office of Environmental Policy and Compliance.

[FR Doc. 2025–01084 Filed 1–16–25; 8:45 am]

BILLING CODE 4331–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Notice of Availability of the Record of Decision and Approved Resource Management Plan for the Cascade-Siskiyou National Monument in Oregon/Washington and California

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Cascade-Siskiyou National Monument (CSNM) located in Oregon/Washington (OR/WA) and California (CA). The Director signed the ROD on January 7, 2025, which constitutes the decision of the BLM and makes the Approved RMP effective immediately.

DATES: The Director signed the ROD on January 7, 2025.

ADDRESSES: The ROD/Approved RMP is available online at *https://eplanning.blm.gov/eplanning-ui/project/2023675/510.* Printed copies of the ROD/Approved RMP are available for public inspection at the BLM Medford District Office, 3040 Biddle Rd, Medford, OR 97504; the BLM Klamath Falls Field Office, 2795 Anderson Avenue, Bldg. #25, Klamath Falls, OR 97603; the Redding Field Office, 6640 Lockheed Drive, Redding, CA 96002–9003; or can be provided upon request by contacting Lauren Brown, Field Manager, Ashland Field Office, *lpbrown@blm.gov* or (541) 618–2200, or by contacting Joel Brumm, Assistant Monument Manager, *jbrumm@blm.gov* or (541) 618–2200.

A copy of the Protest Resolution Report is available at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.*

FOR FURTHER INFORMATION CONTACT: Ms. Lauren Brown, Ashland Field Office, Field Manager, telephone (541) 618–2200; address 3040 Biddle Rd, Medford, OR 97504; email *blm_csnm_rmp@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Brown. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The CSNM boundary, as identified by Presidential Proclamation Nos. 7318 and 9564, constitutes the planning area for the Approved RMP. The planning area is 170,407 acres and includes lands within Jackson and Klamath Counties in Oregon, and Siskiyou County in California. The CSNM's decision area is the approximately 113,500 acres of BLM-administered lands within the planning area. While most of the BLM-administered lands are within the BLM Ashland and Klamath Falls Field Offices in Oregon, approximately 5,000 acres are located within the BLM Redding Field Office in California.

The Approved RMP will ensure that all legal mandates related to management of the congressionally designated National Conservation Lands (*i.e.,* Soda Mountain Wilderness; the Jenny Creek and Spring Creek Wild and Scenic Rivers; the Applegate Trail, which is part of the California National Historic Trail; and the Pacific Crest National Scenic Trail), as well as lands included in President Obama's enlargement of the monument boundary, are fully addressed. In addition, the Approved RMP will update existing management plans to align with current BLM policies, thereby ensuring comprehensive management of the decision area.

The RMP's underlying purpose (40 CFR 1502.13) is to provide a management framework, including objectives and management direction, that guides the BLM's management of the decision area to protect and restore the resources, objects, and values for which the area was designated.

The Approved RMP emphasizes flexibility in planning-level direction but promotes a moderate level of active management for protection, maintenance, and restoration of CSNM resources, and sets some limitations on management actions and tools available. The Approved RMP does not carry forward any Areas of Critical Environmental Concern (ACEC) or Research Natural Areas. The BLM determined that special management attention would be provided by management direction in the plan from other designations and management areas that apply monument-wide and would adequately protect the resource or value. The BLM determined that the entire monument holds historic, cultural, fish and wildlife, and scenic values that meet the relevance and importance criteria for an ACEC. The Approved RMP is designed to protect the monument's objects of scientific and historic interest outlined in Presidential Proclamations Nos. 7318 and 9564, which would safeguard these resources or values.

In developing the Approved RMP, the analysis in the Proposed RMP/Final EIS demonstrated that it best meets the purpose and need for the action compared to the alternatives. The planning process included results from close collaboration with several agency partners, including regulatory agencies and Tribal Nations, and their support will be integral to effectively implementing the Approved RMP.

The BLM provided the Proposed RMP/Final EIS for public protest on October 11, 2024, for a 30-day protest period and received 11 protest letters.

The BLM resolved all protests. Responses to protest issues will be compiled and documented in a Protest Resolution Report (see ADDRESSES). No changes to the Cascade-Siskiyou Resource Management Plan Proposed RMP/EIS were necessary as a result of protests.

Additionally, the BLM provided the Proposed RMP/Final EIS to the Governors of Oregon and California for a 30-day Governor's consistency review. The OR and CA Governor's office identified what they considered inconsistencies, and the BLM issued response letters that outlined explanations and justifications for how the BLM's proposed plan remains consistent with the concerns raised. No changes to the Cascade-Siskiyou National Monument Proposed RMP/EIS were necessary as a result of the Governors' consistency review.

(Authority: 40 CFR 1501.9, 40 CFR 1506.9, 43 CFR 1610.2, 43 CFR 1610.5)

Sharif Branham,

Assistant Director for Resources and Planning.

[FR Doc. 2025–00954 Filed 1–16–25; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Record of Decision and Approved Resource Management Plan Amendment for the Rough Hat Clark Solar Project in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) and Approved Resource Management Plan Amendment (RMPA) for the Rough Hat Clark Solar Project located in Clark County, Nevada. The ROD/Approved RMPA constitutes the final decision of the BLM as approved by the Department of the Interior (DOI).

ADDRESSES: The ROD is available online at *https://eplanning.blm.gov/eplanning-ui/project/2019992/510.* Printed copies of the ROD are available for public inspection at the Southern Nevada District Office, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, or can be provided upon request by contacting Jessica Headen, Project Manager, telephone (702) 515–5206, address Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

The Protest Resolution Report is available at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.*

FOR FURTHER INFORMATION CONTACT: Jessica Headen, Project Manager, telephone (702) 515–5206, address Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.; email *jheaden@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Headen. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The applicant, Candela Renewables, LLC, submitted a right-of-way (ROW) application to the BLM Las Vegas Field Office for the Rough Hat Clark Solar Project (Project), a 400-megawatt (MW) solar photovoltaic power generating facility and 700 MW of battery energy storage system (BESS) on approximately 2,469 acres of BLM-managed public land located in the Pahrump Valley in Clark County, Nevada, southeast of the town of Pahrump and approximately 38 miles west of Las Vegas. The Project would include a solar field, BESS, and a 230 kV transmission line from the solar facility to the GridLiance Trout Canyon Substation.

The Department of the Interior has approved the BLM's decision to issue a ROW grant for the Project as described in the Proposed RMPA/Final Environmental Impact Statement (EIS) as the Resources Integration Alternative. The ROD documents the BLM's decision to authorize the construction, operation, maintenance, and decommissioning of the 400 MW photovoltaic solar power generating facility with battery energy storage on BLM-managed land in Clark County, Nevada. Approval of this ROW constitutes the final decision of the Department of the Interior and is not subject to appeal under Departmental regulations at 43 CFR part 4.

There were no changes to the Approved RMPA from the Proposed RMPA/Final EIS, which was published on November 1, 2024. The Approved RMPA changes the existing 1998 Las Vegas Resource Management Plan to reclassify the Project area from Visual Resource Management (VRM) Class III to VRM Class IV.

The BLM provided the Proposed RMPA/Final EIS for public protest on November 1, 2024, for a 30-day protest period and received seven valid protests. The BLM Director resolved all protests. Responses to protest issues were compiled and documented in a Protest Resolution Report (see **ADDRESSES**).

The BLM provided the Proposed RMPA/Final EIS to the Governor of Nevada for a 60-day Governor's consistency review on November 1, 2024. The Governor's Office replied on December 17, 2024, confirming that the proposed RMPA is consistent with State and local plans, policies, and programs. The Governor's Office had no objections to the approval of the RMPA.

The DOI's Principal Deputy Assistant Secretary for Land and Minerals Management signed the ROD/Approved RMP Amendment, which is in effect upon signature.

(Authority: 40 CFR 1506.6 (2022); 43 CFR 1610.5–1)

Jon K. Raby,

Nevada State Director.

[FR Doc. 2025–01231 Filed 1–16–25; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Record of Decision and Approved Resource Management Plan Amendment for the Lakeview Resource Management Plan, Lakeview District, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) Amendment for the Lakeview RMP, located in the BLM's Lakeview District.

DATES: The ROD/Approved RMP Amendment was signed and is in effect as of the date of signature.

ADDRESSES: The ROD/Approved RMP Amendment is available online at the BLM National Environmental Policy Act Register at *https://eplanning.blm.gov/eplanning-ui/project/114300/510.*

Printed copies of the ROD/Approved RMP Amendment are available for public inspection at the BLM Lakeview District Office, 1301 South G Street,

Lakeview, Oregon 97630, or can be provided upon request by contacting the Lakeview office at (541) 947–2177.

A copy of the Protest Resolution Report is available at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.*

FOR FURTHER INFORMATION CONTACT: Todd Forbes, District Manager, Lakeview District Office; telephone: (541) 947–6100; email: *tforbes@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Forbes. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Approved RMP Amendment amends the existing 2003 Lakeview RMP. The Lakeview planning area covers approximately 3.2 million acres of public lands in Lake and Harney counties. The Approved RMP Amendment provides management direction for lands with wilderness characteristics; makes planning-area-wide travel and transportation/off-highway vehicle (OHV) allocations of open, limited, and closed; and provides management direction for livestock grazing in areas that fail to meet the BLM's Standards for Rangeland Health and for processing voluntary livestock grazing permit relinquishments.

The Approved RMP Amendment prioritizes the protection of wilderness characteristics in 24 whole units and portions of two units (42,547 acres) as new Section 202 Wilderness Study Areas (WSA). New Section 202 WSAs will be managed as: Visual Resource Management Class I, which allows for very low levels of change to the landscapes' visual character that does not attract attention; Land Tenure Zone 1, where the BLM retains the lands in public ownership for the life of the RMP; exclusion areas for all rights-of-way; and closed for the development and extraction of leasable and saleable minerals, including new mineral material sites.

In addition, the Approved RMP Amendment prioritizes the protection of wilderness characteristics in eight whole units and portions of seven units (373,132 acres) over other multiple uses (Category C). These Category C units will be managed as: Visual Resource Management Class II public lands, which only allows for low levels of change to the landscapes visual character; Land Tenure Zone 1, where the BLM retains the lands in public ownership for the life of the RMP; exclusion areas for major rights-of-way and commercial renewable energy projects; and avoidance areas for all minor rights-of-ways. In addition, within these Category C units, leasable mineral extraction will be allowed, but subject to a no surface occupancy stipulation. All Category C units will be closed to saleable minerals, including new mineral material sites. Where roads form the boundary of a protected Category C wilderness characteristic unit, a 300-foot management setback from the centerline of paved and gravel roads and a 100-foot setback from the centerline of natural surface boundary roads is established.

Under the Approved RMP Amendment, 12 areas totaling approximately 70,573 acres scattered across the planning area will be managed as open to OHV use; 397,671 acres currently classified as open will be designated as limited to existing routes, resulting in a total of 3,121,499 acres of limited OHV classification in the planning area; and an additional 476 acres of areas open to OHV use will be designated as closed resulting in a total of 11,285 acres closed to OHV.

The Approved RMP Amendment: (1) requires the BLM to consider taking action in areas that are not meeting Standards for Rangeland Health even if existing livestock grazing is not a causal factor for non-attainment of the standard; (2) clarifies that the BLM will not permit increases to animal unit months if analysis finds that doing so could cause negative impacts to other resources in an area where there is either no rangeland health assessment and evaluation or if the evaluation no longer represents the existing resource conditions; and (3) requires the BLM to review the suitability and compatibility of livestock grazing use with other existing resources in the permitted area when a voluntary permit relinquishment is received. If livestock grazing is found to be unsuitable and/or incompatible, the area will become unavailable to grazing and the forage allocation will be made to another resource. If grazing is found to be suitable and/or compatible, then the allocation of forage to livestock grazing use will remain in place. The BLM could authorize grazing use for the area under a grazing permit or designate the area as a reserve common allotment.

The BLM provided the Proposed RMP Amendment/Final Environmental Impact Statement (EIS) for a 30-day public protest period starting on November 7, 2024, and received 15protests. The BLM Assistant Director for Resources and Planning resolved all valid protests. Responses to protest issues were compiled and documented in a Protest Resolution Report (see **ADDRESSES**). No changes to the Lakeview Proposed RMP Amendment/Final EIS were necessary as a result of protests.

The BLM provided the Proposed RMP Amendment/Final EIS to the Governor of Oregon for a 30-day Governor's consistency review. No inconsistencies with State or local plans, policies or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS. No changes to the Lakeview Proposed RMP Amendment/Final EIS were necessary as a result of the Governor's consistency review.

(Authority: 40 CFR 1501.9, 43 CFR 1610.2, 43 CFR 1610.5)

Nada Wolff Culver,

Deputy Director.

[FR Doc. 2025–01063 Filed 1–16–25; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Records of Decision and Approved Resource Management Plan Amendments for Greater Sage-Grouse Rangewide Planning

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Records of Decision (RODs) for the Approved Resource Management Plan (RMP) Amendments for Greater Sage-Grouse Rangewide Planning in Colorado and Oregon. The BLM's Principal Deputy Director signed the RODs, which constitute the decisions of the BLM to approve the RMP Amendments.

ADDRESSES: The RODs/Approved RMP Amendments are available online at *https://eplanning.blm.gov/eplanning-ui/project/2016719/510.* Printed copies of the RODs/Approved RMP Amendments can be provided upon request by contacting *BLM_HQ_GRSG_Planning@blm.gov.*

A copy of the Protest Resolution Report is available at: *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.*

FOR FURTHER INFORMATION CONTACT: Pat Deibert, BLM National Sage-Grouse Conservation Coordinator; telephone: (720)-447-8107; address: 5353 Yellowstone Road, Cheyenne, WY, 82009; email: *BLM_HQ_GRSG_Planning@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Dr. Deibert. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The RODs/Approved RMP Amendments update how the BLM manages public lands in Colorado and Oregon that support Western communities and enhance conservation for Greater Sage-Grouse and more than 350 other wildlife species. The plan amendments in these two States are part of a rangewide approach, developed with 10 States, Tribes, local communities, and the public to enhance conservation for Greater Sage-Grouse and its habitat. While the Governors of Colorado and Oregon did not identify any inconsistencies with the plans, policies, or programs of their States or potential inconsistencies were resolved, the BLM made minor changes from the Proposed RMP to these RODs/Approved RMP Amendments to resolve potential inconsistencies raised by other States. The BLM made these minor changes to maintain a consistent rangewide approach to Greater Sage-Grouse management and promote coordination between the BLM and the States. The minor changes include clarifying that areas identified as Priority Habitat Management Areas with limited exceptions under the Proposed RMP will be identified only as Priority Habitat Management Areas. A further explanation of this and other changes can be found in the Oregon and Colorado RODs/Approved RMP Amendments.

The States of North Dakota, South Dakota, and California did not submit any administrative protests or identify any inconsistencies with State plans, policies, or programs, so the BLM has completed the administrative process for finalizing those plans, and is prepared to issue RODs for those three States. The BLM continues to work closely with wildlife managers in five other States to finalize decisions to conserve and improve habitat across the Greater Sage-Grouse's range. Until new RODs are signed, the BLM will continue to manage Greater Sage-Grouse habitat on public lands in those eight States under the 2015 Greater Sage-Grouse RMP decisions.

This Greater Sage-Grouse planning process builds on existing direction related to Greater Sage-Grouse conservation, established in earlier planning efforts, responds to updated scientific information and changing land uses, and provides for consistent and effective rangewide conservation based on biological information that is responsive to locally relevant habitat variability. Upon finalization, these RMP Amendments update or will update goals, objectives, allocations, and management direction in 77 resource management plans in California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming.

The BLM provided the Proposed RMP Amendments for public protest on November 15, 2024, for a 30-day protest period and received 60 unique protest letters. The BLM resolved all protests, compiling and documenting responses to protest issues in a Protest Resolution Report (see **ADDRESSES**). Through its review, the BLM determined that no changes from the Proposed RMP Amendments/Final EISs were necessary, although the BLM made minor changes for clarification and to improve implementation as described in the Oregon and Colorado RODs/Approved RMP Amendments.

The BLM provided the Proposed RMP Amendments to the Governors of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming for 60-day Governor's consistency reviews. As discussed above, the Governors of California, North Dakota, South Dakota, and Colorado did not identify any inconsistencies with State plans, policies, or programs. The BLM resolved all potential inconsistencies identified by the Governor of Oregon to the Governor's satisfaction. The BLM is continuing to work with Idaho, Montana, Nevada, Utah, and Wyoming to resolve any remaining asserted inconsistencies.

The BLM's Principal Deputy Director signed the RODs/Approved RMP Amendments, which are in effect upon signature.

(Authority: 40 CFR 1506.6; 43 CFR 1610.5–1)

Nada Wolff Culver,

Principal Deputy Director.

[FR Doc. 2025–01198 Filed 1–16–25; 8:45 am]

BILLING CODE 4331–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Notice To Establish a New Recreation Fee Area on Public Lands Managed by the Salmon Field Office, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Federal Lands Recreation Enhancement Act (FLREA), the Bureau of Land Management (BLM), Salmon Field Office will establish a fee program for a reservable rental cabin known as Tarpons Roost, constructed on the Continental Divide near Lemhi Pass, in Lemhi County, Idaho.

DATES: Starting July 17, 2025, the BLM will have the option to initiate the proposed fees unless the BLM publishes a **Federal Register** notice to the contrary.

ADDRESSES: Copies of relevant supporting documents for this action may be reviewed at the BLM Salmon Field Office, 1206 South Challis St., Salmon, ID 83467; or the BLM Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, ID 83401 and online at: *https://on.doi.gov/3qfe3I0.*

FOR FURTHER INFORMATION CONTACT: Travis Seaberg, outdoor recreation planner, BLM Salmon Field Office, email: *BLM_ID_SalmonOffice@blm.gov;* telephone: (208) 756–5400. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The BLM is committed to provide and receive fair value for the use of developed recreation facilities and services in a manner that meets public use demands, provides quality experiences, and protects important resources. The BLM's policy is to collect fees at specialized recreation sites, or where the BLM provides facilities, equipment, or services, at Federal expense, in connection with outdoor use. To meet anticipated demands for services and maintenance at Tarpons Roost, the BLM will establish a fee program for cabin facility use. This fee will be used for the maintenance and yearly operations cost of Tarpons Roost. Starting July 17, 2025,

the BLM will initiate the approved $75 per night expanded amenity fee.

The FLREA directs the Secretary of the Interior and Secretary of Agriculture to publish an advance notice in the **Federal Register** whenever new recreation fee areas are established under their respective jurisdictions. In accordance with BLM policy, the Salmon Field Office Recreation Fee Sites Business Plan explains the fee collection process and how fees will be used at this site. The BLM Idaho Resource Advisory Council, functioning as a Recreation Resource Advisory Committee, reviewed and concurred with the proposal to charge fees at Tarpons Roost in May 2024, following the FLREA guidelines. Fee amounts will be posted on-site and at the BLM Salmon Field Office. Copies of the business plan will be available at the BLM Salmon Field Office and BLM Idaho Falls District Office as listed in the **ADDRESSES** section. Any future adjustments in the fee amount will be made following the Salmon Field Office Recreation Fee Sites Business Plan and after consultation with the BLM Idaho Resource Advisory Council and other public notice.

Tarpons Roost was analyzed and approved in the 2018 Continental Divide Trail Cabin Environmental Assessment (DOI–BLM–ID–I040–2012–0034–EA) and subsequent Record of Decision, available at *https://eplanning.blm.gov/eplanning-ui/project/33052/510.* Recreation use fees would be consistent with other established fee sites in the area managed by the BLM and other Federal and State land management agencies.

(Authority: 16 U.S.C. 6803(b))

Robert Taylor,

Acting BLM Idaho Falls District Manager.

[FR Doc. 2025–01219 Filed 1–16–25; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039362; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Prescott National Forest, Chino Valley, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Prescott National Forest (PNF) intends to carry out the disposition of an associated funerary object removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the associated funerary object in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the associated funerary object in this notice will become unclaimed associated funerary object.

ADDRESSES: Sarah Clawson, Forest Supervisor, Prescott National Forest, 735 N. Highway 89, Chino Valley, AZ 86323, telephone (928) 443–8213, email *sarah.clawson@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Prescott National Forest, and additional information on the associated funerary object in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, one associated funerary object has been reasonably identified. A ceramic jar and human remains were discovered eroding out of an arroyo by a hiker near the Salt Mine Road (Verde Ranger District, Yavapai County, Arizona) on January 10, 2020. The jar was also removed that same day. The jar has been classified as Verde Brown plainware (Southern Sinagua) and is 20–25cm in diameter and approximately 20cm in height. The jar was found fractured, with about half of its entirety present. The human remains were stabilized in place in January 2020 and again in July 2021. The discovery location was assigned a site number, AR–03–09–05–933, and is being monitored by PNF archaeologists. The jar is currently secured in a safe location away from public view at the Verde Valley Archaeological Center, Camp Verde, Arizona.

Determinations

The Prescott National Forest has determined that:

- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Hopi Tribe of Arizona has priority for disposition of the associated funerary object described in this notice.

Claims for Disposition

Written claims for disposition of the associated funerary object in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 8, 2026, the associated funerary object in this notice will become an unclaimed associated funerary object. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the associated funerary object in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the Prescott National Forest must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the associated funerary object are considered a single request and not competing requests. The Prescott National Forest is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01174 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039345; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Federal Bureau of Investigation, Portland Maine Resident Agency, Portland, ME

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Federal

Bureau of Investigation, Portland Maine Resident Agency (FBI Maine) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025.

ADDRESSES: Special Agent Dale D. Wengler, Federal Bureau of Investigation, Portland Maine Resident Agency, 100 Middle Street, Suite 400, Portland, ME 04101, telephone (207) 541–0702, email *ddwengler@fbi.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the FBI Maine, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing at least one individual has been identified. In May of 2022, a human scalp with an associated tag containing the following inscription ''MESCALLARO APACHE SCALP. KILLED AT JOHNSON'S RUN TEXAS SENT TO FRANK OWENS. BY LANCE BREWINGTON. FORMER MAYSVILLE MAN ABOVE TOLD ME BY LANCE B. AT JOPLIN MO 1899 W.W. GIBSON'' was obtained by the FBI through a federal search warrant after the scalp was offered for sale through an auction house in Maine. After conducting extensive forensic testing, the FBI Laboratory confirmed the scalp was human head hairs with Asian/Native American ancestral characteristics. The one associated funerary object is a beaded pipe bag that was contained with the human scalp and was also offered for sale at the auction house. The items belonged to a widow in New Mexico who was unaware that her husband had been in possession of them. The items had been grouped and consigned for sale along with many of her deceased husband's personal property by an auction house in Maine. Upon seizure by the FBI, the items have been preserved and maintained in accordance with evidence policies and procedures.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The FBI Maine has determined that:

- The human remains described in this notice likely represent the physical remains of one individual of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the FBI Maine must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The FBI Maine is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 14, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01227 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039367; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Arizona State Office, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management, Arizona State Office (BLM), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary object in this notice may occur on or after February 18, 2025.

ADDRESSES: Raymond Suazo, Bureau of Land Management, Arizona State Office, One North Central Avenue, Phoenix, AZ 85004, telephone (602) 417–9500, email *rmsuazo@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BLM and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing two individuals have been identified. The one associated funerary object is one lot of vegetable material (including a fragment of narrowleaf yucca and multiple loose unidentified fibers). The individuals and associated funerary object were found in a box on the shelf of a storage closet at the Safford Field Office, Safford, Graham County, Arizona. No documentation could be found to identify where the box's

contents had come from or when they were removed.

In consultation with BLM, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona and the Gila River Indian Community of the Gila River Indian Reservation, Arizona asserted a lengthy historic tradition of basketry among tribes of southern Arizona which used similar fibers to those represented in the associated funerary object.

A fiber specialist's analysis of the associated funerary object indicated the manufacture of plaited basketry was a late (post 1100 CE) precontact perishable tradition south of the Mogollon Rim, primarily associated with the Late Mogollon and Salado archaeological cultures. The specialist suggested an association with the modern Hopi and Zuni pueblos.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographic location and acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Bureau of Land Management Arizona State Office has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The one associated funerary object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the BLM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The BLM is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01167 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039366; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Marshall University, Huntington, WV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Marshall University has completed an inventory of human and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 18, 2025.

ADDRESSES: Marion Coe, Marshall University, One John Marshall Drive, Huntington, WV 25755, telephone (304) 696–3758, email *coem@marshall.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Marshall University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. No associated funerary objects are present. The individual was removed from Huntington Mound, Cabell County, West Virginia. In September 2023, the Native American human remains were discovered within a collection housed at Marshall University's Geology Department. The identification was made during a review of a handwritten collection ledger, which indicated that the remains had been exhumed by Alfred Ferrell, A.A. Ferrell, and Richard Malcolm. In June 1959, avocational archaeologist Emory Jones donated the individual to the University. Marshall University has no knowledge or record of the presence of any potentially hazardous substances being used to treat the human remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains described in this notice.

Determinations

Marshall University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Catawba Indian Nation; Cayuga Nation; Cherokee Nation; Chickahominy Indian Tribe; Chickahominy Indian Tribe—Eastern Division; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of

Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nansemond Indian Nation; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Pamunkey Indian Tribe; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rappahannock Tribe, Inc.; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Tunica-Biloxi Indian Tribe; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Mattaponi Tribe; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, Marshall University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Marshall University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01178 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039349; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Tulsa District (USACE Tulsa) intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains or cultural items.

ADDRESSES: Jacqueline Rodgers, U.S. Army Corps of Engineers, Tulsa District, 2488 East 81st Street, Tulsa, OK 74137, telephone (918) 669–4964, email *jacqueline.rodgers@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USACE Tulsa, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The one lot of associated funerary objects consist of coffin hardware. In the 1870s, the Kaw Nation founded the community of Washunga along the Arkansas River in what became Kay County, Oklahoma. The Washunga Cemetery was established was in use from approximately 1872 until the 1970s. In the 1970s USACE Tulsa relocated known internments from this cemetery prior to the inundation of Kaw Lake. In 1997, human remains representing one individual and funerary objects including one lot of coffin hardware were collected from the site of the original Washunga Cemetery, now located along the shoreline of Kaw Lake. Currently the individual and all funerary objects are located at the Tulsa District Archaeological Repository.

Determinations

The USACE Tulsa has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The one lot of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Kaw Nation, Oklahoma has priority for disposition of the human remains and associated funerary objects described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the USACE Tulsa must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The USACE Tulsa is responsible for sending a copy of this

notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01189 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039365; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Marshall University, Huntington, WV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Marshall University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025.

ADDRESSES: Marion Coe, Marshall University, One John Marshall Drive, Huntington, WV 25755, telephone (304) 696–3758, email *coem@marshall.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Marshall University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The one lot of associated funerary objects consist of 37 fragments of unmodified faunal remains. Of this number, 30 are currently missing from the collection. Marshall University continues to look for any missing objects. The human remains and associated funerary objects were removed from the Childers Site (46–MS–121), Burial Feature 24 from Mason County in West Virginia. In 1980, the University of Akron Field School conducted an archaeological excavation of the Site and exhumed human remains and associated funerary objects. The human remains were later transferred to Marshall University. Sometime in the early 1990s, a now retired faculty member from the Department of Sociology and Anthropology at Marshall University, sent the human remains to a graduate student for their dissertation research. This individual reached out to Marshall University and returned the human remains in September 2023. Marshall University has no knowledge or record of the presence of any potentially hazardous substances being used to treat the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains and associated funerary objects described in this notice.

Determinations

Marshall University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Catawba Indian Nation; Cayuga Nation; Cherokee Nation; Chickahominy Indian Tribe; Chickahominy Indian Tribe—Eastern Division; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nansemond Indian Nation; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Pamunkey Indian Tribe; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rappahannock Tribe, Inc.; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Tunica-Biloxi Indian Tribe; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Mattaponi Tribe; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, Marshall University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Marshall University is responsible for sending a copy of this

notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01177 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039352; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Auburn University at Montgomery, Montgomery, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Auburn University at Montgomery has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025.

ADDRESSES: Megan LeBlanc, Auburn University at Montgomery, P.O. Box 244023, Montgomery, AL 36124, telephone (334) 394–5532, email *mleblanc@aum.edu* and *nagpra@aum.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Auburn University at Montgomery, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing at least 13 individuals have been identified. The 3,406 associated funerary objects (3,368 individual items and 38 lots of associated funerary objects) include one incomplete pottery vessel, 2,066 pottery sherds, 1,298 lithic items, two metal buttons, one glass fragment, 10 lots of faunal remains, 11 lot of shell fragments, four lots of charcoal, 11 lots of daub, and two lots of sediment samples. 1DS1, Durant's Bend, is located in Dallas County, AL along the Alabama River. In 1982, Dr. Craig Sheldon and field school students from Auburn University at Montgomery removed human remains and associated funerary objects from the east midden area of the site. These human remains and associated funerary objects were then housed in the Auburn University at Montgomery Archaeology Laboratory. No known hazardous substances were used to treat any of the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

Auburn University at Montgomery has determined that:

- The human remains described in this notice represent the physical remains of a minimum of 13 individuals of Native American ancestry.
- The 3,406 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Kialegee Tribal Town; Mississippi Band of Choctaw Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, Auburn University at Montgomery must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Auburn University at Montgomery is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01185 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039330; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Cibola National Forest and National Grasslands, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Cibola National Forest and National Grasslands (USDA-Cibola NF&NGs) intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Heidi McRoberts, US Department of Agriculture, Cibola NF&NGs, 2113 Osuna Rd NE, Albuquerque, NM 87113, telephone (505) 346–3804, email *heidi.mcroberts@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USDA-Cibola NF&NGs, and additional information on the human remains in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing one individual have been reasonably identified. No associated funerary objects are present. In 1992, one human cranium was recovered from site AR 03–03–02–01912/LA 89988 in the Zuni Mountains, Mount Taylor Ranger District (Cibola NF&NGs), Cibola County, NM.

Determinations

The USDA-Cibola NF&NGs has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico have priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the USDA-Cibola NF&NGs must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The USDA-Cibola NF&NGs is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 6, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01180 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039344; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: U.S. Department of the Interior, National Park Service, Great Smoky Mountains National Park, Gatlinburg, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Great Smoky Mountain National Park (GRSM) intends to repatriate a certain cultural item that meets the definition of a sacred object and that has a known lineal descendant.

DATES: Repatriation of the cultural item in this notice may occur on or after February 18, 2025.

ADDRESSES: Cassius Cash, Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, TN 37738, telephone (865) 8436–1200, email *cassius_cash@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, GRSM, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one sacred item is a stone pipe. The stone pipe was reported to have been given to Colonel William Holland Thomas by Yonaguska. In 1937, it was donated to GRSM by Colonel Thomas' daughter-in-law, Mrs. James R. Thomas. Yonaguska was a known Cherokee leader in the early 19th century. No hazardous substances are known to have been used to treat the cultural item.

Determinations

GRSM has determined that:

- The one sacred object described in this notice is a specific ceremonial object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- A known lineal descendant (name withheld per request) is connected to the cultural item described in this notice.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, GRSM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. GRSM is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01181 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039360; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: No Man's Land Museum, Goodwell, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the No Man's Land Museum has completed an inventory of human remains and has determined that there is no lineal descendant and no Indian Tribe or Native Hawaiian organization with cultural affiliation.

DATES: Upon request, repatriation of the human remains in this notice may occur on or after February 18, 2025.

ADDRESSES: Sue Weissinger, No Man's Land Historical Society, 214 E. Avenue, Goodwell, OK 73939, telephone (580) 349–2670, email:*nmlhs@outlook.com.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the No Man's Land Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, two individuals have been identified. No associated funerary objects are present. One individual adult was removed from a site six miles west of Texhoma Texas county, Oklahoma and donated on May 11, 1976. The second adult was uncovered while excavating sand for construction in a sand pit north of Guymon, Texas County, Oklahoma. The individual was 6′ to 7′ deep in the sand. Donated to No Man's Land Museum on May 28, 1976.

Consultation

Invitations to consult were sent to the Apache Tribe of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma; Comanche Nation, Oklahoma; The Osage Nation; and the Wichita & Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

The Cheyenne and Arapaho Tribes, Oklahoma; Comanche Nation, Oklahoma; The Osage Nation; and the Wichita & Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma agreed to consult. The Quapaw Nation declined to comment.

Cultural Affiliation

The following types of information about the cultural affiliation of the human remains in this notice are available: geographical, and expert opinion. The information, including the results of consultation, identified

1. No earlier group connected to the human remains.
2. No Indian Tribe or Native Hawaiian organization connected to the human remains.
3. No relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.

Determinations

The No Man's Land Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No known lineal descendant who can trace ancestry to the human remains in this notice has been identified.
- No Indian Tribe or Native Hawaiian organization with cultural affiliation to the human remains in this notice has been clearly or reasonably identified.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Upon request, repatriation of the human remains described in this notice may occur on or after February 18, 2025. If competing requests for repatriation are received, the No Man's Land Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The No Man's Land Museum is responsible for sending a copy of this notice to any consulting lineal descendant, Indian Tribe, or Native Hawaiian organization.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01172 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039353; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gilcrease Museum intends to repatriate certain cultural items that meet the definition of unassociated funerary objects or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 18, 2025.

ADDRESSES: Laura Bryant, Gilcrease Museum, 800 S. Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Gilcrease Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of nine cultural items have been requested for repatriation.

The four unassociated funerary objects are glass and ceramic beads. These were removed in 1931 from a mid- to late 19th century cemetery at Rocky Hill near Portersville in Tulare County, California. The items were acquired by Thomas Gilcrease likely in the 1950s and transferred to the City of Tulsa in 1955.

The five objects of cultural patrimony are baskets. Three of these baskets are from Tulare County, California and are identified as Yokuts. One of these was acquired by Frank Engles, a prospector who traveled and collected throughout the northwestern part of the United States, in the early 20th century. Thomas Gilcrease purchased his collection in 1950, which was transferred to the City of Tulsa in 1955. Two of the baskets are identified as Yokuts. One, from the early 20th century, was gifted to the Museum by Wynetka Ann Reynolds and Thomas Kirschbaum in 2014.

Determinations

The Gilcrease Museum has determined that:

- The four unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- The five objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Tule River Indian Tribe of the Tule River Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the Gilcrease Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Gilcrease Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01187 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039347; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 18, 2025.

ADDRESSES: Dr. Mark R. Wheeler, Senior Advisor to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email *mark.wheeler@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

The 20,052 cultural items were removed from unknown locations by Anthony Zallio. This collection was donated to the University by his estate in the 1950s. The 20,052 unassociated funerary objects consist of faunal and floral remains; flaked and ground stone; historic materials; modified bones, shells and stones; unmodified stones; geologic samples; hair; and textiles. They have since been housed at the University under accession 81–172.16. Based on Zallio's collecting history, it was determined through consultation that these objects are likely unassociated funerary objects originating from Miwok/Nisenan sites already represented in the larger Zallio Collection. At least 10 objects are currently missing and the University continues to look for them.

Determinations

The California State University, Sacramento has determined that:

- The 20,052 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a reasonable connection between the cultural items described in this notice and the Ione Band of Miwok Indians of California and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint

repatriation of the cultural items are considered a single request and not competing requests. The California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01194 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039331; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: St. Joseph Museums, Inc., St. Joseph, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the St. Joseph Museums, Inc. intends to repatriate certain cultural items that meet the definition of sacred objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 18, 2025.

ADDRESSES: Tori Zieger, St. Joseph Museums, Inc., 3406 Frederick Avenue, St. Joseph, MO 64506, telephone (816) 232–8471, email *tori@stjosephmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the St. Joseph Museums, Inc. and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 67 cultural items have been requested for repatriation. The 67 objects of cultural patrimony/sacred objects were donated to the St. Joseph Museums by three collectors: Harry L. George, Carol Getty, and Mrs. L.T. Golding. Harry L. George was actively collecting Indigenous objects during the years of 1904–1922, mostly through purchasing from other dealers and occasionally through direct purchases from tribes when on personal trips. The Harry L. George Collection was donated to the St. Joseph Museums, Inc. in 1944. The sacred objects/objects of cultural patrimony from the Harry L. George collection include five necklaces, one pair of earrings, one otter skin case, 16 weapons, one basket, three bags, five rattles, one wand, three bowls, two spoons, one knife, one needle, one item identified as a ''shot maker'', one pipe stem, one life stick, one buffalo hide quiver with arrows, six objects of applique or beaded work, one flute, one drum staff, one drum, two metal armbands, one metal badge, one scalp bag, two animal skulls, and one sacred bundle with one associated figure that was previously separated. The buffalo hide quiver has previously been treated with arsenic, as noted in written communication between Harry L. George and the original seller of the object. The Getty Collection was donated to the St. Joseph Museums, Inc. in 2018. The sacred objects/objects of cultural patrimony from the Getty Collection include one necklace, three baskets, and one basket lid. The Mrs. L.T. Golding collection was donated to the St. Joseph Museums, Inc. in 1953. The sacred object/object of cultural patrimony from the Golding collection is one cradleboard doll.

Determinations

The St. Joseph Museums, Inc. has determined that:

- The 67 sacred objects/objects of cultural patrimony described in this notice are, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural items described in this notice and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the St. Joseph Museums, Inc. must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The St. Joseph Museums, Inc. is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 6, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01190 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039363; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Prescott National Forest, Chino Valley, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Prescott National Forest (PNF) intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Sarah Clawson, Forest Supervisor, Prescott National Forest, 735 N. Highway 89, Chino Valley, AZ 86323, telephone (928) 443–8213, email *sarah.clawson@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Prescott National Forest, and additional information on the human remains in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. Human remains of one individual were discovered and removed from the Strickland Wash area (Chino Valley Ranger District, Yavapai County, Arizona) and turned into the Prescott National Forest on August 31, 2017. PNF Staff traveled to the discovery location and recorded this location as a new site, AR–03–09–01–1533. No other human remains were located. AR–03–09–01–1533 is a Prescott Culture site located on a terrace above Strickland Wash. The site contains a rock feature, a depression, and a dense artifact scatter of lithics, ceramics, and ground stone fragments. The human remains are currently secured in a safe location away from public view at the Sharlot Hall Museum, Prescott, Arizona.

Determinations

The Prescott National Forest has determined that:

- The human remains described in this notice represent the physical remains of one individuals of Native American ancestry.
- The Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe; and the Zuni Tribe of the Zune Reservation, New Mexico have priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the Prescott National Forest must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The Prescott National Forest is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01175 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039356; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Apache-Sitgreaves National Forests, Springerville, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Apache-Sitgreaves National Forests intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Robert Lever, Forest Supervisor, Apache-Sitgreaves National Forests, 30 S. Chiricahua Drive, Springerville, AZ 85938, telephone (928) 333–6208, email *robertlever@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Apache-Sitgreaves National Forests, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of information available

Ancestral remains were discovered in 2016 during monitoring of a previously recorded site, Greenlee County, Arizona. Based on the information available, the fragmented ancestral remains represent, at least, one individual being reasonably identified. The approximately 52 associated funerary objects are four groundstone, three flakes, one piece of fossil coral, and 44 ceramics having a Mogollon affiliation.

Determinations

The Apache-Sitgreaves National Forests has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 52 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico have priority for disposition of the human remains and associated funerary objects described in this notice based on cultural affiliation.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20,

2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the Apache-Sitgreaves National Forests must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Apache-Sitgreaves National Forests is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01168 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039361; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Prescott National Forest, Chino Valley, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Prescott National Forest (PNF) intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Sarah Clawson, Forest Supervisor, Prescott National Forest, 735 N. Highway 89, Chino Valley, AZ 86323, telephone (928) 443–8213, email *sarah.clawson@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Prescott National Forest, and additional information on the human remains in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. Human remains were discovered and removed on December 1, 2020 in Hell Canyon (Chino Valley Ranger District, Yavapai County, Arizona). PNF Staff traveled to the discovery location and found two additional bone fragments and those were stabilized near their original location. The discovery location was assigned a site number, AR–03–09–01–1965, and is being monitored by PNF archaeologists. The human remains are currently secured in a safe location away from public view at the Verde Valley Archaeological Center, Camp Verde, Arizona.

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. Human remains of one individual were removed from an eroding cutbank near the Verde River (Chino Valley Ranger District, Yavapai County, Arizona) in 2014. Additional human remains were observed deeper in the cutbank and were stabilized in place. The discovery location was assigned a site number, AR–03–09–01–1841, and is being monitored by PNF archaeologists. The human remains are currently secured in a safe location away from public view at the Sharlot Hall Museum, Prescott, Arizona.

Determinations

The Prescott National Forest has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The Ak-Chin Indian Community; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe; and the Zuni Tribe of the Zuni Reservation, New Mexico have priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the Prescott National Forest must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The Prescott National Forest is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01173 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039357; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Apache-Sitgreaves National Forests, Springerville, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Apache-Sitgreaves National Forests intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Robert Lever, Forest Supervisor, Apache-Sitgreaves National Forests, 30 South Chiracahua Drive, Springerville, AZ 85938, telephone (928) 333–6280, email *robertlever@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Apache-Sitgreaves National Forests, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Ancestral remains, one female individual, were discovered on August 6, 2009, during monitoring of a previously recorded site in Navajo County, Arizona. The 40 associated funerary objects collected are approximately nine stone beads, 29 pieces of stone debris, and two small lithic flakes having a Mogollon affiliation.

Determinations

The Apache-Sitgreaves National Forests has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 40 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Hopi of Arizona; Pueblo of Acoma, New Mexico; Zuni Tribe of the Zuni Reservation, New Mexico have priority for disposition of the human remains and associated funerary objects described in this notice based on cultural affiliation.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the Apache-Sitgreaves National Forests must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Apache-Sitgreaves National Forests is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01169 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–NPS0039152; PPWONRADE3, PPMRSNR1Y.NM0000 (213); OMB Control Number 1024–NEW]

Agency Information Collection Activities; Socioeconomic Monitoring Study of National Park Service Visitors

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 18, 2025.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Phadrea Ponds, NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, (MS–244) Herndon, VA 20171 (mail); or *phadrea_ponds@nps.gov* (email). Please include 1024–NEW (SEM) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Bret Meldrum NPS Social Science Program Manager 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); at *bret_meldrum@nps.gov* email or 970–267–7295 (telephone). Please include 1024–NEW (SEM) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered

within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501et seq.*)* and 5 CFR 1320.8(d)(1), we provide the public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **FederalRegister** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 27, 2021 (86 FR 48244). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Park Service (NPS) Social Science Program is authorized by the National Park Service Protection, Interpretation, and Research in System (54 U.S.C. 100701) to collect information that will improve the ability of the NPS to provide effective management, protection, and interpretation across the NPS. However, data is needed to generalize findings across all national park units in the System concerning visitor experiences, attitudes, and spending behaviors. Current data does not allow for comparison across units or against a regional and nationwide benchmark of information. The proposed collection will provide generalizable results for NPS managers and planners across the System to understand and monitor visitor demographics, economic contribution, services, facilities, and infrastructure investments. Park units will be able to compare their unit data with regional and national-level data to make informed decisions in future planning and management efforts.

A 30-day FRN (88 FR 44831) was previously published on July 13, 2023. This 30-day FRN is being published as a result of discussions with the Office of Information and Regulatory Affairs in the Office of Management and Budget about (1) the overall intent of the collections (2) methodology and statistical sampling, and (3) the length of survey instruments. The following updates have been made to the collection: (1) reductions to the overall number of questions (2) added methods for increasing response rates, and (3) slight adjustments to the wording of questions for clarity.

Title of Collection: Socioeconomic Monitoring Study of National Park Service Visitors.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: General Public; any visitor to national parks during the sampling period.

Total Estimated Number of Annual Respondents: 58,544. (36,936 intercept survey respondents, 8,310 non-response survey respondents, and 13,298 mail-back survey respondents).

Estimated Completion Time per Response: Varies from 2 minutes to 13 minutes *depending upon activity.*

Total Estimated Number of Annual Burden Hours: 6,852 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collections Clearance Officer, National Park Service.

[FR Doc. 2025–01230 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039348; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Tulsa District (USACE Tulsa) intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Jacqueline Rodgers, U.S. Army Corps of Engineers, Tulsa District, 2488 East 81st Street, Tulsa, OK 74137, telephone (918) 669–4964, email *jacqueline.rodgers@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USACE Tulsa, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, eight individuals have been reasonably identified. The, at least, 10 associated funerary objects are one pocketknife, one .22 caliber bullet, one brooch, and seven lots of coffin hardware and coffin fill. In the 1840s, The Chickasaw Nation citizens founded the community of Willis along the Red River in what became Marshall County, Oklahoma. A city cemetery was established that was estimated to hold 500 graves, many of which were unmarked. Between December 1942 and March 1943, USACE Tulsa contracted a company to relocate Willis Cemetery prior to the inundation of Lake Texoma. Due to the age of the cemetery at the time and the loss of original grave markers, several internments were missed during the relocation effort. Over time, multiple inadvertent discoveries of human remains have occurred eroding from the shoreline of Lake Texoma from the original Willis Cemetery location. Site 34MA86, previously recorded as a precontact artifact scatter, was updated to a multicomponent site to include the Willis Cemetery. The remains of at least eight individuals with funerary objects have been recovered over time. In February 1998 two adults and one child were recovered with three lots of coffin hardware with the assistance of a representative from Chickasaw Nation. In 2001 the remains of one child and one young adult male with funerary objects including two lots of coffin hardware and fill, one pocket knife, and one .22 caliber bullet were recovered. In 2008 the remains of one young adult female with no associated funerary objects were recovered by law enforcement, determined to be not of forensic interest, and remitted to the Oklahoma Archaeological Survey (OAS). In August 2016 OAS was informed of an inadvertent discovery, and in conjunction with USACE Tulsa exhumed two individuals and funerary objects including two lots of coffin hardware and fill, and one brooch. Currently all eight individuals and all funerary objects are located at the Tulsa District Archaeological Repository.

Determinations

The USACE Tulsa has determined that:

- The human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- The at least 10 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Chickasaw Nation has priority for disposition of the human remains and associated funerary objects described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the USACE Tulsa must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The USACE Tulsa is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01184 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039346; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Fish and Wildlife Service, Iroquois National Wildlife Refuge, Basom, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, U.S. Fish and Wildlife Service (USFWS), Northeast Region, Iroquois National Wildlife Refuge (NWR) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025.

ADDRESSES: Thomas Roster, Refuge Manager, U.S. Fish and Wildlife Service, Northeast Region, Iroquois National Wildlife Refuge, 1101 Casey Road, Basom, NY 14013, telephone (585) 948–5445 Ext. 7030, email *tom_roster@fws.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USFWS, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the available information, human remains representing, at least, two individuals have been reasonably identified. The seven associated funerary objects include ground stone gorgets, a lithic flake, worked antler, a pipe stem, faunal remains, and a ceramic fragment. The individuals and associated funerary objects were donated to the USFWS by the Owens Family between 1992 and 2000. The individuals and associated funerary objects were likely collected as early as 1962 at the Iroquois National Wildlife Refuge, most likely near Feeder Road and Suttons Marsh. In addition, a friend of the Owens Family noted that a portion of the materials may have also been collected from the Tonawanda Wildlife Management Area, which included one site that was transferred to the Tonawanda Indian Reservation. No additional provenience information is known.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the

geographical location of the individuals and associated funerary objects described in this notice.

Determinations

The USFWS has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The seven objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Tonawanda Band of Seneca.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the USFWS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The USFWS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01188 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039359; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: Arizona Army National Guard, Camp Navajo, Bellemont, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Arizona Army National Guard intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Shelby Manney, Deputy Environmental Programs Manager, Departments of the Army and the Air Force, Joint Force Headquarters-Arizona, Arizona Army National Guard, 5636 East McDowell Road, Phoenix, AZ 85008, telephone (602) 267–2740, email *manneys@emo.azdema.gov* and *shelby.a.manney.nfg@army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Arizona Army National Guard, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing one individual have been reasonably identified. The three associated funerary objects are ceramic sherds. On November 13, 2021, an archaeological field crew encountered the individual and associated funerary objects during a cultural resource inventory of an archaeological site on Camp Navajo located in Bellemont, Coconino County, Arizona. Per installation procedures, the Coconino County Sherrif's Office was informed and subsequently determined that the discovery warranted examination by the Coconino County Office of the Medical Examiner (CCOME). On November 15, 2021, the individual and associated funerary objects were recovered as part of an investigation. CCOME officially confirmed that the discovery is archaeological on November 24, 2021. In consultation with the Indian Tribes, the Arizona Army National Guard recovered and housed the individual and associated funerary objects until final disposition.

Determinations

The Arizona Army National Guard has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The three objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Hopi Tribe of Arizona has priority for disposition of the human remains and associated funerary objects described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the Arizona Army National Guard must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Arizona Army National Guard is responsible for

sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01171 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039355; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of the Interior, Bureau of Land Management, Arizona State Office, Gila District Office, Safford Field Office, Stafford, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management, Arizona State Office, Gila District Office, Safford Field Office (BLM Safford Field Office) intends to carry out the disposition of human remains and associated funerary objects, removed from Federal or Tribal lands to the lineal descendants or Indian Tribe with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Sharisse L. Flatt, Field Manager, Bureau of Land Management, Safford Field Office, 711 14th Avenue, Safford, AZ 85546, telephone (928) 348–4401, email *sflatt@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BLM Safford Field Office, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The one associated funerary object is an animal bone fragment.

The human remains and associated fragmentary animal bone were removed from AZ BB:3:28(BLM), a rock overhang located in Graham County, AZ. They were removed in 1998 by a BLM Field Office archaeologist during a site visit. Following removal, the collection was housed in a box in the cultural resources storage closet until they were found during an inventory of the closet contents conducted by the incoming BLM Field Office archaeologist in 2021.

Determinations

The BLM Safford Field Office has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Tohono O'odham Nation of Arizona have priority for disposition of the human remains and associated funerary objects described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant or Indian Tribe organization identified in this notice.

2. Any lineal descendant or Indian Tribe not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the BLM Safford Field Office must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The BLM Safford Field Office is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01166 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039358; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 18, 2025.

ADDRESSES: Deanna Byrd, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 384–0672, email *deannabyrd@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and

additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of four cultural items have been requested for repatriation. The four objects of cultural patrimony are four woven satchels/bags collected by Dr. Mark Raymond Harrington from the ''Osage Tribe, Oklahoma'' in 1908 or 1909 and accessioned by the PMAE in 1909.

Determinations

The PMAE has determined that:

- The four objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and The Osage Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01170 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039354; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) intends to repatriate a certain cultural item that meets the definition of a sacred object and that has a known lineal descendant.

DATES: Repatriation of the cultural item in this notice may occur on or after February 18, 2025.

ADDRESSES: Deanna Byrd, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 384–0672, email *deannabyrd@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one sacred object is an *akua hulu manu* (feathered god image) of Kekuaokalani from Hawai'i. The akua hulu manu is associated with Kekuaokalani, a chief and the nephew of Kamehameha I, who died in battle at Kuamo'o in 1819. Sometime between 1819 and 1833, Reverend William Richards acquired the akua hulu manu and donated it to the Andover Theological Society. Alfred M. Tozzer acquired the akua hulu manu from the Andover Theological Society and donated it to the PMAE in 1937.

Determinations

The PMAE has determined that:

- The one sacred object described in this notice is a specific ceremonial object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- A known lineal descendant (name withheld per request) is connected to the cultural item described in this notice.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the lineal descendant and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01191 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039364; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Temple University, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), Temple University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025.

ADDRESSES: Leslie Reeder-Myers, Temple University, LL8 Gladfelter Hall, Philadelphia, PA 19122, telephone (215) 204–1376, email *leslie.reeder-myers@temple.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Temple University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 94 individuals have been reasonably identified from the Mohr Site (36LA39), located in Lancaster County, Pennsylvania. The 156 associated funerary objects are four awls; two axes; one lot of bark; 34 lots of beads; one blade; eight lots of bones; one lot of brass; one burial stone; two celts; nine lots of ceramics; six ceramic sherds; 15 lots of ceramic vessels; one lot of charcoal; two chisels; one comb; two lots of disc ornaments; one lot of flints and chert; two lots of iron fragments; one knife; one lot of miscellaneous pit materials; two musket balls; five lots of necklaces; one needle; eight lots of pendants; seven lots of pipes; one point; one pouch; three projectile point; one quartz; five scrapers; two shells; 14 lots of stones; one tine; one tube; two lots of turtle shells; one lot of turtle shell and bones; one unidentified object; two unknown objects; and two lots of turtle shell vessels. Of this number, one ceramic vessel is currently missing from this collection and Temple University will continue to look for it. Between 1963 and 1965, Dr. Jacob Gruber from the Department of Anthropology at Temple University excavated the Site and removed human remains and associated funerary objects. In 1968, the individuals and funerary objects were accessioned by Temple University. Museum records indicate that the individuals were cleaned and, in some instances, reconstructed with glue. Temple University has no knowledge or record of the presence of any potentially hazardous substances, if any, were used for cleaning.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains and associated funerary objects described in this notice.

Determinations

Temple University has determined that:

- The human remains described in this notice represent the physical remains of 94 individuals of Native American ancestry.
- The 156 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Pamunkey Indian Tribe; Saint Regis Mohawk Tribe; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Tonawanda Band of Seneca; and the Tuscarora Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, Temple University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Temple University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01176 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–ACR–NPS0039239; 5038 PPSESEROR4 PX.P0318045B.00.1; OMB Control Number 1024–NEW]

Agency Information Collection Activities; National Park Service Application for the Lower Mississippi Delta Initiative

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments, which NPS must receive on or before February 18, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Phadrea Ponds, NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive (MS–244) Herndon, VA 20171; or at *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number ''1024–NEW (LMDI)'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this (information collection request) ICR, contact Cynthia Walton, Branch

Manager, Archeological and Historic Preservation Partnerships to *cynthia_walton@nps.gov* (email) or at 404–354–6072 (telephone). Please reference OMB Control Number 1024–NEW (LMDI) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 28, 2024 (89 FR 54036). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Under the Lower Mississippi Delta Initiatives (LMDI) (Pub. L. 103–433, title XI), the Secretary of the Interior is authorized to award grants to qualified Tribal, governmental, and non-governmental entities and individuals. The purpose of these grants is to help preserve regional culture and history and enhance educational and recreational opportunities for delta residents. Also, under LMDI, the Secretary is authorized to award grants and provide other types of technical and financial assistance to conserve and protect historic and archeological sites and structures in the delta region. The Secretary delegated these authorities to NPS.

To support grant applications, NPS requests OMB approve the following collections: 10–2020 LMDI *Local Heritage Grants Application,* and 10–2020A *LMDI Budget and Funding Form.* Both will be used by the NPS and Jefferson National Parks Association (JNPA) to determine eligibility. Grant recipients will be required to submit a midway and annual report.

Title of Collection: Application for the National Park Service Lower Mississippi Delta Initiative (LMDI).

OMB Control Number: 1024–NEW.

Form Number: 10–2020 *LMDI Local Heritage Grants Application,* 10–2020A *LMDI Budget and Funding Form,* for midway and final reports.

Type of Review: New.

Respondents/Affected Public: Tribal, State, and local, governments and non-governmental organizations.

Total Estimated Number of Annual Respondents: 116.

Total Estimated Number of Annual Responses: 116.

Estimated Completion Time per Response: 5 hours per application, and 2 hours each for the midway report and the final report.

Total Estimated Number of Annual Burden Hours: 532 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once per respondent.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2025–01229 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039329; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Cibola National Forest and National Grasslands, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest, Service, Cibola National Forest and National Grasslands (USDA-Cibola NF&NGs) intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Heidi McRoberts, US Department of Agriculture, Cibola NF&NGs, 2113 Osuna Rd NE, Albuquerque, NM 87113, telephone (505) 346–3804, email *heidi.mcroberts@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USDA-Cibola NF&NGs, and additional information on the human remains and associated

funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, eight individuals have been reasonably identified. The 24 associated funerary objects are pottery sherds, shell beads, turquoise pendants, and a bone tool. In 1991, 1992, and 1993, at least eight ancestors and their associated funerary objects were removed from site AR 03–03–04–00013/LA 2091, also known as Pueblo de la Mesa, northwest of Corona, NM on the Mountainair Ranger District of the Cibola NF&NGs, Torrance County, NM.

Determinations

The USDA-Cibola NF&NGs has determined that:

- The human remains described in this notice represent the physical remains of at least eight individuals of Native American ancestry.
- The 24 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Pueblo of Isleta, New Mexico and the Ysleta del Sur Pueblo have priority for disposition of the human remains and associated funerary objects described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by January 20, 2026, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after February 18, 2025. If competing claims for disposition are received, the USDA-Cibola NF&NGs must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The USDA-Cibola NF&NGs is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: January 6, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01183 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039350; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) intends to repatriate a certain cultural item that meet the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after February 18, 2025.

ADDRESSES: Tamara Billie, NAGPRA Manager, Bureau of Indian Affairs, 1001 Indian School Road NW, Mailbox 44, Albuquerque, NM 87104, telephone (505) 879–9711, email *tamara.billie@bia.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Bureau of Indian Affairs and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one object of cultural patrimony is a basket. The cultural item was acquired by the BIA at an unknown date, probably 1970s, and was on exhibit at the BIA Cherokee Agency for more than 30 years. Acquisition of the basket is unknown, but local community members recall the Agency office used the basket to transport infants from the hospital to the Agency office where they would be placed for adoption to non-Native families.

Determinations

The Bureau of Indian Affairs has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural item described in this notice and the Eastern Band of Cherokee Indians.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after February 18, 2025. If competing requests for repatriation are received, the BIA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The BIA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 13, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–01195 Filed 1–16–25; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled ''Certain Polyvinylidene Fluoride Resins, DN 3803''; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Syensqo SA, Solvay Specialty Polymers, USA LLC, and Solvay Specialty Polymers Italy S.P.A. on January 13, 2025. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain polyvinylidene fluoride resins. The complaint names as respondents: Inner Mongolia 3F Wanhao Fluorochemical Industry Co. Ltd. of China; Zhejiang Juhua Co., Ltd. of China; Zhejiang Fluorine Chemical New Material Co. Ltd. of China; Hubei Fluorine New Materials Co., Ltd. of China; and Sinochem Lantian Co., Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3803'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel,[2] solely for cybersecurity

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 14, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–01138 Filed 1–16–25; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–919 (Fourth Review)]

Certain Welded Large Diameter Line Pipe From Japan; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on certain welded large diameter line pipe from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: December 9, 2024.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On December 9, 2024, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (89 FR 71417, September 3, 2024) were adequate, and determined to conduct a full review of the order on imports from Japan. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 14, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–01146 Filed 1–16–25; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Evidence Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Evidence has been canceled: Evidence Rules Hearing on February 12, 2025.

DATES: February 12, 2025.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

SUPPLEMENTARY INFORMATION:

The announcement for this hearing was previously published in the **Federal Register** on July 31, 2024 at 89 FR 61498.

(Authority: 28 U.S.C. 2073.)

Dated: January 13, 2025.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2025–01059 Filed 1–16–25; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Laura M. Bellew, N.P.; Decision and Order

On December 7, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Laura M. Bellew, N.P. of Albuquerque, New Mexico (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. MB1955108, alleging that Registrant's registration should be revoked because Registrant is ''currently without authority to handle controlled substances in New Mexico, the state in which [she is] registered with DEA.'' *Id.* at 1–2 (citing 21 U.S.C. 824(a)(3)).[1]

The OSC notified Registrant of her right to file a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. *Id.* at 2 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 3.[2] ''A default, unless

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] According to Agency records, Registrant's registration expired on July 31, 2024. The fact that a registrant allows her registration to expire during the pendency of an OSC does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68474, 68476 through 68479 (2019).

[2] Based on the Government's submissions in its RFAA dated March 1, 2024, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Declaration for a DEA Diversion Investigator (DI) indicates that on December 11, 2023, the DI served the OSC via email to an email address associated with Registrant, and the DI's email was successfully delivered. RFAAX 2, at 2, Attachment 2; *Mohammed S. Aljanaby, M.D.,* 82 FR 34552, 34553 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). The DI made several other attempts to serve Registrant with the OSC, but they were unsuccessful. On December 11 and 12, 2023, the DI left voicemails at a business associated with Registrant, InnovAge, but did not receive any response. RFAAX 2, at 2. Further on December 12, 2023, the DI mailed two copies of the OSC to Registrant's registered address. *Id.* at 2, Attachments 3–5. On the same date, the DI visited two additional addresses associated with Registrant, but when the DI arrived at each address, no person answered. *Id.* at 2–3. The DI left a business card at each address, but received no response. *Id.* Also on December 12,

excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.'' *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(d) through (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, on January 9, 2023, the New Mexico State Board of Nursing suspended Registrant's New Mexico registered nurse license and New Mexico certified nurse practitioner license for a period of two years. RFAAX 1, at 1. According to New Mexico online records, of which the Agency takes official notice, both Registrant's New Mexico registered nurse license and New Mexico certified nurse practitioner license remain suspended.[3] *https://nmbn.boardsofnursing.org/licenselookup* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as a nurse practitioner in New Mexico, the state in which she is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *Gonzales* v. *Oregon,* 546 U.S. 243, 270 (2006)(''The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21).''). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371, 71,372 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[4]

According to New Mexico statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery.'' N.M. Stat. Ann. section 30–31–2(H) (2024). Further, a ''practitioner'' means ''a physician . . . certified nurse practitioner . . . or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act.'' *Id.* at section 30–31–2(P).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice as a nurse practitioner in New Mexico because both her New Mexico registered nurse license and New Mexico certified nurse practitioner license have been suspended. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in New Mexico. Thus, because Registrant lacks authority to practice as a nurse practitioner in New Mexico and, therefore, is not authorized to handle controlled substances in New Mexico, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MB1966108, issued to Laura M. Bellew, N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Laura M. Bellew, N.P., to renew or modify this registration, as well as any other pending application of Laura M. Bellew, N.P., for additional registration in New Mexico. This Order is effective February 18, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on November 26, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters

2023, the DI visited the location of InnovAge, where the director of InnovAge informed the DI that Registrant had not been employed there for at least a year and a half. *Id.* at 3. Finally, on December 20, 2023, the DI mailed two copies of the OSC to a Pennsylvania address associated with Registrant. *Id.* at 3, Attachments 6–8. In sum, the Agency finds that Registrant was successfully served the OSC by email and the DI's efforts to serve Registrant by other means were '' 'reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action.' '' *Jones* v. *Flowers,* 547 U.S. 220, 226 (2006) (quoting *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)). Therefore, due process notice requirements have been satisfied.

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR 71371, 71372; *Sheran Arden Yeates, D.O.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.,* 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR 27617.

the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2025–01111 Filed 1–16–25; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Task Force on Research on Violence Against American Indian and Alaska Native Women Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Office on Violence Against Women (OVW), U.S. Department of Justice has scheduled a meeting of the Task Force on Research on Violence Against American Indian and Alaska Native Women (hereinafter ''the Task Force'').

DATES: The meeting will take place on February 10, 2025, from 1 p.m. to 5:30 p.m. (eastern standard time).

ADDRESSES: This meeting will be held at 999 9th Street NW, Washington, DC 20001. The meeting will also be available online via a video conferencing platform.

FOR FURTHER INFORMATION CONTACT: Visit the OVW website at *https://www.justice.gov/ovw/section-904-task-force* or contact Sherriann C. Moore, Deputy Director, Tribal Affairs Division, Office on Violence Against Women, United States Department of Justice, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. Title IX of the Violence Against Women Act of 2005 (VAWA 2005), as amended, required the Attorney General to establish a task force to assist the National Institute of Justice (NIJ) in developing and implementing a program of research on violence against American Indian and Alaska Native women, to include studies on domestic violence, dating violence, sexual assault, stalking, murder, and sex trafficking experienced by American Indian and Alaska Native women living in Indian country and Alaska. NIJ's program of research has supported studies on these crimes against American Indian and Alaska Native women and responses to these serious crimes. The Attorney General, acting through the Director of the Office on Violence Against Women, established the Task Force on March 31, 2008, and the charter has been renewed every two years since then.

More information on the Task Force may be found at *https://www.justice.gov/ovw/section-904-task-force* and about the NIJ program of research at: *https://nij.ojp.gov/topics/tribal-crime-and-justice.*

This meeting will include an introduction of new Task Force members, an update on NIJ's recent framing papers, and a facilitated Task Force discussion and recommendations addressing violence against American Indian and Alaska Native Women. In addition, the Task Force is also welcoming public oral comment at this meeting and has reserved 30 minutes for this. The meeting will take place on February 10, 2025, from 1 p.m. to 5:30 p.m. Time will be reserved for public comment from 5:00 p.m. to 5:30 p.m. See the section below for information on reserving time for public comment.

Access: The meeting will be held at 999 9th Street NW, Washington, DC 20001 and will also be available online via a video conferencing platform. Members of the public who wish to participate must register in advance of the meeting online, no later than February 5, 2025. Details about registration can be found on the OVW website: *https://www.justice.gov/ovw/section-904-task-force.* Should issues arise with online or email registration, the public should contact Sherriann C. Moore, Deputy Director, Tribal Affairs Division, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.*

Written Comments: Interested parties are invited to submit written comments by February 5, 2025, to Sherriann C. Moore, Deputy Director, Tribal Affairs Division, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.*

Public Comment: Persons interested in participating during the public comment period of the meeting are requested to reserve time on the agenda by contacting Sherriann C. Moore, Deputy Director, Tribal Affairs Division, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov.* Requests must include the participant's name, the organization represented, if appropriate, and a brief description of the subject of the comments. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments at the meeting. Comments that are submitted to Sherriann C. Moore, Deputy Director, Tribal Affairs Division, Office on Violence Against Women, at (202) 616–0039 or *ovw.tribalaffairs@usdoj.gov* on or before February 5, 2025, will be circulated to Task Force members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible.

Rosemarie Hidalgo,

Director, Office on Violence Against Women.

[FR Doc. 2025–01107 Filed 1–16–25; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 10, 2025, the U.S. Department of Justice (DOJ) filed a Complaint and lodged a proposed Consent Decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States of America* v. *General Dynamics-Ordnance and Tactical Systems et al.,* Civil Acton No. 3:25-cv-00046.

The proposed Consent Decree resolves claims brought by the United States under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for releases and threatened releases of hazardous substances at the Additional and Uncharacterized Sites Operable Unit (''AUS OU''), which is part of the Crab Orchard National Wildlife Refuge Superfund Site located near Marion, Illinois. The proposed settlement would resolve claims against General Dynamics-Ordnance and Tactical Systems, Inc. (''GD–OTS''), Crane Company, The Ensign-Bickford Company, Illinois Tool Works Inc., Olin Corporation, United States Surgical Corporation, Mallinckrodt US LLC, The Sherwin Williams Company, and Mason Hanger Corporation (collectively, ''Defendants'') for response costs incurred by the Department of the Interior (''DOI'') and the U.S. Environmental Protection Agency (''EPA''). The proposed settlement would also resolve potential counterclaims by GD–OTS against DOI, the Department of the Army, the Bureau of Prisons, and the General Services Administration (collectively ''Settling Federal Agencies''), for the Settling Federal Agencies' share of response costs GD–OTS has incurred and will

incur to implement an Administrative Order on Consent to perform a Remedial Investigation and Feasibility Study for the AUS OU, and for the Settling Federal Agencies' share of DOI's and EPA's past response costs. Under the proposed settlement, the Settling Federal Agencies will reimburse GD–OTS $24.3 million for past response costs and agree to reimburse 48% of GD–OTS' future response costs on a ''pay-as-you-go'' basis. The Defendants will reimburse DOI for $3.1 million and EPA for $54,000 in past response costs. The Settling Federal Agencies will also reimburse DOI for $2.9 million and EPA for $50,000.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *General Dynamics-Ordnance and Tactical Systems et al.,* D.J. Ref. No. 90–11–3–643/17. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by email or mail:

To submit comments	*Send them to*
By e-mail	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General U.S. DOJ–ENRD P.O. Box 7611 Washington, D.C. 20044–7611

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter. During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Laura Thoms,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2025–01087 Filed 1–16–25; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12102]

Proposed Exemption for the Royal Bank of Canada and Its Current and Future Affiliates (Collectively, RBC or the Applicant) Located in Toronto, Ontario, Canada

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and the Internal Revenue Code of 1986 (the Code). This proposed exemption would permit certain qualified professional asset managers with specified relationships to Royal Bank of Canada Trust Company (Bahamas) Limited, and certain current and future affiliates of the Royal Bank of Canada (collectively, the RBC QPAMs), to continue to rely on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84–14 (PTE 84–14, or the QPAM Exemption), notwithstanding the March 5, 2024 judgment of conviction against Royal Bank of Canada Trust Company (Bahamas) Limited (RBCTC Bahamas) for aiding and abetting tax fraud, entered in France in the Paris Court of Appeal.

DATES:

Exemption date: This proposed exemption would be in effect beginning on March 5, 2025, and ending on March 4, 2030 (the Exemption Period).

Comments due: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by March 3, 2025.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12102 via email to *e-OED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210 (202) 693–8673). See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically and not to submit paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption, and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if:

(1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not

want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The Department is considering granting the exemption pursuant to its authority under ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the Department's exemption procedures.[1] If the Department grants a final exemption, the RBC QPAMs will be allowed to continue their reliance on the QPAM Exemption) [2] notwithstanding the March 5, 2024 judgment of conviction against Royal Bank of Canada Trust Company (Bahamas) Limited (RBCTC Bahamas) for aiding and abetting tax fraud, as described in more detail below (the Conviction), provided the conditions set forth in the exemption are met. The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

This proposed exemption would provide relief from certain restrictions set forth in ERISA sections 406 and 407.[3] It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in the exemption would terminate immediately if, among other things, RBC or an affiliate of RBC (as defined in section VI(d) of PTE 84–14) [4] is convicted of a crime covered by, or otherwise violates, section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period.[5] Although RBC could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.[6]

Summary of Facts and Representations [7]

The Royal Bank of Canada

1. The Royal Bank of Canada (RBC) is a Canadian corporation headquartered in Toronto, Ontario, Canada and is Canada's largest bank. RBC provides personal and commercial banking, wealth management services, insurance, investor services and capital markets products and services on a global basis. As of October 31, 2024, RBC had more than CAD$1.342 trillion (more than $932 billion in U.S. dollars) [8] in assets under management, CAD$4.965 trillion (approximately $3.45 trillion in U.S. dollars) [9] in assets under administration, and equity attributable to shareholders of CAD$127 billion (approximately $88.3 billion in U.S. dollars).

The Convicted Entity

2. RBCTC Bahamas is a wholly-owned subsidiary of RBC located in the Bahamas and regulated by the Central Bank of the Bahamas. RBCTC Bahamas once provided trust and company management services in all major currencies to international clients. Currently, RBCTC Bahamas is not engaged in asset management activities and does not act as a fiduciary of any plans subject to part 4 of title I of ERISA or Internal Revenue Code (Code) section 4975.

3. Over the last several years, RBCTC Bahamas's operations have been reduced in scope. In September 2014, RBCTC Bahamas ceased taking on new trust business. On November 4, 2015, RBCTC Bahamas announced that it had entered into a purchase and sale agreement with SMP Partners Group to sell its Trust, Custody and Fund Administration businesses in the Caribbean. This follows the announcement in November 2014 that RBC would be exiting a number of its Wealth Management businesses in the Caribbean. On November 18, 2016, RBC completed the sale of the assets of RBCTC Bahamas to another financial institution, but did not sell the assets relating to the servicing of the Bahamian trust (the Delta Trust) that is connected to the allegations at issue in the criminal case and for which RBCTC Bahamas has served as successor trustee since 2004 (the Delta Trust).

The RBC QPAMs

4. Certain current and future ''affiliates'' of RBCTC Bahamas, as that term is defined in section VI(d) of PTE 84–14, may manage the assets of ERISA-covered plans and individual retirement accounts subject to the Internal Revenue Code (collectively, Covered Plans) as RBC QPAMs in reliance on PTE 84–14.[10] The primary U.S. bank and U.S. registered investment adviser affiliates in which RBC owns a significant interest, directly or indirectly, include the following: (1) RBC Global Asset Management (U.S.) Inc.; [11] (2) RBC Global Asset Management (UK)

[1] 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

[3] For purposes of this proposed exemption, references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

[4] PTE 84–14 section VI(d) defines the term ''affiliate'' for purposes of section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person, (2) Any director of, Relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who-(A) Is a highly compensated employee (as defined in Code section 4975(e)(2)(H)) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.'' For purposes of this definition, section VI(e) defines the terms ''Controlling,'' ''Controlled by,'' ''under Common Control with,'' and ''Controls'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

[5] See 89 FR 23090 at 23138 through 23140 (April 4, 2024).

[6] Id.

[7] The Department notes that availability of this exemption would be subject to the express condition that the material facts and representations made by the Applicant in Application D–12102 are true and complete at all times and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

[8] The conversion amounts are current as of January 10, 2025.

[9] The figures included in this application are dated as of October 31, 2024, unless otherwise noted. Assets under management for U.S. managers are expressed in U.S. dollars.

[10] The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which RBC relies on PTE 84–14, or with respect to which RBC has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent that RBC has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[11] In its most recent (at the time of the application) Form ADV Part I(A) reported assets of almost $80 billion managed on a discretionary basis, including ERISA assets including approximately $4.7 billion in public pension assets for state and local plans, which may by law or contract require it to comply with the prohibited transaction rules under ERISA.

Limited; [12] (3) RBC Capital Markets, LLC; [13] (4) City National Bank; [14] (5) City National Securities, Inc.; [15] (6) City National Rochdale, LLC; [16] and (7) Symphonic Financial Advisors, LLC.[17]

5. RBC explains that the RBC QPAMs provide asset management services to thousands of Covered Plans. In managing these assets, the RBC QPAMs regularly rely on PTE 84–14 for, among other things, global fixed income, global equities, futures, options, swaps and other derivatives, alternative funds, including hedge funds, and similar instruments and strategies. The issuing documents for many instruments state that the investment manager is deemed to represent that it is relying, at least partially, on PTE 84–14.

6. According to the Applicant, the investment management businesses that are operated out of the RBC QPAMs are separate from RBCTC Bahamas, and from the non-investment management business activities of RBCTC Bahamas that are the subject of criminal charges under French law. The Applicant states that RBC QPAMs have dedicated systems, management, risk and compliance officers. In this regard, the Applicant represents that the RBC QPAMs are insulated from RBCTC Bahamas. The RBC QPAMs use their own, separate systems for trade management, employee supervision, client management, surveillance, risk management, and accounting, which are only accessible by authorized QPAM employees. RBC also represents that the investment management businesses of the RBC QPAMs are subject to policies and procedures, and RBC QPAM personnel engage in training, designed to ensure that such businesses understand and abide by their fiduciary duties in accordance with applicable law.

7. According to RBC, the RBC QPAMs' policies and procedures create information barriers designed to prevent employees of the RBC QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment banking, treasury services or other investor services business activities. These policies and procedures apply to employees, officers, and directors of the RBC QPAMs. The Applicant also maintains an employee hotline for employees to express anonymously any concerns of wrongdoing.

ERISA and Code Prohibited Transactions and PTE 84–14

8. The rules set forth in ERISA section 406 and Code section 4975(c) proscribe certain ''prohibited transactions'' between plans and parties in interest with respect to those plans. ERISA section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[18] The transactions prohibited by ERISA section 406(a) that are relevant to this proposed exemption are (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.[19]

9. ERISA section 408(a) gives the Department authority to grant an exemption from such ''prohibited transactions'' if the Department finds an exemption is: (a) administratively feasible for the Department; (b) in the interests of the plan and of its participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries.

10. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions of the exemption.[20] PTE 84–14 was developed and granted based on the premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent discretionary manager.[21]

11. section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by the QPAM Exemption for itself and its client plans if that entity, an ''affiliate'' thereof,[22] or any direct or indirect five percent or more owner of the QPAM has been either convicted or released from imprisonment, whichever is later, because of criminal activity described in section I(g), or otherwise violates section I(g), within the 10 years immediately preceding a transaction. section I(g) was included in PTE 84–14, in part, based on the Department's expectation that QPAMs, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.[23]

Investigation for Tax Fraud

12. The Applicant has applied for an exemption in connection with the judgment of Conviction rendered on

[12] At the time of the application, managed assets of nearly $122 billion on a discretionary basis, including ERISA assets and approximately $993 million in public pension assets for state and local plans, which may by law or contract require it to comply with the prohibited transaction rules under ERISA.

[13] At the time of the application, this entity managed assets of approximately $149 billion managed on a discretionary basis, including ERISA and IRA assets.

[14] At the time of the application, this entity managed assets of approximately $24.2 billion on a discretionary basis, including ERISA and IRA assets.

[15] At the time of the application, this entity managed assets of nearly $1.5 billion on a discretionary basis, including ERISA and IRA assets.

[16] At the time of the application, this entity managed assets of over $60 billion on a discretionary basis, including ERISA and IRA assets, and including $29 million in public pension assets for state and local plans, which may by law or contract require it to comply with the prohibited transaction rules under ERISA.

[17] At the time of the application managed assets of over $125 million on a discretionary basis, including ERISA and IRA assets. Symphonic is in the process of being dissolved, which process is expected to be completed in the second quarter of 2024.

[18] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[19] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[20] PTE 84–14 was recently amended, effective June 17, 2024 to, among other things, (1) require a QPAM to provide a one-time notice to the Department that the QPAM is relying upon the exemption; (2) update the list of crimes enumerated under section I(g) to explicitly include foreign crimes that are substantially equivalent to the listed crimes; (3) expand the circumstances that may lead to ineligibility; and (4) provide a one-year transition period to help Covered Plans avoid or minimize possible negative impacts of terminating or switching QPAMs or adjusting asset management arrangements when a QPAM becomes ineligible pursuant to section I(g) and allow QPAMs a reasonable period of time to seek an individual exemption, if appropriate. See 89 FR 23090 (April 3, 2024).

[21] See 75 FR 38837, 38839 (July 6, 2010).

[22] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[23] See 47 FR 56947 (December 21, 1982).

March 5, 2024, by the French Court of Appeal against RBCTC Bahamas. The facts forming the basis of the Conviction reach back to 1998, when Daniel Wildenstein established the Delta Trust. In January 2012, RBCTC Bahamas was summoned to appear before a French Judge of Instruction (the Investigative Judge) concerning an investigation into nonpayment of French inheritance taxes by Guy Wildenstein and Alec Daniel Armand Wildenstein (the Wildensteins) following the death in 2001 of family patriarch Daniel Wildenstein. RBCTC Bahamas was placed under judicial investigation,[24] and in December 2013, the Investigative Judge referred the case to the French national prosecutor of financial crimes (the Special Prosecutor) for a review and recommendation. In January 2015, the Special Prosecutor submitted a recommendation that RBCTC Bahamas and several others be charged with complicity in the Wildensteins' alleged tax fraud and money laundering.

13. On April 9, 2015, the Paris Court of Appeal for the District Court of Paris (the Court) issued an Order of Dismissal and Referral before the Criminal Court (the Referral Order). In the Referral Order, RBCTC Bahamas was charged with complicity in the Wildenstein's tax fraud involving taxes owed to France on assets held in the Delta Trust.[25] Specifically, the Court found that the investigation produced sufficient evidence against RBCTC Bahamas for having, in the Bahamas, beginning on November 19, 2004, aided and abetted tax fraud committed in Paris by Daniel Wildenstein's heirs by deliberately concealing a portion of the sums subject to French taxation on Daniel Wildenstein's estate, in particular the works of art placed in the Delta Trust and deeds that are governed by and punishable under Articles 121–2, 121–6, 121–7, 321–1, 321–3, 321–12 of the French Criminal Code and Articles 1741 et 1745 of the French General Tax Code.

14. The pertinent facts that underlie these charges as set out in the Referral Order are as follows: on November 2, 1998, Daniel Wildenstein created a discretionary trust in the Bahamas called the Delta Trust. The Delta Trust was designed to be revocable up to the point of Daniel Wildenstein's death, then irrevocable thereafter. Upon the formation of the Delta Trust, Daniel Wildenstein contributed various works of art to be held as assets of the trust. Royal Bank of Scotland was the initial trustee of the Delta Trust. In early 2001, Royal Bank of Scotland was replaced as trustee by Coutts Trust Holdings Limited, which was succeeded by Coutts Trustees (Bahamas) Limited. On October 21, 2001, Daniel Wildenstein died in Paris. On April 28, 2002, Guy Wildenstein and his brother, Alec Wildenstein Sr., filed an inheritance tax statement in relation to the estate of their father, Daniel Wildenstein, as required by French tax laws. Guy Wildenstein and Alec Wildenstein Sr. did not disclose in this inheritance tax statement, the existence of the Delta Trust or the existence of the assets therein. At this point, RBCTC Bahamas was appointed trustee of the Delta Trust in November 2004, three years after Daniel Wildenstein's death and more than two years after Guy Wildenstein and Alec Wildenstein Sr. had filed their inheritance tax statement.

15. The Applicant represents that according to the French authorities, the existence of the Delta Trust as well as the assets of the Delta Trust should have been disclosed to the French authorities by Guy Wildenstein and by Alec Wildenstein Sr. when they filed their inheritance tax statement in 2002 because an inheritance tax would have applied in relation to these assets. [26]

16. The Referral Order provides that RBCTC Bahamas actually knew, or should have known, that Daniel Wildenstein was of French nationality, and that he died in France. The Referral Order also provides that, at the least, RBCTC should have investigated in greater detail the facts in relation to Daniel Wildenstein's residency and, likewise, the tax consequences of that residency. In addition, the Referral Order provides that the Delta Trust did not operate as a discretionary trust for purposes of French tax law, which would have generally required the trustee to have control over the management of the trust's assets. Further, among other things, the Referral Order points out that RBCTC Bahamas filed an amended declaration with the Internal Revenue Service to declare the paintings in the Delta Trust which were present on U.S. territory at the time of Daniel Wildenstein's death, even though the Delta Trust was purportedly discretionary and irrevocable.

PTE 2016–10

17. In 2016, the Applicant submitted an application for an exemption to continue to rely upon the relief in PTE 84–14 notwithstanding a conviction of RBCTC Bahamas in the District Court of Paris in connection with the criminal activity described in the Referral Order. After a review of the application and the public record, on October 28, 2016, the Department granted PTE 2016–10,[27] in order to protect Covered Plans from the costs and/or investment losses RBC asserted could arise if RBC QPAMs became ineligible to rely on PTE 84–14 due to the conviction of RBCTC Bahamas.[28] The effective period was limited to one year from the date of the anticipated conviction in order to provide the Department ''more time to consider whether longer-term relief is warranted.'' [29]

18. RBCTC Bahamas contested the charges in the French court and was acquitted, although further litigation ensued. Over the next few years, the French authorities appealed the case, and a new proceeding was scheduled. RBC requested that the Department confirm that PTE 2016–10 would still apply in the event that RBCTC Bahamas was ultimately convicted of the same crime based on the same underlying facts. In response, on December 11, 2023 the Department issued a ''Technical Correction'' to PTE 2016–10 that revised the definition of ''Conviction'' in PTE 2016–10 to refer to ''the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction.''[30]

19. On March 5, 2024, the French Court of Appeal rendered its judgment of conviction against RBCTC Bahamas

[24] A judicial investigation in France is a proceeding run by an investigative judge that is required by French law to take place prior to a decision made by a prosecutor to charge a defendant. At the end of the investigation, the Prosecutor decides whether there is enough evidence against the identified suspect(s) and, in case there is, whether the suspect(s) should be judged by a criminal court. Babonneau et Associes: *https://www.sba-avocats.com/Criminal-defense-attorney-paris-criminal-investigation-in-france.html.*

[25] The Referral Order charges both of the Wildensteins with multiple counts of tax fraud, notably for failing to disclose and pay taxes on assets held in various trusts following the death of Daniel Wildenstein. The Wildensteins both were among the beneficiaries of the Delta Trust and have been charged with failing to report and pay inheritance taxes on the assets held in the Delta Trust following the death in 2001 of Daniel Wildenstein.

[26] The authorities allege that this disclosure should have occurred because the assets in the Delta Trust were initially revocable (*i.e.,* the assets in trust could be revoked by Daniel Wildenstein up to the time of his death). As such, the authorities state that the assets in the Delta Trust belonged to Daniel Wildenstein's estate and were therefore taxable under French tax laws.

[27] 81 FR 75147 (October 28, 2016).

[28] Id. at 75149.

[29] Id.

[30] See 88 FR 85931 (December 11, 2023).

and the other defendants. RBCTC Bahamas was ordered by the Court of Appeal to pay a fine of €5,000 ($5,350.95 in U.S. dollars) in connection with the Conviction and held RBCTC Bahamas jointly and severally liable with the Wildensteins and Northern Trust Fiduciary Services (Guernsey) Limited, another trustee of separate trusts, for the unpaid inheritance taxes owing, plus penalties and interest (such aggregate amount will be determined in a separate proceeding before the tax courts).[31] Pursuant to the Technical Correction, the relief in PTE 2016–10 became effective on March 5, 2024, and will expire on March 4, 2025.

The Exemption Request

20. The Applicant requests exemptive relief that would permit the RBC QPAMs to continue to rely on the relief provided by the QPAM Exemption, notwithstanding the disqualifying conviction, for the remaining nine-year period of disqualification upon the expiration of PTE 2016–10. The Department has determined to propose relief for five years, beginning on March 5, 2025, and ending on March 4, 2030, so that after five years, it may reevaluate the effectiveness of the protective conditions for relief as well as whether the QPAMs, and those in position to influence them, have continued to maintain a high standard of integrity. The Applicant represents that the conduct that is the subject of the potential conviction did not involve any of the RBC QPAMs acting in its role as an investment manager of any Covered Plan or otherwise relate to the asset management services provided by the RBC QPAMs. Furthermore, the asset management businesses of the RBC QPAMs did not know or have reason to know of the conduct underlying the charges and did not participate in or receive compensation in connection with the conduct underlying the charges. The convicted entity, RBCTC Bahamas, did not provide any fiduciary services to or act as a QPAM for ERISA plans or IRAs and RBCTC Bahamas does not provide investment management services to ERISA plans or IRAs or otherwise exercise discretionary control over ERISA plan or IRA assets.

Hardship to Covered Plans

21. *Overview of loss of QPAM.* The Applicant represents that the requested exemption is in the interest of affected plans and their participants and beneficiaries, because it will enable the plans to continue their current investment strategy with their current investment manager or trustee. If the Department denies the requested exemption, the Applicant asserts that the many clients that depend on RBC's ability to engage in transactions in reliance on QPAM status would be forced to find another asset manager to remain invested in their preferred strategies. The Applicant explains that clients with strategies dependent upon the RBC QPAMs' ability to rely on PTE 84–14 would likely terminate all of their contracts with RBC (even ones not dependent on PTE 84–14), and plan consultants likely would move their clients' assets away from RBC.[32]

22. The Applicant further represents that pension plans, including non-ERISA plans such as governmental plans, union plans, corporate plans and others, tend to treat an entity's eligibility to rely on PTE 84–14 as a threshold prerequisite for entrusting an investment manager to manage plan assets. In the Applicant's view, this could lead participants and regulators to view remaining with a manager that becomes ineligible to rely on PTE 84–14 as a breach of fiduciary duties. As such, pension plans (ERISA and non-ERISA) could terminate their relationship with any manager that becomes ineligible to rely on the QPAM exemption, even if the plans do not technically require the entity to maintain its QPAM qualification to execute their investment strategies.[33]

23. The Applicant states further that it is disruptive and expensive to cause plan fiduciaries to reconsider their arrangements with their chosen investment manager because of uncertainties relating to the QPAM Exemption. This uncertainty is disruptive to investment strategies and could result in significant redemptions from pooled funds, which would frustrate efforts to manage effectively the pooled funds' assets, harm remaining plan investors, and increase the expense ratios of the investment funds.

Department's Request for More Information: The Department notes the Applicant's representations that denial of relief could have negative impacts on pooled funds but is unable to fully consider these comments due to a lack of supporting data. In order to properly weigh these costs as potential harms to plan in the event the Department denies exemptive relief, the Department requests additional information from the Applicant in its comment letter substantiating harms to pooled funds, including estimates of the costs and any assumptions relied upon in making the estimate.

24. *Transaction Costs/Harm to Plans.* According to the Applicant, the transaction costs to plans of changing managers are significant, especially considering some of the investment strategies employed by the RBC QPAMs. For example, according to the Applicant, the cost of liquidating assets, identifying and selecting new managers, and reinvesting those assets would be borne by the plans and their participants. The Applicant represents that transactions that currently depend on the QPAM Exemption, or in which the counterparty relied on the QPAM exemption as the expected source of exemptive relief, could default and be terminated at a significant cost to the plans. Transaction costs may be higher in times of significant market volatility, especially with respect to certain strategies. Furthermore, the request for proposal process for transitioning to a new manager typically is lengthy and likely would involve numerous steps each of which could last several months—including retaining a consultant, reviewing request for proposals, negotiating contracts, and ultimately transitioning assets, as well as incurring additional transaction-related expenses incurred in connection with the purchase of securities.

Department's Request for More Information: The Department notes the Applicant's representations that the request for proposal process for transitioning to a new manager involves additional costs such as retaining a consultant, reviewing requests for proposal, negotiating contracts, etc. In order to properly weigh these costs as potential harms to plan in the event the Department denies exemptive relief, the Department requests additional information from the Applicant in its

[31] On March 7, 2024, RBCTC Bahamas appealed the decision to the French Supreme Court. The appeal is currently pending. The Department notes that a disqualifying ''Conviction'' under section I(g) of PTE 84–14 occurs as of the date of judgment of the trial court, regardless of whether that judgment is appealed. See also section I(h)(1) of PTE 84–14 at 89 FR 23090, 23139 (April 3, 2024).

[32] The Applicant states that many of RBC's asset management clients are advised by the same relatively small group of consultants, magnifying the effect of any recommendation to terminate an RBC manager.

[33] For example, public plans that, like the Nebraska Public Employees Retirement System (NPERS), are not subject to ERISA have over $5.7 billion in assets invested through RBC. While such public plans are not subject to ERISA, some state and local laws are substantially similar to ERISA, and RBC has contractually agreed to treat certain public plans as if they were subject to ERISA. According to the applicant, if even some of these plans were to pull their business in the event RBC loses its QPAM status, the impact on plans would be substantial.

comment letter substantiating these costs, including estimates of the costs and any assumptions relied upon.

25. The Applicant states that the RBC QPAMs may rely on PTE 84–14 when investing in various securities and financial instruments on behalf of ERISA clients. For example, the RBC QPAMs may rely on PTE 84–14 when buying and selling fixed income products. Many counterparties in such transactions specifically require a representation that PTE 84–14 applies, and those contracts could be in default if the requested exemption were not granted. Accounts managed by the RBC QPAMs invest in fixed income products, with a total portfolio of ERISA and public plan assets valued at over $18.5 billion. Fixed income securities and instruments in which those accounts are invested generally include corporate bonds, U.S. Treasury and agency-backed securities, asset-backed securities, emerging market sovereign and corporate debt, convertible bonds, term loans, repurchase agreements, swaps, futures, options and foreign exchange transactions. The Applicant represents that if the RBC QPAMs become ineligible to rely on PTE 84–14, its plan clients could suffer additional transactions costs associated with liquidating fixed income securities depending on the strategy. The Applicants representations about these liquidation costs are further discussed below for each investment strategy.

26. *Liquidation Costs.* According to the Applicant, if RBC QPAMs were required to liquidate investments because a Covered Plan opted to find another manager, the underlying investments of the following investment strategies could incur the following estimated transaction costs:

a. Multi-Asset Credit: The multi-asset credit strategy invests in the following kinds of instruments: corporate bonds, government bonds, asset-backed securities, convertible bonds, mortgage-backed securities, loans, structured credit, contingent convertible bonds, convertible bonds, swaps, futures, options and foreign exchange transactions. These instruments are generally traded on the primary and secondary fixed income markets, over-the-counter or centrally cleared. The Applicant represents that if the RBC QPAMs were no longer able to rely on the QPAM Exemption, the estimated transaction costs associated with selling such instruments could range from 35 to 65 basis points.

RBC QPAMs currently manage approximately $400,000,000 of ERISA plan assets that are invested in multi-asset credit investments. If PTE 84–14 were lost, ERISA plan clients of the RBC QPAMs invested in this strategy could suffer liquidation costs of between 35 and 65 basis points, which equates to between $1,400,000 and $2,600,000, not including reinvestment costs.

b. Core Fixed Income: The core fixed income strategies invest in the following kinds of instruments: corporate bonds, government bonds, asset-backed securities, mortgage-backed securities, municipal bonds, loans, swaps, futures, options, and foreign exchange transactions. These instruments are generally traded on the primary and secondary markets (including fixed income trading venues), over-the-counter or centrally cleared. If the RBC QPAMs become ineligible to rely on PTE 84–14, the Applicant estimates the transaction costs on such instruments could range from 20 to 25 basis points.

RBC QPAMs currently manage approximately $1.5 billion in market value of ERISA plan assets that are invested in core fixed income investments. If the RBC QPAMs become ineligible to rely on PTE 84–14, the Applicant represents that ERISA plan clients of the RBC QPAMs invested in this strategy could suffer liquidation costs of between 20 and 25 basis points, which equates to between $3,000,000 and $3,750,000, not including reinvestment costs.

c. Impact Investing: The impact investing strategies invest in the following kinds of instruments: U.S. Treasury securities, U.S. agency-backed securities, mortgage-backed securities, Small Business Administration loans and pools, municipal bonds, corporate bonds, certificates of deposit (CDs), commercial paper, foreign sovereign debt, private placements and derivatives. These instruments are generally traded on primary and secondary fixed income trading markets (including via fixed income trading venues), over-the-counter or centrally cleared. If the RBC QPAMs become ineligible to rely on PTE 84–14, the estimated transaction costs on such instruments could range from 15 to 25 basis points.

RBC QPAMs currently manage approximately $36,000,000 in market value of ERISA plan assets that are engaged in impact investing. The Applicant represents that if it became ineligible to rely on PTE 84–14, the RBC QPAMs' ERISA plan clients invested in this strategy could suffer liquidation costs of between 15 and 25 basis points, which equates to between $54,000 and $90,000, not including reinvestment costs.

d. Community Investing: The community investing strategy invests in the following kinds of instruments: U.S. Treasury securities, U.S. agency-backed securities, agency and non-agency mortgage-backed securities, SBA loans and pools, municipal bonds, corporate bonds, certificates of deposit (CDs), commercial paper, foreign sovereign debt, private placements and derivatives. These instruments are generally traded on primary and secondary fixed income trading markets (including via fixed income trading venues), over-the-counter or centrally cleared. If the RBC QPAMs became ineligible to rely on PTE 84–14, the estimated transaction costs on such instruments could range from 10 to 20 basis points.

RBC QPAMs currently manage approximately $450,000,000 in market value of ERISA and public plan assets that are invested in community investing. If the RBC QPAMs become ineligible to rely on PTE 84–14, the Applicant represents that their ERISA plan clients invested in this strategy could suffer liquidation costs of between 10 and 20 basis points, which equates to between $450,000 and $900,000, not including reinvestment costs.

e. Emerging Markets Equity: The emerging markets strategies invest in the following kinds of instruments: common stock, real estate investment trusts (REITS), American depository receipts (ADRs), exchange-traded funds (ETFs) and certain derivatives. These instruments are generally traded on global stock exchanges, equity trading venues, over-the-counter or centrally cleared. If the RBC QPAMs were ineligible to rely on PTE 84–14, the estimated transaction costs on such instruments could range from 48 to 64 basis points.

RBC QPAMs currently manage approximately $2.35 billion in ERISA plan assets that are invested in emerging markets equity. According to the Applicant, if RBC QPAMs were ineligible to rely on PTE 84–14, ERISA plan clients of the RBC QPAMs invested in this strategy could suffer liquidation costs of between 48 and 64 basis points, which equates to between $11,280,000 and over $15,000,000, not including reinvestment costs.

f. Small and Mid-Cap Growth Equity: The small and mid-cap equity strategy invests in the following kinds of instruments: equity securities, REITS, ADRs and ETFs. These instruments are generally traded on national exchanges and equity trading venues. If the RBC QPAMs were no longer eligible to rely on PTE 84–14, the estimated transaction costs on such instruments could range from 34 to 85 basis points.

RBC QPAMs currently manage approximately $9.6 million of ERISA and public plan assets that are invested in small and mid-cap equity. The Applicant represents that if the RBC QPAMs were ineligible to rely on PTE 84–14, its ERISA plan clients invested in this strategy could suffer liquidation costs of between 34 and 85 basis points, which equates to between $32,640 and $81,600, not including reinvestment costs.

g. International Equity: The international equity strategy invests in the following kinds of instruments: common stock, REITs, ADRs, and ETFs. These instruments are generally traded on global stock exchanges or equity trading venues. The applicant represents that if the RBC QPAMs were no longer able to rely on PTE 84–14, the estimated transaction costs on such instruments could range from 30 to 60 basis points. RBC QPAMs currently manage approximately $292,000,000 of ERISA plan assets that are invested in international equity. If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant represents that their ERISA plan clients invested in this strategy could suffer liquidation costs of between 30 and 60 basis points, which equates to between $876,000 and nearly $1,800,000, not including reinvestment costs.

h. Small Cap Growth Equity: The small cap growth equity strategy invests primarily in the following kinds of instruments: equity securities, REITs, ADRs, and ETFs. These instruments are generally traded on national exchanges or equity trading venues. If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant represents that the estimated transaction costs on such instruments could range from 34 to 85 basis points.

RBC QPAMs currently manage approximately $1.23 billion in market value of ERISA plan assets that are invested in small cap growth equity. If the RBC QPAMs become ineligible to rely on PTE 84–14, the Applicant represents that their ERISA plan clients invested in this strategy could suffer liquidation costs of between 34 and 85 basis points, which equates to between $4,200,000 and over $10,500,000, not including reinvestment costs.

i. Emerging Markets Credit: The emerging markets credit strategies invest in the following kinds of instruments: government bonds, corporate bonds, loans, swaps, futures, foreign exchange transactions, options and repurchase transactions. These instruments are generally traded on the primary and secondary fixed income markets (including via fixed income trading venues), over-the-counter or centrally cleared. If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant represents that the estimated transaction costs on such instruments could range from 35 to 70 basis points.

RBC QPAMs currently manage approximately $510,000,000 in market value of ERISA assets that are invested in emerging markets credit. If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant maintains that their ERISA plan clients of the RBC QPAMs invested in this strategy could suffer liquidation costs of between 35 and 70 basis points, which equates to between $1,800,000 and over $3,500,000, not including reinvestment costs.

j. Cash Management: The cash management strategies invest in the following kinds of instruments: U.S. Treasury securities, U.S. agency-backed securities, agency and non-agency mortgage-backed securities, municipal bonds, repurchase agreements, bank deposits, corporate bonds, certificates of deposit (CDs), commercial paper and foreign sovereign debt. These instruments are generally traded on primary and secondary market fixed income trading markets (including via fixed income trading venues). If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant represents that the estimated transaction costs on such instruments could range from 10 to 20 basis points.

RBC QPAMs manage approximately $1.12 billion of ERISA and public plan assets that are invested in cash management strategies. If the RBC QPAMs become ineligible to rely on PTE 84–14, the Applicant represents that ERISA plan clients of the RBC QPAMs invested in this strategy could suffer liquidation costs of between 10 and 20 basis points, which equates to between $1,120,000 and $2,240,000, not including reinvestment costs.

k. Short Duration: The short duration strategy invests in the following kinds of instruments: U.S. Treasury securities, U.S. agency-backed securities, agency and non-agency mortgage-backed securities, municipal bonds, corporate bonds, certificates of deposit (CDs), commercial paper, foreign sovereign debt, futures, private placements and derivatives. These instruments are generally traded on primary and secondary fixed income trading markets (including via fixed income trading venues) or centrally cleared. If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant represents that the estimated transaction costs on such instruments could range from 10 to 20 basis points.

RBC QPAMs manage a total portfolio of over $1.3 billion in market value of public plans that invest in short duration strategies. According to the Applicant, if the RBC QPAMs were ineligible to rely on PTE 84–14, the RBC QPAMs' ERISA plan clients invested in this strategy could suffer liquidation costs of between 10 and 20 basis points, which equates to between $1,300,000 and $2,600,000, not including reinvestment costs.

l. Ultra Short Duration: The ultra short duration strategy invests in the following kinds of instruments: U.S. Treasury securities, U.S. agency-backed securities, agency and non-agency mortgage-backed securities, municipal bonds, corporate bonds, certificates of deposit (CDs), commercial paper, foreign sovereign debt, private placements, and futures. These instruments are generally traded on primary and secondary fixed income trading markets (including via fixed income trading venues), over-the-counter or centrally cleared. If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant represents that the estimated transaction costs on such instruments could range from 15 to 25 basis points.

RBC QPAMs manage public plan assets with a total portfolio of almost $374,000,000 in market value that are invested in ultra short duration strategies. If the RBC QPAMs were ineligible to rely on PTE 84–14, the Applicant represents that ERISA plan clients of the RBC QPAMs invested in this strategy could suffer liquidation costs of between 15 and 25 basis points, which equates to between $561,000 and $935,000, not including reinvestment costs.

Department's Request for Comment and Notes Regarding Harms to Plans in Paragraphs 21 through 26

The Department requests the Applicant to provide a clear description regarding their estimates of costs to Covered Plans in its comment letter. In this regard, the Applicant must provide:

(1) a description, in itemized form, how the basis point range described above was derived by the Applicant, including the assumptions or methodologies relied upon.

(2) an explanation of the amount of Covered Plan assets that are likely to be subject to the costs described above and an explanation of the Applicant's assumptions or methodologies in connection with such figures. For example: 50% of the Covered Plan assets will be likely to incur such costs because. . . .

(3) an explanation of the likelihood of the costs occurring, for each of the transition costs described above. For example: with respect to violating representations as to QPAM status in an offering document, the Applicant should provide information regarding how likely that is to occur; etc.

(4) an explanation of the circumstances under which the transition costs described above are being incurred (*e.g.,* are these transition costs that the Applicant contends would be incurred by Covered Plans to remedy contractual violations due to loss of QPAM status, costs due to Covered Plans seeking to use a different investment manager that can rely on QPAM, costs, etc.).

(5) a description of the extent to which any of the asserted costs reflect the QPAMs' imposition of additional charges or fees on Covered Plans resulting from the loss of QPAM status, and the cause of such additional charges or fees.

(6) an explanation of the extent to which the costs described herein are not likely to be covered by the QPAMs indemnification obligations under section III(j)(2), described in more detail below, and an explanation why such costs are not attributable to the Applicant's violation of exemption conditions.

The Department notes that Condition (j)(2) of the proposed exemption requires RBC QPAMs to ''indemnify and hold harmless'' Covered Plans for ''actual losses resulting directly from the RBC QPAM's violation of any conditions of this exemption, an RBC QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the RBC QPAM; or any claim arising out of the failure of such RBC QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of section I(g) of PTE 84–14 other than the Conviction.'' [34] Furthermore, the Department notes that, to the extent Covered Plans ''feel forced'' to transition to new asset managers because the RBC QPAMs can no longer rely on PTE 84–14, the liquidation and additional costs arising from the transition constitute actual losses resulting directly from the failure of such QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of violation of section I(g) of PTE 84–14. If a plan's fiduciary is compelled to replace an RBC asset manager as a result of a violation of section I(g) and the asset manager's loss of QPAM status, the affected plan is entitled to indemnification of its associated losses, including the transitional expenses necessary to effectuate the switch to a qualified QPAM.

The Exemption's Protective Conditions

27. In order to avail themselves of the relief provided under this proposed exemption, the RBC QPAMs will be required to meet the conditions described in this proposed exemption at all times. The first group of conditions for relief underscores the Department's expectation that the affected RBC QPAMs were not involved in the misconduct engaged in RBCTC Bahamas that is the subject of the Conviction or otherwise tainted by such misconduct. For example, relief under this proposed exemption only will be available to the extent that: (1) RBC QPAMs, including their officers, directors, agents other than RBCTC, and employees, did not know of, have reason to know of, or participate in the criminal conduct of RBCTC Bahamas that is the subject of the Conviction (here and throughout, ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction); [35] (2) any failure of the RBC QPAMs to satisfy section I(g) of PTE 84–14 arose solely from the Conviction; (3) the RBC QPAMs (including their officers, directors, agents other than RBCTC, and employees of such RBC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal misconduct that is the subject of the Conviction; and (4) no other party engaged on behalf of the RBC QPAMs who had responsibility for or exercised authority in connection with the management of plan assets knew or had reason to know of the criminal misconduct that is the subject of the Conviction nor did they participate in such misconduct.

28. The Department expects the RBC QPAMs to rigorously ensure that the individuals associated with the criminal misconduct of RBCTC Bahamas will not be employed or knowingly engaged by such QPAMs. In this regard, the proposed exemption mandates that the RBC QPAMs will not employ or knowingly engage any of the individuals that participated in criminal misconduct that is the subject of the Conviction. Further, the RBC QPAMs will not use their authority or influence to direct an ''investment fund,'' (as defined in section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such RBC QPAMs, to enter into any transaction with RBCTC Bahamas or engage RBCTC Bahamas to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

29. The RBC QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violation of section I(g) of PTE 84–14 that is attributable to the Conviction. Furthermore, this exemption will terminate immediately if an affiliate of the RBC QPAMs (as defined in section VI(d) of PTE 84–14) violates section I(g) of PTE 84–14 (other than with respect to the Conviction). The Department notes that PTE 84–14 was amended effective June 17, 2024 to, among other things, explicitly broaden the disqualifying circumstances under section I(g) to include (1) convictions in foreign courts for crimes that are substantially equivalent to the disqualifying convictions in U.S. federal or state courts (with the exception of certain foreign countries denominated as ''foreign adversaries'' by the U.S. Department of Commerce); (2) the execution of a non-prosecution agreement or deferred prosecution agreement with U.S. federal or state prosecutors or regulatory agencies; and (3) final judgments or court-approved settlements by a federal or state criminal or civil court in a proceeding brought by certain U.S. regulatory agencies, state regulators, or state attorneys general involving participation in certain categories of conduct.[36] The Applicant

[34] Section I(i)(7) of PTE 2016–10, under which RBC QPAMs are currently operating for the ability to rely on PTE 84–14, contains substantially similar language. In that regard, section I(i)(7) of PTE 2016–10 requires the RBC QPAMs to ''. . .indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such RBC QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of section I(g) of PTE 84–14 other than the Conviction.''

[35] The Applicant represents that, while certain other entities in the RBC corporate family were generally aware of RBCTC Bahamas's responsibilities, including the administration of various trusts, no such entity was involved in the day-to-day operations of the trusts and the alleged misconduct did not relate to the asset management services provided by the RBC QPAMs.

[36] See 89 FR 23090, 23143 (April 3, 2024). The amendment also provides a one-year transition period to help Covered Plans avoid or minimize possible negative impacts of terminating or switching QPAMs or adjusting asset management arrangements when a QPAM becomes ineligible pursuant to section I(g) and allow QPAMs a reasonable period of time to seek an individual exemption, if appropriate. Id. at 23139–140.

represents that RBC currently does not have a reasonable basis to believe that there are any pending criminal investigations involving RBC or any of its affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

30. No relief will be provided by the exemption if any entities holding assets that constitute the assets of a Covered Plan were involved in the criminal misconduct that is the subject of the Conviction. Further, no relief will be provided to the extent RBCTC Bahamas provides any discretionary asset management services to Covered Plans or otherwise acts as a fiduciary with respect to Covered Plans.

31. The second set of conditions underscores the Department's intent to ensure that RBC QPAMs adhere to their ERISA-mandated fiduciary duties and the conditions of this proposed exemption. In this regard, the Department believes that robust policies and training are warranted where, as here, alleged criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan investments in reliance on PTE 84–14. Therefore, this proposed exemption requires each RBC QPAM to immediately develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that: (i) the asset management decisions of the RBC QPAM are conducted independently of the management and business activities of RBC, including RBCTC Bahamas; (ii) the RBC QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to Covered Plans; (iii) the RBC QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; any filings or statements made by the RBC QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of Covered Plans are materially accurate and complete, to the best of such QPAM's knowledge at that time; (iv) the RBC QPAMs do not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plan clients; and (v) the RBC QPAMs comply with the terms of this exemption, if granted. Any violation of or failure to comply with these items must be corrected promptly upon discovery and if any such violation or compliance failure is not promptly corrected, then upon discovering the failure to promptly correct, the failure must be reported in writing to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant RBC QPAM, and an appropriate fiduciary of any affected Covered Plan that is independent of RBC.

32. The Department has also included a provision in the proposed exemption that would require each RBC QPAM to immediately develop and implement a training program (the Training) for its asset and portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption, if granted (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

33. The proposed exemption requires the RBC QPAMs to submit to an audit conducted every two years by an independent auditor that has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code. Each biennial audit must cover a consecutive 12-month period starting with the 24-month period that begins on the Conviction Date.

34. The proposed exemption requires the RBC QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. For example, section III(j) of the proposed exemption requires any arrangement, agreement, or contract between a RBC QPAM and a Covered Plan for which a RBC QPAM provides asset management or other discretionary fiduciary services to provide that such RBC QPAM agrees to: (i) comply with ERISA and the Code, as applicable with respect to such Covered Plan and refrain from engaging in non-exempt prohibited transactions (and to promptly correct any inadvertent prohibited transactions); (ii) comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each Covered Plan; (iii) indemnify and hold harmless the Covered Plan for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such RBC QPAM to be eligible for the exemptive relief provided by PTE 84–14 as a result of a violation of section I(g) of PTE 84–14 other than the Conviction; (iv) not require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the RBC QPAM for violating ERISA or the Code or engaging in prohibited transactions; (v) not require the Covered Plan (or sponsor of such Covered Plan) to indemnify the RBC QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of RBC; (vi) not restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the RBC QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and (vii) not impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Furthermore, any contract, agreement or arrangement between an RBC QPAM and its Covered Plan client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the RBC QPAM for a violation of such agreement's terms.

35. Within six (6) months after the publication of a notice of final exemption in the **Federal Register** each RBC QPAM must: (i) provide a notice of its obligations under section III(j) to each Covered Plan for which the RBC QPAM provides asset management or other discretionary fiduciary services;

and (ii) separately warrant in writing to each such Covered Plan its obligations under subparagraph (1) of section III(j).

36. The last set of conditions is intended to, among other things, ensure accountability on behalf of the RBC QPAMs for compliance with the conditions for relief and to provide Covered Plans, the Department, and other external stakeholders transparency regarding the RBC QPAMs compliance with the conditions for this exemption. Among other things, RBC must designate a senior compliance officer who is generally responsible for an annual review for each 12-month period of the effective period under the exemption, that determines the effectiveness of the Policies and the Training, reports on instances of noncompliance and their remediation, and makes recommendations to improve compliance activities. The RBC QPAMs must inform Covered Plan clients of their right to obtain a copy of the Policies or a summary thereof, and each RBC QPAM must maintain records necessary to demonstrate that the conditions of this exemption, if granted, have been met for six (6) years following the date of any transaction for which such RBC QPAM relies upon the relief in the exemption and must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request.[37]

37. The Applicant must impose its internal procedures, controls, and systems to prevent a recurrence of the misconduct; comply with any remedial measures required by other regulators designed to address the misconduct underlying the Conviction; all the material facts and representations made by the Applicant in connection with the application, must be true and accurate.

Statutory Findings

38. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA section 408(a) for the reasons set forth below.

39. *The Proposed Exemption is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, a qualified independent auditor will be required to perform in-depth audit(s) covering, each RBC QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and be available to the public. The Department notes that the independent audit will provide an incentive for, and a measure of, compliance with the exemption conditions, while reducing the immediate need for review and oversight by the Department.

40. *''The Proposed Exemption is ''In the Interest of the Covered Plans.''* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected Covered Plan because of the potential costs that Covered Plans would incur if the RBC QPAMs ability to rely on PTE 84–14 lapsed and the benefits plans would receive due to the RBC QPAMs' continued eligibility to rely on PTE 84–14 subject to the additional protective conditions set forth in this proposed exemption.[38]

41. *''The Proposed Exemption is ''Protective of the Plans.''* The Department has tentatively determined that the proposed exemption is protective of Covered Plans. The Department has imposed protective conditions that it has used in the most recent exemptions for relief from section I(g), and the Department has determined that those conditions would be protective of the rights of participants and beneficiaries of covered Plans. In addition, the relief provided under this proposed exemption is limited to five (5) years, so that the Department can reassess the RBC QPAMs' compliance with the exemption conditions and confirm that the exemption remains protective of the rights of participants and beneficiaries of Covered Plans. Finally, the Applicant's representation that it maintains a hotline for employees who wish to report any concerns about wrongdoing anonymously also will help ensure that this proposed exemption is protective of the rights of participants and beneficiaries of Covered Plans.

Summary

42. Considering the revised and new conditions described above, the Department has tentatively determined that the relief sought by the Applicants in this proposed exemption satisfies the statutory requirements for an exemption under section 408(a) of ERISA. The proposed exemption provides relief from certain of the restrictions set forth in section 406 and 407 of ERISA. The proposed exemption does not provide relief from any other violation of law, including any criminal conviction not expressly described herein. Any criminal conviction not expressly described herein, or other violation of section I(g) of PTE 84–14 that is attributable to the Applicant would result in the applicant's loss of this exemption.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed exemption in the **Federal Register**. The Applicant must provide notice of the proposed exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a RBC QPAM acts only as a sub-advisor to the investment fund in which such Covered Plan invests and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and request a hearing with respect to the proposed exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the **Federal Register** and will be made available to the public.

Warning: If you submit a comment, please include your name and other contact information in the body of your comment but DO NOT submit information that you consider to be confidential or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can

[37] The Department notes that section I(l) of PTE 2016–10 required RBC to: (i) disclose to the Department any Deferred Prosecution Agreement (DPA) or a Non-Prosecution Agreement (NPA) with the U.S. Department of Justice, entered into by RBC or any of its affiliates in connection with conduct described in section I(g) of PTE 84–14 and/or ERISA section 411; and (ii) provide the Department with any information it requests as permitted by law. The Department has determined not to include the same condition in this proposed exemption, because entering into DPAs and NPAs now is included in the list of disqualifying events under section I(g) of PTE 84–14, effective as of June 17, 2024.

[38] The Department notes that, as requested above, in order to make its findings under ERISA section 408(a), it has requested specific information from the Applicant regarding the size and scope of the costs that Covered Plans are likely to incur and that are not subject to the hold harmless provision in section III(j)(2) of the exemption.

be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(b); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in each application are true and complete at all times, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested by the Applicant to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I: Definitions

(a) The term ''Conviction'' means the judgment of conviction against RBCTC Bahamas, an RBC ''affiliate'' (as defined in PTE 84–14, section VI(d)), entered on March 5, 2024, for aiding and abetting tax fraud in France in the Paris Court of Appeal, French Special Prosecutor No. 11203092066.

(b) The term ''RBC QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a) 5 of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which RBCTC Bahamas is a current or future ''affiliate'' (as defined in section VI(d) of PTE 84–14). The RBC QPAMs do not and must not include RBCTC Bahamas.

(c) The term ''RBC'' means Royal Bank of Canada, together with its current and future affiliates.

(d) The term ''RBCTC Bahamas'' means Royal Bank of Canada Trust Company (Bahamas) Limited, a Bahamian ''affiliate'' of RBC (as defined in section VI(c) of PTE 84–14).

(e) The term ''Covered Plan'' means a plan subject to ERISA title I, part 4 (an ERISA Plan) or a plan subject to Code section 4975 (an IRA), in each case, with respect to which a RBC QPAM relies on PTE 84–14, or with respect to which an RBC QPAM (or any RBC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14 (the QPAM Exemption). A ''Covered Plan'' does not include an ERISA Plan or IRA to the extent the RBC QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the Covered Plan. Notwithstanding the above, an RBC QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with a Covered Plan where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the RBC QPAM will not represent that it is a QPAM and will not rely on the relief described in PTE 84–14.

(f) The term ''Exemption Period'' means the period of time beginning on March 5, 2025, and ending on March 4, 2030.

(g) Wherever found, any reference in this exemption to ''the best knowledge'' of a party, ''best of [a party's] knowledge,'' and similar formulations of the ''best knowledge'' standard, will be deemed to mean the actual knowledge of the party and the knowledge which they would have had if they had conducted their reasonable due diligence required under the circumstances into the relevant subject matter. If a condition of the exemption requires an individual to provide certification pursuant to their ''best knowledge,'' then such individual, in order to make such certification, must perform their reasonable due diligence required under the circumstances to determine whether the information such individual is certifying is complete and accurate in all respects. Furthermore, with respect to an entity other than a natural person, the ''best knowledge'' of the entity includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

(h) The terms ''participate,'' and ''participate in,'' when used to describe a person's role in the criminal conduct described in this exemption, refer not only to a person's active participation in the misconduct of RBCTC that is the subject of the Conviction, but also includes the knowing or tacit approval of the misconduct underlying the Conviction or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to RBC's board of directors.

Section II: Transactions

The RBC QPAMs will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14) [39] notwithstanding the Conviction (as defined above) [40] during the Exemption Period, provided that the conditions in section III are satisfied.

[39] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

[40] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including income tax evasion, and aiding and abetting tax evasion.''

Section III: Conditions

(a) The RBC QPAMs (including their officers, directors, agents other than RBCTC, and employees of such RBC QPAMs) did not know of, have reason to know of, and did not participate in the criminal misconduct of RBCTC Bahamas that is the subject of the Conviction. Further, any other party engaged on behalf of the RBC QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal misconduct that is the subject of the Conviction.

(b) The RBC QPAMs (including their officers, directors, agents other than RBCTC, and employees of such RBC QPAMs) did not receive any direct compensation or knowingly receive any indirect compensation in connection with the criminal misconduct that is the subject of the Conviction. Further, any other party engaged on behalf of the RBC QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not receive any direct compensation or knowingly receive any indirect compensation in connection with the criminal misconduct that is the subject of the Conviction;

(c) The RBC QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal misconduct that is the subject of the Conviction;

(d) At all times during the Exemption Period, no RBC QPAM will use its authority or influence to direct an ''investment fund,'' (as defined in section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by an RBC QPAM in reliance of PTE 84–14, or with respect to which an RBC QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on PTE 84–14, to enter into any transaction with RBCTC Bahamas or engage RBCTC Bahamas to provide any service to such Covered Plan for a direct or indirect fee borne by such Covered Plan regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the RBC QPAMs to satisfy PTE 84–14, section I(g) arose solely from the Conviction;

(f) A RBC QPAM did not exercise authority over the assets of any Covered Plan in a manner that it knew or should have known would: (i) further the criminal misconduct that is the subject of the Conviction; or (ii) cause the RBC QPAM or its affiliates to directly or indirectly profit from the criminal misconduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, RBCTC Bahamas will not act as a fiduciary within the meaning of ERISA sections 3(21)(A)(i) or (iii) or Code sections 4975(e)(3)(A) and (C) with respect to Covered Plan assets; provided, however, that RBCTC Bahamas will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each RBC QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) the asset management decisions of the RBC QPAM are conducted independently of the management and business activities of RBC, including RBCTC Bahamas;

(ii) the RBC QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions as applicable with respect to each Covered Plan and does not knowingly participate in any violations of these duties and provisions with respect to Covered Plans;

(iii) the RBC QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) any filings or statements made by the RBC QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans are materially accurate and complete to the best of such QPAM's knowledge at that time;

(v) to the best of the RBC QPAM's knowledge at the time, the RBC QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) the RBC QPAM complies with the terms of the exemption;

(vii) any violation of or failure to comply with a requirement set forth in subparagraphs (h)(1)(ii) through (h)(1)(vi), is corrected promptly upon discovery or as soon after the RBC QPAM reasonably should have known of the noncompliance (whichever is earlier) and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant RBC QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. An RBC QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each RBC QPAM must maintain, adjust (to the extent necessary) and implement a training program (the Training) that is conducted at least annually for all relevant RBC QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(ii) Be conducted in-person, electronically or via a website by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be verified, through in-training knowledge checks, ''graduation'' tests, and/or other technological tools designed to confirm that personnel fully and in good faith participate in the Training;

(i)(1) The RBC QPAMs must submit to a 12-month audit conducted every two years by an independent auditor who has been prudently selected and has appropriate technical training and proficiency with ERISA and the Code to evaluate the adequacy of each RBC QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies, and the first audit must cover a consecutive 12-month period starting on March 5, 2025. The second audit must cover the consecutive 12-month period starting on

March 5, 2027, and the third audit must cover the consecutive 12-month period starting on March 5, 2029. Each audit must be completed no later than six (6) months after the corresponding audit's ending period;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, the RBC QPAMs and, if applicable, RBC, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether the RBC QPAMs have developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption and have developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test the RBC QPAMs operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving Covered Plans that are sufficient in size and nature to afford the auditor a reasonable basis to determine such RBC QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor must issue a written report (the Audit Report) to RBC and the RBC QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination on or before the end of the relevant period described in section III(i)(1) for completing the audit. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all of the RBC QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each RBC QPAM's Policies and Training; each RBC QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective RBC QPAM's noncompliance with the written Policies and Training. The non-compliant RBC QPAM must promptly address any noncompliance and prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective RBC QPAM. Any action taken or the plan of action to be taken by the respective RBC QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective RBC QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that an RBC QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular RBC QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not rely solely on the Annual Report created by the compliance officer (the Compliance Officer) as described in section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in section III(m);

(6) The auditor must notify the respective RBC QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the RBC QPAM's general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the RBC QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that such signatory has reviewed the Audit Report and this exemption and that to the best of such signatory's knowledge at the time, such RBC QPAM has addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such signatory's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person who knew of, or should have known of, or participated in the criminal conduct that is the subject of the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) The Audit Committee of RBC's Supervisory Board is provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking compliance officer of RBC must review the Audit Report for each RBC QPAM and certify in writing and under penalty of perjury that such officer has reviewed each Audit Report. RBC must provide notice to the Department if there is a switch in the committee to which the Audit Report will be provided. With respect to this subsection (8), such certifying executive officer must not have known of, had reason to know of, or participated in, the criminal conduct that is the subject of the Conviction, unless such person took active documented steps to stop the misconduct underlying the Conviction;

(9) Each RBC QPAM provides its certified Audit Report by electronic mail to: *e-oed@dol.gov.* This delivery must take place no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each RBC QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each RBC QPAM and the auditor must submit the following document(s) to OED via electronic mail to *e-oed@dol.gov:* Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for

inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) RBC must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor, and RBC or any of its affiliates;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between an RBC QPAM and a Covered Plan, the RBC QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such Covered Plan to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the RBC QPAM's violation of any conditions of this exemption, an RBC QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the RBC QPAM; or any claim arising out of the failure of such RBC QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of section I(g) of PTE 84–14 other than the Conviction. Actual losses include, but are not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require or otherwise cause the Covered Plan to waive, limit, or qualify the liability of the RBC QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the RBC QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the RBC QPAM for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of RBC and its affiliates, or damages arising from acts outside the control of the RBC QPAM; and

(7) Within 60 calendar days after this exemption's effective date, each RBC QPAM must provide a notice of its obligations under this section III(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with an RBC QPAM on or after 60 calendar days from this exemption's effective date, the RBC QPAM must agree to its obligations under this section III(j) in an updated investment management agreement between the RBC QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–10 that meets the terms of this condition. This condition will also be met where the RBC QPAM has already agreed to the same obligations required by this section III(j) in an updated investment management agreement between the RBC QPAM and a Covered Plan. Notwithstanding the above, an RBC QPAM will not violate the condition solely because a Covered Plan client refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, each RBC QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where an RBC QPAM acts only as a sub-advisor to the investment fund in which such Covered Plan invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with an RBC QPAM (including a participation or subscription agreement in a pooled fund managed by an RBC QPAM) after the date that is sixty days after the effective date of this exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the RBC QPAM (for avoidance of doubt, all Covered Plan clients of an RBC QPAM during the Exemption Period must receive the disclosures described in this section by the later of (i) 60 days after the effective date of the exemption or (ii) the date that a Covered Plan client enters into a written asset or investment management agreement with an RBC QPAM). Disclosures required under this paragraph (k) may be delivered electronically (including by an email that has a link to this exemption). Notwithstanding the above paragraph, an RBC QPAM will not violate the condition solely because a Covered Plan client refuses to sign an updated investment management agreement;

(l) The RBC QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of PTE 84–14 section I(g) that is attributable to the Conviction. If, during the Exemption Period, an affiliate of an RBC QPAM (as defined in section VI(d) of PTE 84–14) violates section I(g) of PTE 84–14 (other than with respect to the Conviction), relief

provided in this exemption would terminate immediately;

(m)(1) Within 60 days after the date of publication of the exemption, each RBC QPAM designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. No person who participated in the criminal conduct that is the subject of the Conviction may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the criminal conduct that is subject of the Conviction. The Compliance Officer must conduct a review of each twelve-month period comprising the Exemption Period (each, an Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for asset management;

(2) With respect to each Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the RBC QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) the twelve-month period under review; the most recent Audit Report issued pursuant to this exemption; the most recent Audit Report issued in connection with this exemption; (B) any material change in the relevant business activities of the RBC QPAMs; and (C) any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the RBC QPAMs;

(ii) The Compliance Officer prepares a written report for each Exemption Review (each, an Exemption Report) that: (A) summarizes their material activities during the twelve-month period under review; (B) sets forth any instance of noncompliance discovered during the twelve-month period under review, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the twelve-month period under review and any prior period and any related correction taken to date have been identified in the Exemption Report; and (D) the RBC QPAMs have complied with the Policies and Training and/or corrected (or is correcting) any known instances of noncompliance in accordance with section III(h) above;

(iv) Each Exemption Report must be provided to: (A) the appropriate corporate officers of RBC and each RBC QPAM to which such report relates, and (B) the head of compliance and the RBC QPAM's general counsel (or their functional equivalent) of the relevant RBC QPAM; and must be made unconditionally available to the independent auditor described in section III(i) above;

(v) Each Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each RBC QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the RBC QPAM relies upon the relief in the exemption;

(o) Within 60 days after the effective date of this exemption, each RBC QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, clearly and prominently informs Covered Plan clients of the Covered Plan's right to obtain a copy of the Policies or a description (Summary Policies), which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan;

(p) An RBC QPAM will not fail to meet the terms of this exemption, solely because a different RBC QPAM fails to satisfy a condition for relief described in sections III(c), (d), (h), (i), (j), (k), (l), (m), (n),(o), and (u) or if the independent auditor described in section III(i) fails to comply with a provision of the exemption, other than the requirement described in section III(i)(11), provided that such failure did not result from any actions or inactions of RBC or its affiliates;

(q) RBC imposes its internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(r) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate;

(s) With respect to an asset manager that becomes an RBC QPAM after the effective date of the exemption by virtue of being acquired (in whole or in part) by RBC or a subsidiary or affiliate of RBC (a ''newly-acquired RBC QPAM''), the newly-acquired RBC QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired RBC QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired RBC QPAM will initially submit to an audit pursuant to section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the acquisition date of the newly-acquired RBC QPAM;

(t) Relief in this exemption will terminate on the date that is 12 months after the date a U.S. regulatory authority makes a final decision that RBC or an affiliate failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Conviction; and

(u) The RBC QPAM(s) must provide the Department with the records

necessary to demonstrate that each condition of this exemption has been met within 30 days after a request for the records by the Department.

Exemption Date: This exemption will be in effect beginning on March 5, 2025, and ending on March 4, 2030.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor

[FR Doc. 2025–01067 Filed 1–16–25; 8:45 am]

BILLING CODE P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation (LSC) Board of Directors and its Finance, Audit, and Delivery of Legal Services committees will hold their 2025 quarterly business meeting January 26–28, 2025. On Monday, January 27, the first meeting will begin at 9:00 a.m. ET, with the next meeting commencing at 1:15 p.m. ET. On Tuesday, January 28, the first meeting will begin at 8:30 a.m. ET, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting.

PLACE: Public Notice of Hybrid Meeting.

LSC will conduct its January 26–28, 2025, meetings at the Embassy Suites by Hilton Tampa Downtown Convention Center, 513 South Florida Avenue, Tampa, FL 33602, and virtually via Zoom.

Public Observation: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who wish to participate virtually in the public proceedings may do so by following the directions provided below.

Directions for Open Sessions

Monday, January 27, 2025

- To join the Zoom meeting by computer, please use this link:
  - *https://lsc-gov.zoom.us/j/81565383451?pwd=1llll33RnbUjvY8CjwW0FB9bORs8UM.1.*
  - *Meeting ID:* 815 6538 3451.
  - *Passcode:* 153274.

Tuesday, January 28, 2025

- To join the Zoom meeting by computer, please use this link:
  - *https://lsc-gov.zoom.us/j/85769137645?pwd=MLcrUbgNKPZ4obAcIbRt5QU7qM5Xr3.1.*
  - *Meeting ID:* 857 6913 7645.
  - *Passcode:* 444480.
  - If calling from outside the U.S., find your local number here: *https://lsc-gov.zoom.us/u/acCVpRj1FD.*

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Board or Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

Finance Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public for the review of banking services.

Audit Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to receive a briefing by the Office of Compliance and Enforcement on active enforcement matter(s); follow up on open investigation referrals to and from the Office of Inspector General (ACC § VIII A (5)); and receive briefings by LSC Management regarding significant grantee oversight activities.

Delivery of Legal Services Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to receive a briefing on service area configuration.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to receive briefings from Management and the Inspector General; to receive the General Counsel's report on outside counsel expenditures; to consider and act on the General Counsel's report on potential and pending litigation involving LSC; and to consider and act on a list of prospective Leaders Council and Emerging Leaders Council members.

Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session.[1]

[1] 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

A verbatim written transcript will be made of the closed sessions of the Finance, Audit, Delivery of Legal Services, and the Board of Directors meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (7), (9) and (10), will not be available for public inspection. A copy of the General Counsel's certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Meeting Schedule

Monday, January 27, 2025

Start Time 9:00 a.m. ET

Finance Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on October 28, 2024
3. Discussion of Finance Committee's Self-Evaluation for 2024 and Goals for 2025
4. Discussion of LSC's Fiscal Year 2025 Appropriation and Additional Supplemental Appropriation Requests
5. Consider and Act on Resolution #2025–XXX: Temporary Operating Budget and Special Circumstance Operating Authority for Fiscal Year 2025
6. Update on Fiscal Year 2026 Budget Request
7. Presentation of LSC's Financial Report for the First Two Months of Fiscal Year 2025 (from Oct. 1–Nov. 30, 2024)
8. Discussion of LSC's Fiscal Year 2026 Appropriations Request
9. Public Comment
10. Consider and Act on Other Business
11. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session Meeting

Portions Closed to the Public

12. Review of Banking Services
13. Consider and Act on Motion To Adjourn the Meeting

Monday, January 27, 2025

Start Time 1:15 p.m. ET

Audit Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on October 28, 2024
3. Discussion of the Committee's Self-Evaluation for 2024 and Goals for 2025

4. Update on reassessment of the Committee's Charter (Audit Committee Charter § D (2)) and vote to approve revised Charter and submit to Board for approval.
5. Briefing by the Office of Inspector General ((ACC § VIII A (3) and (ACC § VIII A (4)), to include:
   a. Update on key activities and accomplishments over the last quarter, and overview of plans and key priorities for the next quarter;
   b. Highlights of audit insights, recently completed work, ongoing work, and planned work for the next quarter; and
   c. Highlights of investigative insights, recently completed work, ongoing work, and planned oversight work for the next quarter.
6. Review LSC Management's and the Office of Inspector General's Mechanisms for the Submission of Confidential Complaints regarding suspected fraud, theft, corruption, or misuse of funds, or problems involving internal controls, auditing, or accounting, and that there are proper procedures in place for the receipt, retention, and handling of such complaints (ACC § VIII C (5))
7. Management Update Regarding Risk Management (ACC § VIII C (1))
8. Office of Compliance and Enforcement briefing on referrals by the Office of Inspector General regarding Audit reports and annual financial statement audits of grantees ((ACC § VIII A (5))
9. Public Comment
10. Consider and Act on Other Business
11. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session Meeting

Portions Closed to the Public

12. Approval of Minutes of the Committee's Closed Session Meeting on October 28, 2024
13. Office of Compliance and Enforcement Briefing on Active Enforcement Matter(s) and Follow-Up on Open Investigation Referrals to and from the Office of Inspector General (ACC § VIII A (5))
14. As Needed Briefing by LSC Management Regarding Significant Grantee Oversight Activities
15. Consider and Act on Adjournment of Meeting

Tuesday, January 28, 2025

Start Time 8:30 a.m. ET

Delivery of Legal Services Committee

Portions Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on October 7, 2024
3. Discussion of the Committee's Self-Evaluation for 2024 and Goals for 2025
4. LSC Performance Criteria Revisions Update and Timeline
5. Panel Discussion: Legal Aid Services for Florida's Foster Youth
6. Comments from Client Leadership Council
7. Public Comment
8. Consider and Act on Other Business
9. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session Meeting

Portions Closed to the Public

10. Briefing on Service Area Configuration
11. Consider and Act on Motion to Adjourn the Meeting

Tuesday, January 28, 2025

Start Time 10:00 a.m. ET

Board of Directors

Portions Open to the Public

1. Pledge of Allegiance
2. Approval of Agenda
3. Approval of Minutes of the Board's Open Session Meetings on October 29, 2024, and November 20, 2024
4. Consider and Act on Nominations for the Chair of the Board of Directors
5. Consider and Act on Nominations for the Vice Chair of the Board of Directors
6. Discussion Results of the Board's Self-Evaluation for 2024 and Goals for 2025
7. Chairman's Report
8. Members' Reports
9. President's Report
10. Inspector General's Report
11. Consider and Act on the Report of the Governance and Performance Review Committee
12. Consider and Act on the Report of the Operations and Regulations Committee
13. Consider and Act on the Report of the Institutional Advancement Committee
14. Consider and Act on the Report of the Finance Committee
15. Consider and Act on the Report of the Audit Committee
16. Consider and Act on the Report of the Delivery of Legal Services Committee
17. Review Committee
18. Public Comment
19. Consider and Act on Other Business
20. Consider and Act on Whether to Authorize a Closed Session of the Board to Address Items Listed Below

Portions Closed to the Public

21. Approval of Minutes of the Board's Closed Session Meeting on October 29, 2024
22. Management Briefing
23. Inspector General's Briefing
24. General Counsel's Report on Outside Counsel Expenditures
25. Consider and Act on Potential and Pending Litigation Involving Legal Services Corporation
26. Consider and Act on List of Prospective Leaders Council and Emerging Leaders Council Invitees
27. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295–1626. Questions may also be sent by electronic mail to *wechterj@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

(Authority: 5 U.S.C. 552b.)

Dated: January 14, 2025.

Stefanie Davis,

Deputy General Counsel,Legal Services Corporation.

[FR Doc. 2025–01348 Filed 1–15–25; 4:15 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2025–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 20, 27, and February 3, 10, 17, 24, 2025. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of January 20, 2025

There are no meetings scheduled for the week of January 20, 2025.

Week of January 27, 2025—Tentative

There are no meetings scheduled for the week of January 27, 2025.

Week of February 3, 2025—Tentative

Thursday, February 6, 2025

9:00 a.m. Briefing on ADVANCE Act Activities (Public Meeting). (Contact: Mike King: 301–415–6637; Luis Betancourt: 301–415–6146)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of February 10, 2025—Tentative

There are no meetings scheduled for the week of February 10, 2025.

Week of February 17, 2025—Tentative

There are no meetings scheduled for the week of February 17, 2025.

Week of February 24, 2025—Tentative

There are no meetings scheduled for the week of February 24, 2025.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Chris Markley at 301–415–6293 or via email at *Christopher.Markley@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 15, 2025.

For the Nuclear Regulatory Commission.

Christopher Markley,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2025–01366 Filed 1–15–25; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2024–0017]

Privacy Act of 1974; System of Records

AGENCY: Office of the Executive Secretariat and Privacy and Information Management, Office of Personnel Management.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Office of Personnel Management (OPM) proposes to establish a new OPM system of records titled, ''OPM/Internal—29, **Federal Register** Comments.'' This system of records contains information about individuals who submit a public comment (a comment and/or supplementary materials provided to OPM in response to an OPM publication in the **Federal Register**).

DATES: Submit comments on or before February 18, 2025 This new system is effective upon publication in the **Federal Register**, except for the routine uses, which are effective February 18, 2025.

ADDRESSES: You may submit written comments using the following method:

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

FOR FURTHER INFORMATION CONTACT: Kayyonne Marston, Federal Registe Liaison, Office of the Executive Secretariat, Privacy, and Information Management, Office of Personnel Management, at 202–936–2308 or *Regulatory.Information@opm.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Privacy Act of 1974, OPM proposes to establish a new OPM system of records titled, ''OPM/Internal—29, **Federal Register** Comments.'' This system of records supports OPM's public notice and comment process.

When OPM publishes a rulemaking, guidance, or notice document in the **Federal Register**, anyone can visit *Regulations.gov* (*https://www.regulations.gov*) to access that document and submit a public comment. Commenters may choose to respond anonymously or provide personal identifiers.

The comments and identifying information submitted on *Regulations.gov* are maintained in the Federal Docket Management System (FDMS), a government-wide platform. Although the General Services Administration eRulemaking Program Office manages *Regulations.gov* and FDMS, each Federal agency manages its own dockets and public comments within FDMS.

OPM uses FDMS to search, review, organize, analyze, and download the comments, and address them, as appropriate, when finalizing their publications. This system of records will enable OPM to identify individuals who submitted a public comment in response to a request for comments on an OPM document published in the **Federal Register**. If the commenter provided identifying information, OPM may use that information to ask the commenter to clarify their comment, as appropriate, or for other needs connected to the notice and comment process.

In accordance with 5 U.S.C. 552a(r), OPM has provided a report of this new system of records to the Office of Management and Budget and to Congress. This new system of records will be included in OPM's inventory of record systems.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

SYSTEM NAME AND NUMBER:

Office of Personnel Management, OPM/Internal—29, **Federal Register** Comments.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Executive Secretariat, Privacy, and Information Management, U.S. Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–0001 and General Services Administration, National Computer Center, 3799 Hopson Road, Research Triangle Park, North Carolina 27709.

SYSTEM MANAGER(S):

Federal Register Liaison, Office of the Executive Secretariat, Privacy, and Information Management, U.S. Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 206(d) of the E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C.

3501 note); 5 U.S.C. 301, Departmental regulations; 5 U.S.C. 552a, Records maintained on individuals; 5 U.S.C. 553, Rule making; 6 U.S.C. 101, Definitions; 44 U.S.C. chapter 35 subchapter 1, Federal Information Policy; and 5 CFR part 1320, Controlling Paperwork Burdens on the Public.

PURPOSE(S) OF THE SYSTEM:

This system of records will enable OPM to identify individuals who submitted a public comment (a comment and/or supplementary materials provided to OPM in response to an OPM publication in the **Federal Register**) in response to a request for comments to an OPM document published in the **Federal Register**. If the commenter provided identifying information, OPM may use that information to ask the commenter to clarify their comment, as appropriate, or for other needs connected to the notice and comment process.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who provided personal identifiers when submitting a public comment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include the commenter's name, personal contact information, business contact information, and public comment. Records may also include a comment tracking number, document title, keywords, document identification number, Code of Federal Regulation (CFR) title, CFR citation, document type, document sub type, date posted, and comment period end date.

RECORD SOURCE CATEGORIES:

Individuals who submitted a public comment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the records or information contained in this system may be disclosed outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when OPM or another agency representing OPM determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

b. To the Department of Justice when (a) OPM, or any component thereof; (b) any OPM employee in their official capacity; (c) any OPM employee in their individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where OPM determines that litigation is likely to affect OPM or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by OPM to be relevant and necessary to the litigation.

c. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

d. To a member of Congress or staff acting upon the member's behalf, when the member or staff requests the information on behalf of, and at the request of, the individual to whom the record pertains.

e. To the National Archives and Records Administration (NARA) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that there has been a breach of the system of records, (2) OPM has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OPM (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OPM's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

g. To another Federal agency or Federal entity, when OPM determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

h. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for OPM to the extent necessary to accomplish an agency function related to this system of records.

i. To the General Services Administration to operate the eRulemaking system.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All comments are maintained electronically by the General Services Administration in the Federal Docket Management System (FDMS). Comments are also extracted and stored electronically at OPM for further analysis.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the commenter's name, keywords, document identification number, comment tracking number, document title, CFR title, CFR citation, document type, document sub type, date posted, and comment period end date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Comments on rulemakings are retained permanently in accordance with OPM's NARA approved record schedule DAA–0478–2017–0002–0001. Comments on SORNs are retained for 2 years after supersession by a revised SORN or after system ceases operation in accordance with GRS 4.2, item 150. Records of notices of announcements and other matters not codified in the Code of Federal Regulations are retained for 1 year unless needed longer for a required business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The General Services Administration information technology system that hosts *Regulations.gov* and FDMS is in a facility protected by physical walls, security guards, and requiring identification badges. Rooms housing the system infrastructure are locked, as are the individual server racks. All security controls are reviewed on a periodic basis by external assessors. The controls themselves include measures for access control, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance.

Several administrative, technical, and physical security measures implemented by OPM also protect the records stored by OPM from unauthorized access and misuse. These

measures comply with the Federal Information Security Modernization Act of 2002, as amended by the Federal Information Security Modernization Act of 2014, OMB policies, and standards and guidance from the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records in this system may email their request to *foia@opm.gov* or mail their request to the Office of Personnel Management, Office of the Executive Secretariat, Privacy, and Information Management—FOIA, 1900 E Street NW, OESPIM/FOIA Room 5H35, Washington, DC 20415–0001. The email or letter should:

1. Include the words ''Privacy Act Records Access Request'',
2. State that the request relates to OPM/Internal—29, **Federal Register** Comments, and
3. Clearly describe the information requested.

The letter or email must also include the individual's:

1. Full name, and any former names,
2. Date of birth,
3. Preference for how they want to be contacted (home address, telephone number, and/or personal email), and
4. Signature.

Additional requirements regarding record access requests, including the rights of guardians and how records may be provided, may be found in 5 CFR part 297, Privacy Procedures for Personnel Records.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about them may email their request to *foia@opm.gov* or mail their request to the Office of Personnel Management, Office of the Executive Secretariat, Privacy, and Information Management—FOIA, 1900 E Street NW, OESPIM/FOIA Room 5H35, Washington, DC 20415–0001. The email or letter should:

1. Include the words ''Privacy Act Amendment Request'',
2. State that the request relates to OPM/Internal—29, **Federal Register** Comments,
3. Clearly describe the records the individual wants to amend and why, and
4. Include any documents which could help substantiate the request.

The letter or email must also include the individual's:

1. Full name, and any former names,
2. Date of birth,
3. Preference for how they want to be contacted (home address, telephone number, and/or personal email), and
4. Signature.

Additional requirements regarding record access requests, including the rights of guardians and how records may be provided, may be found in 5 CFR part 297, Privacy Procedures for Personnel Records.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2025–01125 Filed 1–16–25; 8:45 am]

BILLING CODE 6325–67–P

POSTAL REGULATORY COMMISSION

[Docket No. C2024–13; Presiding Officer's Ruling No. 7]

Complaint

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is providing notice that a prehearing videoconference is being rescheduled.

DATES: *Live WebEx Videoconference:* January 23, 2025, at 10 a.m., eastern daylight time, virtual.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Procedural Schedule

A prehearing videoconference is currently scheduled to be conducted before the Presiding Officer on January 16, 2025, at 10 a.m. Due to the inability of one of the participants to attend, the prehearing videoconference will be rescheduled to Thursday, January 23, 2025, at 10 a.m.

II. Ruling

1. The prehearing videoconference, scheduled for Thursday, January 16, 2025, is hereby rescheduled to Thursday, January 23, 2025, at 10 a.m..

2. The Secretary shall arrange for publication of this ruling (or abstract thereof) in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2025–01156 Filed 1–16–25; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–1112; K2025–1111; MC2025–1113; K2025–1112; MC2025–1114; K2025–1113; MC2025–1115; K2025–1114; MC2025–1116; K2025–1115; MC2025–1117; K2025–1116; MC2025–1118; K2025–1117; MC2025–1119; K2025–1118; MC2025–1120; K2025–1119; MC2025–1121; K2025–120; MC2025–1122; K2025–1121; MC2025–1123; K2025–1122; MC2025–1124; K2025–1123]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 22, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*https://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2025–1112 and K2025–1111; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1288 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 22, 2025.

2. *Docket No(s).:* MC2025–1113 and K2025–1112; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 596 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 22, 2025.

3. *Docket No(s).:* MC2025–1114 and K2025–1113; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1289 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 22, 2025.

4. *Docket No(s).:* MC2025–1115 and K2025–1114; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1290 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* January 22, 2025.

5. *Docket No(s).:* MC2025–1116 and K2025–1115; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1291 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* January 22, 2025.

6. *Docket No(s).:* MC2025–1117 and K2025–1116; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1292 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* January 22, 2025.

7. *Docket No(s).:* MC2025–1118 and K2025–1117; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1293 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* January 22, 2025.

8. *Docket No(s).:* MC2025–1119 and K2025–1118; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1295 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* January 22, 2025.

9. *Docket No(s).:* MC2025–1120 and K2025–1119; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1294 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* January 22, 2025.

10. *Docket No(s).:* MC2025–1121 and K2025–1120; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1296 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 22, 2025.

11. *Docket No(s).:* MC2025–1122 and K2025–1121; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1297 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* January 22, 2025.

12. *Docket No(s).:* MC2025–1123 and K2025–1122; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1298 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* January 22, 2025.

13. *Docket No(s).:* MC2025–1124 and K2025–1123; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1299 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 13, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:*

Christopher Mohr; *Comments Due:* January 22, 2025.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2025–01157 Filed 1–16–25; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–1103; K2025–1102; MC2025–1104; K2025–1103; MC2025–1105; K2025–1104; MC2025–1106; K2025–1105; MC2025–1107; K2025–1106; MC2025–1108; K2025–1107; MC2025–1109; K2025–1108; MC2025–1110; K2025–1109; MC2025–1111; K2025–1110]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 21, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

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The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*https://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2025–1103 and K2025–1102; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 595 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 21, 2025.

2. *Docket No(s).:* MC2025–1104 and K2025–1103; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1280 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 21, 2025.

3. *Docket No(s).:* MC2025–1105 and K2025–1104; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1281 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 21, 2025.

4. *Docket No(s).:* MC2025–1106 and K2025–1105; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1282 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 21, 2025.

5. *Docket No(s).:* MC2025–1107 and K2025–1106; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1283 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 21, 2025.

6. *Docket No(s).:* MC2025–1108 and K2025–1107; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1284 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 21, 2025.

7. *Docket No(s).:* MC2025–1109 and K2025–1108; *Filing Title:* USPS Request to Add Priority Mail Express, Priority

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Mail & USPS Ground Advantage Contract 1285 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* January 21, 2025.

8. *Docket No(s).:* MC2025–1110 and K2025–1109; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1286 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* January 21, 2025.

9. *Docket No(s).:* MC2025–1111 and K2025–1110; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1287 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 10, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* January 21, 2025.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2025–01128 Filed 1–16–25; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–948 and MC2025–958; Order No. 8596]

Removing Bound Printed Matter From the Market Dominant Product List and Raising USPS Marketing Mail Weight Limits

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: Effective no earlier than July 2025, the Postal Service proposes to remove two products, Bound Printed Matter Flats (BPM Flats) and Bound Printed Matter Parcels (BPM Parcels), from the Market Dominant Product List. Concurrent with this proposed removal, the Postal Service also proposes raising the weight limits for certain USPS Marketing Mail products. The Commission seeks public comments on the Postal Service's filings.

DATES: *Comments are due:* February 7, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Proposal
III. Administrative Actions
IV. Ordering Paragraphs

I. Introduction

On December 20, 2024, pursuant to 39 U.S.C. 3642 and 39 CFR 3040.130 *et seq.,* the Postal Service filed a request to remove Bound Printed Matter Flats (BPM Flats) and Bound Printed Matter Parcels (BPM Parcels) from the Market Dominant Product List.[1] To support this request, the Postal Service filed a copy of the Governors' Decision supporting the request, a Certification by a Postal Service official attesting to the accuracy of the factual information appearing in the request, and proposed changes to the Mail Classification Schedule (MCS). *See* BPM Removal Request, Attachments A–C.

Also on December 20, 2024, pursuant to 39 U.S.C. 3682 and 39 CFR 3040.211, the Postal Service filed a notice of a set of changes to raise the weight limits for USPS Marketing Mail Parcels and for flat-shaped mailpieces within three USPS Marketing Mail products (High Density and Saturation Flats/Parcels, Carrier Route, and Flats.[2] The Postal Service filed a copy of its proposed changes to the MCS for three of those four affected products. *See* Marketing Mail Weight Limit Notice, Attachment A.

II. Proposal

Effective no earlier than July 2025, the Postal Service proposes to remove two products, BPM Flats and BPM Parcels, from the Market Dominant Product List. *See* BPM Removal Request at 2–3. The Postal Service states that BPM Flats and BPM Parcels containing catalogs, promotional material, or other advertising material may then be sent as USPS Marketing Mail. *See id.* at 2. The Postal Service explains that BPM Flats and BPM Parcels containing books may not be sent as USPS Marketing Mail because that class excludes order fulfillment.[3] Thus, the Postal Service states that such books may be sent as Package Services Media Mail/Library Mail or by using Competitive products such as USPS Ground Advantage. *See* BPM Removal Request at 2. If removed, the Package Services class will contain only two products, Alaska Bypass Service and Media Mail/Library Mail. *Id.* at 1. The Postal Service asserts that it has provided all information required pursuant to 39 CFR 3040.131 and 3040.132 and includes Table 3 to serve as a table of contents for a reader to locate the information. *See id.* at 3–4.

Concurrent with the proposed removal described above, the Postal Service also proposes raising the weight limits for certain USPS Marketing Mail products to: 15 pounds for Parcels, 24 ounces for flat-shaped mailpieces within High Density and Saturation Flats/Parcels, 24 ounces for flat-shaped mailpieces within Carrier Route, and 20 ounces for Flats. *See* Marketing Mail Weight Limit Notice at 1. The weight limit for letter-shaped mailpieces within USPS Marketing Mail will remain at less than 16 ounces (15.999 ounces). *See* BPM Removal Request at 2.

III. Administrative Actions

The Commission establishes Docket No. MC2025–948 to consider matters raised by the BPM Removal Request and Docket No. MC2025–958 to consider matters raised by the Marketing Mail Weight Limit Notice. *See* 39 CFR 3040.133, 3040.211(b). The instant dockets involve related issues pertaining to product consolidation and the Postal Service does not object to consolidation of the dockets. *See* Marketing Mail Weight Limit Notice at 1. Accordingly, the Commission will consolidate them. *See* 39 CFR 3010.104.

The Commission invites comments on the BPM Removal Request and the Marketing Mail Weight Limit Notice. Comments are due no later than February 7, 2025. The filings can be accessed via the Commission's website (*https://www.prc.gov*). In accordance with 39 CFR 3040.211(a)(1), the Postal Service is directed to file its proposed

[1] Docket No. MC2025–948, United States Postal Service Request to Remove Bound Printed Matter from the Market-Dominant Product List, December 20, 2024 (BPM Removal Request).

[2] Docket No. MC2025–958, Notice of the United States Postal Service of Updates to the Maximum Weight Limit for Marketing Mail, December 20, 2024 (Marketing Mail Weight Limit Notice)

[3] *See id.* at 2 (citing Mailing Standards of the United States Postal Service Domestic Mail Manual 243.3.2.2, available at *https://pe.usps.com/DMM300*).

changes to the MCS for USPS Marketing Mail Parcels by January 21, 2025.

Pursuant to 39 U.S.C. 505, the Commission appoints Christopher Mohr to represent the interests of the general public (Public Representative) in these dockets.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2025–948 to consider matters raised by the BPM Removal Request.

2. The Commission establishes Docket No. MC2025–958 to consider matters raised by the Marketing Mail Weight Limit Notice.

3. The Commission consolidates Docket Nos. MC2025–948 and MC2025–958.

4. In accordance with 39 CFR 3040.211(a)(1), the Postal Service is directed to file its proposed changes to the MCS for USPS Marketing Mail Parcels by January 21, 2025.

5. Comments by interested persons are due by February 7, 2025.

6. Pursuant to 39 U.S.C. 505, the Commission appoints Christopher Mohr to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

7. The Secretary shall arrange for publication of this Order or an abstract thereof) in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2025–01129 Filed 1–16–25; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., January 29, 2025.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Office of Legislative Affairs Update
Bureau of Field Service Congressional Outreach Update
Website Survey—Next Steps

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

(Authority 5 U.S.C. 552b.)

Dated: January 15, 2025.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2025–01376 Filed 1–15–25; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102179; File Nos. PCAOB–2024–06, PCAOB–2024–07]

Public Company Accounting Oversight Board; Extension of Comment Period and Notice of Designation of Longer Period for Commission Action on Proposed Rules on Firm Reporting and Firm and Engagement Metrics and Related Amendments to PCAOB Standards

January 14, 2025.

On November 22, 2024, the Public Company Accounting Oversight Board (''PCAOB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rules on (1) Firm Reporting (''Firm Reporting'') and (2) Firm and Engagement Metrics and Related Amendments to PCAOB Standards (''Firm and Engagement Metrics''). The proposed rules on Firm Reporting were published for comment in the **Federal Register** on December 5, 2024,[3] and the proposed rules on Firm and Engagement Metrics were published for comment in the **Federal Register** on December 11, 2024.[4] The Commission provided a 21-day public comment period for the proposed rules,[5] which ended on December 26, 2024 for Firm Reporting and on January 2, 2025 for Firm and Engagement Metrics.

Section 19(b)(2) of the Act [6] provides that no later than 45 days after the date of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization [7] consents, the Commission shall either approve or disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the proposed rules on Firm Reporting is January 19, 2025. The 45th day after publication of the notice for the proposed rules on Firm and Engagement Metrics is January 25, 2025.

To provide additional time for public comment on the proposed rules and the issues raised therein, the Commission has determined to extend the comment periods for the proposed rules for an additional 21 days from the date of the issuance of this notice. To accommodate the longer comment periods and consideration of such comments, the Commission finds it appropriate to also extend the time periods within which the Commission must take action on the proposed rules for up to 45 days.

Accordingly, the Commission is extending the public comment periods for the proposed rules on Firm Reporting and Firm and Engagement Metrics until February 4, 2025, and, pursuant to Section 19(b)(2) of the Act,[8] extends the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rules on Firm Reporting to March 5, 2025 (File No. PCAOB–2024–07) and the proposed rules on Firm and Engagement Metrics to March 11, 2025 (File No. PCAOB–2024–06). Please note that comments previously received on the proposed rules will be considered together with comments submitted in response to this notice. Therefore, while commenters are free to submit additional comments at this time, they need not re-submit earlier comments.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.[9]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025–01160 Filed 1–16–25; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Firm Reporting, Release No. 34–101723 (Nov. 25, 2024) [89 FR 96712 (Dec. 5, 2024)].

[4] *See* Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Firm and Engagement Metrics and Related Amendments to PCAOB Standards, Release No. 34–101724 (Nov. 25, 2024) [89 FR 99968 (Dec. 11, 2024)].

[5] *See supra* notes 3 and 4.

[6] 15 U.S.C. 78s(b)(2).

[7] The term ''self-regulatory organization'' includes a ''registered securities association.'' *See* Section 3(a)(26) of the Act. Section 107(b)(4) of the Sarbanes-Oxley Act of 2002 states that the provisions of Sections 19(b)(1) through (3) of the Act shall govern the proposed rules of the PCAOB as fully as if the PCAOB were a ''registered securities association'' for purposes of that Section.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–11(b)(3).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102169; File No. SR–NYSE–2024–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt a Provision That the Exchange Will Not Review a Compliance Plan Submitted by a Listed Company That Is Below Compliance With a Continued Listing Standard If the Company Owes Any Unpaid Fees to the Exchange and Will Instead Immediately Commence Suspension and Delisting Procedures If Such Fees Are Not Paid in Full

January 13, 2025.

I. Introduction

On September 27, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Sections 802.02 and 802.03 of the NYSE Listed Company Manual (''Manual'') to provide that the Exchange (1) will not review a compliance plan submitted by a domestic or non-U.S. listed company that is determined to be below compliance with a continued listing standard unless the company has paid in full all outstanding listing or annual fees due to the Exchange and will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual if such fees are not paid in full by the plan submission deadline; or (2) with respect to any unpaid fees that have become due and payable since the commencement of its plan period, will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual if such fees are not paid in full at the time of any required periodic review of such plan. The proposed rule change was published for comment in the **Federal Register** on October 16, 2024.[3]

On November 25, 2024, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Currently, Sections 802.02 and 802.03 of the Manual provide that when the Exchange identifies a domestic company subject to Section 802.02 of the Manual (''listed domestic company'') or a non-U.S. company subject to Section 802.03 of the Manual (''listed non-U.S. company'') as being below the continued listing criteria set forth in Section 802.01 of the Manual (and the company is not able to otherwise qualify under an original listing standard), the Exchange will notify the company of such noncompliance by letter and give the company an opportunity to provide the Exchange with a plan (''plan'') advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months.[7] If a company submits a plan pursuant to Sections 802.02 or 802.03 of the Manual, it must identify specific quarterly milestones, in the case of listed domestic companies, or semi-annual milestones, in the case of listed non-U.S. companies, against which the Exchange will evaluate the company's progress.[8] A company has 45 days, in the case of listed domestic companies, or 90 days, in the case of listed non-U.S. companies, from receipt of the letter from the Exchange identifying an event of noncompliance to submit its plan to the Exchange for review (the ''plan submission deadline'').[9] Otherwise, suspension and delisting procedures will commence in accordance with Section 804.00 of the Manual.[10]

With respect to a plan submitted pursuant to Sections 802.02 or 802.03 of the Manual, Exchange staff will evaluate the plan, including any supporting documentation, and determine whether the company has made a reasonable demonstration in the plan of the company's ability to come into conformity with the relevant continued listing standards within 18 months.[11] If the Exchange accepts the plan, the Exchange will review the company for compliance with the plan either quarterly, in the case of a listed domestic company, or semi-annually, in the case of a listed non-U.S. company.[12] If the Exchange determines that the company has failed to meet the material aspects of the plan or any quarterly or semi-annual milestones, as applicable, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures.[13] In any event, a company that does not meet the continued listing standards at the end of the 18 months will be subject to the prompt initiation of suspension and delisting procedures in accordance with Section 804.00 of the Manual.[14]

The Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that the Exchange will not review a plan submitted by a listed domestic company or listed non-U.S. company (each referred to herein as a ''listed company'' and, together, ''listed companies'') that the Exchange has identified as being below the continued listing standards set forth in Section 802.01 of the Manual unless the company has previously paid in full any listing or annual fees due to the Exchange.[15] If the listed company is below continued listing standards and has not paid in full all outstanding listing or annual fees by the plan submission deadline, under the proposal, the Exchange will immediately commence suspension and delisting procedures in accordance with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 101295 (Oct. 9, 2024), 89 FR 83527 (''Notice''). Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nyse-2024-44/srnyse202444.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 101738, 89 FR 95283 (December 2, 2024). The Commission designated January 14, 2025, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Sections 802.02 and 802.03 of the Manual. *See also* Notice at 83527.

[8] *See* Sections 802.02 and 802.03 of the Manual.

[9] *See* Sections 802.02 and 802.03 of the Manual. *See also* Notice at 83527.

[10] *See* Sections 802.02 and 802.03 of the Manual; Notice at 83527.

[11] *See* Sections 802.02 and 802.03 of the Manual. *See also* Notice at 83528. The Exchange will make such determination within 45 days of receipt of the plan and will promptly notify the company of its determination in writing. *See* Sections 802.02 and 802.03 of the Manual.

[12] *See* Sections 802.02 and 802.03 of the Manual. *See also* Notice at 83528. The Exchange will deem the plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards or achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. *See* Sections 802.02 and 802.03 of the Manual.

[13] *See* Sections 802.02 and 802.03 of the Manual. If the Exchange determines to proceed with suspension and delisting procedures in accordance with Section 804.00 of the Manual, it may do so regardless of the company's continued listing status at that time. *See id.*

[14] *See id.*

[15] *See* proposed amendments to Sections 802.02 and 802.03 of the Manual; Notice at 83528.

Section 804.00 of the Manual.[16] In addition, the Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that in connection with the Exchange's quarterly or semi-annual review of a plan, as applicable, the Exchange will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to any listed domestic company or listed non-U.S. company that has not paid any listing or annual fees that have become due and payable since the commencement of its plan period.[17]

The Exchange states that the process of reviewing and analyzing plans and reviewing the periodic updates with respect to plans is resource-intensive and costly for the Exchange and that, given the significant amount of work required, the Exchange believes it is important to ensure that companies that wish to have a plan accepted or continued by the Exchange have paid all outstanding annual and listing fees prior to acceptance of a plan or at the time of any required review of such plan.[18] In addition, the Exchange states that listed companies are already required by Exchange rules to pay fees, as set forth in Section 902.00 *et seq.* of the Manual [19] and their listing agreements,[20] and the proposal ''would simply require listed companies to pay fees to the Exchange that were already due and payable.'' [21] In addition, the Exchange states that it currently has the authority under Section 802.01D of the Manual to delist companies for violations of their agreements with the Exchange, including their listing agreements.[22] The Exchange states that the proposal will help the Exchange to ensure that it has sufficient resources to fund its regulatory activities relating to the review and approval and the ongoing monitoring of plans submitted by companies that are below continued listing standards.[23]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2024–44 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [24] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[25] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Exchange Act and, in particular, with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to ''promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' [26] and with Section 6(b)(7) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange ''provide a fair procedure for'', among other things, ''the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.'' [27]

The Commission has previously stated that the development and enforcement of meaningful exchange listing standards [28] is of critical importance to financial markets and the investing public. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[29]

As discussed above, Sections 802.02 and 802.03 of the Manual set forth specific procedures for listed domestic companies and listed non-U.S. companies that are identified as being below the Exchange's continued listing criteria, including procedures for companies to submit a plan to regain compliance.[30] The Commission has stated that such rules enhance investor protection by ensuring that companies that fail to satisfy the continued listing criteria are identified, reviewed, and then subjected to specified delisting procedures.[31]

The Exchange now proposes to amend Sections 802.02 and 802.03 of the Manual to provide that the Exchange will not review a compliance plan submitted by a listed domestic company or listed non-U.S. company that is determined to be below compliance with the continued listing standards set forth in Section 802.01 of the Manual unless the company has paid in full all outstanding listing or annual fees due to the Exchange, and the Exchange will immediately commence suspension and delisting procedures in accordance with

[16] *See* proposed amendments to Sections 802.02 and 802.03 of the Manual; Notice at 83528.

[17] *See* proposed amendments to Sections 802.02 and 802.03 of the Manual; Notice at 83528.

[18] *See* Notice at 83528.

[19] The listing fees and annual fees for all categories of listed securities are set forth in Section 902.00 *et seq.* of the Manual. *See* Notice at 83528 n.4.

[20] The Exchange states that the NYSE listing agreement includes an agreement by the listing applicant to ''pay when due all fees associated with its listing of securities on the Exchange, in accordance with the Exchange's rules.'' Notice at 83528.

[21] *Id.*

[22] *See id.* Section 802.01D of the Manual provides that the Exchange may in its sole discretion subject a company to the procedures outlined in Sections 802.02 and 802.03 of the Manual if the company, its transfer agent, or registrar, violates any of its, or their, listing or other agreements with the Exchange. In addition, Section 802.01D of the Manual provides that the Exchange is not limited by the criteria set forth in the rule and ''[o]ther factors which may lead to a company's delisting include . . . [a] breach by the company of the terms of its listing agreement.''

[23] *See* Notice at 83528.

[24] 15 U.S.C. 78s(b)(2)(B).

[25] *Id.*

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(7).

[28] The Commission notes that this reference to ''listing standards'' is referring to both initial and continued listing standards.

[29] *See, e.g.,* Securities Exchange Act Release Nos. 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR–NASDAQ–2020–001) (Order Approving a Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price at or Below $0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 Shares or More to One Over the Prior Two-Year Period); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR–NASDAQ–2019–089) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 5815 To Preclude Stay During Hearing Panel Review of Staff Delisting Determinations in Certain Circumstances). *See also* Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR–NYSE–2017–31) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts) (stating that ''[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market'' and that ''[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue . . . so that fair and orderly markets can be maintained'').

[30] *See* Sections 802.02 and 802.03 of the Manual.

[31] *See, e.g.,* Securities Exchange Act Release No. 41502 (Jun. 9, 1999), 64 FR 32588, 32594 (Jun. 17, 1999) (SR–NYSE–99–13).

Section 804.00 of the Manual with respect to a listed company if such fees are not paid in full by the plan submission deadline. In addition, the Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that in connection with the Exchange's quarterly or semi-annual review of a plan, as applicable, the Exchange will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to any listed company that has not paid any listing or annual fees that have become due and payable since the commencement of its plan period.

The Commission has concerns about whether the Exchange's proposal is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between issuers, as required by Section 6(b)(5) of the Exchange Act. As discussed above, the Exchange states in support of its proposal that the process of reviewing and analyzing plans and reviewing the periodic updates with respect to plans is resource-intensive and costly for the Exchange and that, given the significant amount of work required, the Exchange believes it is important to ensure that companies that wish to have a plan accepted or continued by the Exchange have paid all outstanding annual and listing fees prior to acceptance of a plan or at the time of any required review of such plan.[32] However, the Exchange does not give further detail regarding the resources and costs involved in reviewing plans under Sections 802.02 and 802.03 of the Manual submitted by listed companies that fall below the continued listing criteria in Section 802.01 of the Manual or for the quarterly or semi-annual reviews of compliance with these plans, including with respect to quarterly or semi-annual reviews that occur later in the process.

Further, the Exchange's Manual outlines other processes that apply to issuers that are not in compliance with certain Exchange rules pursuant to which an issuer that falls out of compliance is not eligible to follow the procedures in Sections 802.02 and 802.03 of the Manual and instead may follow alternative procedures specific to the rule violation. For example, Section 802.01E of the Manual applies to a listed company that incurs a late filing delinquency by failing to timely file certain reports with the Commission, and provides, among other things, that the Exchange will notify a company of its filing delinquency and require the company to contact the Exchange to discuss the status of the report subject to the filing delinquency within a certain time period and that, during the six-month period from the date of the filing delinquency, the Exchange will monitor the company and the status of the delinquent report and any subsequent reports until the filing delinquency is cured.[33] If the company fails to cure the filing delinquency within the initial six-month cure period, the Exchange may, in its sole discretion, grant an additional six-month period to a company to cure the filing delinquency depending on the company's specific circumstances.[34] Section 802.01E of the Manual, however, does not explicitly require a company that incurs a late filing delinquency to have paid all outstanding annual and listing fees prior to the Exchange's undertaking to monitor such company or when considering whether to grant the company an initial or additional six-month period to cure the delinquency, nor does it require the Exchange to immediately commence suspension and delisting procedures with respect to such company if such fees are not paid in full when the Exchange is considering granting the initial or additional cure period or while the Exchange is monitoring such company.[35] The Exchange has not addressed how the Exchange's review of compliance plans under Sections 802.02 and 802.03 of the Manual is more resource intensive and costly for the Exchange than other processes set forth in the Manual applicable to issuers who are violating Exchange rules and are working to come back into compliance, such as, for example, the process set forth in Section 802.01E of the Manual for delinquent filers.[36] As a result, the proposal raises questions as to whether it is consistent with the provisions of Section 6(b)(5) of the Exchange Act that, among other things, require that the rules of the Exchange not be designed to permit unfair discrimination between issuers.

Similarly, the Exchange has not addressed or adequately justified why it is proposing to suspend and delist only companies subject to Sections 802.02 and 802.03 of the Manual that have not paid outstanding fees by the plan submission deadline, rather than proposing a provision to suspend and delist any listed company that is delinquent in paying its outstanding fees. The Exchange has not adequately justified why it is treating issuers subject to Sections 802.02 and 802.03 of the Manual different from other listed issuers.

Furthermore, as discussed above, the Exchange states that it has the authority and discretion under its current rules to immediately suspend and delist a company that has not paid required fees when due.[37] The Exchange has not sufficiently explained why its proposal to immediately suspend and delist listed companies subject to Sections 802.02 and 802.03 of the Manual that have failed to pay all outstanding fees by the plan submission deadline is designed to protect investors and the public interest and not designed to permit unfair discrimination between issuers, consistent with Section 6(b)(5) of the Exchange Act, given that the Exchange already has the discretion to suspend and delist such a company under its current rules.

In addition, the Commission has concerns about whether the Exchange's proposal provides for a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered, as required by Section 6(b)(7) of the Exchange Act. The Exchange's proposal would require the Exchange to immediately suspend and delist a company that already has a plan in place with the Exchange pursuant to Section 802.02 or 802.03 of the Manual, if, at its quarterly or semi-annual review, as applicable, the company has not paid any listing or annual fees that have become due and payable since the commencement of its plan period. It is unclear from the proposal whether, in such a situation, the listed company

[32] *See* Notice at 83528.

[33] *See* Section 802.01E of the Manual.

[34] *See id.* Section 802.01E of the Manual also allows the Exchange to truncate any delinquency cure period or not grant any cure period on the basis of an analysis of all relevant factors including specified ones set forth in the rule. *See id.*

[35] *See id.*

[36] As another example, Section 802.01F of the Manual applies to a listed issuer that is not compliant with the provisions of Section 303A.14 of the Manual (Erroneously Awarded Compensation) (referred to as a ''clawback requirement delinquency'') and provides a process for an issuer subject to a clawback requirement delinquency to come back into compliance with Exchange rules that is similar to the process set forth in Section 802.01E of the Manual described above. Similarly, Section 802.01F of the Manual does not explicitly require a company that incurs a clawback requirement delinquency to have paid all outstanding annual and listing fees prior to the Exchange's undertaking to monitor such company or when considering whether to grant the company an initial or additional six-month period to cure the delinquency, nor does it require the Exchange to immediately commence suspension and delisting procedures with respect to such company if such fees are not paid in full when the Exchange is considering granting the initial or additional cure period or while the Exchange is monitoring such company. *See* Section 802.01F of the Manual.

[37] *See supra* notes 20–22 and accompanying text.

would have prior notice regarding the suspension and delisting and/or a period to pay any unpaid fees prior to such suspension and delisting. For example, it is unclear if immediate suspension and delisting would occur even if the fees became due only one day prior to a quarterly or semi-annual review.

As a result, the Commission believes there are questions as to whether the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Exchange Act.[38] For this reason, it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [39] to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Sections 6(b)(5) and 6(b)(7) of the Exchange Act [40] or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Exchange Act,[41] any request for an opportunity to make an oral presentation.[42]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by February 7, 2025. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 21, 2025. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–44 and should be submitted on or before February 7, 2025. Rebuttal comments should be submitted by February 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01085 Filed 1–16–25; 8:45 am]

BILLING CODE 8011–01–P

[38] 15 U.S.C. 78f(b)(5) and (7).

[39] 15 U.S.C. 78s(b)(2)(B).

[40] 15 U.S.C. 78f(b)(5) and (b)(7).

[41] 17 CFR 240.19b–4.

[42] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[43] 17 CFR 200.30–3(a)(57).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20955; TEXAS Disaster Number TX–20041 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Texas dated January 13, 2025.

Incident: Laredo Boil Water Notice due to E. Coli Contamination.

DATES: Issued on January 13, 2025.

Incident Period: October 10, 2024 through October 21, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: October 14, 2025.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Webb.

Contiguous Counties: Texas

Dimmit, Duval, Jim Hogg, La Salle, Maverick, McMullen, Zapata.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 209550.

The State which received an EIDL Declaration is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2025–01081 Filed 1–16–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20613 and #20614; SOUTH DAKOTA Disaster Number SD–20004]

Presidential Declaration Amendment of a Major Disaster for the Cheyenne River Sioux Tribe

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Cheyenne River Sioux Tribe (FEMA–4842–DR), dated November 1, 2024.

Incident: Severe Storm, Straight-line Winds, and Flooding.

DATES: Issued on January 8, 2025.

Incident Period: July 13, 2024 through July 14, 2024.

Physical Loan Application Deadline Date: February 28, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 1, 2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Cheyenne River Sioux Tribe, dated November 1, 2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to February 28, 2025.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025–01065 Filed 1–16–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20953 and # 20954; CALIFORNIA Disaster Number CA–20030]

Presidential Declaration of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–4856–DR), dated January 8, 2025.

Incident: Wildfires and Straight-line Winds.

DATES: Issued on January 8, 2025.

Incident Period: January 7, 2025 and continuing.

Physical Loan Application Deadline Date: March 10, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: October 8, 2025.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on January 8, 2025, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Los Angeles

Contiguous Counties (Economic Injury Loans Only):

California: Kern, Orange, San Bernardino, Ventura

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.563
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 209535 and for economic injury is 209540.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025–01066 Filed 1–16–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20879 and # 20880; MONTANA Disaster Number MT–20014]

Presidential Declaration Amendment of a Major Disaster for the Crow Nation

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Crow Nation (FEMA—4847–DR), dated November 14, 2024.

Incident: Severe Storm and Straight-line Winds.

DATES: Issued on January 8, 2025.

Incident Period: August 6, 2024.

Physical Loan Application Deadline Date: February 28, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 14, 2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street

SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Crow Nation, dated November 14, 2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to February 28, 2025.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025–01071 Filed 1–16–25; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2024–0019]

Youth Transition Exploration Demonstration

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Social Security Administration (SSA) is announcing the *Youth Transition Exploration Demonstration (YTED)* project for the Supplemental Security Income (SSI) program under title XVI of the Social Security Act (Act). This project is a randomized controlled trial (RCT) of an employment intervention for youth with disabilities, who are transitioning into the adult workforce. SSA will modify the program rules that apply to income for certain project participants who receive SSI payments under title XVI of the Act. This modification will not apply to income for project participants who receive Old-Age, Survivors and Disability Insurance (OASDI) benefits under title II or receive concurrent benefits under title II and title XVI of the Act.

DATES: This project begins January 17, 2025 and ends by December 31, 2028.

FOR FURTHER INFORMATION CONTACT: Eunsong Park, Social Security Administration, Office of Retirement and Disability Policy, Youth Transition Exploration Demonstration, 6401 Security Boulevard, Baltimore, MD, 21235. Telephone: (410) 965–3570; Email: *eunsong.park@ssa.gov*.

SUPPLEMENTARY INFORMATION:

Youth Transition Exploration Demonstration

Under the YTED, youth with disabilities may receive enhanced counseling services and referrals to training programs and other employment services. We are conducting this project under section 1110 of the Social Security Act, which authorizes the Commissioner to conduct demonstration projects that are likely to assist in promoting the objectives or facilitate the administration of the title XVI program. This demonstration will test the effectiveness of providing enhanced counseling and referral services to youth with disabilities in achieving long-term employment outcomes.

Through SSA's Interventional Cooperative Agreement Program (ICAP), we acquired a cooperative agreement with Mathematica to implement and evaluate YTED. Mathematica is a research and data analytics consultancy driven by a mission to improve public well-being. Other partners for the YTED are the Pennsylvania Office of Vocational Rehabilitation (OVR) and University of Maryland's Center for Transition and Career Innovation.

For the evaluation, we will modify the program rules that apply to certain project participants and provide individual level SSA data to Mathematica that will compare outcomes between treatment group and control group participants regarding benefits, earnings, and application frequency. Mathematica and OVR will recruit participants, and OVR will provide enhanced counseling and referral services.

Potential participants are youth with disabilities ages 16 through 24 who are eligible for services from OVR, but do not have an open case with OVR. They must be residents of the state of Pennsylvania in the following counties:

- City of Philadelphia,
- Montgomery,
- Chester,
- Delaware, and
- Bucks.

Mathematica expects to recruit up to 700 individuals to participate in the YTED. Participation is voluntary and individual participants will sign an informed consent. Mathematica will randomly assign participants to a treatment group and a control group. The treatment group will receive enhanced counseling and referral services by a vocational rehabilitation counselor with specialized YTED training (VRC–YTED). The VRC–YTED will provide services, including connections to intensive training programs, submitting an application for training programs on behalf of the youth, coordinating placement with a program representative, and benefits counseling including information on waiving earned income counting and deeming. The control group will only be eligible for standard OVR services, such as case management, and will receive information on how to apply for the OVR services.

Under title XVI of the Act, we make SSI payments to persons who are aged, blind, or disabled, and who also have limited income and resources. We expect that some YTED participants may currently receive SSI payments. Additionally, we expect some YTED participants may apply for SSI once they learn about the program and seek eligibility for benefits per 20 CFR 416.202. All participants can withdraw from the project at any time. We will apply all usual program rules, including reporting requirements, to all applicable participants no later than December 31, 2028. Especially relevant, SSI recipients must report changes in their work and generally must report their wages monthly. We will also apply the alternate rules, as described below, to those participants in the treatment group who consent to sharing their data with us in the informed consent and who are SSI recipients (not OASDI or concurrent recipients) no later than December 31, 2028.

Provisions of the Act and Regulations We are Waiving For the YTED Treatment Group

We are waiving rules that offset SSI payments based on YTED participants' earnings. The following alternate program rules will apply to the YTED treatment group participants who are SSI recipients:

- The first waiver applies to earnings that directly affect participants' own benefits. SSA will not offset SSI payments for participants when the participants earn income. In other words, all earned income by participants is excluded from SSI income counting.
- The second waiver applies to any deeming that results from participants' earnings. For example, a participant's earnings will not count against the SSI benefit of their child who receives SSI or their spouse who receives SSI. However, if a person under the age of 18 is a participant, any income (earned or unearned) from their non-participant deemor parent(s) will still be subject to deeming. Additionally, if a participant is married, any income from the non-participant spouse will still be subject to deeming.

Applying these alternate rules involves waiving or altering certain provisions included in sections of:

- Statutory Waivers

Social Security Act 1611(a)(1)(A), (a)(2)(A), (a)(3)(A) as applicable to earned income; 1612(b)(1), (b)(3)(B), (b)(4); 1614(f)(1), (f)(2)(A) as applicable to earned income; and 1619(a)(1).

• Regulatory Waivers

20 CFR 416.202 (c); 416.1104; 416.1110; 416.1111; 416.1112; 416.1163 as applicable to earned income; and 416.1165 as applicable to earned income.

Authority for the Waivers Under YTED

Section 1110(b) of the Act authorizes us to waive any requirements, conditions, or limitations of title XVI necessary to carry out demonstration projects. Consistent with the requirements in section 1110(b)(2)(B) of the Act, participation in the YTED is voluntary and based on informed consent, and the voluntary agreement to participate may be withdrawn by the participant at any time.

Carolyn Colvin, the Acting Commissioner of the Social Security Administration, having reviewed and approved this document, is delegating the authority to electronically sign this document to Erik Hansen, who is a **Federal Register** Liaison for the Social Security Administration, for purposes of publication in the **Federal Register**.

Erik Hansen,

Associate Commissioner, Office of Legislation and Congressional Affairs, Legislative Development and Operations, Social Security Administration.

[FR Doc. 2025–01123 Filed 1–16–25; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2024–0045]

Notice of Tier Subscription Expansion and Fee Decrease for Our Electronic Consent Based Social Security Number Verification Service

AGENCY: Social Security Administration.

ACTION: Notice of Tier Subscription Expansion and Fee Decrease for the Electronic Consent Based Social Security Number Verification Service.

SUMMARY: The Social Security Administration (SSA) is announcing two additional subscription tiers and a decrease in the fees across all tiers for the electronic Consent Based Social Security Number (SSN) Verification (eCBSV) service. In accordance with statutory requirements, a permitted entity (PE) is required to provide payment to reimburse SSA for the development and support of the eCBSV system.

DATES: The revised subscription tier structure will go into effect for subscription payments made on or after February 3, 2025.

FOR FURTHER INFORMATION CONTACT: Peter Worstell, Office of Data Exchange, Policy Publications, and International Negotiations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (866) 395–8801, email: *eCBSV@ssa.gov.*

SUPPLEMENTARY INFORMATION: Section 215 of the Economic Growth, Regulatory Relief, and Consumer Protection Act [1] (the Banking Bill) directed SSA to modify or develop a database for accepting and comparing fraud protection data [2] provided electronically by a PE.[3] In response to this statutory directive, we created eCBSV, a fee-based SSN verification service. The eCBSV allows SSA to verify and disclose to a PE, based on the number holder's consent,[4] whether a number holder's SSN, name, and date of birth match SSA's records. The PE's request for SSA's verification of the fraud protection data must be in connection with a credit transaction or a circumstance described in section 604 of the Fair Credit Reporting Act. Each PE must submit a certification statement [5] that the PE is compliant with the Banking Bill as part of their application to SSA.

Based on feedback from PEs received by email and during monthly direct PE conference calls, we are adding two additional tiers for purchase within the eCBSV program. We are adding a new smaller eCBSV tier capped at a maximum of 75,000 transactions to better serve smaller eCBSV customers. This addition will give smaller PEs additional and more affordable tier options. Additionally, we are adding a new eCBSV tier capped at 500,000 maximum transactions. These new tiers allow us to maintain our pricing structure and provide small and medium customers an avenue to directly use the eCBSV service instead of having to go through a third-party service. We anticipate that this new fee structure will incentivize higher transactional volume. In addition, we are decreasing the annual fee for all tiers, which we explain in more detail in the Fees section below.

Fees

The public cost burden is dependent upon the number of PEs using the service and the annual transaction volume. We based the revised tier fee schedule below on 20 participating PEs in fiscal year (FY) 2025. The total cost for developing and operating the service is approximately $66.5 million through FY 2024. Of this amount, $25.7 million remains unrecovered. The subscription fees are set to ensure we collect these remaining costs in a reasonably timely manner to ensure that we break-even on prior year and ongoing costs for the development and operation of the program. By breaking even, we mean that we will have collected enough revenue to fully cover our costs of developing and operating the eCBSV service. Assuming projected enrollment and transactions are met,[6] we will collect the outstanding balance of $25.7 million through FY 2027. Upon breaking even, we will further adjust our fee structure to ensure that ongoing costs of the program are covered.

During our evaluation for FY 2025, we noted the following:

• We collected approximately $16.1 million in FY 2024.

• Operating costs of approximately $5 million per year in FY 2023 and FY 2024 continued to be lower than historic

[1] Public Law 115–174, codified at 42 U.S.C. 405b.

[2] The Banking Bill defines ''Fraud Protection Data'' to mean a combination of an individual's name (including the first name and any family forename or surname), SSN, and date of birth (including month, day, and year). Public Law 115–174, title II, 215(b)(3), codified at 42 U.S.C. 405b(b)(3).

[3] The Banking Bill defines a PE to mean a financial institution or service provider, subsidiary, affiliate, agent, subcontractor, or assignee of a financial institution. Public Law 115–174, title II, 215(b)(4), codified at 42 U.S.C. 405b(b)(4). They must possess an Employer Identification Number and a Data Universal Number System (DUN) and Bradstreet number.

[4] Under the eCBSV User Agreement, valid written consent must meet the requirements of applicable Federal law, SSA's regulations, and section IV of the eCBSV User Agreement. Valid written consent must include a wet or electronic signature. Section IV A.1. eCBSV User Agreement. Electronic signatures must meet the definition in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006). 42 U.S.C. 405b(f)(2); section IV. E. eCBSV User Agreement. The written consent must clearly specify to whom the information may be disclosed, the information to be disclosed (*e.g.,* SSN verification) and, where applicable, during which timeframe the information may be disclosed (*e.g.,* whenever the subject individual is receiving specific services). 20 CFR 401.100.

[5] The PE must certify that (1) the entity is a PE; (2) the entity is in compliance with section 215; (3) the entity is, and will remain, in compliance with its privacy and data security requirements in title V of 15 U.S.C. 6801, *et seq.,* with respect to the information the entity receives from the Commissioner of Social Security pursuant to this section; and (4) the entity will retain sufficient records to demonstrate its compliance with its certification and section 215 for a period of not less than 2 years. 42 U.S.C. 405b(e)(1)–(3).

[6] Our projected enrollment is 20 PEs each year and a total annual usage of 58 million transactions per year. These figures align with reported usage in the last few years.

costs. (Currently, we project operating costs will continue at this rate).

- We have fully recovered all prior year costs incurred during FY 2020 and earlier.
- We are on track in FY 2025, assuming current usage and fee collection continues, to fully recover costs incurred during FY 2021.
- While our break-even is scheduled for FY 2027, our current fee structure could see significant surplus funds in that year, without changes to the fees.

Based on this information, specifically the last bullet above, and being mindful of our eCBSV customers, we evaluated opportunities to reduce fees across all tiers in a manner that provides some cost relief, maintains our current projected break-even timeline of FY 2027, and continues the collection of prior year costs in a reasonably timely manner.

Our long-term goal, once we break-even, is to only collect fees to cover our ongoing operating costs. Rather than postponing cost relief until that point, we evaluated the relevant information and determined that we could provide a fee reduction now, while staying on target for our cost recovery goals.

REVISED eCBSV TIER FEE SCHEDULE

Tier	Annual volume threshold	Annual fee
1	Up to 10,000 (1–10,000)	$6,650
2	Up to 75,000 (10,001–75,000)	49,500
3	Up to 200,000 (75,001–200,000)	125,000
4	Up to 500,000 (200,001–500,000)	308,750
5	Up to 1 million (500,001–1 million)	610,000
6	Up to 2.5 million (1,000,001–2.5 million)	1,210,000
7	Up to 5 million (2,500,001–5 million)	2,350,000
8	Up to 10 million (5,000,001–10 million)	4,275,000
9	Up to 15 million (10,000,001–15 million)	4,750,000
10	Up to 20 million (15,000,001–20 million)	5,937,500
11	Up to 25 million (20,000,001–25 million)	6,887,500
12	Up to 200 million (25,000,001–200 million)	7,837,500

Each enrolled PE will be required to remit the above tier-based subscription fee for the 365-day agreement period starting on or after February 3, 2025.

Our eCBSV fees are designed to recover prior year costs timely as we look to break-even, while ensuring that we can cover ongoing operating costs. Agency costs and future year cost estimates are based on actual and forecasted systems and operational expenses, agency oversight, overhead, and certified public accountant audit contract costs. Section 215(h)(1)(B) of the Banking Bill (42 U.S.C. 405b(h)) requires that the Commissioner shall ''periodically adjust'' the price paid by users to ensure that amounts collected are sufficient to fully offset the costs of administering the eCBSV system. On at least an annual basis, SSA will monitor costs incurred to provide eCBSV services and will revise the tier fee schedule accordingly. We notify PEs of the tier fee schedule in effect at the renewal of eCBSV user agreements, when a PE begins a new 365-day agreement period, and via notice in the **Federal Register**. PE renewals are governed by the tier fee schedule in effect at the time of renewal.

Sean Brune,

Deputy Commissioner, Office of Budget, Finance, and Management, Social Security Administration.

[FR Doc. 2025–01155 Filed 1–16–25; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority No. 570]

Delegation of Authority—Authorities of the Under Secretary for Public Diplomacy and Public Affairs

ACTION: Delegation of Authority.

SUMMARY: The State Department is publishing a Delegation of Authority signed by the Secretary of State on January 10, 2025.

SUPPLEMENTARY INFORMATION: Antony J. Blinken, Secretary of State, signed the following ''Delegation of Authority—Authorities of the Under Secretary for Public Diplomacy and Public Affairs'' on January 10, 2025. The State Department maintains the original document.

(Begin text.)

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1(a)(4) of the State Department Basic Authorities Act (22 U.S.C. 2651a(a)(4)), I hereby delegate to Scott Weinhold, to the extent authorized by law, all authorities vested in or delegated to the Under Secretary for Public Diplomacy and Public Affairs by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued.

The Secretary, either Deputy Secretary, and the Under Secretary for Management may exercise any function or authority delegated herein. This delegation of authority does not modify any other delegation of authority currently in effect.

This delegation will take effect on January 17, 2025, and will expire, unless sooner revoked, upon the entry upon duty of a confirmed or designated Under Secretary for Public Diplomacy and Public Affairs or Assistant Secretary for Educational and Cultural Affairs, and shall be published in the **Federal Register**.

(End text.)

Zachary A. Parker,

Director, Office of Organizational Policy, Department of State.

[FR Doc. 2025–01208 Filed 1–16–25; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 569]

Delegation of Authority to the Assistant Secretary for Political Military Affairs

ACTION: Delegation of Authority.

SUMMARY: The State Department is publishing a Delegation of Authority signed by the Secretary of State on December 19, 2024. .

SUPPLEMENTARY INFORMATION: Antony J. Blinken, Secretary of State, signed the following ''Delegation of Authority to the Assistant Secretary for Political-Military Affairs to Provide Concurrence under 10 U.S.C. 335'' on December 19, 2024. The State Department maintains the original document.

(Begin text.)

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and 10 U.S.C. 335, I hereby delegate to the Assistant Secretary for Political-Military Affairs, to the extent authorized by law, the authority to concur with respect to assistance authorized by section 335 of title 10 of the U.S. Code.

Any function or authority delegated herein may be exercised by the Secretary, either Deputy Secretary, or the Under Secretary for Arms Control and International Security. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute. The authority delegated herein may be re-delegated, to the extent authorized by law.

This document will be published in the **Federal Register**.

(End text.)

Zachary A. Parker,

Director, Office of Organizational Policy, Department of State.

[FR Doc. 2025–01207 Filed 1–16–25; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 570–1]

Delegation of Authority—Authorities of the Assistant Secretary for Educational and Cultural Affairs

ACTION: Delegation of Authority.

SUMMARY: The State Department is publishing a Delegation of Authority signed by the Secretary of State on January 10, 2025.

SUPPLEMENTARY INFORMATION: Antony J. Blinken, Secretary of State, signed the following ''Delegation of Authority—Authorities of the Assistant Secretary for Educational and Cultural Affairs on January 10, 2025. The State Department maintains the original document.

(Begin text.)

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1(a)(4) of the State Department Basic Authorities Act (22 U.S.C. 2651a(a)(4)), I hereby delegate to Rafik Mansour, to the extent authorized by law, all authorities vested in or delegated to the Assistant Secretary for Educational and Cultural Affairs by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued.

The Secretary, either Deputy Secretary, the Under Secretary for Public Diplomacy and Public Affairs, and the Under Secretary for Management may exercise any function or authority delegated herein. This delegation of authority does not modify any other delegation of authority currently in effect.

This delegation will take effect on January 17, 2025, and will expire, unless sooner revoked, upon the entry upon duty of a confirmed or designated Assistant Secretary for Educational and Cultural Affairs, and shall be published in the **Federal Register**.

(End text.)

Zachary A. Parker,

Director, Office of Organizational Policy, Department of State.

[FR Doc. 2025–01205 Filed 1–16–25; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request to Release Airport Property; New Century AirCenter (IXD), New Century, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property for land disposal.

SUMMARY: The FAA proposes to rule and invites public comment on the release and disposal of one parcel of land at the New Century AirCenter (IXD), New Century, Kansas.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Lawrence Peet, Deputy Director, Johnson County Airport Commission, One New Century Parkway, New Century, KS 66031, (913) 715–6005.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 37.21-acres of airport property at the New Century AirCenter (IXD) under the provisions of 49 U.S.C. 47107(h)(2). The Deputy Director has requested from the FAA a 37.21-acre parcel of airport property be released from obligations and sold. The FAA determined the request to release and sell this property at the New Century AirCenter (IXD) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

New Century AirCenter (IXD) is proposing the release and sale of a 37.21-acre parcel of airport property. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the release of land and surface rights at the New Century AirCenter (IXD) from the conditions of the AIP Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value when the parcel is sold.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, request an appointment and inspect the application, notice and other documents determined by the FAA to be related to the application in person at the New Century AirCenter.

Issued in Kansas City, MO on January 13, 2025.

Rodney N. Joel,

Director, FAA Central Region, Airports Division.

[FR Doc. 2025–01086 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0122]

Parts and Accessories Necessary for Safe Operation; Application for Exemption Renewal from Grote Industries, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for renewal of exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on the application from Grote Industries, LLC (Grote) for a renewal of its exemption allowing motor carriers to install amber brake-activated pulsating warning lamps on the rear of trailers and van body trucks in addition to the steady-burning brake lamps required by the Federal Motor Carrier Safety Regulations (FMCSRs). Grote currently holds an exemption for the period December 7, 2020, through December 2, 2025, and requests a five-year renewal of the exemption. FMCSA requests public comment on Grote's request to renew the exemption.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: You may submit comments identified by docket number FMCSA–2020–0122 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2020-0122/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2024–0237) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–9209; *MCPSV@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0122), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2020-0122/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

B. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

C. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2020-0122/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

D. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed under

the ''Department Wide System of Records Notices'' at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Exemption Request

Current Regulatory Requirements

Section 393.25(e) of the FMCSRs requires all exterior lamps (both required lamps and any additional lamps) to be steady burning except turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and commercial motor vehicles (CMV) transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Original Exemption

In its original exemption application, Grote applied for an exemption to allow motor carriers operating trailers and van body trucks to install amber brake-activated pulsating warning lamps on the rear of these vehicles, in addition to the steady-burning brake lamps required by FMCSRs. Specifically, Grote requested allowance to use: (1) An upper pair of brake-activated warning lamps centered about the centerline of the trailer such that the centerline of the outermost identification (ID) lamps to the centerline of the auxiliary braking lamps is between 6–12 inches and collinear with the three ID lamp cluster; (2) a single brake-activated warning lamp centrally located on or below the rear sill collinear with the stop/tail/turn lamps; (3) an upper pair of brake-activated warning lamps (as described in (1) above) and a single brake-activated warning lamp centrally located on or below the rear sill collinear with the stop/tail/turn lamps; (4) a lower pair of brake-activated warning lamps centered about the centerline of the trailer located on or below the rear sill; or (5) an upper pair of brake-activated warning lamps (as described in (1) above and a lower pair of brake-activated warning lamps as described in (4) above). These configurations would apply to both trailers and van body straight trucks. The lamps would be amber and pulsate as a Class II strobe for up to 4 seconds when the brake is applied, then transition to a steady red for the duration of brake activation. The brake-activated pulsating warning lamps would be in addition to the steady-burning brake lamps required by the FMCSRs.

Grote, a manufacturer of vehicle lighting and safety equipment, submitted this request on behalf of interstate motor carriers, citing research that shows pulsating brake-activated warning lamps improve vehicle visibility. Grote argued that the use of amber pulsating brake-activated warning lamps, in addition to steady-burning red brake lamps required by the FMCSRs, would allow commercial carriers to not only maintain operational safety levels, but also implement more efficient and effective operations.

Grote contended that adding pulsating lamps would enhance safety, noting studies showing that these lamps improve visibility and help prevent accidents. Additionally, Grote referenced FMCSA's previous exemption granted to Groendyke Transport, Inc., which demonstrated a reduction in rear-end accidents involving tank trailers following the installation of amber pulsating brake lamps alongside red brake lamps (84 FR 17910; April 26, 2019).

Grote included in the original application several studies conducted by the National Highway Traffic Safety Administration (NHTSA), another agency in the U.S. Department of Transportation, on the issues of rear-end crashes, distracted driving, and braking signals. Grote stated that the additional amber brake-activated pulsating warning lamp(s) will not have an adverse impact on safety, and that adherence to the terms and conditions of the exemption would likely achieve a level of safety equivalent to or greater than the level of safety achieved without the exemption.

On December 7, 2020, following notice and consideration of the comments received, FMCSA granted Grote a 5-year exemption after determining that the use of an amber brake-activated pulsating lamp positioned on the rear of the trailer and van body trucks, in addition to the steady-burning brake lamps required by the FMCSRs, would likely maintain a level of safety that is equivalent to or greater than the level of safety achieved without the exemption (85 FR 78918). In its decision, FMCSA noted that rear-end crashes, which account for approximately 30% of all crashes, are a significant concern, especially when large trucks are involved. These types of crashes often result from a failure to respond (or delays in responding) to a stopped or decelerating lead vehicle. Data between 2010 and 2016 show that large trucks are consistently three times more likely than other vehicles to be struck in the rear in two-vehicle fatal crashes.

Research conducted by both FMCSA and NHTSA explored alternative rear signaling systems to address this issue. Specifically, FMCSA conducted research and development on Enhanced Rear Signaling (ERS) systems, which showed promise. However, the FMCSA ultimately decided not to pursue formal field operational testing of the prototype system due to concerns about implementation costs and fleets' willingness to invest in the technology. Nonetheless, the preliminary research showed that the ERS system performed well at detecting and signaling rear-end crash threats and drawing the gaze of following-vehicle drivers to the forward roadway which if implemented, could potentially reduce the number and frequency of rear-end crashes into the rear of CMVs.

Separately, NHTSA has performed a series of research studies intended to develop and evaluate rear signaling applications designed to reduce the frequency and severity of rear-end crashes via enhancements to rear-brake lighting by redirecting drivers' visual attention to the forward roadway (for cases involving a distracted driver), and/or increasing the saliency or meaningfulness of the brake signal (for attentive drivers). The research demonstrated that flashing all lights

simultaneously or alternately flashing is a promising signal for use in enhanced brake light applications, even at levels of brightness within the current regulated limits. Specifically, the study showed that substantial performance gains may be realized by increasing brake lamp brightness levels under flashing configurations; however, increases beyond a certain brightness threshold will not return substantive performance gains.

In addition, NHTSA has conducted research on the effectiveness of rear turn signal color on the likelihood of being involved in a rear-end crash. FMVSS No. 108 allows rear turn signals to be either red or amber in color. The study showed that amber signals show a 5.3 percent effectiveness in reducing involvement in two-vehicle crashes where a lead vehicle is rear-struck in the act of turning left, turning right, merging into traffic, changing lanes, or entering/leaving a parking space. The advantage of amber rear turn signals was shown to be statistically significant.

Finally, FMCSA concluded that the FMCSA and NHTSA research programs demonstrated the effectiveness of alternative rear-signaling systems in reducing the frequency and severity of rear-end crashes. This evidence was sufficient to support the implementation of amber, brake-activated, pulsating warning lamps on the rear of trailers and van body trucks, in addition to the steady-burning brake lamps required by regulation, as likely to provide a level of safety equivalent to or greater than that achieved without the exemption.

Therefore, FMCSA imposed the following terms and conditions to ensure the safety of the motoring public. The exemption would be rescinded if: (1) Motor carriers operating trailers and van body trucks fail to comply with the terms and conditions of the exemption; (2) the exemption resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Application for Renewal of Exemption

In its renewal application, Grote reiterated its previous statements in support of the original exemption request. Since the exemption was granted in 2020, the Grote auxiliary strobe and stop lamp has been installed on over 80,000 vehicles and traveled over 250,000,000 miles. Grote reported that the usage of its pulsating warning lamp has yielded positive results. Grote stated that a large national fleet customer reported a 33% reduction in overall rear-end crashes on a per-mile basis compared to a baseline fleet (without the system installed) with more than 1 billion miles driven. In the most severe cases, involving personal injuries, the fleet observed a 75% reduction. Another large fleet customer reported similar outcomes, noting a 52% reduction in overall recordable incidents per vehicle and, more notably, a 75% reduction in the severity of incidents that did occur. A copy of Grote's request to renew the exemption is available in the docket.

Although Grote applied for ''renewal of the 2020 exemption,'' it also stated that it was ''applying on behalf of all operators, motor carriers, *and equipment manufacturers* that are subject to'' the Federal Motor Carrier Safety Regulations (FMCSRs) (emphasis added). Both the 2020 exemption and this renewal request apply only to motor carriers and operators of commercial motor vehicles (CMVs) that install Grote's pulsating brake lamps described above, not to Grote itself (unless it operates as a motor carrier and installs its own brake lamps on its own CMVs) or to any other equipment manufacturer. The renewal application also stated that ''Grote seeks the ability to install safety features in addition to those required under the FMCSRs.'' The renewal application, like the 2020 exemption, allows motor carriers or CMV operators to install the Grote brake equipment described above, but does not authorize Grote to install its brake equipment on behalf of motor carriers. The proposed renewal, like the current exemption, would apply only to motor carriers and CMV operators that wish to install and use the Grote brake lamp equipment.

IV. Applicant's Method To Ensure an Equivalent or Greater Level of Safety

Grote states that its commitment to safety remains unchanged and emphasized that in the five years since the original exemption was granted, the use of Grote's amber brake-activated pulsating warning lamps on the rear of trailers and van body trucks in addition to the steady-burning brake lamps required by the FMCSRs has demonstrated a level of safety equivalent to, or greater than, that provided by the regulation.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Grote's application for renewal of its exemption from § 393.25(e). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2025–01162 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No.: DOT–OST–2024–0130]

Public Interest Waiver of the Application of Certain Domestic Preference Requirements and Policies for Transit-Oriented Development Housing Projects

ACTION: Notice.

SUMMARY: In order to expeditiously deliver projects and provide meaningful infrastructure results while ensuring the appropriate application of domestic content standards, the U.S. Department of Transportation (DOT) is issuing waiver for the domestic preference requirements for manufactured products applicable to certain transit-oriented development (TOD) housing projects that receive credit assistance through the Build America Bureau (the Bureau) under the Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) credit programs.

DATES: The effective date of the waiver is January 17, 2025 and will apply to all TOD housing projects that enter into the Bureau's creditworthiness review on or before December 31, 2025.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Dan Schned, U.S. Department of Transportation, Build America Bureau, at 202–366–2300 or *daniel.schned@dot.gov.* For legal questions, please contact, Jessica Pettrone, DOT Office of the General Counsel, at (202) 366–8560 or *jessica.pettrone@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) Public Law 117–58 was enacted. IIJA reauthorized Federal surface transportation programs and invested billions in making the United States transportation system safer and more resilient. TOD projects are eligible for both TIFIA (23 U.S.C. 601(a)(12)(E)) and RRIF (49 U.S.C. 22402(b)(1)(F)) financing, subject to all other eligibility criteria, and compliance with all applicable Federal requirements and creditworthiness standards.[1]

Transportation and land use reforms are central strategies to achieving many goals, including reaching net-zero greenhouse gas emissions by 2050; addressing the housing supply and affordability crises throughout the country; and advancing equity, fair housing, and environmental justice.[2] Providing long-term, low-interest direct loans through the TIFIA and RRIF credit programs to TOD projects is one of the primary tools available to DOT to help achieve this mission.

Over the last three years, DOT has taken several concrete steps to date to facilitate TOD financing under the TIFIA and RRIF credit programs. DOT has published TOD guidance [3] and a policy statement [4] and authorized TOD projects' eligibility to borrow up to the maximum allowed under TIFIA to promote the creation of more walkable, mixed-use spaces near transit that support vibrant, sustainable, and equitable communities.[5] Additionally, the Bureau has worked on outreach to developers and created several tools including the TOD Eligibility Map [6] and has conducted webinars to help educate potential borrowers about the opportunities and requirements of the programs.

The IIJA also includes the Build America, Buy America Act (BABA) at div. G, sec. 70901–27. BABA greatly strengthens Made in America standards by expanding the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. The Act requires that the head of each covered Federal agency shall ensure that ''none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' IIJA sec. 70914(a).

BABA applies to Federal financial assistance, which term includes ''all expenditures by a Federal agency to a non-Federal entity for an infrastructure project.'' IIJA sec. 70912(4)(B). ''Non-Federal entity,'' as defined in 2 CFR 200.1, does not include for-profit entities. Therefore, BABA by its terms does not apply to Federal financial assistance to for-profit entities.[7] However, in accordance with the Office of Management and Budget (OMB)'s Guidance Memorandum M–24–02, *Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure,* Federal agencies may consider applying domestic preference requirements to for-profit entities, consistent with their legal authorities.

DOT has a longstanding policy of requiring all borrowers receiving TIFIA or RRIF credit assistance to comply with domestic steel, iron, and manufactured products content requirements, collectively known as ''Buy America'' requirements,[8] for the projects receiving TIFIA or RRIF credit assistance, even where not covered by a specific Buy America statute, including chapter 83 of title 41, United States Code (Buy American), because no appropriated funds are used for the cost of the loan. DOT has consistently applied this policy to for-profit borrowers as well. Accordingly, because Buy America is applied to all projects receiving TIFIA or RRIF credit assistance, DOT, in an effort to ensure transparency and maintain consistency in the application of Buy America standards for all recipients (one rule for all projects and borrowers), applies this waiver to the domestic manufactured products requirements as applied to both TOD housing projects with for-profit borrowers that do not use any appropriated funds for the cost of the loan (to which Buy America requirements are applied as a matter of policy), as well as to TOD housing projects with non-Federal entity borrowers (to which Buy America requirements apply as a matter of law, whether or not such loans use appropriated funds), and, in each case, that enter into the Bureau's creditworthiness review on or before December 31, 2025.

TOD projects are a class of eligible capital projects under the TIFIA and RRIF credit programs administered by the Bureau. The Bureau recently provided guidance on Federal requirements for TOD projects receiving TIFIA or RRIF credit assistance.[9] Pursuant to that guidance, the Bureau reiterated the DOT's longstanding policy of requiring sponsors of all projects receiving TIFIA and RRIF credit assistance to comply with domestic steel, iron, and manufactured products content requirements, collectively known as ''Buy America'' requirements, for the projects receiving credit assistance, even where not covered by a specific Buy America statute, including Buy American requirements because no appropriated funds are used for the cost of the loan.

Issuance of Waiver and Discussion of Comments Received

DOT proposed a waiver of the Buy America manufactured products requirement for TIFIA and RRIF TOD projects that include any housing elements (TOD Housing Projects) that enter into creditworthiness review on or before December 31, 2025, in the **Federal Register** (FR Doc. 2024–28820). DOT received two comments on the proposed waiver, one from an advisor on various TOD projects and one from a public policy think tank that represents the interests of real estate entities. Both commenters supported the proposed waiver.

One commenter requested that DOT issue a ''blanket waiver'' that would effectively establish a new domestic

[1] Eligible TOD projects can take many forms, including joint development; public infrastructure; and economic development, including commercial and residential development. One of the key parameters of the programs, among others, is that TOD projects must be within walking distance of a qualifying transit or passenger rail station. *See https://www.transportation.gov/buildamerica/TOD.*

[2] *https://www.transportation.gov/buildamerica/sites/buildamerica.dot.gov/files/2023-10/TOD%20Policy%20Statement.pdf.*

[3] *https://www.transportation.gov/buildamerica/TOD.*

[4] *https://www.transportation.gov/buildamerica/sites/buildamerica.dot.gov/files/2023-10/TOD%20Policy%20Statement.pdf.*

[5] *https://www.transportation.gov/buildamerica/TIFIA49.*

[6] *https://www.transportation.gov/buildamerica/about/resources-mode/interactive-map-tifia-and-rrif-tod-eligibility.*

[7] *See* OMB Memorandum M–22–11 *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* (April 18, 2022), p. 2 (''for-profit organizations are not considered non-Federal entities''); OMB Memorandum M–24–02 *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* (October 25, 2023), p. 4 (restating the guidance on for-profit entities from M–22–11); and 88 FR 57750, 57774 (October 23, 2023) (''Thus—although OMB does not require them to do so—Federal agencies are allowed, under the existing structure of part 200, to apply part 200, including the domestic preferences at § 200.322, to for-profit entities'').

[8] As noted above, after the enactment of BABA, Buy America requirements now include domestic construction material requirements per BIL sec. 70914(a).

[9] *https://www.transportation.gov/buildamerica/about/resources-mode/tod-project-federal-requirements-guidance.*

preference standard (*e.g.,* 60–70 percent) that applies to all products and materials involved in TOD projects. They argued that this would simplify the compliance process by preventing the need for sponsors to request many individual product waivers, thereby reducing the burden on DOT resources and expediting the advancement of TOD Housing Projects. As was described in the notice, to support both the delivery of housing and domestic manufacturing, DOT will continue to work closely with borrowers to better understand and document the sources of materials and products used in TOD Housing Projects and the challenges that compliance with DOT's domestic preference standards present and determine appropriate solutions.

One commenter requested that DOT update its guidance for TOD projects to include a ''plain language'' list of examples of manufactured products covered by this waiver. As was described in the notice, DOT recently provided guidance on Federal requirements applicable to TOD projects receiving TIFIA or RRIF credit assistance. DOT appreciates the suggestion and will consider it in determining the best ways of providing technical assistance to borrowers for TOD Housing Projects.

Finding on the Waiver

Based on the information available, DOT is issuing a public interest waiver of the Buy America requirements for manufactured products that apply to Bureau-financed TOD Housing Projects. This waiver is limited to TOD Housing Projects that enter into creditworthiness review on or before December 31, 2025. For these projects, DOT will continue to apply domestic steel, iron, and construction materials content requirements.

To ensure transparency and maintain consistency in the application of Buy America standards for all recipients (one rule for all projects and borrowers), this waiver will apply to both TOD Housing Projects with for-profit borrowers and those with non-Federal entity borrowers.

To continue to support the goals of Buy America policies, DOT will work closely with TOD Housing Project borrowers to better understand and document the sources of materials and products used in such projects. This research will assist DOT in refining its domestic preference requirements policy for TOD projects entering enter the Bureau's creditworthiness review phase after January 1, 2026, and to further support both the delivery of housing and domestic manufacturing.

Issued in Washington, DC.

Morteza Farajian,

Executive Director, Build America Bureau.

[FR Doc. 2025–01113 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number DOT–OST–2014–0031]

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Small Aircraft Operators

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial, traffic and operating statistics from small certificated and commuter air carriers. Small, certificated air carriers (operate aircraft with 60 seats or less or with 18,000 pounds of payload capacity or less) currently must file the two quarterly schedules: F–1 ''Report of Financial Data''; F–2 ''Report of Aircraft Operating Expenses and Related Statistics''; and Commuter air carriers must file the Schedule F–1 ''Report of Financial Data''. Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility, and clarity of the information collected.

DATES: Written comments should be submitted by February 18, 2025.

ADDRESSES: You may submit comments identified by DOT Docket ID Number

DOT–OST–2014–0031 by any of the following methods:

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

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *https://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Comments: Comments should identify the associated OMB approval # 2138–0009 and Docket ID Number DOT–OST–2014–0031. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0009, Docket—DOT–OST–2014–0031. The postcard will be date/time stamped and returned.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access: You may access comments received for this notice at *https://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: Cecelia Robinson, Office of Airline Information, RTS–42, Room E34–110, OST–R, BTS,1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 893–0515, Fax Number (202) 366–3383 or email *cecelia.robinson@dot.gov.*

Jennifer Rodes, Office of Airline Information, RTS–42, Room E32–103, OST–R, BTS, 1200 New Jersey Avenue SE, Washington DC 20590–0001, Telephone Number (202) 366–8513, Fax Number (202) 366–3383 or email *Jennifer.rodes@dot.gov*.

SUPPLEMENTARY INFORMATION: *A notice of this information collection was published in the* **Federal Register** *allowing for a 60-day comment period November 8, 2024 at* 89 FR 88863.

OMB Approval No. 2138–0009

Title: Report of Financial and Operating Statistics for Small Aircraft Operators

Form No.: BTS Form 298–C.

Type Of Review: Extension of a currently approved collection for the financial data.

Respondents: Small certificated (28) and commuter air carriers (33).

Schedule F1:

Number of Respondents: 61.
Number of Annual responses: 244.
Total Burden per Response: 4 hours.
Total Annual Burden: 976 hours.

Schedule F2:

Number of Respondents: 28.
Number of Annual responses: 112.
Total Burden per Response: 12 hours.
Total Annual Burden: 1,344 hours.
Needs and Uses: Program uses for Form 298–C financial data are as follows:

Mail Rates

The Department of Transportation sets and updates the Intra-Alaska Bush mail rates based on carrier aircraft operating expense, traffic, and operational data. Form 298–C cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carrier's receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Essential Air Service

DOT often has to select a carrier to provide a community's essential air service. The selection criteria include historic presence in the community, reliability of service, financial stability and cost structure of the air carrier.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 298–C for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

The quarterly financial submissions by commuter and small certificated air carriers are used in determining each carrier's continuing fitness to operate. Section 41738 of title 49 of the United States Code (U.S.C.) requires DOT to find all commuter and small certificated air carriers fit, willing, and able to conduct passenger service as a prerequisite to providing such service to an eligible essential air service point. In making a fitness determination, DOT reviews three areas of a carrier's operation: (1) the qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier begins conducting flight operations, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed and advised of all current and developing economic issues affecting the airline industry. In preparing financial condition reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers prepared for senior DOT officials may use the same information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, January 8, 2025.

Rolf Schmitt,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2025–01064 Filed 1–16–25; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) or Technical Assistance (TA) awards under the Community Development Financial Institutions Program (CDFI Program) fiscal year (FY) 2025 Funding Round.

Funding Opportunity Number: CDFI–2025–FATA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Dates:

TABLE 1—FY 2025 CDFI PROGRAM FUNDING ROUNDCRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (Eastern Time- ET)	Submission method
Last day to create an AMIS Account (all Applicants)	February 18, 2025	11:59 p.m. ET	AMIS.
Last day to enter Employer Identification Number (EIN) and Unique Entity Identifier (UEI) in AMIS (all Applicants).	February 18, 2025	11:59 p.m. ET	AMIS.
Last day to submit SF–424 Mandatory Form (Application for Federal Assistance).	February 18, 2025	11:59 p.m. ET	Electronically via *Grants.gov.*
Last day to contact CDFI Program staff	March 19, 2025	5:00 p.m. ET	Service Request via AMIS Or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	March 21, 2025	5:00 p.m. ET	Service Request via AMIS Or 202–653–0422 Or *AMIS@cdfi.treas.gov.*
Last day to submit Title VI Compliance Worksheet (all Applicants) [1].	March 21, 2025	11:59 p.m. ET	AMIS.
Last day to submit CDFI Program Application for Financial Assistance (FA) or Technical Assistance (TA).	March 21, 2025	11:59 p.m. ET	AMIS.
Last day to submit Excel Housing Production FA (HP–FA) Application.	April 4, 2025	11:59 p.m. ET	Service Request via AMIS.

[1] This requirement also applies to Subsidiary Insured Depository Institutions that will carry out award activities on behalf of Depository Institution Holding Company Applicants.

Executive Summary: Through the CDFI Program, the CDFI Fund provides (i) FA awards to Certified Community Development Financial Institutions (CDFIs) to build their financial capacity to lend to Eligible Markets and/or their Target Markets, and (ii) TA awards to build Certified and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets. All awards provided through this NOFA are subject to funding availability.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. The CDFI Program made its first awards in 1996 and the Native American CDFI Assistance (NACA) Program made its first awards in 2002.

B. Priorities: Through the CDFI Program's FA and TA awards, the CDFI Fund invests in and builds the capacity of for-profit and non-profit community-based lending organizations known as CDFIs. These organizations, Certified as CDFIs by the CDFI Fund, serve rural and urban Low-Income people, and communities across the nation that lack adequate access to affordable Financial Products and Financial Services.

C. Authorizing Statutes and Regulations: The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*) (Authorizing Statute). The regulations governing the CDFI Program are found at 12 CFR parts 1805 and 1815 (the Regulations) and set forth evaluation criteria and other program requirements. The CDFI Fund encourages Applicants to review the Regulations; this NOFA; the CDFI Program Application for Financial Assistance or Technical Assistance (the Application); all related materials and guidance documents found on the CDFI Fund's website (Application materials); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for Federal financial assistance management at 2 CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements) for a complete understanding of the program. Capitalized terms in this NOFA are defined in the Authorizing Statute, the Regulations, this NOFA, the Application, Application materials, or the Uniform Administrative Requirements. Details regarding Application content requirements are found in the Application and Application materials.

D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000): The Uniform Administrative Requirements codify financial, administrative, procurement, and program management standards that Federal award agencies must follow. When evaluating Applications, awarding agencies must evaluate the risks posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, the soundness of its business plan, history of performance, ability to achieve measurable impacts through its products and services, and audit findings. In addition, the Uniform Administrative Requirements include guidance on audit requirements and other award compliance requirements for Recipients.

E. Funding limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA.

II. Federal Award Information

A. Funding Availability:

1. FY 2025 Funding Round: Subject to final appropriations, the CDFI Fund expects to award, through this NOFA, approximately $320 million as indicated in table 2.

TABLE 2—FY 2025 FUNDING ROUND ANTICIPATED CATEGORY AMOUNTS

Funding categories (see definition in table 7 for TA or table 8 for FA)	Estimated total amount to be awarded millions) FY 2025	Award amount		Estimated number of awards FY 2025	Estimated average amount to be awarded FY 2025
		Minimum [2]	Maximum *		
Base-FA: Category I/Small and/or Emerging CDFI Assistance (SECA).	$14.8	$125,000	$700,000	48	$308,000
Base-FA: Category II/Core	101.2	$500,000, or if portfolio outstanding is less than $1,666,700 as of the most recent historic fiscal year end, then 30% of portfolio outstanding.	1,000,000	185	547,000
Persistent Poverty Counties—Financial Assistance (PPC–FA)	21.0	$100,000	400,000	137	153,000
Disability Funds—Financial Assistance (DF–FA) **	20.0	$100,000	1,000,000	20	1,000,000
Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) **.	24.0	$500,000	5,000,000	15	1,600,000
Housing Production—Financial Assistance (HP–FA) **	100.0	$1,000,000	5,000,000	50	2,000,000
TA	39.0	$10,000	150,000	260	150,000
Total	320.0			715	

[2] The FA Application Guidance defines ''the most recent historic fiscal year'' based on an Applicant's fiscal year end.

* Note that, regardless of the stated maximum award in each award category, in no case will the sum of an Applicant's Base-FA, TA, PPC–FA and HP–FA Awards in the last three years exceed $5 million.

** DF–FA, HFFI–FA, and HP–FA funding will be allocated in one competitive round between the NACA and CDFI Program NOFAs.

The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

2. Funding Availability for the FY 2025 Funding Round: Funds for the FY 2025 Funding Round are subject to change based on passage of a final FY 2025 appropriations bill; if Congress does not appropriate funds for the CDFI Program there will not be an FY 2025 Funding Round. If funds are appropriated for FY 2025, the amount of such funds may be greater or less than the amounts set forth above. The CDFI Fund reserves the right to contact Applicants to seek additional information if final FY 2025 appropriations for the CDFI Program necessitate change to any of the requirements of this NOFA. As of the date of this NOFA, the CDFI Fund is operating under a continuing funding resolution as enacted by the Continuing Appropriations and Extensions Act, 2025 (Pub. L. 118–83). The HP–FA awards are funded through interest and dividend payments and sale proceeds received under the Department of the Treasury's Emergency Capital Investment Program (ECIP). The amount available for HP–FA awards is estimated based on projected ECIP proceeds and may vary based on the actual proceeds received by the CDFI Fund.

3. Anticipated Start Date and Period of Performance: The Period of Performance for TA awards begins with the date of the award announcement and includes either (i) an Emerging CDFI Recipient's three full consecutive fiscal years after the date of the award announcement, or (ii) a Certified CDFI Recipient's two full consecutive fiscal years after the date of the award announcement, during which the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Period of Performance for FA awards begins with the date of the award announcement and includes a Recipient's three full consecutive fiscal years after the date of the award announcement, during which time the Recipient must meet the PG&Ms set forth in the Assistance Agreement.

B. Types of Awards: Through the CDFI Program, the CDFI Fund provides two types of awards: Financial Assistance (FA) and Technical Assistance (TA) awards. An Applicant may submit an Application for a TA award or an FA award under the CDFI Program, but not both. FA awards include the Base Financial Assistance (Base-FA) award and the following awards that are provided as a supplement to the Base-FA award: Healthy Food Financing Initiative-Financial Assistance (HFFI–FA), Persistent Poverty Counties-Financial Assistance (PPC–FA), Disability Funds-Financial Assistance (DF–FA), and Housing Production-Financial Assistance (HP–FA). The HFFI–FA, PPC–FA, DF–FA, and HP–FA Applications will be evaluated independently from the Base-FA Application and will not affect the Base-FA Application evaluation or Base-FA award amount. Alternatively, an Applicant may request only HP–FA by submitting an FA Application with no Base-FA award request and submitting the Excel HP–FA Application as well. Additional information on how to complete an FA Application under this circumstance is provided in the Application Guidance.

However, Applicants that qualify for the NACA Program may submit two Applications in certain circumstances: one Application (either for a TA award or an FA award, but not both) through the CDFI Program, and one Application (either for a TA award or an FA award, but not both) through the NACA Program. NACA qualified Applicants that choose to apply for awards through both the CDFI Program and the NACA Program must apply for the same type of award under both programs. For example, an Applicant that applies for an FA award under the NACA Program may apply for an FA award under the CDFI Program, but not for a TA award under the CDFI Program. NACA qualified FA Applicants that choose to apply for an FA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the FA award under the NACA Program. NACA qualified TA Applicants that choose to apply for a TA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the TA award under the NACA Program. NACA Applicants cannot receive an award under both Programs within the same funding round. Further, NACA qualified Applicants who seek to only apply for an HP–FA award with no Base-FA award can do so by submitting either a CDFI Program FA Application or a NACA Program FA Application; the FA Application should be submitted with no Base-FA award request and the additional Excel HP–FA Application. Further instructions are found in the Application Guidance. If a NACA qualified Applicant seeks to apply for HP–FA award only, they should apply through either the CDFI Program or the NACA Program, but not both. If a NACA qualified Applicant submits an eligible HP–FA only Application under one program and an eligible Application with a Base-FA award request under the other program, only the Application with the Base-FA award request will be reviewed. The HP–FA only Application will be deemed ineligible.

There are two categories of FA Applicants: Category I (SECA) and Category II (Core) (see definitions in table 8). Category II (Core) FA Applicants applying for Base-FA, PPC–FA, and/or DF–FA must provide evidence of acceptable Matching Funds [3] (see table 9 for more information), except Native American CDFIs [4] applying under this NOFA, which are exempt from the Matching Funds requirement.[5] Native American CDFIs that qualify as a Category II (Core) FA Applicant are not required to submit Matching Funds for their award requests. Additionally, the Matching Funds requirement for HFFI–FA and SECA FA Applicants was waived in the enacted FY 2024 Consolidated Appropriations Act, and the final FY 2025 appropriations are still pending. Therefore, HFFI–FA and SECA FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from SECA FA Applicants and/or HFFI–FA Applicants if Matching Funds are not waived in the final FY 2025 CDFI Program appropriations. HP–FA Applicants are not required to provide Matching Funds for HP–FA award requests, as Matching Funds are not required under the Consolidated Appropriations Act, 2021 (P.L. 116–260). TA Applicants are not required to provide Matching Funds.

1. Base-FA Awards: Base-FA awards can be in the form of loans, grants, Equity Investments, deposits, and credit union shares. The form of the Base-FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waives the Matching Funds requirement. The Matching Funds requirement was permanently waived

[3] Matching Funds shall mean funds from sources other than the Federal Government as defined in accordance with the CDFI Program Regulations at 12 CFR 1805.500.

[4] A Native American CDFI (Native CDFI) is one that Primarily Serves a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community. For purposes of this NOFA, a Native Community is defined as Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas.

[5] The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waives the Matching Funds requirement for Native American CDFIs that receive Assistance from the CDFI Fund.

for Native American CDFIs. Therefore, the Base-FA award will be in the form of a grant for Native American CDFI Applicants. Matching Funds are required at the time of Application submission for Category II (Core) Applicants (except Native American CDFIs) applying for Base-FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for Base FA awards if Matching Funds are not waived in the final FY 2025 appropriations for these Applicants. Matching Funds must be from non-Federal sources and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a Base-FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

2. Persistent Poverty Counties—Financial Assistance (PPC–FA) Awards: PPC–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that are selected to receive a Base-FA award through the CDFI Program FY 2025 Funding Round will be eligible to receive a PPC–FA award. PPC–FA awards can be in the form of loans, grants, Equity Investment, deposits, and credit union shares. The form of the PPC–FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waives the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the PPC–FA award will be in the form of a grant for Native American CDFI Applicants. Matching Funds are required at the time of Application submission for Category II (Core) Applicants (except Native American CDFIs) applying for PPC–FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for PPC–FA awards if Matching Funds are not waived in the final FY 2025 appropriations for these Applicants. Matching Funds must be from non-Federal sources and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a PPC–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

3. Disability Funds—Financial Assistance (DF–FA) Awards: DF–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the CDFI Program FY 2025 Funding Round will be eligible to receive a DF–FA award. DF–FA awards can be in the form of loans, grants, Equity Investments, deposits, and credit union shares. The form of the DF–FA award is based on the form of the Matching Funds that the Applicant includes in its Application unless Congress waives the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the DF–FA award will be in the form of a grant to Native American CDFI Applicants. Matching Funds are required for Category II (Core) Applicants (except Native American CDFIs) applying for DF–FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for DF–FA awards if Matching Funds are not waived in the final FY 2025 appropriations for these Applicants. Matching Funds must be from non-Federal sources and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a DF–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

4. Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) Awards: HFFI–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the CDFI Program FY 2025 Funding Round will be eligible to receive an HFFI–FA award. HFFI–FA awards can be in the form of loans, grants, Equity Investments, deposits, and credit union shares. The form of the HFFI–FA award is based on the form of the Matching Funds that the Applicant includes in its Application unless Congress waives the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, HFFI–FA awards will be in the form of a grant to Native American CDFI Applicants. The Matching Funds requirement for HFFI–FA Applicants was waived in the final appropriations bill for FY 2024, and the final FY 2025 appropriations are still pending. As a result, HFFI–FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from HFFI–FA Applicants if Matching Funds are not waived in the final FY 2025 CDFI Program appropriations. The CDFI Fund reserves the right, in its sole discretion, to provide an HFFI–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

5. Housing Production—Financial Assistance (HP–FA) Awards: Applicants may apply for an HP–FA award as a supplement to a Base-FA award or may apply only for an HP–FA award (without a Base-FA award). If an Applicant applies for an HP–FA award as a supplement to a Base-FA award, it must be selected to receive a Base-FA award through the FY 2025 CDFI Program Funding Round to be eligible to receive an HP–FA award. Alternatively, an Applicant may choose to apply for only an HP–FA award (with no Base-FA award) by completing an FA Application as instructed in the Application Guidance and submitting the Excel HP–FA Application as well. If an Applicant chooses to apply only for an HP–FA Award (with no Base-FA award), it will be ineligible to receive a Base-FA, PPC–FA, DF–FA, or HFFI–FA award. HP–FA awards will be provided in the form of a grant. Because HP–FA awards are funded by proceeds received from ECIP under the Consolidated Appropriations Act, 2021, HP–FA awards are not subject to the Matching Funds requirements. The CDFI Fund reserves the right, in its sole discretion, to provide an HP–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

6. TA Awards: TA is provided in the form of grants. The CDFI Fund reserves the right, in its sole discretion, to provide a TA award in an amount other than that which the Applicant requests; however, the TA award amount will not exceed the Applicant's request as stated in its Application.

C. Eligible Activities:

1. FA Awards: Base-FA, PPC–FA, DF–FA, HFFI–FA, and HP–FA award funds may be expended for activities serving Commercial Real Estate, Small Business, Microenterprise, Community Facilities, Consumer Financial Products, Consumer Financial Services, Commercial Financial Products, Commercial Financial Services, Affordable Housing, Intermediary Lending to Non-Profits and CDFIs, Climate-Focused Financing, and other

lines of business as deemed appropriate by the CDFI Fund in the following categories: (i) Financial Products; (ii) Financial Services; (iii) Loan Loss Reserves; (iv) Development Services; [6] (v) Capital Reserves; and (vi) Direct Administrative Expenses, subject to certain restrictions outlined in this section. The FA Budget is the amount of the award and must be expended in the eligible activity categories prior to the end of the Budget Period.[7] None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. All FA eligible activities must be in an Eligible Market or the Applicant's approved Target Market. Eligible Market is defined as (i) a geographic area meeting the requirements set forth in 12 CFR 1805.201(b)(3)(ii), or (ii) individuals that are Low-Income, African American, Hispanic, Native American, Native Hawaiian, Alaska Native, Other Pacific Islander, Filipino, Vietnamese, or Persons with Disabilities.

Base-FA Recipients must meet PG&Ms, which will be derived from projections and attestations provided by the Applicant in its Application, to achieve one of the following FA Objectives: (i) Increase Volume of Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market and/or Increase Volume of Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; (ii) Serve Eligible Market(s) or the Applicant's approved Target Market in New Geographic Area or Areas; (iii) Provide New Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market; and (iv) Serve New Targeted Population or Populations. FA awards may only be used for Direct Costs associated with an eligible activity; no indirect expenses are allowed. Up to 15% of the FA award may be used for Direct Administrative Expenses associated with an eligible FA activity. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Administrative Requirements, which are incurred by the Recipient to carry out the Financial Assistance. Direct Costs incurred to provide Development Services or Financial Services are not deemed to be Direct Administrative Expenses and therefore are not subject to the 15% limitation.

The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements,[8] with respect to any Direct Costs. For purposes of this NOFA, the five eligible activity categories are defined in table 3.

TABLE 3—BASE–FA, PPC–FA, DF–FA, HFFI–FA, AND HP–FA ELIGIBLE ACTIVITY CATEGORIES

FA eligible activity	FA Eligible activity definition	Eligible CDFI institution types
i. Financial Products	FA expended as loans, Equity Investments, loan guarantees, and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by Certified CDFIs and the purchase of loans originated by entities that do not have the CDFI Certification but were made to members of the Applicant's Target Market. In the case of CDFI Intermediaries, Financial Products may also include loans to CDFIs and/or Emerging CDFIs, and deposits in Insured Credit Union CDFIs, Emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs. For HFFI–FA, however, financing for prepared food outlets are not eligible activities, including the purchase of loans, loan refinancing, or any other type of financing for prepared food outlets.	All.
ii. Financial Services	FA expended for providing checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.	Regulated Institutions [9] only. Not applicable for HFFI–FA or HP–FA Recipients.
iii. Loan Loss Reserves	FA set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable or for related purposes that the CDFI Fund deems appropriate.	All.
iv. Development Services	FA expended for activities undertaken by a CDFI, its Affiliate or contractor that (i) promote community development and (ii) prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include financial or credit counseling; homeownership counseling; business planning; and management assistance.	All.
v. Capital Reserves	FA set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or providing financing, or for related purposes as the CDFI Fund deems appropriate.	Regulated Institutions only. Not applicable for DF–FA.

2. DF–FA Award: DF–FA award funds may only be expended for eligible FA activities (referenced in table 3) to directly or indirectly benefit individuals with disabilities. The DF–FA Recipient must close Financial Products for the primary purpose of directly or indirectly benefiting people with disabilities, where the majority of the DF–FA supported loans or investments benefit individuals with disabilities, in an amount equal to or greater than 85% of the total DF–FA provided. Eligible DF–FA financing activities may include, among other activities, loans to develop or purchase affordable, accessible, and safe housing; loans to provide or facilitate employment opportunities;

[6] Although some financial education for youth under 18 years old do not fall under the definition of Development Services and thus is not eligible to support Certification, the CDFI Fund allows FA award funds to be used to provide such financial education. Financial education for youth means education designed to prepare youth to engage with the financial system. This includes accessing Financial Products when they are legally able to and accessing Financial Services offered by the Applicant or a third party.

[7] Budget Period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which Recipients are authorized to expend the funds awarded.

[8] Section 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any Subsidiary or Affiliate of such entities).

[9] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

and loans to purchase assistive technology.

For the purposes of DF- FA, a person with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment, as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. 12102.

3. HFFI–FA Award: HFFI–FA award funds may only be expended for eligible FA activities referenced in table 3. The HFFI–FA investments must comply with the following guidelines:

a. Recipient must close Financial Products for Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets in its approved Target Market in an amount equal to or greater than 100% of the total HFFI Financial Assistance provided. Eligible financing activities to Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets require that the majority of the loan or investment be devoted to offering a range of Healthy Food choices, which may include, among other activities, investments supporting an existing retail store or wholesale operation upgrade to offer an expanded range of Healthy Food choices, or supporting a nonprofit organization that expands the availability of Healthy Foods in underserved areas.

b. Recipient must demonstrate that it has closed Financial Products to Healthy Food Retail Outlets located in Low-Income and Low-Access Food Areas in the Recipient's approved Target Market in an amount equal to 75% of the total HFFI Financial Assistance provided.

Definitions:

Healthy Foods: Healthy Foods include unprepared nutrient-dense foods and beverages as set forth in the USDA Dietary Guidelines for Americans 2020–2025 including whole fruits and vegetables, whole grains, fat free or low-fat dairy foods, lean meats, and poultry (fresh, refrigerated, frozen or canned). Healthy Foods should have low or no added sugars, and be low-sodium, reduced sodium, or no-salt-added. (See USDA Dietary Guidelines: *https://www.dietaryguidelines.gov*).

Healthy Food Retail Outlets: Commercial sellers of Healthy Foods including, but not limited to, grocery stores, mobile food retailers, farmers markets, retail cooperatives, corner stores, bodegas, stores that sell other food and non-food items along with a range of Healthy Foods.

Healthy Food Non-Retail Outlets: Wholesalers of Healthy Foods including, but not limited to, wholesale food outlets, wholesale cooperatives, or other non-retail food producers that supply for sale a range of Healthy Food options; entities that produce or distribute Healthy Foods for eventual retail sale, and entities that provide consumer education regarding the consumption of Healthy Foods.

Low-Income and Low-Access Food Areas: Distressed geographic areas where either a substantial number or share of residents has low access to a supermarket or large grocery store. For the purpose of satisfying this requirement, a Low-Income and Low-Access Food Area must either: (1) be a census tract determined to be a Low-Income and Low-Access Food Area by the U.S. Department of Agriculture (USDA), in its USDA Food Access Research Atlas; (2) be a census tract adjacent to a census tract determined to be a Low-Income and Low-Access Food Area by the USDA, in its USDA Food Access Research Atlas; which has a median family income less than or equal to 120% of the applicable Area Median Family Income; or (3) be a Geographic Unit as defined in 12 CFR part 1805.201(b)(3)(ii)(B), which (i) individually meets at least one of the criteria in 12 CFR part 1805.201(b)(3)(ii)(D), and (ii) has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

4. PPC–FA Award: PPC–FA award funds may only be expended for eligible FA activities referenced in table 3. The PPC–FA Recipient must close Financial Products in PPC: (1) in an Eligible Market or in the Applicant's approved Target Market and (2) in an amount equal to or greater than 100% of the total PPC–FA award. The specific counties that meet the criteria for ''persistent poverty'' can be found at: *https://www.cdfifund.gov/sites/cdfi/files/2024-05/PPC_2020_ACS_May_10_2024.xlsx*.

5. HP–FA Award: HP–FA award funds may only be expended for eligible FA activities authorized in table 3. Additionally, HP–FA award funds must comply with the following guidelines:

a. Recipient must close Financial Products that finance the production of rental Housing projects affordable to families making at or below 120% Area Median Income (AMI) and/or the production of Homeownership projects affordable to families making at or below 150% of AMI in an amount equal to or greater than 100% of the total HP–FA assistance provided to the Recipient. The CDFI Fund will prioritize funding Applications that focus on financing Homeownership and rental Housing affordable to families at or below 80% AMI and further income targeting restrictions will be specified in the Assistance Agreement based on the Recipient's Application strategy.

b. Recipient must increase the volume of housing units financed from the baseline period (Recipient's most recent three historic fiscal years) to the Performance Period, as specified in the Assistance Agreement.

c. For rental Housing, the Recipient must finance projects that have a financing gap and are projected to be completed and ready for occupancy by the end of the Period of Performance as evidenced by a certificate of occupancy or equivalent. For Homeownership, the Recipient must finance the development of new for-sale Housing and/or the acquisition and rehabilitation of for-sale Housing, where such Housing will be completed and ready for occupancy by the end of the Period of Performance as evidenced by a certificate of occupancy or equivalent.

Definitions:

Homeownership means ownership interest in a home in fee simple, or by condominium, cooperative, mutual housing, or ground lease title interest, as allowed under State law, in one- to four-unit Single-family housing, or ownership of a manufactured housing unit. The ownership interest is subject to the following additional requirements: (1) Ownership interest may not merely consist of a right of possession under a contract for deed, installment contract, or land contract pursuant to which the deed is not given until the final payment is made; and (2) Ownership interest is subject to the restrictions on affordability permitted under the Assistance Agreement and this part; mortgages, deeds of trust, or other liens or instruments securing debt on the property; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

Housing means Single-family and Multi-family residential units including, but not limited to, manufactured housing, permanent supportive housing, single-room occupancy (SRO) housing, assisted living, and group homes that are permanent in nature and not temporary, short term, transitional, or a dormitory, as further set forth by the CDFI Fund.

Multi-family housing means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, or an apartment.

Single-family housing means a one- to four- unit family residence, a condominium unit, a cooperative unit, mutual housing, a manufactured housing unit only, or the combination of a manufactured housing unit and lot.

6. TA Awards: TA award funds may be expended for the following seven eligible activity categories: (i) Compensation—Personal Services; (ii) Compensation—Fringe Benefits; (iii) Professional Service Costs; (iv) Travel Costs; (v) Training and Education Costs; (vi) Equipment; and (vii) Supplies. The TA Budget is the amount of the award and must be expended in the seven eligible activity categories before the end of the Budget Period. None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Any expenses that are prohibited by the Uniform Administrative Requirements are unallowable and are generally found in Subpart E-Cost Principles. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs. For purposes of this NOFA, the seven eligible activity categories are defined in table 4.

TABLE 4—TA ELIGIBLE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM ADMINISTRATIVE REQUIREMENTS

(i) Compensation–Personal Services.	TA paid to cover all remuneration, paid currently or accrued, for services of Applicant's employees rendered during the Period of Performance under the TA award in accordance with section 2 CFR 200.430 of the Uniform Administrative Requirements, is allowed. Any work performed directly but unrelated to the purposes of the TA award may not be paid as Compensation through a TA award. For example, the salaries for building maintenance would not carry out the purpose of a TA award and would be deemed unallowable.
(ii) Compensation—Fringe Benefits.	TA paid to cover allowances and services provided by the Applicant to its employees as Compensation in addition to regular salaries and wages, in accordance with section 2 CFR 200.431 of the Uniform Administrative Requirements, is allowed. Such expenditures are allowable as long as they are made under formally established and consistently applied organizational policies of the Applicant.
(iii) Professional Service Costs ...	TA paid to cover professional and consultant services (e.g., such as strategic and marketing plan development), rendered by persons who are members of a particular profession or possess a special skill (e.g., credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 2 CFR 200.459 of the Uniform Administrative Requirements, is allowed. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV Federal employee. Professional and consultant services must build the capacity of the CDFI. For example, professional services that provide direct Development Services to the customers do not build the capacity of the CDFI to provide those services and would not be eligible. The Applicant must comply, as applicable, with section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to payment of Professional Service Costs.
(iv) Travel Costs	TA paid to cover costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on business related to the TA award, in accordance with section 2 CFR 200.475 of the Uniform Administrative Requirements, is allowed. Travel Costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA award would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA award.
(v) Training and Education Costs	TA paid to cover the cost of training and education provided by the Applicant for employees' development, in accordance with section 2 CFR 200.473 of the Uniform Administrative Requirements, is allowed. TA can only be used to pay for training costs incurred by the Applicant's employees. Training and Education Costs may not be incurred by the Applicant's consultants.
(vi) Equipment	TA paid to cover tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $10,000, in accordance with section 2 CFR 200.1 of the Uniform Administrative Requirements, is allowed. For example, items such as office furnishings and information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to the purchase of Equipment.
(vii) Supplies	TA paid to cover tangible personal property with a per unit acquisition cost of less than $10,000, in accordance with section 2 CFR 200.1 of the Uniform Administrative Requirements, is allowed. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to the purchase of Supplies.

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, table 5 through table 8 set forth the eligibility criteria to receive an award from the CDFI Fund, along with certain definitions of terms. There are four categories of Applicant eligibility criteria: (1) CDFI Certification criteria (table 5); (2) requirements that apply to all Applicants (table 6); (3) requirements that apply to TA Applicants (table 7); and (4) requirements that apply to FA Applicants (table 8).

TABLE 5—CDFI CERTIFICATION CRITERIA DEFINITIONS

Certified CDFI	An entity that the CDFI Fund has officially notified that it meets all CDFI Certification requirements.
Emerging CDFI ..... (TA Applicants)	• A non-Certified entity that demonstrates to the CDFI Fund in its Application that it has an acceptable plan to meet CDFI Certification requirements by the end of its Period of Performance, or another date that the CDFI Fund selects. • An Emerging CDFI that has prior award(s) must comply with CDFI Certification PG&M(s) stated in its prior Assistance Agreement(s). • An Emerging CDFI selected to receive a TA award will be required to become a Certified CDFI by a date specified in the Assistance Agreement.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS

Applicant	• An Applicant must be duly organized as a legal entity (within the United States or its territories). • Only the entity that will carry out the proposed award activities may apply for an award (other than Depository Institution Holding Companies (DIHC)[10]—see below). Recipients may not create a new legal entity to carry out the proposed award activities. • The information in the Application should only reflect the activities of the Applicant, including the presentation of financial and portfolio information (other than DIHCs-see below). Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application unless it relates to the provision of Development Services. • An Applicant that applies on behalf of another organization will be rejected without further consideration, other than DIHCs (see below).
Application type and submission overview through *Grants.gov* and Awards Management Information System (AMIS).	• Applicants must submit the Required Application Documents listed in table 10. • The CDFI Fund will only accept Applications that use the official Application templates provided on the *Grants.gov* and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different systems: (1) the SF–424 in *Grants.gov* and (2) all other Required Application Documents in AMIS. • *Grants.gov* and the SF–424: o Grants.gov: Applicants must submit the Standard Form (SF) SF–424, Application for Federal Assistance. o All Applicants must register in the *Grants.gov* system to successfully submit an Application. The *Grants.gov* registration process can take 30 days or more to complete. The CDFI Fund strongly encourages Applicants to register as early as possible. o The CDFI Fund will not extend the SF–424 application deadline for any Applicant that started the *Grants.gov* registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline except in the case of a Federal Government administrative or technological error that directly resulted in a late submission of the SF–424. o The SF–424 must be submitted in *Grants.gov* on or before the deadline listed in table 1. Applicants are strongly encouraged to submit their SF–424 as early as possible in the *Grants.gov* system. o The deadline for the *Grants.gov* submission is before the AMIS submission deadline. o The SF–424 must be submitted under the CDFI Program Funding Opportunity Number for the CDFI Program Application. CDFI Program Applicants should be careful to not select the NACA Program Funding Opportunity Number when submitting their SF–424 for the CDFI Program. CDFI Program Applicants that submit their SF–424 for the CDFI Program Application under the NACA Program Funding Opportunity Number will be deemed ineligible for the CDFI Program Application. o If the SF–424 is not accepted by *Grants.gov* by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible. • AMIS and all other Required Application Documents listed in table 10: o AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund. o Applicants are only allowed one CDFI Program Application submission in AMIS. o Each Application in AMIS must be signed by an Authorized Representative. o Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. *Consultants working on behalf of the organization may not be designated as Authorized Representatives.* o Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. o All Required Application Documents must be submitted in AMIS on or before the deadline specified in table 1. The CDFI Fund will not extend the deadline for any Applicant except in the case of a Federal Government administrative or technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN).	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS). • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization. • The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account. • Applicants must enter their EIN into their AMIS profile on or before the deadline specified in table 1.
Unique Entity Identifier (UEI)	• The transition from the Dun and Bradstreet Universal Numbering System (DUNS) to UEI is a Federal, government-wide initiative. • An Applicant must apply using its UEI in *Grants.gov*. • The CDFI Fund will reject an Application submitted with the UEI of a parent or Affiliate organization. • The UEI in the Applicant's AMIS account must match the UEI in the Applicant's *Grants.gov* and SAM accounts. The CDFI Fund will reject an Application if the UEI in the Applicant's AMIS account does not match the UEI in its *Grants.gov* and SAM accounts. • Applicants must enter their UEI into their AMIS profile on or before the deadline specified in table 1.
System for Award Management (SAM).	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the Federal Government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the *Grants.gov* registration process. • Applicants that have an active SAM registration have been assigned a UEI. Applicants must also have an EIN in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF–424 in *Grants.gov*. • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the Application evaluation period, or is set to expire before September 30, 2025, and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• Each Applicant must register as an organization in AMIS and submit all Required Application Documents listed in table 10 through the AMIS system. • The Application of any organization that does not properly register in AMIS by the deadline set forth in table 1—FY 2025 CDFI Program Funding Round Critical Deadlines for Applicants—will be rejected without further consideration. • The Authorized Representative and/or Application Point of Contact must be included as ''users'' in the Applicant's AMIS account. • An Applicant that fails to properly register and update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.
501 (c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a CDFI or NACA Program award.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	• An Applicant* may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination has been issued within the time period beginning three years prior to the publication of this NOFA until the execution of the Assistance Agreement that indicates the Applicant has violated any Federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601 et seq.); the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107). • Applicants* will be required to submit the Title VI Compliance Worksheet (Worksheet) once annually to assist the CDFI Fund in determining whether Applicants are compliant with the Treasury regulations implementing Title VI of the Civil Rights Act (Title VI), set forth in 31 CFR part 22. These requirements are set forth in the United States Department of the Treasury regulations implementing Title VI located in 31 CFR part 22, Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury. • In addition, an Applicant* must be compliant with Federal civil rights requirements in order to be deemed eligible to receive an award from the CDFI Fund. The CDFI Fund will consider an Application submitted by an Applicant that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination. • The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under Federal law.
Depository Institution Holding Company Applicant.	• In the case where a Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary Insured Depository Institution, the Application must be submitted by the Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary Insured Depository Institution. • If a Depository Institution Holding Company and its Subsidiary Insured Depository Institution (through which it will carry out the activities of the award) both apply for an award under this NOFA, only the Depository Institution Holding Company will receive an award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible. • Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary Insured Depository Institution, and that the award funds will be used to support the Subsidiary Insured Depository Institution for the eligible activities outlined in the Application.
Use of award	• All awards made through this NOFA must be used to support the Applicant's activities in at least one of the FA or TA Eligible Activity Categories (see Section II. (C)). • With the exception of Depository Institution Holding Company Applicants, awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. • The Recipient of any award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.
Requested award amount	• An Applicant must state its requested award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance or default.	• If an Applicant (or Affiliate of an Applicant identified in AMIS) that is a prior Recipient or Allocatee under any CDFI Fund program: (i) has demonstrated it is in noncompliance with or default of a previous Assistance Agreement, Award Agreement, Allocation Agreement, Bond Loan Agreement, or Agreement to Guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance or default.
Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award recipient or allocatee under any CDFI Fund program if, as of the AMIS Application deadline in this NOFA, (i) the CDFI Fund has made a final determination in writing that such Applicant (or Affiliate of an Applicant identified in AMIS)is in noncompliance with or default of a previously executed Assistance Agreement, Award Agreement, Allocation Agreement, bond loan agreement, or agreement to guarantee, and (ii) the CDFI Fund has provided written notification that the Applicant is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. • Additionally, regardless of whether a sanction or remedy is imposed, the CDFI Fund will not consider an Application submitted by an Applicant if the default on a prior Allocation Agreement of the Applicant or an Affiliate occurs during the time period beginning 12 months prior to the Application deadline and ending with the FY 2025 award announcement. • The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification.	• The CDFI Fund will contact the Do Not Pay Business Center to conduct a debarment check on the Applicant. The CDFI Fund will not consider any Applicant that is debarred. • If the Do Not Pay Business Center reports that the Applicant has a pending or delinquent debt to the Federal Government, the Applicant will be required to demonstrate that it has resolved such pending or delinquent debt. Applicants that fail to demonstrate resolution of the pending or delinquent Federal debt will be found ineligible to receive an award. • In the case where a Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary Insured Depository Institution, the above debarment requirements apply both to the Depository Institution Holding Company and its Subsidiary Insured Depository Institution. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal Government.

*This requirement also applies to Subsidiary Insured Depository Institutions that will carry out award activities on behalf of Depository Institution Holding Company Applicants.

[10] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS

CDFI Certification status	(1) Emerging CDFIs (see definition in table 5), or (2) Certified CDFIs (see table 5) that meet the following SECA Applicant criteria: (a) Have total assets as of the end of the Applicant's most recent historic fiscal year in accordance with the TA Application Guidance (as stated in the Applicant's AMIS account and verified by internally prepared financial statements and/or audits) in the following amounts: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million; • Insured Credit Unions and State-Insured Credit Unions: up to $100 million; • Venture Capital Funds**: up to $5 million; • Other CDFIs: up to $5 million; OR (b) Have begun operations (as indicated by the financing activity start date field in the Applicant's AMIS account) on or after January 1, 2021. If a TA Applicant is a Certified CDFI at the time of Application but loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered for an award by the CDFI Fund.
Matching Funds	• Matching Funds documentation is not required for TA awards.
Limitation on Awards	• An Emerging CDFI may not receive a TA award if it has previously received three or more TA awards in the preceding ten fiscal years.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. • The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2024 funding round, as well as the requested FY 2025 award. The $5 million funding cap includes TA, Base-FA, PPC–FA, and HP–FA awards, but excludes DF–FA and HFFI–FA awards.
Proposed Activities	• Applicants must propose to directly undertake eligible activities with TA awards. For example, an uncertified CDFI Applicant must propose to become Certified as part of its Application and a Certified CDFI Applicant must propose activities that build its capacity to serve its Target Market or an Eligible Market. • Applicants may not propose to use a TA award to create a separate legal entity to become a Certified CDFI or otherwise carry out the TA award activities.
Regulated Institution	• Each Regulated Institution TA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''4.'' • TA Applicants with CAMELS/CAMEL ratings of ''5'' will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant, as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will not approve a TA award for an Insured Depository Institution Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CDFI Fund will not approve a TA award if the Subsidiary Insured Depository Institution has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.

** A Venture Capital Fund is an organization that predominantly invests funds in businesses, typically in the form of either Equity Investments or subordinated debt with equity features such as a revenue participation or warrants, and generally seeks to participate in the upside returns of such businesses in an effort to at least partially offset the risk of its investments.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS

CDFI Certification status	• Each FA Applicant must be a Certified CDFI as of the publication date of this NOFA in the **Federal Register**. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, both the Depository Institution Holding Company and its Subsidiary Insured Depository Institution must be Certified CDFIs as of the publication date of this NOFA in the **Federal Register**. • The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification and Data Collection Report (ACR) if the CDFI Fund has not yet made a final compliance determination. • If a Certified CDFI loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered for an award by the CDFI Fund.
Matching Funds documentation	• Native American CDFIs are not required to provide Matching Funds. • Applicants that are required to submit Matching Funds (see table 9) must submit acceptable documentation attesting that they have received or will receive Matching Funds. Applicants that do not complete the Matching Funds section in the FA Application in AMIS, documenting the source(s) of their Matching Funds, will not be evaluated. See table 9 for additional information on Matching Funds requirements for FY 2025 Funding Round. The Matching Funds requirement for Category I (SECA) FA Applicants and HFFI–FA Applicants was waived in the final FY 2024 appropriations, and the final FY 2025 appropriations are still pending. Therefore HFFI–FA and SECA FA applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2025 CDFI Program appropriations. Category II (Core) FA Applicants must document their Matching Funds in the Matching Funds section in the FA Application in AMIS. Matching Funds information provided in another format will not be considered. • Unless Congress waives the Matching Funds requirement, awards will be limited to no more than two times the amount of In-Hand or Committed Matching Funds documentation provided at the time of Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). See table 9 for the definitions of Committed and In-Hand. • Unless Congress waives the Matching Funds requirement, awards will be obligated in like form to the Matching Funds provided at time of Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). See table 9. Matching Funds ''Determination of Award Form'' for additional guidance. • Unless Congress waives the Matching Funds requirement, award payments from the CDFI Fund will require eligible dollar-for-dollar In-Hand Matching Funds for the total payment amount. Recipients will not receive a payment until 100% of their Matching Funds are In-Hand. • Unless Congress waives the Matching Funds requirement, the CDFI Fund will reduce and de-obligate the remaining balance of any award that does not demonstrate full dollar-for-dollar Matching Funds equal to the announced award amount by the end of the Matching Funds Window.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS—Continued

Consideration as a Native American CDFI.	• For consideration as a Native American CDFI under this NOFA, an FA Applicant must Primarily Serve a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community. • For purposes of this NOFA, a Native Community is defined as Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas. • Applicants that do not meet the above conditions will not be considered as a Native American CDFI under this NOFA. • The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waived the Matching Funds requirements for Native American CDFIs. Therefore, if the CDFI Fund determines that a Category II (Core) FA Applicant that attests in its Application to meeting the above conditions does not meet the criteria to be considered a Native American CDFI, the Application will be deemed ineligible for failure to provide Matching Funds.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. • The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were awarded to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2024 funding round, as well as the requested FY 2025 award. The $5 million funding cap includes TA, Base-FA, PPC–FA, and HP–FA awards but excludes DF–FA and HFFI–FA awards.
FA Category I (SECA)	• To be an eligible SECA Applicant, an Applicant must meet the following criteria: (1) Be a Certified CDFI as defined in table 5; (2) Request $700,000 or less in Base-FA award funds; AND EITHER (3) Have total assets as of the end of the Applicant's most recent historic fiscal year in accordance with the FA Application Guidance (as stated in the Applicant's AMIS account and verified by internally prepared financial statements and/or audits) in the following amounts: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million; • Insured Credit Unions and State-Insured Credit Unions: up to $100 million; • Venture Capital Funds: up to $5 million; • Other CDFIs: up to $5 million; OR • Have begun operations (as indicated by the financing activity start date field in the Applicant's AMIS account) on or after January 1, 2021.
FA Category II (Core)	• A Core Applicant must be a Certified CDFI as defined in table 5. • An Applicant that meets the SECA requirements stated above, and that requests more than $700,000 in Base-FA award funds is categorized as an FA Category II (Core) Applicant, regardless of its total assets and/or years in operation. • Such Applicants who meet SECA requirements but wish to apply as a Core FA Applicant by requesting more than $700,000 must elect to apply as a Core Applicant upon Application launch in AMIS. The CDFI Fund will not change the Application type (Core FA or SECA FA) after the Application has been launched by the Applicant.
FA Applicants with Community Partners.	• A CDFI Applicant can apply for assistance jointly with a Community Partner. The CDFI Applicant must complete the CDFI Program Application and address the Community Partnership in its business plan and other sections of the Application as specified in the Application materials. • The CDFI Applicant must be a Certified CDFI as defined in table 5. • An Application with a Community Partner must: o Describe how the CDFI Applicant and Community Partner will each participate in the partnership and how the partnership will enhance eligible activities serving the Investment Area and/or Targeted Population. o Demonstrate that the Community Partnership activities are consistent with the strategic plan submitted by the CDFI Applicant. • Assistance provided upon approval of an Application with a Community Partner shall only be entrusted to the CDFI Applicant and shall not be used to fund any activity carried out directly by the Community Partner or an Affiliate or Subsidiary thereof. • Applicants for HP–FA only (with no Base-FA request) are not eligible to apply with a Community Partner. Only Certified CDFIs may apply for HP–FA only (with no Base-FA request).
Regulated Institution	• Each Regulated Institution FA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''3.'' • FA Applicants with CAMELS/CAMEL ratings of ''4'' or ''5'' will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant, as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will not approve an FA award for an Insured Depository Institution Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CDFI Fund will not approve an FA award if the Subsidiary Insured Depository Institution has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
PPC–FA	• All PPC–FA Applicants must: o Submit a CDFI or NACA Program FA Application; o Meet all FA award eligibility requirements; o Submit the PPC–FA Application; and o Provide a PPC–FA award request amount in AMIS.
DF–FA	• All DF–FA Applicants must: o Submit a CDFI or NACA Program FA Application; o Meet all FA award eligibility requirements; o Submit the DF–FA Application; and o Provide a DF–FA award request amount in AMIS.
HFFI–FA	• All HFFI–FA Applicants must: o Submit a CDFI or NACA Program FA Application; o Meet all FA award eligibility requirements; o Submit the HFFI–FA Application; and o Provide a HFFI–FA award request amount in AMIS.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS—Continued

HP–FA	• Applicants applying for only HP–FA (with no Base-FA request) must: o Submit a CDFI or NACA Program FA Application; o Meet all FA award eligibility requirements; o Indicate intention to apply for only HP–FA in the CDFI or NACA Program FA Application; o Submit the Excel HP–FA Application; o Have a track record of having financed Housing in each of the last 3 historic fiscal years; and o Provide an HP–FA award request amount. • Applicants applying for HP–FA as a supplement to Base-FA request must: o Submit a CDFI or NACA Program FA Application; o Meet all FA award eligibility requirements; o Indicate intention to apply for both a Base-FA award and an HP–FA award in the CDFI Program or NACA Program FA Application; o Submit the Excel HP–FA Application; o Have a track record of having financed Housing in each of the last 3 historic fiscal years; and o Provide an HP–FA award request amount.

B. Matching Funds Requirements: In order to receive a Base-FA, PPC–FA, or DF–FA award, an Applicant must provide evidence of eligible dollar-for-dollar Matching Funds and attest that it can provide acceptable documentation upon the CDFI Fund's request as part of the Application, unless Congress waives the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, Native American CDFI Applicants are not required to submit Matching Funds for their award requests. HP–FA Applicants are not required to submit Matching Funds for their HP–FA award requests. The Matching Funds requirement was waived for Category I (SECA) FA Applicants and HFFI–FA Applicants in the final appropriations bill for FY 2024, and the final FY 2025 appropriations are still pending for this funding round. As a result, Category I (SECA) FA Applicants and HFFI–FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA Applicants and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2025 CDFI Program appropriations. An Applicant that represents that it has Equity Investments and/or deposits Matching Funds In-Hand at the time of Application submission must provide documentation of such as part of the Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). An Applicant that uses retained earnings as Matching Funds must provide supporting documentation of In-Hand and/or Committed Matching Funds at the time of Application submission. The CDFI Fund will review Matching Funds information, attestations, and supporting Matching Funds documentation, if applicable, prior to award payment and will pay award funds to a Recipient based upon eligible In-Hand Matching Funds. The CDFI Fund encourages Applicants to review the Regulations, the Uniform Administrative Requirements, and the Matching Funds guidance materials available on the CDFI Fund's website. Table 9 provides a summary of the Matching Funds requirements for Applicants for whom Matching Funds are required. The Matching Funds requirement for Native American CDFIs is permanently waived. Additional details are set forth in the Application materials.

TABLE 9—MATCHING FUNDS REQUIREMENTS *

In-Hand Matching Funds definition.	• Matching Funds are In-Hand when the Applicant receives payment for the Matching Funds from the Matching Funds source and has acceptable documentation that can be provided to the CDFI Fund upon request. Acceptable In-Hand documentation must show the source, form (e.g., grant, loan, deposit, and Equity Investment), amount received, and the date the funds came into physical possession of the Applicant. • The following documentation, depending on the Matching Funds type, must be provided to the CDFI Fund upon request: • loan—the loan agreement and/or promissory note; • grant—the grant letter or agreement; • Equity Investment—the stock certificate, documentation of total equity outstanding, and shareholder agreement; • retained earnings—Retained Earnings Calculator and audited financial statements or call reports from regulating entity for each fiscal year reported in the Retained Earnings Calculator; • third party in-kind contribution- evidence of receipt of contribution and valuation; • deposits—certificates of deposit agreement; • secondary capital—secondary capital agreement and disclosure and acknowledgement statement; AND • clearly legible documentation that demonstrates actual receipt of the Matching Funds including the date of the transaction and the amount, such as a copy of a check or a wire transfer statement. • Unless Congress waives the Matching Funds requirement, Applicants must provide information on their In-Hand Matching Funds in the Matching Funds section of the FA Application in AMIS (refer to table 10—Required Application Documents) at the time of Application submission. • Although Applicants are not required to provide further documentation for In-Hand Matching Funds at the time of Application submission (other than supporting documentation for retained earnings, deposits, and Equity Investments, which must be provided at the time of Application submission), they must be able to provide documentation to the CDFI Fund upon request.
Matching Funds requirements by Application type.	The following Applicants must provide evidence of acceptable Matching Funds at the time of Application: • Category II/Core FA Applicants, with the exception of Native American CDFIs, applying for Base-FA, PPC–FA, and DF–FA. The CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA Applicants and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2025 CDFI Program appropriations. TA Applicants and Native American CDFI FA Applicants are not required to provide Matching Funds. Matching Funds are also not required for award requests under HP–FA.
Amount of required match	Unless waived by Congress, Applicants must provide evidence of eligible, In-Hand, dollar-for-dollar, non-Federal Matching Funds for every award dollar to be paid by the CDFI Fund. If awarded, Applicants that do not demonstrate 100% In-Hand Matching Funds at the time of Application submission may experience a longer payment timeline.

TABLE 9—MATCHING FUNDS REQUIREMENTS *—Continued

Determination of award form ..... For awards where Congress waives the Matching Funds requirement, the form of the award will be a grant.	Unless the Matching Funds requirement is waived by Congress, awards will be made in comparable form and value to the eligible In-Hand and/or Committed Matching Funds submitted by the Applicant. For awards where Congress has waived the Matching Funds requirement, the form of the award will be a grant. • For example, if an Applicant provides documentation of eligible loan Matching Funds for $200,000 and eligible grant Matching Funds of $400,000, the CDFI Fund will obligate $200,000 of the FA award as a loan and $400,000 as a grant. • The CDFI Fund will not permit a Recipient to change the form of a loan award.
Matching Funds Window definition.	• The Applicant must receive eligible In-Hand Matching Funds between January 1, 2023 and January 15, 2026. • A Recipient must provide the CDFI Fund with all documentation demonstrating the receipt of In-Hand Matching Funds by January 31, 2026 or a later date as specified by the CDFI Fund.
Matching Funds and form of award.	• Recipients will be approved for a maximum award size of two times the total amount of eligible In-Hand and/or Committed Matching Funds included in the Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable), so long as they do not exceed the requested award amount. • The form of the Matching Funds documented in the Application determines the form of the award.
Committed Matching Funds definition.	• Matching Funds are Committed when the Applicant has entered into or received a legally binding commitment from the Matching Funds source demonstrating that the Matching Funds will be disbursed to the Applicant at a future date. • The Applicant must provide information on their Committed Matching Funds in the Matching Funds section of the FA Application in AMIS (refer to table 10—Required Application Documents) at the time of Application submission. • Although the Applicant is not required to provide further documentation for Committed Matching Funds at the time of Application submission (other than supporting documentation for retained earnings, deposits, and Equity Investments, which must be provided at the time of Application submission), it must be able to provide the CDFI Fund, upon request, acceptable written documentation showing the source, form, and amount of the Committed Matching Funds (including, in the case of a loan, the terms thereof), as well as the anticipated payment date of the Committed Matching Funds.
Limitations on Matching Funds ...	• Matching Funds must be from non-Federal sources. • Applicants cannot proffer Matching Funds that were accepted as Matching Funds for a prior award that required Matching Funds under the CDFI Program, NACA Program, or under another Federal grant or award program. • Matching Funds must comply with the Regulations. • The Matching Funds source(s) must support at least one of the eligible FA activities (see Section II (C) of this NOFA).
Rights of the CDFI Fund	• The CDFI Fund reserves the right to contact the Matching Funds source to discuss the Matching Funds and the documentation that the Applicant provided. • The CDFI Fund may grant an extension of the Matching Funds Window (defined in table 9), on a case-by-case basis, if the CDFI Fund deems it appropriate. • The CDFI Fund reserves the right to rescind all or a portion of an award requiring Matching Funds and re-allocate the rescinded award amount to other qualified Applicant(s) if a Recipient fails to provide evidence of In-Hand Matching Funds obtained during the Matching Funds Window totaling its award amount.
Matching Funds in the form of third-party in-kind contributions.	• Third party in-kind contributions are non-cash contributions (i.e., property or services) provided by non-Federal third parties to the Applicant. • Third party in-kind contributions will be deemed in the form of a grant for Matching Funds purposes. • Third party in-kind contributions may be in the form of real property, equipment, supplies, and other expendable property. The value of goods and services must directly benefit the eligible FA activities. • For third party in-kind contributions, the fair market value of goods and services must be documented as the grant match. • Applicants will be responsible for documenting the value of all in-kind contributions pursuant to the Uniform Administrative Requirements.
Matching Funds in the form of a loan.	• An award made in the form of a loan will have the following standardized terms: i. A 13-year term with semi-annual interest-only payments due in years 1 through 10, and fully amortizing payments due each year in years 11 through 13; and ii. A fixed interest rate of 4.04%, which was calculated by the CDFI Fund based on the U.S. Department of the Treasury's 10-year Treasury note. • The Applicant's Matching Funds loan(s) must: i. have a minimum of a 3-year term (loans presented as Matching Funds with less than a 3-year term will not qualify as eligible match); and ii. be from a non-Federal source.
Matching Funds in the form of Equity Investments.	• An Equity Investment source must meet the terms outlined in 12 CFR 1805.401(a): Equity: The CDFI Fund may make non-voting equity investments in a Recipient, including, without limitation, the purchase of non-voting stock. Such stock shall be transferable and, in the discretion of the CDFI Fund, may provide for convertibility to voting stock upon transfer. The CDFI Fund shall not own more than 50 percent of the equity of a Recipient and shall not control its operations. • The CDFI Fund's ownership of equity is calculated by dividing the shares owned by the CDFI Fund by the total number of shares issued by the Recipient. • The CDFI Fund reserves the right, in its sole discretion, to perform its own valuation of Equity Investment source(s) and to determine if the equity value is acceptable to the CDFI Fund.
Severe Constraints Waiver	• In the case of an Applicant demonstrating severe constraints on available sources of Matching Funds, the CDFI Fund, in its sole discretion, may provide a Severe Constraints Waiver, which permits such Applicant to comply with the Matching Funds requirements by reducing such requirements by up to 50%. • In order to be considered eligible for a Severe Constraints Waiver, an Applicant must meet all of the SECA eligibility criteria described in table 8. Instructions for requesting a Severe Constraints Waiver will be made available if required. • No more than 25% of the total funds available for obligation under this funding round may qualify for a Severe Constraints Waiver.
Ineligible Matching Funds	• Applicants will not be given the opportunity to correct or amend the Matching Funds information included in the FA Application after Application submission if the CDFI Fund determines that any portion of the Applicant's Matching Funds is ineligible.
Use of Matching Funds from a prior CDFI Program Recipient.	If an Applicant offers Matching Funds documentation from an organization that was a prior Recipient under the CDFI Program or NACA Program, the Applicant must be able to prove to the CDFI Fund's satisfaction that such funds do not consist, in whole or in part, of CDFI Program funds, NACA Program funds, or other Federal funds.

TABLE 9—MATCHING FUNDS REQUIREMENTS *—Continued

Matching Funds in the form of retained earnings.	• Retained earnings are eligible for use as Matching Funds in an amount equal to the CDFI Fund's calculation of: i. the increase in retained earnings that occurred over any one of the Applicant's fiscal years within the Matching Funds Window; or ii. the annual average of such increases that occurred over any three consecutive fiscal years of the Applicant with at least one of the fiscal years occurring within the Matching Funds Window. • Any increases as measured in (i) and (ii) will be adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for prior Federal awards. • Retained earnings will be matched in the form of a grant. • Depository Institution Holding Company Applicants must provide call reports for the Depository Institution Holding Company in order to verify their retained earnings, even if the requested award will support its Subsidiary Insured Depository Institution.
Special rule for Regulated Institutions.	• A Regulated Institution's retained earnings are eligible for use as Matching Funds in an amount equal to the CDFI Fund's calculation of: i. the increase in retained earnings that occurred over any one of the Applicant's fiscal years within the Matching Funds Window; or ii. the annual average of such increases that occurred over any three consecutive fiscal years of the Applicant with at least one of the fiscal years occurring within the Matching Funds Window; or iii. the entire retained earnings that have been accumulated since the inception of the Applicant, as provided in the Regulations. • Any increases as measured in (i) and (ii) will be adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for prior Federal awards. • If option (iii) is used for Insured Credit Unions or State-Insured Credit Unions, the Applicant must increase its member and/or non-member shares and/or total loans outstanding by an amount equal to the amount of retained earnings committed as Matching Funds. • This increase (1) will be measured on a quarterly basis from March 31, 2025; (2) must occur by December 31, 2026; and (3) will be based on amounts reported in the Applicant's National Credit Union Administration (NCUA) form 5300 Call Report, or equivalent. • The CDFI Fund will assess the likelihood of this increase during the Application review process. • An award will not be made to any Applicant that has not demonstrated in the relevant NCUA form 5300 call reports or equivalent that it has increased shares and/or total loans outstanding by at least 25% of the requested FA award amount (including all awards requiring Matching Funds) between December 31, 2023, and December 31, 2024. • The Matching Funds are not In-Hand until the Recipient has increased its member and/or non-member shares, deposits and/or total loans outstanding by the amount of retained earnings since inception that are being used as Matching Funds. • If option (iii) is used for Insured Depository Institutions or Depository Institution Holding Companies, the Applicant, or its Subsidiary Insured Depository Institution (in the case of a Depository Institution Holding Company), must increase deposits and/or total loans outstanding by an amount equal to the amount of retained earnings committed as Matching Funds. Depository Institution Holding Company Applicants must use the call reports of the Subsidiary Insured Depository Institution that the requested FA award will support. • This increase (1) will be measured on a quarterly basis from March 31, 2025; (2) must occur by December 31, 2026; and (3) will be based on amounts reported in the call report. • The CDFI Fund will assess the likelihood of this increase during the Application review process. • An award will not be made to any Applicant that has not demonstrated in the relevant call reports that it has increased deposits and/or total loans outstanding by at least 25% of the requested FA award amount (including all awards requiring Matching Funds) between December 31, 2023, and December 31, 2024. • The Matching Funds are not In-Hand until the Recipient has increased its deposits and/or total loans outstanding by the amount of retained earnings since inception that are being used as Matching Funds. • All regulated Applicants utilizing the option (iii) should refer to the Retained Earnings Guidance included in the Retained Earnings Calculator Excel Workbook found on the CDFI Fund's website.

* The requirements set forth in table 9 are applicable to Category II (Core) FA Applicants, with the exception of Native American CDFIs, applying for Base-FA, PPC–FA, and DF–FA. The Matching Funds requirements were permanently waived for Native American CDFIs. Therefore, the requirements set forth in table 9 are not applicable to Native American CDFI Applicants for the FY 2025 Funding Round. Category I (SECA) FA Applicants and HFFI–FA Applicants are not required to submit Matching Funds at the time of Application submission, but the CDFI Fund reserves the right to request Matching Funds from these Applicants if the Matching Funds requirement is not waived in the final FY 2025 CDFI Program appropriations. Matching Funds are not required for award requests under HP–FA.

IV. Application and Submission Information

A. Address to Request an Application Package: Application materials can be found on the CDFI Fund's website at *https://www.cdfifund.gov/cdfi.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.* Paper versions of Application materials will only be provided if an Applicant cannot access the CDFI Fund's website.

B. Content and Form of Application Submission: All Applications must be prepared using the English language, and calculations must be computed in U.S. dollars. The following table lists the Required Application Documents for the FY 2025 Funding Round. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Financial data, portfolio, and activity information provided in the Application should only include the Applicant's activities. Information submitted must accurately reflect the Applicant's activities (other than Depository Institution Holding Companies—see table 6).

TABLE 10—REQUIRED APPLICATION DOCUMENTS

Application documents	Applicant type	Submission format
Active AMIS Account	All Applicants	AMIS.
SF–424	All Applicants	Fillable PDF in *Grants.gov*.
Title VI Compliance Worksheet *	All Applicants	AMIS.

TABLE 10—REQUIRED APPLICATION DOCUMENTS—Continued

Application documents	Applicant type	Submission format
CDFI Program Application Components: • Funding Application Detail • Data, Charts, and Narrative sections as listed in AMIS and outlined in Application materials. • Matching Funds (FA Core Applicants, with the exception of Native American CDFIs).	All Applicants	AMIS.
PPC–FA Application Components: • Funding Application Detail • Narratives • AMIS Charts	PPC–FA Applicants	AMIS.
DF–FA Application Components: • Funding Application Detail • Narratives • AMIS Charts	DF–FA Applicants	AMIS.
HFFI–FA Application Components: • Funding Application Detail • Narratives • AMIS charts	HFFI–FA Applicants	AMIS.
HP–FA Application Components: The Excel HP–FA Application will not be completed as part of the AMIS Application. The Application component is anticipated to be released at a later date than the other Application components under this NOFA and will be due at a later date, as noted in table 1. Applicants will be provided at least 30 days to complete the Excel HP–FA Application which will be an Excel spreadsheet that contains two sections:. • Narratives • Tables	HP–FA Applicants	Attachment to AMIS Service Request.
Attachments to the Application:		
Key Staff Resumes	All Applicants	PDF or Word document in AMIS.
Organizational Chart	All Applicants	PDF in AMIS.
Completed, final audited financial statements for the Applicant's Three Most Recent Historic Fiscal Years.	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Unaudited financial statements for Applicant's Three Most Recent Historic Years (required if available, and only if audited financial statements are not available).	FA and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Community Partnership Agreement	FA Applicants, if applicable	PDF or Word document in AMIS.
Retained Earnings Calculator Excel Workbook (required only if using retained earnings as Matching Funds).	FA Core Applicants, if applicable	Excel Workbook in AMIS. Applicants must submit CDFI Fund-provided template in the original format (.xlsm).
Call reports for each fiscal year reported in the Retained Earnings Calculator	FA Core Applicants: Regulated Institutions that are using retained earnings as Matching Funds.	PDF in AMIS.
Equity Investment Matching Funds Documentation	FA Core Applicants: For-profit CDFIs that are using In-Hand Equity Investment(s) as Matching Funds.	PDF or Word document in AMIS.
Deposits Matching Funds Documentation	FA Core Applicants: Regulated Institutions that are using In-Hand Deposits as Matching Funds.	PDF or Word document in AMIS.

*This requirement also applies to Subsidiary Insured Depository Institutions that will carry out award activities on behalf of Depository Institution Holding Company Applicants.

C. Application Submission: The CDFI Fund has a multiple step process that requires the submission of Required Application Documents (listed in table 10) on separate deadlines and locations. The SF–424 must be submitted through *Grants.gov* and all other Required Application Documents through the CDFI Fund's Award Management Information System (AMIS). The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved in writing by the CDFI Fund. The deadlines for submitting the relevant Application materials are listed in table 1.

First, all Applicants must register in the *Grants.gov* system to successfully submit the SF–424. The *Grants.gov* registration process can take 45 days or longer to complete and the CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as early as possible (refer to the following link: *https://www.grants.gov/register*). Since the *Grants.gov* registration process requires Applicants to have a UEI and an EIN, Applicants without these required items should allow for additional time to complete the *Grants.gov* registration process. The CDFI Fund will not extend the Application deadline for any Applicant that started the *Grants.gov* registration process but did not complete it by the deadline. An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not maintain the *Grants.gov* system.

Each Application must be signed by a designated Authorized Representative in AMIS before it can be submitted. The Excel HP–FA Application must be submitted via a Service Request in AMIS by an Authorized Representative of the Applicant or an Application Point of Contact. Applicants must ensure that an Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only a designated Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. If an AMIS

Application is not submitted by an Authorized Representative or Application Point of Contact, the Application will be deemed ineligible.

D. Unique Entity Identifier (UEI): The UEI has replaced the Dun and Bradstreet Data Universal Numbering System (DUNS) number. The UEI, generated in the System for Award Management (*SAM.gov*), has become the official identifier for doing business with the Federal Government. This transition allows the Federal Government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the Federal Government. If an entity is registered in *SAM.gov* today, its UEI has already been assigned and is viewable in *SAM.gov*, including inactive registrations. New registrants will be assigned a UEI as part of their SAM registration.

E. System for Award Management (SAM): Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application. When accessing *SAM.gov*, users will be asked to create a *Login.gov* user account (if they don't already have one). Going forward, users will use their *Login.gov* username and password every time when logging into *SAM.gov*. Registration in SAM is required as part of the *Grants.gov* registration process. The SAM registration process may take one month or longer to complete. An original, signed notarized letter identifying the authorized entity administrator for the entity associated with the UEI is required. This requirement is applicable to new entities registering in SAM or an existing registration where there is no existing entity administrator. Existing entities with registered entity administrators do not need to submit an annual notarized letter. Applicants without an EIN should allow for additional time as an Applicant cannot register in SAM without an EIN. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a Federal awarding agency. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit the SF–424 in *Grants.gov* or Application in AMIS by the applicable Application deadlines. These restrictions also apply to organizations that have not yet received a UEI or EIN by the established deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

TABLE 11—GRANTS.GOV REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Obtain an EIN	Internal Revenue Service (IRS)	Two (2) Weeks.*
Register in *SAM.gov*	System for Award Management (*SAM.gov*). This step will include obtaining a UEI..	Four (4) Weeks.*
Register in *Grants.gov*	*Grants.gov*	One (1) Week.**

* Applicants are advised that the stated durations are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account, has not yet received a UEI or EIN, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a UEI, an EIN, and is already registered in *SAM.gov*.

F. Submission Instructions

1. Submission Deadlines: Table 1 provides the critical deadlines for the FY 2025 Funding Round.

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424, Application for Federal Assistance through the *Grants.gov* system, under the CDFI Program Funding Opportunity Number by the applicable deadline. All other Required Application Documents (listed in table 10) must be submitted through the AMIS website by the applicable deadline. Note, the Excel HP–FA Application will be submitted separately via a Service Request in AMIS by the date specified in table 1. Applicants must submit the SF–424 prior to submitting the Application in AMIS. If the SF–424 is not successfully accepted by *Grants.gov* by the deadline, the CDFI Fund will not review the Application submitted in AMIS, and the Application will be deemed ineligible.

a. *Grants.gov Submission Information:* Each Applicant will receive an email from *Grants.gov* immediately after submitting the SF–424 confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within 48 hours, the Applicant will receive a second email, which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by contacting the helpdesk at *Grants.gov* directly. The Application material submitted in AMIS is not officially accepted by the CDFI Fund until *Grants.gov* has validated the SF–424.

b. *AMIS Submission Information:* AMIS is a web-based system where Applicants will directly enter their Application information and add the required attachments listed in table 10. The Base-FA, PPC–FA, DF–FA, HFFI–FA, and TA Application components will all be submitted as part of a single AMIS Application. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The Excel HP–FA Application will be a fillable Excel spreadsheet and must be separately submitted as an attachment to a Service Request in AMIS. The CDFI Fund strongly encourages Applicants to allow for sufficient time to review and complete all Required Application Documents listed in table 10 and remedy any issues prior to the Application deadline. Each Application submitted in AMIS must be signed by an Authorized Representative listed in the organization's AMIS account before it can be submitted. Applicants must ensure that the

Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only an Authorized Representative or an Application Point of Contact may submit an Application. If an Application is not submitted by an Authorized Representative or Application Point of Contact, the Application will be deemed ineligible. Applicants may only submit one Base-FA or TA Application under the CDFI Program. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple Application submissions.

3. Late Submission or AMIS Account Creation: The CDFI Fund will not accept an Application if the SF–424 is not submitted and accepted by *Grants.gov* by the SF–424 deadline listed in table 1. Additionally, the CDFI Fund will not accept an Application if it is not signed by an Authorized Representative and submitted in AMIS by the Application deadline or if an Applicant did not submit the required Title VI Compliance Worksheet by the Application deadline listed in table 1. The CDFI Fund will also not accept an Application from an Applicant that failed to create an AMIS account by the deadlines specified in table 1. The CDFI Fund will not accept the Excel HP–FA Application if it is not submitted via a Service Request in AMIS by the deadline in table 1. In these cases, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible.

However, in cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424, from submitting the AMIS Application, from submitting the Excel HP–FA Application, from creating an AMIS account, or from submitting the Title VI Compliance Worksheet by the deadlines stated in this NOFA, Applicants are provided the opportunity to submit a written request for acceptance of late submissions. Be aware that unexpected delay in a Federal Government process does not in and of itself constitute a Federal Government administrative or technological error. The CDFI Fund will only approve the late submission of the SF–424, the AMIS Application, the Excel HP–FA Application, the Title VI Compliance worksheet, or the late creation of an AMIS account if the Applicant demonstrates that an unexpected delay was the direct result of a Federal Government administrative or technological error.

a. Creation of AMIS Account: In cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from creating an AMIS account by the required deadline, the Applicant must submit a written request for approval to create its AMIS account after the deadline, and include documentation of the error, no later than two business days after the AMIS account creation deadline. The CDFI Fund will not respond to requests for creating an AMIS account after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program or an email to *cdfihelp@cdfi.treas.gov* with a subject line of ''AMIS Account Creation Deadline Extension Request.''

b. SF–424 Late Submission: In cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424 by the required deadline, the Applicant must submit a written request for acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that time period. Applicants must submit late SF–424 submission requests to the CDFI Fund via an AMIS Service Request to the CDFI Program with a subject line of ''Late SF–424 Submission Request.''

c. Title VI Compliance Worksheet Late Submission: In cases where a Federal Government administrative or technological error directly precluded an Applicant from submitting the Title VI Compliance Worksheet by the required deadline, the Applicant must submit a written request for approval to submit the Worksheet after the deadline, and include documentation of the error, no later than two business days after the Title VI Compliance Worksheet submission deadline. The CDFI Fund will not respond to requests for submitting a Title VI Compliance Worksheet after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program with a subject line of ''CDFI Program—Title VI Compliance Worksheet Deadline Extension Request.''

d. AMIS Application Late Submission, including Late Excel HP–FA Application Submission: In cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from submitting the Application in AMIS by the required deadline, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS Service Request to the CDFI Program with a subject line of ''Late Application Submission Request.''

G. Funding Restrictions: Base-FA, PPC–FA, DF–FA, HFFI–FA, HP–FA, and TA awards are limited by the following:

1. Base-FA Awards:

a. A Recipient shall use Base-FA award funds only for the eligible activities described in Section II. (C)(1) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, Base-FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. Base-FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay Base-FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

2. PPC–FA Awards:

a. A Recipient shall use PPC–FA award funds only for the eligible activities described in Section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, PPC–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. PPC–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay PPC–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

3. DF–FA Awards:

a. A Recipient shall use DF–FA award funds only for the eligible activities described in Section II. (C)(2) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, DF–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. DF–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay DF–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

4. HFFI–FA Awards:

a. A Recipient shall use HFFI–FA award funds only for the eligible activities described in Section II. (C)(4) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, HFFI–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HFFI–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HFFI–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

5. HP–FA Awards:

a. A Recipient shall use HP–FA award funds only for the eligible activities described in Section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, HP–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HP–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HP–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

6. TA Awards:

a. A Recipient shall use TA award funds only for the eligible activities described in Section II. (C)(3) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, TA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. TA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay TA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

V. Application Review Information

A. Criteria: If the Applicant has submitted an eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Administrative Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or risk that its Application will be rejected. The CDFI Fund will review the Base-FA, DF–FA, PPC–FA, HFFI–FA, HP–FA, and TA Applications in accordance with the process below. All internal and external reviewers will complete the CDFI Fund's conflict of interest process.

1. Base-FA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application using a five-step review process illustrated in the sections below. Applicants that meet the minimum criteria will advance to the next step in the review process. Applicants applying as a Community Partnership must describe the partnership in the Application pursuant to the requirements set forth in table 8 and will be evaluated in accordance with the review process described below.

a. Step 1: Eligibility Review: The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to Section III of this NOFA.

b. Step 2: Financial Analysis and Compliance Risk Evaluation:

i. Step 2: Financial Analysis: For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in table 8, each Regulated Institution FA Applicant (including a Subsidiary Insured Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant) must have a CAMELS/CAMEL rating of at least ''3'' and/or no significant material concerns from its regulator. Each Insured Depository Institution Applicant and each Subsidiary Insured Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant must have a CRA assessment rating of at least ''Satisfactory.''

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using financial information provided by the Applicant. For the financial analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the

analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to Step 3. Applicants that receive an initial Total Financial Composite Score of four (4) or five (5) will be re-evaluated and re-scored by CDFI Fund staff. If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to Step 3.

ii. Step 2: Compliance Risk Evaluation: For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application, as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI Fund staff review, the Applicant will not advance to Step 3.

c. Step 3: Business Plan Review: Applicants that proceed to Step 3 will be evaluated on the soundness of their comprehensive business plan. Two external non-CDFI Fund Reviewers will conduct the Step 3: Business Plan Review. Reviewers will evaluate the Application sections listed in table 12. All Applications will be reviewed in accordance with standard reviewer evaluation materials. At the conclusion of the Step 3 evaluation, Applications will be ranked based on Total Business Plan Scores, in descending order from highest Total Business Plan Score to lowest Total Business Plan Score. Each category of Applicant type (Core and SECA) will be ranked separately. An amount up to but not exceeding the highest scoring 60% of Core Applicants in the Core Applicant pool and an amount up to, but not exceeding, the highest scoring 70% of SECA Applicants in the SECA Applicant pool will progress to Step 4. Within each category of Applicant type (Core and SECA) respectively, if a tie in Total Business Plan Scores would prevent an Applicant from advancing to Step 4, all Applicants with the same score will progress to Step 4. Lastly, the CDFI Fund may consider the geographic diversity of Applicants based on primary geographic market served (Major Urban Area, Micropolitan Area, Minor Urban Area, and Rural Area) when determining the Step 4 Applicant pool.

Based on funding availability for Core and SECA Base-FA Applicant types, the CDFI Fund reserves the right to limit the number of Applicants that progress from Step 3 to Step 4 to ensure that the CDFI Program can meaningfully vary award amounts among Applicants with different Step 4 Policy Objective scores, while maintaining minimum award amounts specified in table 2. In cases where funding availability is not sufficient to progress all Applicants within the top 60% of the Core Applicant pool and within the top 70% of the SECA Applicant pool from Step 3 to Step 4, priority will be given to Applicants that score highest on the Total Business Plan Score in each Applicant type (Core and SECA).

Applicants who request only an HP–FA award (with no Base-FA award) will be evaluated in a separate pool from the Core and SECA Base-FA Applicant types, utilizing the criteria outlined in table 12. This pool will combine any HP–FA only Applications under both the CDFI Program and the NACA Program. The Step 3 review questions under these criteria will be modified to reflect the fact that Applications requesting only HP–FA without Base-FA will not have an FA Objective. This review will be completed by CDFI Fund or other Federal staff, rather than external reviewers. Upon completion of the Step 3: Business Plan Review, the Applications requesting only an HP–FA award without a Base-FA award will be ranked according to Step 3 score. The CDFI Fund will forward the same percentage of HP–FA only applications to Step 4 as the percentage of the CDFI Program Core Applicant pool requesting Base-FA forwarded to Step 4. For example, if the CDFI Fund forwards the highest scoring 60% of the CDFI Program Core Applicant pool requesting Base-FA to Step 4, and it received 8 Applications requesting only HP–FA (across both the CDFI and NACA Programs), it will multiply 8 by 60% to calculate 4.8 and forward five Applicants to Step 4, as five is the closest whole number to 4.8.

TABLE 12—STEP 3: BASE-FA BUSINESS PLAN REVIEW SCORING CRITERIA

Base-FA application sections	Possible score	Score needed to advance
Mission and Community Needs	Scored as a component of the other Base-FA Application Sections.	N/A.
Business Strategy	12	N/A.
Market and Competitive Analysis	7	N/A.
Products and Services	12	N/A.
Management and Track Record	12	N/A.
Growth and Projections	7	N/A.
Total Business Plan Score	50	Core Applicants: Up to, but not exceeding, top 60% of all Core Applicants. SECA Applicants: Up to, but not exceeding, top 70% of all SECA Applicants.

d. Step 4: Policy Objective Review: The CDFI Fund internal reviewers will evaluate each Application to determine its ability to meet policy objectives of the CDFI Fund. Each Applicant will be evaluated in each of the categories listed in table 13 and will receive a Total Policy Objective Review Score on a scale of one (1) to five (5), with one (1) being the highest score. Applicants are then grouped according to Total Policy Objective Review Scores. For Applications requesting only HP–FA (with no Base-FA request), the Step 4 policy objective review will be conducted using the same categories listed in table 13. Where appropriate, the evaluation criteria for reviewers will be modified to reflect the fact that Applications requesting only HP–FA without Base-FA will not have an FA Objective.

The CDFI Fund also conducts a due diligence review for Applicants that

includes an analysis of programmatic risk factors including, but not limited to: history of performance in managing Federal awards (including timeliness of reporting and compliance); ability to meet FA Objectives selected by Base-FA Applicants in their Applications; reports and findings from audits; and ability to effectively implement Federal requirements, each of which could impact the Total Policy Objective Review Score. For Applications requesting only HP–FA (with no Base-FA), the due diligence review will consist of all of the above components except the FA Objective due diligence review; due diligence related to the Application's HP–FA strategy will be conducted as part of the HP–FA Application review.

TABLE 13—STEP 4: BASE-FA POLICY REVIEW SCORING CRITERIA

Section	Possible scores	High score	Score needed to advance
Economic Distress	1, 2, 3, 4, or 5	1	N/A.
Economic Opportunities	1, 2, 3, 4, or 5	1	N/A.
Community Collaboration	1, 2, 3, 4, or 5	1	N/A.
Total Policy Objective Review Composite Score	1, 2, 3, 4, or 5	1	All Scores Advance.

e. Step 5: Award Amount Determination: The CDFI Fund determines an award amount for each Application based on the Step 4 Total Policy Objective Review Score, the Applicant's request amount, and on certain other factors, including, but not limited to, the Applicant's deployment track record, minimum award size, and funding availability. Applicants may have award amounts reduced from the requested award amount or not funded as a result of this analysis. Based on funding availability for Core, SECA, and/or NACA Base-FA Applicant types, the CDFI Fund reserves the right to not award all Applicants that advance to Step 5. In cases where funding availability is not sufficient to award all Applications, priority will be given to Applicants that score highest on the Step 4: Policy Objective Review in each Applicant type Category (Core and SECA). For Core FA Applicants, the award cannot exceed 30% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end in accordance with the FA Application Guidance. For SECA FA Applicants, the award cannot exceed 75% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end in accordance with the FA Application Guidance, or the minimum award size as noted in table 2, whichever is greater.

2. HFFI–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HFFI–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application sections listed in table 14 and assign a Total HFFI- FA Score up to 60 points. The CDFI Fund will make awards to the highest scoring Applicants first. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base-FA award will not be considered for a HFFI–FA award.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an HFFI–FA award. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund may reduce awards sizes from requested amounts based on certain variables, including but not limited to, an Applicant's deployment track record, total portfolio outstanding, or compliance with prior HFFI–FA awards. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

TABLE 14—STEP 4 HFFI–FA APPLICATION SCORING CRITERIA

Sections	Possible score
Target Market Profile	10 points
Healthy Food Financial Products	10 points
Projected HFFI–FA Activities	15 points
HFFI Track Record	20 points
Management Capacity for Providing Healthy Food Financing	5 points
Total HFFI–FA Score	60 points

3. PPC–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate the PPC–FA request of each PPC–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. PPC–FA requests are not scored. PPC–FA award amounts will be determined based on the total number of eligible Applicants and funding availability, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's total portfolio outstanding, historical track record of deployment in PPC, pipeline of projects in PPC, minimum award size, and funding availability. Applicants that fail to receive a Base-FA award will not be considered for a PPC–FA award.

4. DF–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each DF–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application and assign a Total DF–FA Score on a scale of one (1) to three (3), with one (1) being the highest score. Applicants are then grouped according to Total DF–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base-FA award will not be considered for a DF–FA award. Award amounts will be determined on the basis of the Total DF–FA Score, the Applicant's requested amount, and on certain factors,

including but not limited to, an Applicant's deployment track record, total portfolio outstanding, minimum award size, and funding availability. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

TABLE 15—STEP 3 DF–FA APPLICATION SCORING CRITERIA

Section	Possible scores	High score
DF–FA Narrative Questions	1, 2, or 3	1
Total DF–FA Score	1, 2, or 3	1

5. HP–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HP–FA Application that progresses to Step 4 of the review process. The reviewer will evaluate the Application and assign a Total HP–FA Score on a scale of one (1) to three (3), with one (1) being the highest score, based on the Applicant's projected financing activity supporting housing production, the extent it intends to target 51% or more of Homeownership and rental Housing to families with incomes at 80% AMI or below, its track record of financing housing, its projected timeline for Housing to be completed, and the effectiveness of its strategy to mitigate any risks. Applicants are then grouped according to Total HP–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that would not qualify for an award based on Step 4 Total Policy Objective Review Score and due diligence evaluation will not be considered for an HP–FA award. Applicants that request an HP–FA award as a supplement a Base-FA award must be selected to receive a Base-FA award to be considered for an HP–FA award. Award amounts will be determined based on the Total HP–FA Score, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's deployment track record, total portfolio outstanding, minimum award size, proximity to the $5 million over three years award cap, geographies served, and funding availability. The CDFI Fund may reduce an Applicant's award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

6. TA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application to determine its eligibility pursuant to Section III of this NOFA. If the Application satisfies the eligibility criteria, the CDFI Fund will conduct the TA Business Plan Review in two parts. Emerging CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part I of the TA Business Plan Review to progress to Part II of the TA Business Plan Review. Emerging CDFI Applicants that receive a rating of High Risk in Part I of the TA Business Plan Review will not be considered for an award. Part I of the TA Business Plan Review is not applicable for Certified CDFI Applicants. Emerging CDFI and Certified CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part II of the TA Business Plan Review to be considered for an award. Applicants that receive a rating of High Risk in Part II of the TA Business Plan Review will not be considered for an award. An Applicant that is a Certified CDFI will be evaluated on the demonstrated need for a TA award to build the CDFI's capacity, further the Applicant's strategic goals, and achieve impact within the Applicant's Target Market. An Applicant that is an Emerging CDFI will be evaluated on the Applicant's demonstrated capability and plan to achieve CDFI Certification within three years, or if a prior Recipient, the CDFI Certification PG&M stated in its prior Assistance Agreement. An Applicant that is an Emerging CDFI will also be evaluated on its demonstrated need for a TA award to build the CDFI's capacity and further its strategic goals. The CDFI Fund will rate each part of the TA Business Plan Review as indicated in table 16.

TABLE 16—TA BUSINESS PLAN REVIEW

Business plan review component	Applicant type	Ratings
Part I:		
Primary Mission	Emerging CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Financing Entity	Emerging CDFI Applicants.	
Target Market	Emerging CDFI Applicants.	
Accountability	Emerging CDFI Applicants.	
Development Services	Emerging CDFI Applicants.	
Part II:		
Target Market Needs & Strategy	Emerging and Certified CDFI Applicants.	Low Risk, Medium Risk, or High Risk.
Organizational Capacity	Emerging and Certified CDFI Applicants.	
Management Capacity	Emerging and Certified CDFI Applicants.	

Each TA Application will be evaluated by one internal CDFI Fund reviewer. The Business Plan Review of all Applications will be reviewed in accordance with CDFI Fund standard reviewer evaluation materials.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an award. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing Federal

awards (including timeliness of reporting and compliance), reports and findings from audits, and the Applicant's ability to effectively implement Federal requirements. The CDFI Fund will also evaluate the compliance risk of each Applicant using information provided in the Application, as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI staff review, the Applicant will not be considered for an award. The CDFI Fund will also evaluate the Applicant's ability to meet CDFI Certification criteria of being a legal entity and a non-government entity. Award amounts may be reduced as a result of the due diligence analysis in addition to consideration of the Applicant's funding request and similar factors. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

6. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the Depository Institution Holding Company and the Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns (including any concerns for Subsidiary Insured Depository Institutions carrying out the activities of an award on behalf of a Depository Institution Holding Company), the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

7. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Recipients which are non-regulated CDFIs are financially and managerially sound and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

8. Consideration of the Three-Year Award Cap: The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. Base-FA, TA, PPC–FA, and HP–FA are expected to be considered in this determination, based on existing statutory authority and past appropriations bill language. DF–FA and HFFI–FA were excluded from consideration towards the three-year award cap in the enacted FY 2024 Consolidated Appropriations Act; however, the final FY 2025 appropriations are still pending. Thus, the CDFI Fund reserves the right to include FY 2025 DF–FA and HFFI–FA awards in calculating the three-year award cap if these programs are not excluded in the final FY 2025 CDFI Program appropriations. The CDFI Fund may reduce award amounts or deny certain supplemental awards if necessary to stay under the $5 million award cap for a Recipient.

B. Anticipated Award Announcement: The CDFI Fund anticipates making the CDFI Program award announcement before September 30, 2025. However, the anticipated award announcement date is subject to change without notice.

C. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are final, and there is no right to appeal decisions.

D. External Non-CDFI Fund Reviewers: All external non-CDFI Fund reviewers are selected based on criteria that includes a professional background in community and economic development finance, and experience reviewing the financial statements of all CDFI institution types. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive an email ''notice of award'' notification from the CDFI Fund stating that its Application has been approved for an award. Each Applicant not selected for an award will receive an email stating that a debriefing notice has been provided in its AMIS account.

B. Assistance Agreement: Each Applicant selected to receive an award must enter into an Assistance Agreement with the CDFI Fund in order to receive a payment(s). The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the: (i) award amount; (ii) award type; (iii) award uses; (iv) eligible use of award funds; (v) PG&Ms; and (vi) reporting requirements. FA Assistance Agreements have three-year Periods of Performance. TA Assistance Agreements have two-year Periods of Performance for Certified CDFIs and three-year Periods of Performance for Emerging CDFIs.

1. Certificate of Good Standing: All FA and TA Recipients that are not Regulated Institutions will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Recipient's jurisdiction of formation prior to closing. This certificate can often be acquired online on the secretary of state website for the Recipient's jurisdiction of formation and must generally be dated within 180 days prior to the Federal Award Date of the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing no later than 60 days after they submit their Applications.

2. Closing: Pursuant to the Assistance Agreement, there will be an initial closing at which point the Assistance Agreement and related documents will be properly executed and delivered, and an initial payment of FA or TA may be made. FA Recipients that are subject to the Matching Funds requirement will

not receive a payment until 100% of their Matching Funds are In-Hand. The first payment is the estimated amount of the award that the Recipient states in its Application that it will use for eligible FA or TA activities in the first 12 months after the award announcement. The first payment request amount entered in the Application must be greater than zero. The CDFI Fund reserves the right to increase the first payment amount on any award to ensure that any subsequent payments are at least $25,000 for FA and $5,000 for TA awards.

The CDFI Fund will minimize the time between the Recipient incurring costs for eligible activities and award payment(s) in accordance with the Uniform Administrative Requirements. Advanced payments for eligible activities will occur no more than one year in advance of the Recipient incurring costs for the eligible activities. Following the initial closing, there may be subsequent closings involving additional award payments. Any documentation in addition to the Assistance Agreement that is connected with such subsequent closings and payments shall be properly executed and timely delivered by the Recipient to the CDFI Fund.

3. Requirements Prior to Entering into an Assistance Agreement: If, prior to entering into an Assistance Agreement, information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects the Recipient's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation of the Application; indicates that the Recipient is not in compliance with any requirement listed in the Uniform Administrative Requirements; indicates that the Recipient is not in compliance with a term or condition of any prior Award Agreement, Assistance Agreement, and/or Allocation Agreement from the CDFI Fund; indicates the Recipient has failed to execute and return a prior round Assistance Agreement to the CDFI Fund within the CDFI Fund's deadlines; or indicates fraud or mismanagement on the Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Assistance Agreement, signed by the Authorized Representative of the Recipient, and/or provide the CDFI Fund with any requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA pending the criteria described in table 17.

TABLE 17—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements.	• If a Recipient received a prior award or allocation under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, as of the date of the notice of award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a payment of award, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. • If such a prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the award made under this NOFA. • Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete, nor that it met reporting requirements.
Failure to maintain CDFI Certification.	• An FA Recipient must be a Certified CDFI. • If an FA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA. • If a TA Recipient is a Certified CDFI at the time of award announcement, it must maintain CDFI Certification. • If a Certified CDFI TA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA.
Pending resolution of noncompliance or default.	• The CDFI Fund will delay entering into an Assistance Agreement with a prior Recipient or allocatee (or Affiliate of the Recipient identified in AMIS) that has pending noncompliance or default issues with any of its previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee. • If said prior Recipient or allocatee is unable satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and/or rescind the notice of award and the award made under this NOFA.
Noncompliance or default status	• If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient (or Affiliate of the Recipient identified in AMIS) is noncompliant or found in default with any previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee, and the CDFI Fund has provided written notification that the Recipient is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may delay entering into an Assistance Agreement until the Recipient has cured the noncompliance and/or default by taking actions the CDFI Fund has specified within such specified timeframe. Additionally, regardless of whether a sanction or remedy is imposed, the CDFI Fund will not consider an Application submitted by an Applicant if the default on a prior Allocation Agreement of the Applicant or an Affiliate occurs during the time period beginning 12 months prior to the Application deadline and execution of the FY 2025 Assistance Agreement. If the Recipient is unable to cure the noncompliance and/or default within the specified timeframe, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Compliance with Federal civil rights requirements.	• If, within the period starting three years prior to this NOFA and through the date of the Assistance Agreement, the Recipient received a final determination, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient violated any Federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination. • If the Recipient is unable to satisfactorily resolve the Title VI noncompliance issues, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. • The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under Federal law.

TABLE 17—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT—Continued

Requirement	Criteria
Do Not Pay	• The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal Government. • If the Do Not Pay Business Center reports that the Recipient has a pending or delinquent debt to the Federal Government, the Recipient will be required to demonstrate that it has resolved such pending or delinquent debt. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to demonstrate resolution of the pending or delinquent Federal debt.
Safety and soundness	• If it is determined the Recipient is, or will be, incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve its safety and soundness prior to entering into an Assistance Agreement.

C. Reporting

1. Reporting requirements: On an annual basis during the Period of Performance, the CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components (Annual Reporting Requirements):

TABLE 18—ANNUAL REPORTING REQUIREMENTS *

Financial Statement Audit Report (Non-profit Recipient including Insured Credit Unions and State-Insured Credit Unions).	A Non-profit Recipient (including Insured Credit Unions and State-Insured Credit Unions) must submit a Financial Statement Audit (FSA) Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Recipient to conduct or arrange for additional audits not otherwise required under Uniform Administrative Requirements or otherwise prepared at the request of the Recipient or parties other than the CDFI Fund.
Financial Statement Audit Report (For-Profit Recipient).	For-profit Recipients must submit an FSA Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Financial Statement Audit Report (Depository Institution Holding Company and Insured Depository Institution).	If the Recipient is a Depository Institution Holding Company or an Insured Depository Institution, it must submit an FSA Report in AMIS.
Single Audit Report (Non-Profit Recipients, if applicable).	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Administrative Requirements (see 2 CFR Subpart F-Audit Requirements) if it expends $1,000,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR Subpart F-Audit Requirements in the Uniform Administrative Requirements) and optionally through AMIS.
Federal Financial Report/OMB Standard Form 425 (SF–425).	The Recipient must annually submit the SF–425 Federal Financial Report to the CDFI Fund through AMIS to disclose how much of the CDFI Program award funds were expended during the Federal Government's fiscal year of October 1 through September 30.
Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary Insured Depository Institution, the Depository Institution Holding Company must submit all uses in a Uses of Award Report.
Shareholders Report	If the Assistance is in the form of an Equity Investment, the Recipient must submit shareholder information to the CDFI Fund showing the class, series, number of shares and valuation of capital stock held or to be held by each shareholder. The Shareholders Report must be submitted for as long as the CDFI Fund is an equity holder. The Shareholders Report is submitted through AMIS.
Performance Progress Report	The Recipient must submit the Performance Progress Report through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary Insured Depository Institution, the Depository Institution Holding Company must submit all deployed activity in a Performance Progress Report.
Transaction Level Report (TLR)	The Recipient must submit a TLR to the CDFI Fund through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary Insured Depository Institution, the Depository Institution Holding Company must create and submit the TLR for this award. The Subsidiary Insured Depository Institution does not submit and create a TLR related to this award. The full-length TLR completed by FA Recipients is not required for TA Recipients. However, TA Recipients who are Certified CDFIs must complete the abbreviated TLR through AMIS as a requirement of CDFI Certification.
Annual Certification and Data Collection Report (ACR).	TA Recipients that are Certified at the time of award announcement and all FA Recipients must submit the ACR to the CDFI Fund through AMIS per the ACR reporting schedule. If a TA Recipient is a Certified CDFI at the time of the award announcement, it must also submit the abbreviated TLR in conjunction with its ACR to the CDFI Fund through AMIS as per the ACR and abbreviated TLR reporting schedule. If a TA Recipient is an uncertified CDFI at the time of award announcement, it must submit the ACR and abbreviated TLR to the CDFI Fund through AMIS subsequent to obtaining CDFI Certification as per the ACR and abbreviated TLR reporting schedule.

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/residents of Distressed Communities in AMIS, Applicants should not include the following PII for the individuals who received the Financial Products or Financial Services in AMIS or in the supporting documentation (*i.e.,* name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number, etc.). This information should be redacted from all supporting documentation.

Each Recipient is responsible for the timely and complete submission of the Annual Reporting Requirements. The CDFI Fund reserves the right to require Recipients to take training on how to accurately complete any reporting required pursuant to the Assistance Agreement. The CDFI Fund reserves the right to contact the Recipient and additional entities or signatories to the Assistance Agreement to request additional information and/or documentation. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements of the Assistance Agreement and to assess the impact of the CDFI Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements, including increasing the scope and frequency of reporting, if it determines it to be appropriate and necessary; however, such reporting requirements

will be modified only after notice to Recipients.

2. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the Federal award. These systems must be sufficient to permit the preparation of reports required by the CDFI Fund to ensure compliance with the terms and conditions of the CDFI Program, including the tracing of award funds to a level of expenditures adequate to establish that such award funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.

The cost principles used by Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles and must provide for adequate documentation to support costs charged to the CDFI Program award. In addition, the CDFI Fund will require Recipients to: maintain effective internal controls; comply with applicable statutes, regulations, and the Assistance Agreement; evaluate and monitor compliance; take appropriate action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA is published through the date listed in table 1. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS Service Request to the CDFI Program, Certification, Compliance Monitoring and Evaluation, or IT Help Desk. The CDFI Fund will post on its website responses to reoccurring questions received about the NOFA and Application. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *https://www.cdfifund.gov.* Table 19 lists CDFI Fund contact information:

TABLE 19—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
CDFI Program	Service Request via AMIS	202–653–0421, option 1	*cdfihelp@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
CDFI Certification	Service Request via AMIS	202–653–0423	*OCPECert@cdfi.treas.gov.*
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*
Grants.gov Help Desk	N/A	(800) 518–4726	*support@grants.gov.*
SAM.gov (Federal Service Desk)	N/A	(866) 606–8220	*https://sam.gov/.*

B. Information Technology Support: For IT assistance, the preferred method of contact is to submit a Service Request within AMIS. For the Service Request, select ''Technical Issues'' from the Program dropdown menu of the Service Request. People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll-free number).

C. Communication with the CDFI Fund: The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative, therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations.

D. Revisions to Federal Funding Accountability and Transparency Act of 2006: Each Applicant that does not have an exception related to reporting subaward and executive compensation information under 2 CFR part 170 must have the necessary processes and systems in place to comply with reporting requirements should they receive an award.

E. Civil Rights and Equal Employment Opportunity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs or activities is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of race, color, religion, national origin, age, sex, marital status, familial status, disability and/or reprisal, s/he may file a complaint with: Director, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania Ave, NW, Washington, DC 20230 or (202) 622–1160 (not a toll-free number).

F. Whistleblower Protections: An employee of a Recipient or Subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The Recipient and Subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

G. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the Federal award in a manner to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal law, and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application

information otherwise required. Pursuant to the Paperwork Reduction Act, the CDFI Program, and NACA Program Applications have been assigned the following control number: 1559–0021.

B. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, visit the CDFI Fund's website at *https://www.cdfifund.gov.*

Authority: 12 U.S.C. 4701, et seq; 12 CFR parts 1805 and 1815; 2 CFR part 200.

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2025–01322 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) or Technical Assistance (TA) awards under the Native American CDFI Assistance (NACA Program) fiscal year (FY) 2025 Funding Round.

Funding Opportunity Number: CDFI–2025–NACA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.012.

Dates:

TABLE 1—FY 2025 NACA PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
Last day to create an AMIS Account (all Applicants)	February 18, 2025	11:59 p.m. ET	AMIS.
Last day to enter Employer Identification Number (EIN) and Unique Entity Identifier (UEI) in AMIS (all Applicants).	February 18, 2025	11:59 p.m. ET	AMIS.
Last day to submit SF–424 Mandatory Form (Application for Federal Assistance).	February 18, 2025	11:59 p.m. ET	Electronically via *Grants.gov.*
Last day to contact NACA Program staff	March 19, 2025	5:00 p.m. ET	Service Request via AMIS Or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	March 21, 2025	5:00 p.m. ET	Service Request via AMIS Or 202–653–0422 Or *AMIS@cdfi.treas.gov.*
Last day to submit Title VI Compliance Worksheet (all Applicants) [1].	March 21, 2025	11:59 p.m. ET	AMIS.
Last day to submit NACA Program Application for Financial Assistance (FA) or Technical Assistance (TA).	March 21, 2025	11:59 p.m. ET	AMIS.
Last day to submit Excel Housing Production FA (HP–FA) Application.	April 4, 2025	11:59 p.m. ET	Service Request via AMIS.

Executive Summary: Through the NACA Program, the Community Development Financial Institutions (CDFI) Fund provides (i) FA awards to Certified Community Development Financial Institutions (CDFIs) serving Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas (collectively, ''Native Communities'') to build their financial capacity to lend to Eligible Markets and/or their Target Markets, and (ii) TA awards to build Certified, and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets, and Sponsoring Entities' ability to create Certified CDFIs that serve Native Communities. All awards provided through this NOFA are subject to funding availability.

[1] This requirement also applies to Subsidiary Insured Depository Institutions that will carry out the activities on behalf of Depository Institution Holding Company Applicants.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. The Native American CDFI Assistance (NACA) Program made its first awards in 2002, after the CDFI Program began making awards in 1996.

B. Priorities: Through the NACA Program's FA and TA awards, the CDFI Fund invests in and builds the capacity of for-profit and non-profit community-based lending organizations known as CDFIs. These organizations, Certified as CDFIs by the CDFI Fund, serve Native Communities.

C. Authorizing Statutes and Regulations: The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*) (Authorizing Statute). The regulations governing the NACA Program are found at 12 CFR parts 1805 and 1815 (the Regulations) and are used by the CDFI Fund to govern, in general, the NACA Program, setting forth evaluation criteria and other program requirements. The CDFI Fund encourages Applicants to review the Regulations; this NOFA; the NACA Program Application for Financial Assistance or Technical Assistance (the Application); all related materials and guidance documents found on the CDFI Fund's website (Application materials); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for Federal financial assistance management at 2 CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements) for a complete understanding of the NACA Program. Capitalized terms in this NOFA are defined in the Authorizing Statute, the Regulations, this NOFA, the Application, Application materials, or the Uniform

Administrative Requirements. Details regarding Application content requirements are found in the Application and Application materials.

D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000): The Uniform Administrative Requirements codify financial, administrative, procurement, and program management standards that Federal award agencies must follow. When evaluating Applications, awarding agencies must evaluate the risks posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, the soundness of its business plan, history of performance, ability to achieve measurable impacts through its products and services, and audit findings. In addition, the Uniform Administrative Requirements include guidance on audit requirements and other award compliance requirements for Recipients.

E. Funding limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is anticipated to be available through this NOFA to other CDFI Fund initiatives that are designed to benefit Native Communities, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

II. Federal Award Information

A. Funding Availability:

1. FY 2025 Funding Round: Subject to final appropriations, the CDFI Fund expects to award, through this NOFA, approximately $28 million specifically for NACA through Base-FA, PPC–FA, and TA, as indicated in table 2. NACA Applicants may also access the supplemental funding programs of DF–FA, HFFI, and HP–FA, though NACA Applicants compete with CDFI Program Applicants for these funds. There is not a set-aside for NACA under these supplemental programs.

TABLE 2—FY 2025 FUNDING ROUND ANTICIPATED CATEGORY AMOUNTS

Funding categories (see definition in table 7 for TA or table 8 for FA)	Estimated total amount to be awarded (millions) FY 2025	Award amount		Estimated number of awards FY 2025	Estimated average amount to be awarded FY 2025
		Minimum	Maximum *		
Base-FA	$22.2	$150,000	$1,500,000	27	$822,000
Persistent Poverty Counties—Financial Assistance (PPC–FA)	2.8	100,000	400,000	10	280,000
TA	3.0	10,000	200,000	15	200,000
Total (Base-FA, PPC–FA, and TA)	28.0			52	
Disability Funds—Financial Assistance (DF–FA) **	20.0	100,000	1,000,000	20	1,000,000
Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) **	24.0	500,000	5,000,000	15	1,600,000
Housing Production—Financial Assistance (HP–FA) **	100.0	1,000,000	*5,000,000	50	2,000,000

* Note that, regardless of the stated maximum award in each award category, in no case will the sum of an Applicant's Base-FA, TA, PPC–FA and HP–FA Awards in the last three years exceed $5 million.

** DF–FA, HFFI–FA, and HP–FA funding will be allocated in one competitive round between the NACA and CDFI Program NOFAs.

The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

2. Funding Availability for the FY 2025 Funding Round: Funds for the FY 2025 Funding Round are subject to change based on passage of a final FY 2025 appropriations bill; if Congress does not appropriate funds for the NACA Program there will not be an FY 2025 Funding Round. If funds are appropriated for FY 2025, the amount of such funds may be greater or less than the amounts set forth above. The CDFI Fund reserves the right to contact Applicants to seek additional information in the event that final FY 2025 appropriations for the NACA Program necessitate change to any of the requirements of this NOFA. As of the date of this NOFA, the CDFI Fund is operating under a continuing funding resolution as enacted by the Continuing Appropriations and Extensions Act, 2025 (Pub. L. 118–83). The HP–FA awards are funded through interest and dividend payments and sale proceeds received under the Department of the Treasury's Emergency Capital Investment Program (ECIP). The amount available for HP–FA awards is estimated based on projected ECIP proceeds and may vary based on the actual proceeds received by the CDFI Fund.

3. Anticipated Start Date and Period of Performance: The Period of Performance for TA awards begins with the date of the award announcement and includes either (i) an Emerging CDFI Recipient's three full consecutive fiscal years after the date of the award announcement, or (ii) a Certified CDFI Recipient's two full consecutive fiscal years after the date of the award announcement, or (iii) a Sponsoring Entity Recipient's four full years after the date of the award announcement, during which the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Period of Performance for FA awards begins with the date of the award announcement and includes a Recipient's three full consecutive fiscal years after the date of the award announcement, during which time the Recipient must meet the PG&Ms set forth in the Assistance Agreement.

B. Types of Awards: Through the NACA Program, the CDFI Fund provides two types of awards: Financial Assistance (FA) and Technical Assistance (TA) awards. An Applicant may submit an Application for a TA award or an FA award under the NACA Program, but not both. FA awards include the Base Financial Assistance (Base-FA) award and the following awards that are provided as a supplement to the Base-FA award: Healthy Food Financing Initiative-Financial Assistance (HFFI–FA), Persistent Poverty Counties-Financial Assistance (PPC–FA), Disability Funds-Financial Assistance (DF–FA), and Housing Production-Financial Assistance (HP–FA). The HFFI–FA, PPC–FA, DF–FA, and HP–FA Applications will be evaluated independently from the Base-FA Application and will not affect the Base-FA Application evaluation or Base-FA award amount. Alternatively, an Applicant may request only HP–FA by submitting an FA Application with no Base-FA award request and submitting the Excel HP–FA Application as well. Additional information on how to

complete an FA Application under this circumstance is provided in the Application Guidance.

However, Applicants that qualify for the NACA Program may submit two Applications in certain circumstances: one Application (either for a TA award or an FA award, but not both) through the CDFI Program, and one Application (either for a TA award or an FA award, but not both) through the NACA Program. NACA qualified Applicants that choose to apply for awards through both the CDFI Program and the NACA Program must apply for the same type of award under both programs. For example, an Applicant that applies for an FA award under the NACA Program may apply for an FA award under the CDFI Program, but not for a TA award under the CDFI Program. NACA qualified FA Applicants that choose to apply for an FA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the FA award under the NACA Program. NACA qualified TA Applicants that choose to apply for a TA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the TA award under the NACA Program. NACA Applicants cannot receive an award under both Programs within the same funding round. Further, NACA qualified Applicants who seek to only apply for an HP–FA award with no Base-FA award can do so by submitting either a CDFI Program FA Application or a NACA Program FA Application; the FA Application should be submitted with no Base-FA award request and the additional Excel HP–FA Application. Further instructions are found in the Application Guidance. If a NACA qualified Applicant seeks to apply for HP–FA award only, they should apply through either the CDFI Program or the NACA Program, but not both. If a NACA qualified Applicant submits an eligible HP–FA only Application under one program and an eligible Application with a Base-FA award request under the other program, only the Application with the Base-FA award request will be reviewed. The HP–FA only Application will be deemed ineligible.

The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waived the Matching Funds [2] requirement for Native American CDFIs,[3] and as a result, Native American CDFI FA Applicants are not required to provide Matching Funds. HP–FA Applicants are not required to provide Matching Funds for HP–FA award requests, as Matching Funds are not required under the Consolidated Appropriations Act, 2021 (Pub. L. 116–260). TA Applicants are not required to provide Matching Funds.

1. Base-FA Awards: Base-FA awards are provided in the form of a grant. The CDFI Fund reserves the right, in its sole discretion, to provide a Base-FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

2. Persistent Poverty Counties—Financial Assistance (PPC–FA) Awards: PPC–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that are selected to receive a Base-FA award through the NACA Program FY 2025 Funding Round will be eligible to receive a PPC–FA award. PPC–FA awards are provided in the form of a grant. The CDFI Fund reserves the right, in its sole discretion, to provide a PPC–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

3. Disability Funds—Financial Assistance (DF–FA) Awards: DF–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the NACA Program FY 2025 Funding Round will be eligible to receive a DF–FA award. DF–FA awards are provided in the form of a grant to Native American CDFIs. The CDFI Fund reserves the right, in its sole discretion, to provide a DF–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

4. Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) Awards: HFFI–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the NACA Program FY 2025 Funding Round will be eligible to receive an HFFI–FA award. HFFI–FA awards are provided in the form of a grant to Native American CDFIs. The CDFI Fund reserves the right, in its sole discretion, to provide an HFFI–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

5. Housing Production—Financial Assistance (HP–FA) Awards: Applicants may apply for an HP–FA award as a supplement to a Base-FA award or may apply only for an HP–FA award (without a Base-FA award). If an Applicant applies for an HP–FA award as a supplement to a Base-FA award, it must be selected to receive a Base-FA award through the FY 2025 NACA Program Funding Round to be eligible to receive an HP–FA award. Alternatively, an Applicant may choose to apply for only an HP–FA award (with no Base-FA award) by completing an FA Application as instructed in the Application Guidance and submitting the Excel HP–FA Application as well. If an Applicant chooses to apply only for an HP–FA Award (with no Base-FA award), it will be ineligible to receive a Base-FA, PPC–FA, DF–FA, or HFFI–FA award. HP–FA awards will be provided in the form of a grant. Because HP–FA awards are funded by proceeds received from ECIP under the Consolidated Appropriations Act, 2021, HP–FA awards are not subject to the Matching Funds requirements. The CDFI Fund reserves the right, in its sole discretion, to provide an HP–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

6. TA Awards: TA is provided in the form of grants. The CDFI Fund reserves the right, in its sole discretion, to provide a TA award in an amount other than that which the Applicant requests; however, the TA award amount will not exceed the Applicant's request as stated in its Application.

C. Eligible Activities:

1. FA Awards: Base-FA, PPC–FA, DF–FA, HFFI–FA, and HP–FA award funds may be expended for activities serving Commercial Real Estate, Small Business, Microenterprise, Community Facilities, Consumer Financial Products, Consumer Financial Services, Commercial Financial Products, Commercial Financial Services, Affordable Housing, Intermediary Lending to Non-Profits and CDFIs, Climate-Focused Financing, and other lines of business as deemed appropriate by the CDFI Fund in the following categories: (i) Financial Products; (ii) Financial Services; (iii) Loan Loss

[2] Matching Funds shall mean funds from sources other than the Federal Government as defined in accordance with the CDFI Program Regulations at 12 CFR 1805.500.

[3] A Native American CDFI (Native CDFI) is one that Primarily Serves a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community.

Reserves; (iv) Development Services; [4] (v) Capital Reserves; and (vi) Direct Administrative Expenses, subject to certain restrictions outlined in this section. The FA Budget is the amount of the award and must be expended in the five eligible activity categories prior to the end of the Budget Period.[5] None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. All FA eligible activities must be in an Eligible Market or the Applicant's approved Target Market. Eligible Market is defined as (i) a geographic area meeting the requirements set forth in 12 CFR 1805.201(b)(3)(ii), or (ii) individuals that are Low-Income, African American, Hispanic, Native American, Native Hawaiian, Alaska Native, Other Pacific Islander, Filipino, Vietnamese, or Persons with Disabilities.

Base-FA Recipients must meet PG&Ms, which will be derived from projections and attestations provided by the Applicant in its Application, to achieve one of the following FA Objectives: (i) Increase Volume of Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market and/or Increase Volume of Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; (ii) Serve Eligible Market(s) or the Applicant's approved Target Market in New Geographic Area or Areas; (iii) Provide New Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market; and (iv) Serve New Targeted Population or Populations. At the end of each year of the Period of Performance, 50% or more of the Financial Products closed by NACA Recipients must be in Native Communities. FA awards may only be used for Direct Costs associated with an eligible activity; no indirect expenses are allowed. Up to 15% of the FA award may be used for Direct Administrative Expenses associated with an eligible FA activity. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Administrative Requirements, which are incurred by the Recipient to carry out the Financial Assistance. Direct Costs incurred to provide Development Services or Financial Services are not deemed to be Direct Administrative Expenses and therefore are not subject to the 15% limitation.

The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements,[6] with respect to any Direct Costs. For purposes of this NOFA, the five eligible activity categories are defined in table 3.

TABLE 3—BASE–FA, PPC–FA, DF–FA, HFFI–FA, AND HP–FA ELIGIBLE ACTIVITY CATEGORIES

FA eligible activity	FA eligible activity definition	Eligible CDFI institution types
i. Financial Products	FA expended as loans, Equity Investments, loan guarantees, and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by Certified CDFIs and the purchase of loans originated by entities that do not have the CDFI Certification but were made to members of the Applicant's Target Market. In the case of CDFI Intermediaries, Financial Products may also include loans to CDFIs and/or Emerging CDFIs, and deposits in Insured Credit Union CDFIs, Emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs. For HFFI–FA, however, financing for prepared food outlets are not eligible activities, including the purchase of loans, loan refinancing, or any other type of financing for prepared food outlets.	All.
ii. Financial Services	FA expended for providing checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.	Regulated Institutions [7] only. Not applicable for HFFI–FA or HP–FA Recipients.
iii. Loan Loss Reserves	FA set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable or for related purposes that the CDFI Fund deems appropriate.	All.
iv. Development Services	FA expended for activities undertaken by a CDFI, its Affiliate or contractor that (i) promote community development and (ii) prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include financial or credit counseling; homeownership counseling; business planning; and management assistance.	All.
v. Capital Reserves	FA set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or providing financing, or for related purposes as the CDFI Fund deems appropriate.	Regulated Institutions only. Not applicable for DF–FA.

2. DF–FA Award: DF–FA award funds may only be expended for eligible FA activities (referenced in table 3) to directly or indirectly benefit individuals with disabilities. The DF–FA Recipient must close Financial Products for the primary purpose of directly or indirectly benefiting people with disabilities, where the majority of the DF–FA supported loans or investments benefit individuals with disabilities, in an amount equal to or greater than 85% of the total DF–FA provided. Eligible DF–FA financing activities may include, among other activities, loans to develop or purchase affordable, accessible, and safe housing; loans to provide or facilitate employment opportunities;

[4] Although some financial education for youth under 18 years old do not fall under the definition of Development Services and thus is not eligible to support Certification, the CDFI Fund allows FA award funds to be used to provide such financial education. Financial education for youth means education designed to prepare youth to engage with the financial system. This includes accessing Financial Products when they are legally able to and accessing Financial Services offered by the Applicant or a third party.

[5] Budget Period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which Recipients are authorized to expend the funds awarded.

[6] § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any Subsidiary or Affiliate of such entities).

[7] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

and loans to purchase assistive technology.

For the purposes of DF–FA, a person with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment, as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. 12102.

3. HFFI–FA Award: HFFI–FA award funds may only be expended for eligible FA activities referenced in table 3. The HFFI–FA investments must comply with the following guidelines:

a. Recipient must close Financial Products for Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets in its approved Target Market in an amount equal to or greater than 100% of the total HFFI Financial Assistance provided. Eligible financing activities to Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets require that the majority of the loan or investment be devoted to offering a range of Healthy Food choices, which may include, among other activities, investments supporting an existing retail store or wholesale operation upgrade to offer an expanded range of Healthy Food choices, or supporting a nonprofit organization that expands the availability of Healthy Foods in underserved areas.

b. Recipient must demonstrate that it has closed Financial Products to Healthy Food Retail Outlets located in Low-Income and Low-Access Food Areas in the Recipient's approved Target Market in an amount equal to 75% of the total HFFI Financial Assistance provided.

Definitions:

Healthy Foods: Healthy Foods include unprepared nutrient-dense foods and beverages as set forth in the USDA Dietary Guidelines for Americans 2020–2025 including whole fruits and vegetables, whole grains, fat free or low-fat dairy foods, lean meats, and poultry (fresh, refrigerated, frozen or canned). Healthy Foods should have low or no added sugars, and be low-sodium, reduced sodium, or no-salt-added. (See USDA Dietary Guidelines: *https://www.dietaryguidelines.gov*).

Healthy Food Retail Outlets: Commercial sellers of Healthy Foods including, but not limited to, grocery stores, mobile food retailers, farmers markets, retail cooperatives, corner stores, bodegas, stores that sell other food and non-food items along with a range of Healthy Foods.

Healthy Food Non-Retail Outlets: Wholesalers of Healthy Foods including, but not limited to, wholesale food outlets, wholesale cooperatives, or other non-retail food producers that supply for sale a range of Healthy Food options; entities that produce or distribute Healthy Foods for eventual retail sale, and entities that provide consumer education regarding the consumption of Healthy Foods.

Low-Income and Low-Access Food Areas: Distressed geographic areas where either a substantial number or share of residents has low access to a supermarket or large grocery store. For the purpose of satisfying this requirement, a Low-Income and Low-Access Food Area must either: (1) be a census tract determined to be a Low-Income and Low-Access Food Area by the U.S. Department of Agriculture (USDA), in its USDA Food Access Research Atlas; (2) be a census tract adjacent to a census tract determined to be a Low-Income and Low-Access Food Area by the USDA, in its USDA Food Access Research Atlas; which has a median family income less than or equal to 120% of the applicable Area Median Family Income; or (3) be a Geographic Unit as defined in 12 CFR part 1805.201(b)(3)(ii)(B), which (i) individually meets at least one of the criteria in 12 CFR part 1805.201(b)(3)(ii)(D), and (ii) has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

4. PPC–FA Award: PPC–FA award funds may only be expended for eligible FA activities referenced in table 3. The PPC–FA Recipient must close Financial Products in PPC: (1) in an Eligible Market or in the Applicant's approved Target Market and (2) in an amount equal to or greater than 100% of the total PPC–FA award. The specific counties that meet the criteria for ''persistent poverty'' can be found at: *https://www.cdfifund.gov/sites/cdfi/files/2024-05/PPC_2020_ACS_May_10_2024.xlsx*.

5. HP–FA Award: HP–FA award funds may only be expended for eligible FA activities authorized in table 3. Additionally, HP–FA award funds must comply with the following guidelines:

a. Recipient must close Financial Products that finance the production of rental Housing projects affordable to families making at or below 120% Area Median Income (AMI) and/or the production of Homeownership projects affordable to families making at or below 150% of AMI in an amount equal to or greater than 100% of the total HP–FA assistance provided to the Recipient. The CDFI Fund will prioritize funding Applications that focus on financing Homeownership and rental Housing affordable to families at or below 80% AMI and further income targeting restrictions will be specified in the Assistance Agreement based on the Recipient's Application strategy.

b. Recipient must increase the volume of housing units financed from the baseline period (Recipient's most recent three historic fiscal years) to the Performance Period, as specified in the Assistance Agreement.

c. For rental Housing, the Recipient must finance projects that have a financing gap and are projected to be completed and ready for occupancy by the end of the Period of Performance as evidenced by a certificate of occupancy or equivalent. For Homeownership, the Recipient must finance the development of new for-sale Housing and/or the acquisition and rehabilitation of for-sale Housing, where such Housing will be completed and ready for occupancy by the end of the Period of Performance as evidenced by a certificate of occupancy or equivalent.

Definitions:

Homeownership means ownership interest in a home in fee simple, or by condominium, cooperative, mutual housing, or ground lease title interest, as allowed under State law, in one- to four-unit Single-family housing, or ownership of a manufactured housing unit. The ownership interest is subject to the following additional requirements: (1) Ownership interest may not merely consist of a right of possession under a contract for deed, installment contract, or land contract pursuant to which the deed is not given until the final payment is made; and (2) Ownership interest is subject to the restrictions on affordability permitted under the Assistance Agreement and this part; mortgages, deeds of trust, or other liens or instruments securing debt on the property; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

Housing means Single-family and Multi-family residential units including, but not limited to, manufactured housing, permanent supportive housing, single-room occupancy (SRO) housing, assisted living, and group homes that are permanent in nature and not temporary, short term, transitional, or a dormitory, as further set forth by the CDFI Fund.

Multi-family housing means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, or an apartment.

Single-family housing means a one- to four-unit family residence, a condominium unit, a cooperative unit, mutual housing, a manufactured housing unit only, or the combination of a manufactured housing unit and lot.

6. TA Awards: TA award funds may be expended for the following eight eligible activity categories: (i) Compensation—Personal Services; (ii) Compensation—Fringe Benefits; (iii) Professional Service Costs; (iv) Travel Costs; (v) Training and Education Costs; (vi) Equipment; (vii) Supplies; and (viii) Incorporation Costs. Only Sponsoring Entities may use TA award funds for Incorporation Costs. The TA Budget is the amount of the award and must be expended in the eight eligible activity categories before the end of the Budget Period. None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Any expenses that are prohibited by the Uniform Administrative Requirements are unallowable and are generally found in Subpart E—Cost Principles. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs. For purposes of this NOFA, the eight eligible activity categories are defined in table 4.

TABLE 4—TA ELIGIBLE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM ADMINISTRATIVE REQUIREMENTS

(i) Compensation—Personal Services.	TA paid to cover all remuneration paid currently or accrued, for services of Applicant's employees rendered during the Period of Performance under the TA award, in accordance with section 2 CFR 200.430 of the Uniform Administrative Requirements, is allowed. Any work performed directly but unrelated to the purposes of the TA award may not be paid as Compensation through a TA award. For example, the salaries for building maintenance would not carry out the purpose of a TA award and would be deemed unallowable.
(ii) Compensation—Fringe Benefits.	TA paid to cover allowances and services provided by the Applicant to its employees as Compensation in addition to regular salaries and wages, in accordance with section 2 CFR 200.431 of the Uniform Administrative Requirements, is allowed. Such expenditures are allowable, as long as they are made under formally established and consistently applied organizational policies of the Applicant.
(iii) Professional Service Costs ...	TA paid to cover professional and consultant services (*e.g.,* such as strategic and marketing plan development), rendered by persons who are members of a particular profession or possess a special skill (*e.g.,* credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 2 CFR 200.459 of the Uniform Administrative Requirements, is allowed. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV Federal employee. Professional and consultant services must build the capacity of the CDFI. For example, professional services that provide direct Development Services to the customers do not build the capacity of the CDFI to provide those services and would not be eligible. The Applicant must comply, as applicable, with section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to payment of Professional Service Costs.
(iv) Travel Costs	TA paid to cover costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on business related to the TA award, in accordance with section 2 CFR 200.475 of the Uniform Administrative Requirements, is allowed. Travel Costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA award would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA award.
(v) Training and Education Costs	TA paid to cover the cost of training and education provided by the Applicant for employees' development, in accordance with section 2 CFR 200.473 of the Uniform Administrative Requirements, is allowed. TA can only be used to pay for training costs incurred by the Applicant's employees. Training and Education Costs may not be incurred by the Applicant's consultants.
(vi) Equipment	TA paid to cover tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $10,000, in accordance with section 2 CFR 200.1 of the Uniform Administrative Requirements, is allowed. For example, items such as office furnishings and information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to the purchase of Equipment.
(vii) Supplies	TA paid to cover tangible personal property with a per unit acquisition cost of less than $10,000, in accordance with section 2 CFR 200.1 of the Uniform Administrative Requirements, is allowed. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to the purchase of Supplies.
(viii) Incorporation Costs (*Sponsoring Entities only*).	TA paid to cover incorporation fees in connection with the establishment or reorganization of an organization as a CDFI, in accordance with section 2 CFR 200.455 of the Uniform Administrative Requirements, is allowed. Incorporation Costs are allowable for NACA Program Sponsoring Entity Applicants only.

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, table 5 through table 8 set forth the eligibility criteria to receive an award from the CDFI Fund, along with certain definitions of terms. There are four categories of Applicant eligibility criteria: (1) CDFI Certification criteria (table 5); (2) requirements that apply to all Applicants (table 6); (3) requirements that apply to TA Applicants (table 7); and (4) requirements that apply to FA Applicants (table 8).

TABLE 5—CDFI CERTIFICATION CRITERIA DEFINITIONS

Certified CDFI	An entity that the CDFI Fund has officially notified that it meets all CDFI Certification requirements.
Emerging CDFI (TA Applicants) ..	• A non-Certified entity that demonstrates to the CDFI Fund in its Application that it has an acceptable plan to meet CDFI Certification requirements by the end of its Period of Performance, or another date that the CDFI Fund selects. • An Emerging CDFI that has prior award(s) must comply with CDFI Certification PG&M(s) stated in its prior Assistance Agreement(s). • An Emerging CDFI selected to receive a TA award will be required to become a Certified CDFI by a date specified in the Assistance Agreement.
Sponsoring Entity	• Sponsoring Entities include any legal organization that primarily serves a Native Community with ''primary'' meaning, at least 50% of its activities are directed toward the Native Community.

TABLE 5—CDFI CERTIFICATION CRITERIA DEFINITIONS—Continued

Definitions relating to Native Other Targeted Populations as Target Markets.	• An eligible organization that proposes to create a separate legal organization that will become a Certified CDFI serving Native Communities. • Each Sponsoring Entity selected to receive a TA award will be required to create a CDFI and ensure that this newly created CDFI becomes Certified by the dates specified in the Assistance Agreement. For Target Market assessment purposes, the CDFI Fund uses the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented: • American Indian or Alaskan Native: A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment; and • Native Hawaiian: A person having origins in any of the original peoples of Hawaii.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS

Applicant	• An Applicant must be duly organized as a legal entity (within the United States or its territories). • Only the entity that will carry out the proposed award activities may apply for an award (other than Depository Institution Holding Companies (DIHC) [8]—see below, and Sponsoring Entities). Recipients may not create a new legal entity to carry out the proposed award activities (except for Sponsoring Entities). • The information in the Application should only reflect the activities of the Applicant, including the presentation of financial and portfolio information (other than DIHCs-see below). Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application unless it relates to the provision of Development Services. • An Applicant that applies on behalf of another organization will be rejected without further consideration, other than DIHCs (see below).
Application type and submission overview through *Grants.gov* and Awards Management Information System (AMIS).	• Applicants must submit the Required Application Documents listed in table 10. • The CDFI Fund will only accept Applications that use the official Application templates provided on the *Grants.gov* and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different systems: (1) the SF–424 in *Grants.gov* and (2) all other Required Application Documents in AMIS. • *Grants.gov* and the SF–424: ○ *Grants.gov:* Applicants must submit the Standard Form (SF) SF–424, Application for Federal Assistance. ○ All Applicants must register in the *Grants.gov* system to successfully submit an Application. The *Grants.gov* registration process can take 30 days or more to complete. The CDFI Fund strongly encourages Applicants to register as early as possible. ○ The CDFI Fund will not extend the SF–424 application deadline for any Applicant that started the *Grants.gov* registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline except in the case of a Federal Government administrative or technological error that directly resulted in a late submission of the SF–424. ○ The SF–424 must be submitted in *Grants.gov* on or before the deadline listed in table 1. Applicants are strongly encouraged to submit their SF–424 as early as possible in the *Grants.gov* system. ○ The deadline for the *Grants.gov* submission is before the AMIS submission deadline. ○ The SF–424 must be submitted under the NACA Program Funding Opportunity Number for the NACA Program Application. *NACA Program Applicants should be careful to not select the CDFI Program Funding Opportunity Number when submitting their SF–424 for the NACA Program.* NACA Program Applicants that submit their SF–424 for the NACA Program Application under the CDFI Program Funding Opportunity Number will be deemed ineligible for the NACA Program Application. ○ If the SF–424 is not accepted by *Grants.gov* by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible. • AMIS and all other Required Application Documents listed in table 10: ○ AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund. ○ Applicants are only allowed one NACA Program Application submission in AMIS. ○ Each Application in AMIS must be signed by an Authorized Representative. ○ Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. *Consultants working on behalf of the organization may not be designated as Authorized Representatives.* ○ Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. ○ All Required Application Documents must be submitted in AMIS on or before the deadline specified in table 1. ○ The CDFI Fund will not extend the deadline for any Applicant except in the case of a Federal Government administrative or technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN).	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS). • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization. • The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account. • Applicants must enter their EIN into their AMIS profile on or before the deadline specified in table 1.
Unique Entity Identifier (UEI)	• The transition from the Dun and Bradstreet Universal Numbering System (DUNS) to UEI is a Federal Government-wide initiative. • An Applicant must apply using its UEI in *Grants.gov*. • The CDFI Fund will reject an Application submitted with the UEI of a parent or Affiliate organization.

[8] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

	• The UEI in the Applicant's AMIS account must match the UEI in the Applicant's *Grants.gov* and SAM accounts. The CDFI Fund will reject an Application if the UEI in the Applicant's AMIS account does not match the UEI in its *Grants.gov* and SAM accounts. • Applicants must enter their UEI into their AMIS profile on or before the deadline specified in table 1.
System for Award Management (SAM).	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the Federal Government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the *Grants.gov* registration process. • Applicants that have an active SAM registration have been assigned a UEI. Applicants must also have an EIN in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF–424 in *Grants.gov*. • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the Application evaluation period, or is set to expire before September 30, 2025, and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• Each Applicant must register as an organization in AMIS and submit all Required Application Documents listed in table 10 through the AMIS system. • The Application of any organization that does not properly register in AMIS by the deadline set forth in table 1—FY 2025 NACA Program Funding Round Critical Deadlines for Applicants—will be rejected without further consideration. • The Authorized Representative and/or Application Point of Contact must be included as ''users'' in the Applicant's AMIS account. • An Applicant that fails to properly register and update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.
501 (c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a CDFI or NACA Program award.
Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	• An Applicant * may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination has been issued within the time period beginning three years prior to the publication of this NOFA until the execution of the Assistance Agreement that indicates the Applicant has violated any Federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601 et seq.); the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107). • Applicants * will be required to submit the Title VI Compliance Worksheet (Worksheet) once annually to assist the CDFI Fund in determining whether Applicants are compliant with the Treasury regulations implementing Title VI of the Civil Rights Act (Title VI), set forth in 31 CFR part 22. These requirements are set forth in the United States Department of the Treasury regulations implementing Title VI located in 31 CFR part 22, Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury. • In addition, an Applicant* must be compliant with Federal civil rights requirements in order to be deemed eligible to receive an award from the CDFI Fund. The CDFI Fund will consider an Application submitted by an Applicant that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination. • The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under Federal law.
Depository Institution Holding Company Applicant.	• In the case where a Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary Insured Depository Institution, the Application must be submitted by the Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary Insured Depository Institution. • If a Depository Institution Holding Company and its Subsidiary Insured Depository Institution (through which it will carry out the activities of the award) both apply for an award under this NOFA, only the Depository Institution Holding Company will receive an award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible. • Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary Insured Depository Institution, and that the award funds will be used to support the Subsidiary Insured Depository Institution for the eligible activities outlined in the Application.
Use of award	• All awards made through this NOFA must be used to support the Applicant's activities in at least one of the FA or TA Eligible Activity Categories (see section II. (C)). • With the exception of Depository Institution Holding Company Applicants and Sponsoring Entities, awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. • The Recipient of any award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.
Requested award amount	• An Applicant must state its requested award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance or default.	• If an Applicant (or Affiliate of an Applicant identified in AMIS) that is a prior Recipient or Allocatee under any CDFI Fund program: (i) has demonstrated it is in noncompliance with or default of a previous Assistance Agreement, Award Agreement, Allocation Agreement, Bond Loan Agreement, or Agreement to Guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance or default.
Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award recipient or allocatee under any CDFI Fund program if, as of the AMIS Application deadline in this NOFA, (i) the CDFI Fund has made a final determination in writing that such Applicant (or Affiliate of an Applicant identified in AMIS) is in noncompliance with or default of a previously executed Assistance Agreement, Award Agreement, Allocation Agreement, bond loan agreement, or agreement to guarantee, and (ii) the CDFI Fund has provided written notification that the Applicant is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. • Additionally, regardless of whether a sanction or remedy is imposed, the CDFI Fund will not consider an Application submitted by an Applicant if the default on a prior Allocation Agreement of the Applicant or an Affiliate occurs during the time period beginning 12 months prior to the Application deadline and ending with the FY 2025 award announcement. • The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification.	• The CDFI Fund will contact the Do Not Pay Business Center to conduct a debarment check on the Applicant. The CDFI Fund will not consider any Applicant that is debarred.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

	• If the Do Not Pay Business Center reports that the Applicant has a pending or delinquent debt to the Federal Government, the Applicant will be required to demonstrate that it has resolved such pending or delinquent debt. Applicants that fail to demonstrate resolution of the pending or delinquent Federal debt will be found ineligible to receive an award. • In the case where a Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary Insured Depository Institution, the above debarment requirements apply both to the Depository Institution Holding Company and its Subsidiary Insured Depository Institution. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal Government.

*This requirement also applies to Subsidiary Insured Depository Institutions that will carry out award activities on behalf of Depository Institution Holding Company Applicants.

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS

CDFI Certification status	Certified CDFIs, Emerging CDFIs, or Sponsoring Entities (see definitions in table 5). If a TA Applicant is a Certified CDFI at the time of Application but loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered for an award by the CDFI Fund.
Matching Funds	• Matching Funds documentation is not required for TA awards.
Limitation on Awards	• An Emerging CDFI serving Native Communities may not receive a TA award if it has previously received three or more TA awards in the preceding ten fiscal years. • A Sponsoring Entity is only eligible to apply for an award if (i) it does not have an active prior award or (ii) the CDFI Certification goal in its active award's Assistance Agreement has been satisfied and it proposes to create another CDFI that will serve one or more Native Communities.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. • The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2024 funding round, as well as the requested FY 2025 award. The $5 million funding cap includes TA, Base–FA, PPC–FA, and HP–FA awards but excludes DF–FA and HFFI–FA awards.
Proposed Activities	• Applicants must propose to directly undertake eligible activities with TA awards. For example, an uncertified CDFI Applicant must propose to become Certified as part of its Application and a Certified CDFI Applicant must propose activities that build its capacity to serve its Target Market or an Eligible Market. • With the exception of Sponsoring Entities, Applicants may not propose to use a TA award to create a separate legal entity to become a Certified CDFI or otherwise carry out the TA award activities.
Regulated Institution	• Each Regulated Institution TA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''4.'' • TA Applicants with CAMELS/CAMEL ratings of ''5'' will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will not approve a TA award for an Insured Depository Institution Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CDFI Fund will not approve a TA award if the Subsidiary Insured Depository Institution has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
Target Market	• TA Applicants must demonstrate that the Certified CDFI, Emerging CDFI, or the CDFI to be created by the Sponsoring Entity will primarily serve one or more Native Communities as its Target Market.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS

CDFI Certification status	• Each FA Applicant must be a Certified CDFI as of the publication date of this NOFA in the **Federal Register**. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, both the Depository Institution Holding Company and its Subsidiary Insured Depository Institution must be Certified CDFIs as of the publication date of this NOFA in the **Federal Register**. • The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification and Data Collection Report (ACR) if the CDFI Fund has not yet made a final compliance determination. • If a Certified CDFI loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered for an award by the CDFI Fund.
Activities in Native Communities	• For consideration under this NOFA, each FA Applicant must: ○ Demonstrate that at least 50% of its past activities were in one or more Native Communities; and ○ Describe how it will target its lending/investing activities to one or more Native Communities.
Target Market	• For consideration under this NOFA, an FA Applicant's CDFI Certification Target Market must have one or more of the following characteristics: ○ For qualifying with an *Investment Area,* the Applicant must demonstrate that the Investment Area approved for CDFI Certification is also a geographic area of federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau designated Tribal Statistical Areas; and/or ○ For qualifying with an Other Targeted Population (OTP), the Applicant's Target Market approved for CDFI Certification must be one or more of the following OTPs: of Native American, Native Alaskan, or Native Hawaiian. • Any FA Applicant whose CDFI Certification Target Market does not meet either of the conditions above will not be eligible for an FA award under this NOFA.
Community Collaboration	• All FA Applicants must demonstrate strong community collaboration with Native Communities.
Matching Funds documentation	• Native American CDFIs are not required to provide Matching Funds.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS—Continued

FA Applicants with Community Partners.	• The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were awarded to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2024 funding round, as well as the requested FY 2025 award. The $5 million funding cap includes TA, Base–FA, PPC–FA, and HP–FA awards but excludes DF–FA and HFFI–FA awards. • A NACA Applicant can apply for assistance jointly with a Community Partner. The NACA Applicant must complete the NACA Program Application and address the Community Partnership in its business plan and other sections of the Application as specified in the Application materials. • The NACA Applicant must be a Certified CDFI as defined in table 5. • An Application with a Community Partner must: ○ Describe how the NACA Applicant and Community Partner will each participate in the partnership and how the partnership will enhance eligible activities serving the Investment Area and/or Targeted Population. ○ Demonstrate that the Community Partnership activities are consistent with the strategic plan submitted by the NACA Applicant. • Assistance provided upon approval of an Application with a Community Partner shall only be entrusted to the NACA Applicant and shall not be used to fund any activity carried out directly by the Community Partner or an Affiliate or Subsidiary thereof. • Applicants for HP–FA only (with no Base–FA request) are not eligible to apply with a Community Partner. Only Certified CDFIs may apply for HP–FA only (with no Base–FA request).
Regulated Institution	• Each Regulated Institution FA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''3.'' • FA Applicants with CAMELS/CAMEL ratings of ''4'' or ''5'' will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution. The CDFI Fund will not approve an FA award for an Insured Depository Institution Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CDFI Fund will not approve an FA award if the Subsidiary Insured Depository Institution has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
PPC–FA	• All PPC–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Submit the PPC–FA Application; and ○ Provide a PPC–FA award request amount in AMIS.
DF–FA	• All DF–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Submit the DF–FA Application; and ○ Provide a DF–FA award request amount in AMIS.
HFFI–FA	• All HFFI–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Submit the HFFI–FA Application; and ○ Provide a HFFI–FA award request amount in AMIS.
HP–FA	• Applicants applying for only HP–FA (with no Base–FA request) must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Indicate intention to apply for only HP–FA in the CDFI or NACA Program FA Application; ○ Submit the Excel HP–FA Application; ○ Have a track record of having financed Housing in each of the last 3 historic fiscal years; and ○ Provide an HP–FA award request amount. • Applicants applying for HP–FA as a supplement to Base–FA request must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Indicate intention to apply for both a Base–FA award and an HP–FA award in the CDFI Program or NACA Program FA Application; ○ Submit the Excel HP–FA Application; ○ Have a track record of having financed Housing in each of the last 3 historic fiscal years; and ○ Provide an HP–FA award request amount.

B. Matching Funds Requirements: Native American CDFIs are not required to provide Matching Funds.

TABLE 9—RESERVED

IV. Application and Submission Information

A. Address to Request an Application Package: Application materials can be found on the CDFI Fund's website at *https://www.cdfifund.gov/native.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.* Paper versions of Application materials will only be

provided if an Applicant cannot access the CDFI Fund's website.

B. Content and Form of Application Submission: All Applications must be prepared using the English language, and calculations must be computed in U.S. dollars. The following table lists the Required Application Documents for the FY 2025 Funding Round. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Financial data, portfolio, and activity information provided in the Application should only include the Applicant's activities. Information submitted must accurately reflect the Applicant's activities (other than Depository Institution Holding Companies—see table 6).

TABLE 10—REQUIRED APPLICATION DOCUMENTS

Application documents	Applicant type	Submission format
Active AMIS Account	All Applicants	AMIS.
SF–424	All Applicants	Fillable PDF in *Grants.gov*.
Title VI Compliance Worksheet*	All Applicants	AMIS.
NACA Program Application Components: • Funding Application Detail. • Data, Charts, and Narrative sections as listed in AMIS and outlined in Application materials.	All Applicants	AMIS.
PPC–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	PPC–FA Applicants	AMIS.
DF–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	DF–FA Applicants	AMIS.
HFFI–FA Application Components: • Funding Application Detail. • Narratives. • AMIS charts.	HFFI–FA Applicants	AMIS.
HP–FA Application Components: The Excel HP–FA Application will not be completed as part of the AMIS Application. The Application component is anticipated to be released at a later date than the other Application components under this NOFA and will be due at a later date, as noted in table 1. Applicants will be provided at least 30 days to complete the Excel HP–FA Application which will be an Excel spreadsheet that contains two sections:. • Narratives • Tables	HP–FA Applicants	Attachment to AMIS Service Request.
Attachments to the Application:		
Key Staff Resumes	All Applicants	PDF or Word document in AMIS.
Organizational Chart	All Applicants	PDF in AMIS.
Completed, final audited financial statements for the Applicant's Three Most Recent Historic Fiscal Years.	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds**, and other non-Regulated Institutions.	PDF in AMIS.
Unaudited financial statements for Applicant's Three Most Recent Historic Years (required if available, and only if audited financial statements are not available).	FA and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Community Partnership Agreement	FA Applicants, if applicable	PDF or Word document in AMIS.

*This requirement also applies to Subsidiary Insured Depository Institutions that will carry out award activities on behalf of Depository Institution Holding Company Applicants.

**A Venture Capital Fund is an organization that predominantly invests funds in businesses, typically in the form of either Equity Investments or subordinated debt with equity features such as revenue participation or warrants, and generally seeks to participate in the upside returns of such businesses in an effort to at least partially offset the risk of its investments.

C. Application Submission: The CDFI Fund has a multiple step process that requires the submission of Required Application Documents (listed in table 10) on separate deadlines and locations. The SF–424 must be submitted through *Grants.gov* and all other Required Application Documents through the CDFI Fund's Award Management Information System (AMIS). The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved in writing by the CDFI Fund. The deadlines for submitting the relevant Application materials are listed in table 1.

First, all Applicants must register in the *Grants.gov* system to successfully submit the SF–424. The *Grants.gov* registration process can take 45 days or longer to complete and the CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as early as possible (refer to the following link: *https://www.grants.gov/register*). Since the *Grants.gov* registration process requires Applicants to have a UEI and an EIN, Applicants without these

required items should allow for additional time to complete the *Grants.gov* registration process. The CDFI Fund will not extend the Application deadline for any Applicant that started the *Grants.gov* registration process but did not complete it by the deadline. An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not maintain the *Grants.gov* system.

Each Application must be signed by a designated Authorized Representative in AMIS before it can be submitted. The Excel HP–FA Application must be submitted via a Service Request in AMIS by an Authorized Representative of the Applicant or an Application Point of Contact. Applicants must ensure that an Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only a designated Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. If an AMIS Application is not submitted by an Authorized Representative or Application Point of Contact, the Application will be deemed ineligible.

D. Unique Entity Identifier (UEI): The UEI has replaced the Dun and Bradstreet Data Universal Numbering System (DUNS) number. The UEI, generated in the System for Award Management (*SAM.gov*), has become the official identifier for doing business with the Federal Government. This transition allows the Federal Government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the Federal Government. If an entity is registered in *SAM.gov* today, its UEI has already been assigned and is viewable in *SAM.gov*, including inactive registrations. New registrants will be assigned a UEI as part of their SAM registration.

E. System for Award Management (SAM): Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application. When accessing *SAM.gov*, users will be asked to create a *Login.gov* user account (if they don't already have one). Going forward, users will use their *Login.gov* username and password every time when logging into *SAM.gov*. Registration in SAM is required as part of the *Grants.gov* registration process. The SAM registration process may take one month or longer to complete. An original, signed notarized letter identifying the authorized entity administrator for the entity associated with the UEI is required. This requirement is applicable to new entities registering in SAM or an existing registration where there is no existing entity administrator. Existing entities with registered entity administrators do not need to submit an annual notarized letter. Applicants without an EIN should allow for additional time as an Applicant cannot register in SAM without an EIN. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a Federal awarding agency. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit the SF–424 in *Grants.gov* or Application in AMIS by the applicable Application deadlines. These restrictions also apply to organizations that have not yet received a UEI or EIN by the established deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

TABLE 11—Grants.gov REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Obtain an EIN	Internal Revenue Service (IRS)	Two (2) Weeks.*
Register in *SAM.gov*	System for Award Management (*SAM.gov*). This step will include obtaining a UEI.	Four (4) Weeks.*
Register in *Grants.gov*	*Grants.gov*	One (1) Week.**

* Applicants are advised that the stated durations are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account, has not yet received a UEI or EIN, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a UEI, an EIN, and is already registered in *SAM.gov.*

F. Submission Instructions:

1. Submission Deadlines: Table 1 provides the critical deadlines for the FY 2025 Funding Round.

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424, Application for Federal Assistance through the *Grants.gov* system, under the NACA Program Funding Opportunity Number by the applicable deadline. All other Required Application Documents (listed in table 10) must be submitted through the AMIS website by the applicable deadline. Note, the Excel HP–FA Application will be submitted separately via a Service Request in AMIS by the date specified in table 1. Applicants must submit the SF–424 prior to submitting the Application in AMIS. If the SF–424 is not successfully accepted by *Grants.gov* by the deadline, the CDFI Fund will not review the Application submitted in AMIS, and the Application will be deemed ineligible.

a. *Grants.gov Submission Information:* Each Applicant will receive an email from *Grants.gov* immediately after submitting the SF–424 confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within 48 hours, the Applicant will receive a second email, which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by contacting the

helpdesk at *Grants.gov* directly. The Application material submitted in AMIS is not officially accepted by the CDFI Fund until *Grants.gov* has validated the SF–424.

b. *AMIS Submission Information:* AMIS is a web-based system where Applicants will directly enter their Application information and add the required attachments listed in table 10. The Base-FA, PPC–FA, DF–FA, HFFI–FA, and TA Application components will all be submitted as part of a single AMIS Application. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The Excel HP–FA Application will be a fillable Excel spreadsheet and must be separately submitted as an attachment to a Service Request in AMIS. The CDFI Fund strongly encourages Applicants to allow for sufficient time to review and complete all Required Application Documents listed in table 10 and remedy any issues prior to the Application deadline. Each Application submitted in AMIS must be signed by an Authorized Representative listed in the organization's AMIS account before it can be submitted. Applicants must ensure that the Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only an Authorized Representative or an Application Point of Contact may submit an Application. If an Application is not submitted by an Authorized Representative or Application Point of Contact, the Application will be deemed ineligible. Applicants may only submit one Base-FA or TA Application under the NACA Program. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple Application submissions.

3. Late Submission or AMIS Account Creation: The CDFI Fund will not accept an Application if the SF–424 is not submitted and accepted by *Grants.gov* by the SF–424 deadline listed in table 1. Additionally, the CDFI Fund will not accept an Application if it is not signed by an Authorized Representative and submitted in AMIS by the Application deadline or if an Applicant did not submit the required Title VI Compliance Worksheet by the Application deadline listed in table 1. The CDFI Fund will also not accept an Application from an Applicant that failed to create an AMIS account by the deadlines specified in table 1. The CDFI Fund will not accept the Excel HP–FA Application if it is not submitted via a Service Request in AMIS by the deadline in table 1. In these cases, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible.

However, in cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424, from submitting the AMIS Application, from submitting the Excel HP–FA Application, from creating an AMIS account, or from submitting the Title VI Compliance Worksheet by the deadlines stated in this NOFA, Applicants are provided the opportunity to submit a written request for acceptance of late submissions. Be aware that unexpected delay in a Federal Government process does not in and of itself constitute a Federal Government administrative or technological error. The CDFI Fund will only approve the late submission of the SF–424, the AMIS Application, the Excel HP–FA Application, the Title VI Compliance worksheet, or the late creation of an AMIS account if the Applicant demonstrates that an unexpected delay was the direct result of a Federal Government administrative or technological error.

a. *Creation of AMIS Account:* In cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from creating an AMIS account by the required deadline, the Applicant must submit a written request for approval to create its AMIS account after the deadline, and include documentation of the error, no later than two business days after the AMIS account creation deadline. The CDFI Fund will not respond to requests for creating an AMIS account after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program or an email to *cdfihelp@cdfi.treas.gov* with a subject line of ''AMIS Account Creation Deadline Extension Request.''

b. *SF–424 Late Submission:* In cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424 by the required deadline, the Applicant must submit a written request for acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that time period. Applicants must submit late SF–424 submission requests to the CDFI Fund via an AMIS Service Request to the NACA Program with a subject line of ''Late SF–424 Submission Request.''

c. *Title VI Compliance Worksheet Late Submission:* In cases where a Federal Government administrative or technological error directly precluded an Applicant from submitting the Title VI Compliance Worksheet by the required deadline, the Applicant must submit a written request for approval to submit the Worksheet after the deadline, and include documentation of the error, no later than two business days after the Title VI Compliance Worksheet submission deadline. The CDFI Fund will not respond to requests for submitting a Title VI Compliance Worksheet after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program with a subject line of ''CDFI Program—Title VI Compliance Worksheet Deadline Extension Request.''

d. *AMIS Application Late Submission, including Late Excel HP–FA Application Submission:* In cases where a Federal Government administrative or technological error directly resulted in precluding an Applicant from submitting the Application in AMIS by the required deadline, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS Service Request to the NACA Program with a subject line of ''Late Application Submission Request.''

G. Funding Restrictions: Base–FA, PPC–FA, DF–FA, HFFI–FA, HP–FA, and TA awards are limited by the following:

1. Base–FA Awards:

a. A Recipient shall use Base–FA award funds only for the eligible activities described in section II. (C)(1) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, Base–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or

similar transaction, and with the CDFI Fund's prior written consent.

c. Base–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay Base–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

2. PPC–FA Awards:

a. A Recipient shall use PPC–FA award funds only for the eligible activities described in section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, PPC–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. PPC–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay PPC–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

3. DF–FA Awards:

a. A Recipient shall use DF–FA award funds only for the eligible activities described in section II. (C)(2) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, DF–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. DF–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay DF–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

4. HFFI–FA Awards:

a. A Recipient shall use HFFI–FA award funds only for the eligible activities described in section II. (C)(4) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, HFFI–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HFFI–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HFFI–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

5. HP–FA Awards:

a. A Recipient shall use HP–FA award funds only for the eligible activities described in section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, HP–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HP–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HP–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

6. TA Awards:

a. A Recipient shall use TA award funds only for the eligible activities described in section II. (C) (3) of this NOFA and its Assistance Agreement.

b. A Sponsoring Entity Recipient must create the Emerging CDFI as a legal entity no later than the end of the first year of the Period of Performance. Upon creation of the Emerging CDFI, the Sponsoring Entity must request the CDFI Fund to amend the Assistance Agreement to add the Emerging CDFI as a co-Recipient. The Sponsoring Entity must add the Emerging CDFI as a co-Recipient within 90 days the end of the first year of the Period of Performance. The Sponsoring Entity must then transfer any remaining balances and/or assets derived from the TA award to the Emerging CDFI.

c. With the exception of Depository Institution Holding Company Applicants, TA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

d. TA award funds shall only be paid to the Recipient.

e. The CDFI Fund, in its sole discretion, may pay TA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

f. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Administrative Requirements, with respect to any Direct Costs.

V. Application Review Information

A. Criteria: If the Applicant has submitted an eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Administrative Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or risk that its Application will be rejected. The CDFI Fund will review the Base–FA, DF–FA, PPC–FA, HFFI–FA, HP–FA, and TA Applications in accordance with the process below. All internal and external reviewers will complete the CDFI Fund's conflict of interest process.

1. Base–FA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application using a five-step

review process illustrated in the sections below. Applicants that meet the minimum criteria will advance to the next step in the review process. Applicants applying as a Community Partnership must describe the partnership in the Application pursuant to the requirements set forth in table 8 and will be evaluated in accordance with the review process described below.

a. *Step 1: Eligibility Review:* The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to section III of this NOFA.

b. *Step 2: Financial Analysis and Compliance Risk Evaluation:*

i. *Step 2: Financial Analysis:* For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in table 8, each Regulated Institution FA Applicant (including a Subsidiary Insured Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant) must have a CAMELS/CAMEL rating of at least ''3'' and/or no significant material concerns from its regulator. Each Insured Depository Institution Applicant and each Subsidiary Insured Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant must have a CRA assessment rating of at least ''Satisfactory.''

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using financial information provided by the Applicant. For the financial analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to Step 3. Applicants that receive an initial Total Financial Composite Score of four (4) or five (5) will be re-evaluated and re-scored by CDFI Fund staff. If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to Step 3.

ii. *Step 2: Compliance Risk Evaluation:* For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI Fund staff review, the Applicant will not advance to Step 3.

c. *Step 3: Business Plan Review:* Applicants that proceed to Step 3 will be evaluated on the soundness of their comprehensive business plan. Two external non-CDFI Fund Reviewers will conduct the Step 3: Business Plan Review. Reviewers will evaluate the Application sections listed in table 12. All Applications will be reviewed in accordance with standard reviewer evaluation materials. At the conclusion of the Step 3 evaluation, Applications will be ranked based on Total Business Plan Scores, in descending order from highest Total Business Plan Score to lowest Total Business Plan Score. An amount up to but not exceeding the highest scoring 75% of NACA FA Applicants in the NACA FA Applicant pool will progress to Step 4. If a tie in Total Business Plan Scores would prevent an Applicant from advancing to Step 4, all Applicants with the same score will progress to Step 4. Lastly, the CDFI Fund may consider the geographic diversity of Applicants based on primary geographic market served (Major Urban Area, Micropolitan Area, Minor Urban Area, and Rural Area) when determining the Step 4 Applicant pool.

Based on funding availability for NACA Base–FA Applicants, the CDFI Fund reserves the right to limit the number of Applicants that progress from Step 3 to Step 4 to ensure that the CDFI Program can meaningfully vary award amounts among Applicants with different Step 4 Policy Objective scores, while maintaining minimum award amounts specified in table 2. In cases where funding availability is not sufficient to progress all Applicants within the top 75% of the NACA FA Applicant pool from Step 3 to Step 4, priority will be given to Applicants that score highest on the Total Business Plan Score.

Applicants who request only an HP–FA award (with no Base–FA award) will be evaluated in a separate pool from the Core and SECA Base–FA Applicant types, utilizing the criteria outlined in table 12. This pool will combine any HP–FA only Applications under both the CDFI Program and the NACA Program. The Step 3 review questions under these criteria will be modified to reflect the fact that Applications requesting only HP–FA without Base–FA will not have an FA Objective. This review will be completed by CDFI Fund or other Federal staff, rather than external reviewers. Upon completion of the Step 3: Business Plan Review, the Applications requesting only an HP–FA award without a Base–FA award will be ranked according to Step 3 score. The CDFI Fund will forward the same percentage of HP–FA only applications to Step 4 as the percentage of the CDFI Program Core Applicant pool requesting Base–FA forwarded to Step 4. For example, if the CDFI Fund forwards the highest scoring 60% of the CDFI Program Core Applicant pool requesting Base–FA to Step 4, and it received 8 Applications requesting only HP–FA (across both the CDFI and NACA Programs), it will multiply 8 by 60% to calculate 4.8 and forward five Applicants to Step 4, as five is the closest whole number to 4.8.

TABLE 12—STEP 3: BASE–FA BUSINESS PLAN REVIEW SCORING CRITERIA

Base–FA application sections	Possible score	Score needed to advance
Mission and Community Needs	Scored as a component of the other Base–FA Application Sections.	N/A.
Business Strategy	12	N/A.
Market and Competitive Analysis	7	N/A.
Products and Services	12	N/A.
Management and Track Record	12	N/A.
Growth and Projections	7	N/A.

TABLE 12—STEP 3: BASE–FA BUSINESS PLAN REVIEW SCORING CRITERIA—Continued

Base–FA application sections	Possible score	Score needed to advance
Total Business Plan Score	50	NACA Applicants: Up to but not exceeding top 75% of all NACA Applicants.

d. *Step 4: Policy Objective Review:* The CDFI Fund internal reviewers will evaluate each Application to determine its ability to meet policy objectives of the CDFI Fund. Each Applicant will be evaluated in each of the categories listed in table 13 and will receive a Total Policy Objective Review Score on a scale of one (1) to five (5), with one (1) being the highest score. Applicants are then grouped according to Total Policy Objective Review Scores. For Applications requesting only HP–FA (with no Base–FA request), the Step 4 policy objective review will be conducted using the same categories listed in table 13. Where appropriate, the evaluation criteria for reviewers will be modified to reflect the fact that Applications requesting only HP–FA without Base–FA will not have an FA Objective.

The CDFI Fund also conducts a due diligence review for Applicants that includes an analysis of programmatic risk factors including, but not limited to: history of performance in managing Federal awards (including timeliness of reporting and compliance); ability to meet FA Objectives selected by Base–FA Applicants in their Applications; reports and findings from audits; and ability to effectively implement Federal requirements, each of which could impact the Total Policy Objective Review Score. For Applications requesting only HP–FA (with no Base–FA), the due diligence review will consist of all of the above components except the FA Objective due diligence review; due diligence related to the Application's HP–FA strategy will be conducted as part of the HP–FA Application review.

TABLE 13—STEP 4: BASE–FA POLICY REVIEW SCORING CRITERIA

Section	Possible scores	High score	Score needed to advance
Economic Distress	1, 2, 3, 4, or 5	1	N/A.
Economic Opportunities	1, 2, 3, 4, or 5	1	N/A.
Community Collaboration	1, 2, 3, 4, or 5	1	N/A.
Total Policy Objective Review Composite Score	1, 2, 3, 4, or 5	1	All Scores Advance.

e. *Step 5: Award Amount Determination:* The CDFI Fund determines an award amount for each Application based on the Step 4 Total Policy Objective Review Score, the Applicant's request amount, and on certain other factors, including, but not limited to, the Applicant's deployment track record, minimum award size, and funding availability. Applicants may have award amounts reduced from the requested award amount or not funded as a result of this analysis. Based on funding availability for NACA Base–FA, the CDFI Fund reserves the right to not award all Applicants that advance to Step 5. In cases where funding availability is not sufficient to award all Applications, priority will be given to Applicants that score highest on the Step 4: Policy Objective Review: For NACA FA Applicants, the award cannot exceed 100% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end in accordance with the FA Application Guidance, or the minimum award size as noted in table 2, whichever is greater.

2. HFFI–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HFFI–FA Application associated with a Base–FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application sections listed in table 14 and assign a Total HFFI–FA Score up to 60 points. The CDFI Fund will make awards to the highest scoring Applicants first. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base–FA award will not be considered for a HFFI–FA award.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an HFFI–FA award. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund may reduce awards sizes from requested amounts based on certain variables, including but not limited to, an Applicant's deployment track record, total portfolio outstanding, or compliance with prior HFFI–FA awards. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

TABLE 14—STEP 4 HFFI–FA APPLICATION SCORING CRITERIA

Sections	Possible score
Target Market Profile	10 points.
Healthy Food Financial Products	10 points.
Projected HFFI–FA Activities	15 points.
HFFI Track Record	20 points.
Management Capacity for Providing Healthy Food Financing	5 points.
Total HFFI–FA Score	60 points.

3. PPC–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate the PPC–FA request of each PPC–FA Application associated with a Base–FA Application that

progresses to Step 4 of the FA Application review process. PPC–FA requests are not scored. PPC–FA award amounts will be determined based on the total number of eligible Applicants and funding availability, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's total portfolio outstanding, historical track record of deployment in PPC, pipeline of projects in PPC, minimum award size, and funding availability. Applicants that fail to receive a Base–FA award will not be considered for a PPC–FA award.

4. DF–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each DF–FA Application associated with a Base–FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application and assign a Total DF–FA Score on a scale of one (1) to three (3), with one (1) being the highest score. Applicants are then grouped according to Total DF–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base–FA award will not be considered for a DF–FA award. Award amounts will be determined on the basis of the Total DF–FA Score, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's deployment track record, total portfolio outstanding, minimum award size, and funding availability. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

TABLE 15—STEP 3 DF–FA APPLICATION SCORING CRITERIA

Section	Possible scores	High score
DF–FA Narrative Questions	1, 2, or 3	1
Total DF–FA Score	1, 2, or 3	1

5. HP–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HP–FA Application that progresses to Step 4 of the review process. The reviewer will evaluate the Application and assign a Total HP–FA Score on a scale of one (1) to three (3), with one (1) being the highest score, based on the Applicant's projected financing activity supporting housing production, the extent it intends to target 51% or more of Homeownership and rental Housing to families with incomes at 80% AMI or below, its track record of financing housing, its projected timeline for Housing to be completed, and the effectiveness of its strategy to mitigate any risks. Applicants are then grouped according to Total HP–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that would not qualify for an award based on Step 4 Total Policy Objective Review Score and due diligence evaluation will not be considered for an HP–FA award. Applicants that request an HP–FA award as a supplement a Base–FA award must be selected to receive a Base–FA award to be considered for an HP–FA award. Award amounts will be determined based on the Total HP–FA Score, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's deployment track record, total portfolio outstanding, minimum award size, proximity to the $5 million over three years award cap, geographies served, and funding availability. The CDFI Fund may reduce an Applicant's award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

6. TA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application to determine its eligibility pursuant to section III of this NOFA. If the Application satisfies the eligibility criteria, the CDFI Fund will conduct the TA Business Plan Review in two parts. Sponsoring Entity or Emerging CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part I of the TA Business Plan Review to progress to Part II of the TA Business Plan Review. Sponsoring Entity, or Emerging CDFI Applicants that receive a rating of High Risk in Part I of the TA Business Plan Review will not be considered for an award. Part I of the TA Business Plan Review is not applicable for Certified CDFI Applicants. Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part II of the TA Business Plan Review to be considered for an award. Applicants that receive a rating of High Risk in Part II of the TA Business Plan Review will not be considered for an award.

An Applicant that is a Certified CDFI will be evaluated on the demonstrated need for a TA award to build the CDFI's capacity, further the Applicant's strategic goals, and achieve impact within the Applicant's Target Market. An Applicant that is an Emerging CDFI will be evaluated on the Applicant's demonstrated capability and plan to achieve CDFI Certification within three years, or if a prior Recipient, the CDFI Certification PG&M stated in its prior Assistance Agreement. An Applicant that is an Emerging CDFI will also be evaluated on its demonstrated need for a TA award to build the CDFI's capacity and further its strategic goals. An Applicant that is a Sponsoring Entity will be rated on its demonstrated capability to create a separate legal entity within one year that will achieve CDFI Certification within four years. An Applicant that is a Sponsoring Entity will also be rated on its demonstrated need for a TA award to build the CDFI's capacity and further its strategic goals. The CDFI Fund will rate each part of the TA Business Plan Review as indicated in table 16.

TABLE 16—TA BUSINESS PLAN REVIEW

Business plan review component	Applicant type	Ratings
Part I:		
Primary Mission	Sponsoring Entity and Emerging CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Financing Entity	Sponsoring Entity and Emerging CDFI Applicants.	
Target Market	Sponsoring Entity and Emerging CDFI Applicants.	

TABLE 16—TA BUSINESS PLAN REVIEW—Continued

Business plan review component	Applicant type	Ratings
Accountability	Sponsoring Entity and Emerging CDFI Applicants.	
Development Services	Sponsoring Entity and Emerging CDFI Applicants.	
Part II:		
Target Market Needs & Strategy	Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants.	Low Risk, Medium Risk, or High Risk.
Organizational Capacity	Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants.	
Management Capacity	Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants.	

Each TA Application will be evaluated by one internal CDFI Fund reviewer. The Business Plan Review of all Applications will be reviewed in accordance with CDFI Fund standard reviewer evaluation materials.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an award. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing Federal awards (including timeliness of reporting and compliance), reports and findings from audits, and the Applicant's ability to effectively implement Federal requirements. The CDFI Fund will also evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI staff review, the Applicant will not be considered for an award. The CDFI Fund will also evaluate the Applicant's ability to meet CDFI Certification criteria of being a legal entity and a non-government entity. Award amounts may be reduced as a result of the due diligence analysis in addition to consideration of the Applicant's funding request and similar factors. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

6. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the Depository Institution Holding Company and the Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns (including any concerns for Subsidiary Insured Depository Institutions carrying out the activities of an award on behalf of a Depository Institution Holding Company), the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

7. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Recipients which are non-regulated CDFIs are financially and managerially sound and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

8. Consideration of the Three-Year Award Cap: The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. Base–FA, TA, PPC–FA, and HP–FA are expected to be considered in this determination, based on existing statutory authority and past appropriations bill language. DF–FA and HFFI–FA were excluded from consideration towards the three-year award cap in the enacted FY 2024 Consolidated Appropriations Act; however, the final FY 2025 appropriations are still pending. Thus, the CDFI Fund reserves the right to include FY 2025 DF–FA and HFFI–FA awards in calculating the three-year award cap if these programs are not excluded in the final FY 2025 CDFI Program appropriations. The CDFI Fund may reduce award amounts or deny certain supplemental awards if necessary to stay under the $5 million award cap for a Recipient.

B. Anticipated Award Announcement: The CDFI Fund anticipates making the NACA Program award announcement before September 30, 2025. However, the anticipated award announcement date is subject to change without notice.

C. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are final, and there is no right to appeal decisions.

D. External Non-CDFI Fund Reviewers: All external non-CDFI Fund reviewers are selected based on criteria that includes a professional background in community and economic development finance, and experience reviewing the financial statements of all CDFI institution types. Reviewers must complete the CDFI Fund's conflict of

interest process and be approved by the CDFI Fund.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive an email ''notice of award'' notification from the CDFI Fund stating that its Application has been approved for an award. Each Applicant not selected for an award will receive an email stating that a debriefing notice has been provided in its AMIS account.

B. Assistance Agreement: Each Applicant selected to receive an award must enter into an Assistance Agreement with the CDFI Fund in order to receive a payment(s). The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the: (i) award amount; (ii) award type; (iii) award uses; (iv) eligible use of award funds; (v) PG&Ms; and (vi) reporting requirements. FA Assistance Agreements have three-year Periods of Performance. TA Assistance Agreements have two-year Periods of Performance for Certified CDFIs, three-year Periods of Performance for Emerging CDFIs, and four-year Periods of Performance for Sponsoring Entity Recipients. Upon creation of the Emerging CDFI, the Sponsoring Entity must request the CDFI Fund to amend the Assistance Agreement and add the Emerging CDFI as a party thereto. The Emerging CDFI, as co-Recipient, will be subject to all of the terms and conditions of the Assistance Agreement, including all PG&Ms.

1. Certificate of Good Standing: All FA and TA Recipients that are not Regulated Institutions will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Recipient's jurisdiction of formation prior to closing. This certificate can often be acquired online on the secretary of state website for the Recipient's jurisdiction of formation and must generally be dated within 180 days prior to the Federal Award Date of the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing no later than 60 days after they submit their Applications.

2. Closing: Pursuant to the Assistance Agreement, there will be an initial closing at which point the Assistance Agreement and related documents will be properly executed and delivered, and an initial payment of FA or TA may be made. The first payment is the estimated amount of the award that the Recipient states in its Application that it will use for eligible FA or TA activities in the first 12 months after the award announcement. The first payment request amount entered in the Application must be greater than zero. The CDFI Fund reserves the right to increase the first payment amount on any award to ensure that any subsequent payments are at least $25,000 for FA and $5,000 for TA awards.

The CDFI Fund will minimize the time between the Recipient incurring costs for eligible activities and award payment(s) in accordance with the Uniform Administrative Requirements. Advanced payments for eligible activities will occur no more than one year in advance of the Recipient incurring costs for the eligible activities. Following the initial closing, there may be subsequent closings involving additional award payments. Any documentation in addition to the Assistance Agreement that is connected with such subsequent closings and payments shall be properly executed and timely delivered by the Recipient to the CDFI Fund.

3. Requirements Prior to Entering into an Assistance Agreement: If, prior to entering into an Assistance Agreement, information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects the Recipient's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation of the Application; indicates that the Recipient is not in compliance with any requirement listed in the Uniform Administrative Requirements; indicates that the Recipient is not in compliance with a term or condition of any prior Award Agreement, Assistance Agreement, and/or Allocation Agreement from the CDFI Fund; indicates the Recipient has failed to execute and return a prior round Assistance Agreement to the CDFI Fund within the CDFI Fund's deadlines; or indicates fraud or mismanagement on the Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Assistance Agreement, signed by the Authorized Representative of the Recipient, and/or provide the CDFI Fund with any requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA pending the criteria described in table 17.

TABLE 17—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements.	• If a Recipient received a prior award or allocation under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, as of the date of the notice of award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a payment of award, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. • If such a prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the award made under this NOFA. • Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete, nor that it met reporting requirements.
Failure to maintain CDFI Certification.	• An FA Recipient must be a Certified CDFI. • If an FA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA. • If a TA Recipient is a Certified CDFI at the time of award announcement, it must maintain CDFI Certification. • If a Certified CDFI TA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA.
Pending resolution of noncompliance or default.	• The CDFI Fund will delay entering into an Assistance Agreement with a prior Recipient or allocatee (or Affiliate of the Recipient identified in AMIS) that has pending noncompliance or default issues with any of its previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee.

TABLE 17—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT—Continued

Requirement	Criteria
Noncompliance or default status	• If said prior Recipient or allocatee is unable satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and/or rescind the notice of award and the award made under this NOFA. • If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient (or Affiliate of the Recipient identified in AMIS) is noncompliant or found in default with any previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee, and the CDFI Fund has provided written notification that the Recipient is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may delay entering into an Assistance Agreement until the Recipient has cured the noncompliance and/or default by taking actions the CDFI Fund has specified within such specified timeframe. Additionally, regardless of whether a sanction or remedy is imposed, the CDFI Fund will not consider an Application submitted by an Applicant if the default on a prior Allocation Agreement of the Applicant or an Affiliate occurs during the time period beginning 12 months prior to the Application deadline and execution of the FY 2025 Assistance Agreement. If the Recipient is unable to cure the noncompliance and/or default within the specified timeframe, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Compliance with Federal civil rights requirements.	• If, within the period starting three years prior to this NOFA and through the date of the Assistance Agreement, the Recipient received a final determination, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient violated any Federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*); Fair Housing Act (42 U.S.C. 3601 *et seq.*); Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination. • If the Recipient is unable to satisfactorily resolve the Title VI noncompliance issues, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. • The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under Federal law.
Do Not Pay	• The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal Government. • If the Do Not Pay Business Center reports that the Recipient has a pending or delinquent debt to the Federal Government, the Recipient will be required to demonstrate that it has resolved such pending or delinquent debt. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to demonstrate resolution of the pending or delinquent Federal debt.
Safety and soundness	• If it is determined the Recipient is, or will be, incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve its safety and soundness prior to entering into an Assistance Agreement.

C. Reporting

1. Reporting requirements: On an annual basis during the Period of Performance, the CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components (Annual Reporting Requirements):

TABLE 18—ANNUAL REPORTING REQUIREMENTS *

Financial Statement Audit Report (Non-profit Recipient including Insured Credit Unions and State-Insured Credit Unions).	A Non-profit Recipient (including Insured Credit Unions and State-Insured Credit Unions) must submit a Financial Statement Audit (FSA) Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Recipient to conduct or arrange for additional audits not otherwise required under Uniform Administrative Requirements or otherwise prepared at the request of the Recipient or parties other than the CDFI Fund.
Financial Statement Audit Report (For-Profit Recipient).	For-profit Recipients must submit an FSA Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Financial Statement Audit Report (Depository Institution Holding Company and Insured Depository Institution).	If the Recipient is a Depository Institution Holding Company or an Insured Depository Institution, it must submit an FSA Report in AMIS.
Financial Statement Audit Report (Sponsoring Entities).	A Sponsoring Entity must submit an FSA Report in AMIS, along with a statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Sponsoring Entity to conduct or arrange for additional audits not otherwise required under Uniform Requirements or otherwise prepared at the request of the Sponsoring Entity or parties other than the CDFI Fund.
Single Audit Report (Non-Profit Recipients, if applicable).	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Administrative Requirements (see 2 CFR Subpart F—Audit Requirements) if it expends $1,000,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR Subpart F—Audit Requirements in the Uniform Administrative Requirements) and optionally through AMIS.
Federal Financial Report/OMB Standard Form 425 (SF 425).	The Recipient must annually submit the SF–425 Federal Financial Report to the CDFI Fund through AMIS to disclose how much of the CDFI Program award funds were expended during the Federal Government's fiscal year of October 1 through September 30.
Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary Insured Depository Institution, the Depository Institution Holding Company must submit all uses in a Uses of Award Report.
Performance Progress Report	The Recipient must submit the Performance Progress Report through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary Insured Depository Institution, the Depository Institution Holding Company must submit all deployed activity in a Performance Progress Report.
Transaction Level Report (TLR)	The Recipient must submit a TLR to the CDFI Fund through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary Insured Depository Institution, the Depository Institution Holding Company must create and submit the TLR for this award. The Subsidiary Insured Depository Institution does not submit and create a TLR related to this award.

TABLE 18—ANNUAL REPORTING REQUIREMENTS *—Continued

Annual Certification and Data Collection Report (ACR).	The full-length TLR completed by FA Recipients is not required for TA Recipients. However, TA Recipients who are Certified CDFIs must complete the abbreviated TLR through AMIS as a requirement of CDFI Certification. TA Recipients that are Certified at the time of award announcement and all FA Recipients must submit the ACR to the CDFI Fund through AMIS per the ACR reporting schedule. If a TA Recipient is a Certified CDFI at the time of the award announcement, it must also submit the abbreviated TLR in conjunction with its ACR to the CDFI Fund through AMIS as per the ACR and abbreviated TLR reporting schedule. If a TA Recipient is an uncertified CDFI at the time of award announcement, it must submit the ACR and abbreviated TLR to the CDFI Fund through AMIS subsequent to obtaining CDFI Certification as per the ACR and abbreviated TLR reporting schedule.

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/residents of Distressed Communities in AMIS, Applicants should not include the following PII for the individuals who received the Financial Products or Financial Services in AMIS or in the supporting documentation (*i.e.,* name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number, etc.). This information should be redacted from all supporting documentation.

Each Recipient is responsible for the timely and complete submission of the Annual Reporting Requirements. Sponsoring Entities with co-Recipients will be informed of any changes to reporting obligations at the time the Emerging CDFI is joined to the Assistance Agreement. The CDFI Fund reserves the right to require Recipients to take training on how to accurately complete any reporting required pursuant to the Assistance Agreement. The CDFI Fund reserves the right to contact the Recipient and additional entities or signatories to the Assistance Agreement to request additional information and/or documentation. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements of the Assistance Agreement and to assess the impact of the NACA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements, including increasing the scope and frequency of reporting, if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Recipients.

2. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the Federal award. These systems must be sufficient to permit the preparation of reports required by the CDFI Fund to ensure compliance with the terms and conditions of the NACA Program, including the tracing of award funds to a level of expenditures adequate to establish that such award funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.

The cost principles used by Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles and must provide for adequate documentation to support costs charged to the NACA Program award. In addition, the CDFI Fund will require Recipients to: maintain effective internal controls; comply with applicable statutes, regulations, and the Assistance Agreement; evaluate and monitor compliance; take appropriate action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA is published through the date listed in table 1. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS Service Request to the NACA Program, Certification, Compliance Monitoring and Evaluation, or IT Help Desk. The CDFI Fund will post on its website responses to reoccurring questions received about the NOFA and Application. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *https://www.cdfifund.gov.* Table 19 lists CDFI Fund contact information:

TABLE 19—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
NACA Program	Service Request via AMIS	202–653–0421, option 1	*cdfihelp@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
CDFI Certification	Service Request via AMIS	202–653–0423	*OCPECert@cdfi.treas.gov.*
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*
Grants.gov Help Desk	N/A	(800) 518–4726	*support@grants.gov.*
SAM.gov (Federal Service Desk)	N/A	(866) 606–8220	*https://sam.gov/.*

B. Information Technology Support: For IT assistance, the preferred method of contact is to submit a Service Request within AMIS. For the Service Request, select ''Technical Issues'' from the Program dropdown menu of the Service Request. People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll-free number).

C. Communication with the CDFI Fund: The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative, therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations.

D. Revisions to Federal Funding Accountability and Transparency Act of 2006: Each Applicant that does not have an exception related to reporting subaward and executive compensation information under 2 CFR part 170 must have the necessary processes and systems in place to comply with reporting requirements should they receive an award.

E. Civil Rights and Equal Employment Opportunity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs or activities is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of race, color, religion, national origin, age, sex, marital status, familial status, disability and/or reprisal, s/he may file a complaint with: Director, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania Ave. NW, Washington, DC 20230 or (202) 622–1160 (not a toll-free number).

F. Whistleblower Protections: An employee of a Recipient or Subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The Recipient and Subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

G. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the Federal award in a manner to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal law, and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the CDFI Program and NACA Program Applications have been assigned the following control number: 1559–0021.

B. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, visit the CDFI Fund's website at *https://www.cdfifund.gov.*

Authority: 12 U.S.C. 4701, *et seq.*; 12 CFR parts 1805 and 1815; 2 CFR part 200.

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2025–01323 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons whose property and interests in property have been unblocked and who have been removed from the Specially Designated Nationals and Blocked Persons List.

DATES: This action was issued on January 13, 2025. See Supplementary Information for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; the Assistant Director for Sanctions Compliance, 202–622–2490 or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Actions

On January 13, 2025, OFAC removed from the SDN List the persons listed below, whose property and interests in property were blocked pursuant to section 1 of Executive Order 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela,'' as amended by Executive Order 13857 of January 25, 2019, ''Taking Additional Steps To Address the National Emergency With Respect to Venezuela.''

Individuals

1. BAZZONI, Alessandro, Via Cantonale 8, Lugano 6900, Switzerland; DOB 09 Jul 1971; POB Milan, Italy; citizen Italy; Gender Male; Passport YA9636063 (Italy) issued 12 Jul 2016 expires 11 Jul 2026 (individual) [VENEZUELA–EO13850].

2. D'AGOSTINO CASADO, Francisco Javier, Calle El Parque. Res. Campo Alegre Plaza, Piso 5. Urb. Campo Alegre, Caracas, Miranda 1060, Venezuela; DOB 02 Jun 1974; POB Caracas, Venezuela; nationality Spain; citizen Spain; alt. citizen Venezuela; Gender Male; Cedula No. V–11307398 (Venezuela); Passport XDC221294 (Spain) issued 18 Sep 2015 expires 11 Jul 2018; National ID No. R.E. 201000798316 (Spain) (individual) [VENEZUELA–EO13850].

Entities

1. CATALINA HOLDINGS CORP., New York, NY 10107–1706, United States; Company Number 3934472 (New York) (United States) [VENEZUELA–EO13850].

2. D'AGOSTINO & COMPANY, LTD (a.k.a. D'AGOSTINO AND COMPANY, LTD), Torre Dayco, Piso PH, Caracas, Venezuela; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c. [VENEZUELA–EO13850].

3. ELEMENT CAPITAL ADVISORS LIMITED, Avenida Federico Boyd con Calle 49, Edificio Alfaro Piso 4 Oficina 4–A, Apartado 0832–00998, Panama City, Panama; Virgin Islands, British; website *www.element-capital.com;* Nationality of Registration Virgin Islands, British; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Company Number 1476279 (Virgin Islands, British) [VENEZUELA–EO13850].

4. ELEMENTO OIL & GAS LTD (a.k.a. ELEMENTO OIL AND GAS LTD), 35 Strait Street, Valletta VLT 1434, Malta; Company Number C 73377 (Malta) [VENEZUELA–EO13850].

5. JAMBANYANI SAFARIS, 364 Gibson Road, Victoria Falls, Zimbabwe; P.O. Box 155, Victoria Falls, Zimbabwe; website *www.jambanyani.com;* Organization Established Date 28 Sep 2019; Organization Type: Tour operator activities [VENEZUELA–EO13850].

6. 82 ELM REALTY LLC, 450 Park Avenue, Ste 1403, New York, NY 10022, United States; Company Number 3848561 (New

York) (United States) [VENEZUELA–EO13850].

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2025–01119 Filed 1–16–25; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Amortization of Intangible Property.

DATES: Written comments should be received on or before March 18, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include ''OMB Number 1545–1671—Amortization of Intangible Property'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Amortization of Intangible Property.

OMB Number: 1545–1671.

Regulation Project Number: TD 8865 (REG–209709–94).

Abstract: These regulations apply to property acquired after January 25, 2000. Regulations to implement section 197(e)(4)(D) are applicable August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, for property acquired after July 25, 1991, if a valid retroactive election has been made under § 1.197–1).

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 2025.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2025–01068 Filed 1–16–25; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.

DATES: Written comments should be received on or before March 18, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1641—Mark to Market Election for Commodities Dealers and Securities and Commodities Traders'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.

OMB Number: 1545–1641.

Revenue Procedure Number: 99–17 (modified by Revenue Procedure 99–49).

Abstract: The revenue procedure prescribes the time and manner for dealers in commodities and traders in securities or commodities to elect to use the mark-to-market method of accounting under Sec. 475(e) or (f) of the Internal Revenue Code. The collections of information of this revenue procedure are required by the IRS in order to facilitate monitoring taxpayers changing accounting methods resulting from making the elections under Sec. 475(e) or (f).

Current Actions: There are no changes being made to the Rev. Proc. at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 30 mins.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 2025.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2025–01070 Filed 1–16–25; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Section 9100 Relief for 338 Elections.

DATES: Written comments should be received on or before March 18, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1820—Section 9100 Relief for 338 Elections'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 9100 Relief for 338 Elections.

OMB Number: 1545–1820.

Revenue Procedure Number: 2003–33.

Abstract: Revenue Procedure 2003–33 provides qualifying taxpayers with an extension of time pursuant to § 301.9100–3 of the Procedure and Administration Regulations to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Current Actions: There are no changes being made to the Rev. Proc. at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 60.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 2025.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2025–01069 Filed 1–16–25; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment

Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before February 18, 2025 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Property Qualifying for the Energy Credit under Section 48 (Specifically, Performance & Quality for Small Wind Energy Property).

OMB Number: 1545–2259.

Abstract: Section 48(a)(3)(D) of the Internal Revenue Code allows a credit for energy property which meets, among other requirements, the performance and quality standards (if any) which have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy) and are in effect at the time of the acquisition of the property. Energy property includes small wind energy property. This notice provides the performance and quality standards that small wind energy property must meet to qualify for the energy credit under section 48.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 160.

Estimated Time per Response: 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 400.

2. Title: Waiver of 60-Day Rollover Requirement.

OMB Number: 1545–2269.

Revenue Procedure: 2020–46.

Abstract: Revenue Procedure 2020–46 modifies and updates Rev. Proc. 2016–47, 2016–37 I.R.B. 346. Section 3.02(2) of Rev. Proc. 2016–47 provides a list of permissible reasons for self-certification of eligibility for a waiver of the 60 day rollover requirement, and, in response to requests from stakeholders, this revenue procedure modifies that list by adding a new reason: a distribution was made to a state unclaimed property fund. As under Rev. Proc. 2016–47, a self-certification relates only to the reasons for missing the 60-day deadline, not to whether a distribution is otherwise eligible to be rolled over. An appendix contains a model letter that may be used for self-certification.

Upon receipt of a self-certification, a plan administrator or IRA trustee may accept the contribution and treat it as having satisfied the requirements for a waiver of the 60-day requirement. Currently, the only way for a taxpayer to obtain a waiver of the 60 day requirement with respect to an amount distributed to a state unclaimed property fund is to apply to the Internal Revenue Service (IRS) for a favorable ruling, which is issued by the Tax Exempt and Government Entities Division (TE/GE). The user fee for a ruling is $10,000. The program outlined in this revenue procedure permits taxpayers to receive the benefits of a waiver without paying a user fee.

Current Actions: There is no change to this existing revenue procedure.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 160.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 480.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2025–01196 Filed 1–16–25; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Notice Regarding Board of Directors Meetings

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting.

SUMMARY: USIP announces the next meeting of the Board of Directors.

DATES: Friday, January 24, 2025 (9 a.m.).

The next meeting of the Board of Directors will be held April 25, 2025.

ADDRESSES: 2301 Constitution Avenue NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Anna Dean, 202–429–7848, *adean@usip.org.*

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Authority: 22 U.S.C. 4605(h)(3).

Dated: January 13, 2025.

Rebecca Fernandes,

Director of Accounting.

[FR Doc. 2025–01105 Filed 1–16–25; 8:45 am]

BILLING CODE 2810–03–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on United States Outlying Areas and Freely Associated States, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10., that the Advisory Committee on United States Outlying Areas and Freely Associated States will hold a virtual meeting. The meeting will begin and end as follows:

Date	Time	Location	Open session
February 11, 2025	6 p.m.–7 p.m. eastern standard time.	Virtual via Microsoft Teams; see meeting link below.	Yes.

The meeting is open to the public and will be available virtually via Microsoft Teams.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on covered Veterans. The term ''covered Veteran'' is defined as a Veteran residing in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The Committee advises on improving VA programs and services to serve covered Veterans better.

The meeting agenda will include the Committee's review and a vote to submit its final draft report, with the Committee's recommendations, to the Secretary of Veterans Affairs. Limited time will also be allocated to receive comments from the public.

Public members wishing to provide comments or join the meeting, please use the following Microsoft Teams link: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTdlNGUzYTAtYzI1Mi00Nzk5LWJlZDctODRmODA0NjMyZWE2%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%2258df1cb4-ec74-4431-9191-301a3dd59ff8%22%7d.*

Microsoft Teams:

Meeting ID: 214 928 356 173.

Passcode: me2Sz2Mn.

Dial in by phone:

+1 872–701–0185, 789755609# United States, Chicago.

Phone conference ID: 789 755 609#.

The Committee will accept written comments from interested parties on items outlined in the meeting agenda or other issues related to covered Veterans. Interested parties may submit written comments to Mr. Bernard Johnson, Designated Federal Officer, via email at *bernard.johnson2@va.gov* or Mr. Ferdinand Torres-Leon, Alternate Designated Federal Officer, at *Ferdinand.Torres-leon@va.gov* no later than February 4, 2025. Any member of the public seeking additional information should contact Mr. Johnson at the email address noted above.

Dated: January 13, 2025.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2025–01088 Filed 1–16–25; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 90 Friday,
No. 11 January 17, 2025

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922
Regulations for the Florida Keys National Marine Sanctuary Management Review: Blueprint for Restoration; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 241204–0311]

RIN 0648–BJ14

Regulations for the Florida Keys National Marine Sanctuary Management Review: Blueprint for Restoration

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: As part of its Restoration Blueprint initiative, the National Oceanic and Atmospheric Administration (NOAA) is issuing final regulations for the Florida Keys National Marine Sanctuary (FKNMS or sanctuary) that will expand the boundary of the sanctuary, update sanctuary-wide regulations, update the individual marine zones and their associated regulations, and revise the sanctuary's terms of designation. NOAA is also finalizing a revised management plan and final environmental impact statement (EIS) as part of this action. The final rule describes how NOAA will work to improve the condition of resources in FKNMS through a series of regulatory measures designed to reduce threats and, where appropriate, restore coral reefs, seagrasses, and other important habitats. The intended effect of this final rule is to manage and protect the living and heritage resources of FKNMS for the benefit of the public.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this Federal rulemaking is published, which is January 17, 2025; however, if the Governor of the State of Florida certifies to the Secretary of Commerce during that same review period that any such regulation is unacceptable, the regulation(s) will not take effect in State waters of the sanctuary. The public can track days of the congressional session at the following website: *https://www.congress.gov/days-in-session.* NOAA will publish an announcement of the effective date of the final regulations in the **Federal Register**.

Incorporation by reference: The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this Federal rulemaking is published, which is January 17, 2025. NOAA will publish an announcement of the IBR approval date in the **Federal Register**.

Delay of effective date: NOAA is delaying the effective date of §§ 922.163(a)(5)(x) and 922.164(e)(3), (f)(2), (g)(1), and (h)(1) until January 19, 2027.

ADDRESSES: Copies of the final EIS and management plan described in this rule, the Record of Decision (ROD), and additional background materials are available at *https://floridakeys.noaa.gov/blueprint/.*

FOR FURTHER INFORMATION CONTACT: Beth Dieveney, Policy Analyst, FKNMS, 33 East Quay Rd., Key West, FL 33040, 305–797–6818 phone, or by email at *beth.dieveney@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Florida Keys National Marine Sanctuary

Designated in 1990, FKNMS was the ninth national marine sanctuary in the National Marine Sanctuary System. As one of the largest marine protected areas in the United States, FKNMS encompasses approximately 3,800 square miles of coastal and ocean waters from the estuarine waters of South Florida along the Florida Keys archipelago to the Dry Tortugas, encompassing more than 1,700 islands. FKNMS provides habitats for more than 6,000 species of fishes, invertebrates, and plants, in addition to uniquely expansive and diverse seagrass and coral reef communities. Within the boundaries of the sanctuary lie spectacular, unique, and nationally significant marine resources including North America's only coral barrier reef, extensive seagrass beds, mangrove-fringed islands, and more than 6,000 species of marine life. The sanctuary also protects pieces of our Nation's history such as shipwrecks and other archeological resources. This final rule follows NOAA's publication of a 2022 proposed rule and a 2019 draft EIS, which included a range of alternatives.

The health of the marine environment around the Florida Keys and the health of the Florida Keys community in Monroe County, Florida, are inextricably linked. A declining marine environment puts the economy and jobs at risk. Relying on the existence and maintenance of a healthy marine environment, the Florida Keys support more than 82,874 residents and approximately 5.13 million visitors annually (Rockport Analytics, 2019). Tourism value to the Florida Keys economy was estimated at $2.4 billion (in 2018, the most recent year data were available), supporting 43% of jobs and employment in Monroe County and sales tax paid by visitors to Monroe County made up roughly 59% of state and local tax receipts attributed to tourism (Rockport Analytics, 2019).

2. Need for the Rulemaking

NOAA's management of FKNMS is directed by the purposes and policies of the NMSA and the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Public Law 101–605). The NMSA requires the Secretary of Commerce (Secretary) to evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques and strategies, and . . . revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter. (16 U.S.C. 1434(e)). Those purposes and policies include:

- Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. 1431(b)(2));
- Maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes (*id.* 1431(b)(3));
- Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities (*id.* (b)(6));
- Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments . . . and other public and private interests concerned with the continuing health and resilience of these marine areas (*id.* 1431(b)(7)); and
- Create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques (*id.* 1431(b)(8)).

The FKNMSPA directs NOAA to protect and preserve living and other resources of the Florida Keys marine environment, provide education on and interpretation of sanctuary resources to the public, and manage human uses of the sanctuary consistent with the FKNMSPA (Sec. 3, Pub. L. 101–605, 104 Stat. 3090).

In order to ensure long-term resource viability and ecosystem function, NOAA is updating the FKNMS management framework to address current and future threats to sanctuary resources, such as diminished water quality originating from both within and outside the sanctuary, significant decrease in coral cover, and habitat degradation from vessel impacts including anchor damage, propeller-scarring, and groundings. Each of these threats has major implications for FKNMS.

In addition, NOAA is updating FKNMS management efforts to respond to the 2011 FKNMS Condition Report,[1] which concluded that resources in the Florida Keys were in fair to fair/poor condition and generally either stable or in decline. Since the release of the 2011 condition report, sanctuary resources have been further degraded by Hurricane Irma (2017), a serious and widespread coral disease outbreak, a seagrass die-off, and warming ocean temperatures as evident during the summer 2023 marine heat wave, among other threats.

Furthermore, during the comment phase on the draft documents for this action, the public emphasized the need for a more ecosystem-based management approach to better protect the region's marine resources. To that end, there was strong public support for sanctuary expansion and updated marine zones—actions that are consistent with the purposes and policies of the NMSA and the FKNMSPA. As a result, this final rule extends national marine sanctuary management actions to areas that have demonstrated biological and ecological connectivity with existing sanctuary resources and includes adaptive management strategies to better respond to changing conditions, use patterns, and emerging threats to resources.

In addition to these regulatory updates, NOAA is enhancing research, restoration, and education efforts to conserve and restore these nationally significant sanctuary resources. These efforts, which are described in the final management plan, are critical for assessing changes occurring in the environment, fostering a stewardship ethic, and developing a better understanding of the ecosystem services that sanctuary resources provide for communities throughout the Florida Keys.

In a parallel process, which involved a separate regulatory review aimed at creating consistency and streamlining national marine sanctuary regulations, on January 6, 2023, NOAA updated some of the regulations found at 15 CFR part 922 (88 FR 953 [2]). Part 922 includes general regulations applicable to all national marine sanctuaries (subparts A through E) and site-specific regulations that relate to each individual sanctuary (subparts F through T). All regulatory references to 15 CFR part 922 in this final rule conform with the 88 FR 953 final rule.

3. Incorporation by Reference

The definitions in § 922.162 for ''marine life species'' and ''tropical fish'' incorporate by reference the same definitions under State of Florida regulations for Marine Life found at Florida Administrative Code (F.A.C.) 68B–42.001 and 68B–42.002. Specifically, under these Florida regulations, the definitions of ''marine life species'' and ''tropical fish'' in 68B–42.002 incorporate lists of species designated as ''restricted species'' found at 68B–42.001. Under Florida regulations, a fishing permit is required to target any species that falls under the definition of ''marine life species'' and ''tropical fish.'' Similarly, sanctuary regulations at § 922.163(a)(12) require, among other things, that marine life species only be harvested from the sanctuary if authorized by a state permit or exemption. Sanctuary regulations at § 922.164(b)(2) also prohibit the collection of tropical fish from within two management areas of the sanctuary that were formerly the Key Largo and Looe Key national marine sanctuaries. Florida regulations are readily accessible at *https://www.flrules.org/*. These Florida regulations are currently referenced in the existing sanctuary regulations; at this time NOAA is updating the language in order to comply with Office of **Federal Register** regulations for incorporation by reference found at 1 CFR part 51.

II. The Restoration Blueprint Process

1. Notice of Intent & Scoping

On April 19, 2012, NOAA and the U.S. Department of the Interior's (DOI) U.S. Fish and Wildlife Service (USFWS) published a notice of intent in the **Federal Register**. The notice informed the public of the proposal to develop a draft environmental impact statement (draft EIS), announced five public scoping meetings, and solicited public comment. NOAA and USFWS held public scoping meetings throughout the Florida Keys, in Ft. Myers and Miami and accepted written comments from April 19, 2012, to June 29, 2012. The website provides a scoping comments summary document [3] and original comments can be found at the regulations.gov docket for this notice of intent: *NOAA–NOS–2012–0061.*

In addition, as part of formal scoping, the FKNMS Sanctuary Advisory Council played a significant role throughout this review and the alternatives development process. Informed by their 2012 Regulatory and Marine Zone Alternatives Development Work Plan [4] and input from four community working groups,[5] the Sanctuary Advisory Council provided over 200 recommendations for the sanctuary superintendent as well as the USFWS Florida Keys National Wildlife Refuges Complex manager to consider when developing alternatives related to regulations and marine zones within the sanctuary. The website *https://floridakeys.noaa.gov/review/workgroups.html* provides more information and summary documents of the Sanctuary Advisory Council and working groups.

2. Environmental Impact Statement (EIS)

Following the NOI and scoping, in accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and the NMSA (16 U.S.C. 1434), NOAA prepared and released a draft EIS and updated draft management plan on (84 FR 45728, August 30, 2019). NOAA accepted public comments on the draft EIS from August 2019 to January 2020 and hosted six public hearings and two Sanctuary Advisory Council meetings to hear public comment. NOAA received comment from 1,213 distinct commenters during the public comment period and several letters and petitions with multiple signatories for a total of well over 35,000 comments.

[1] *https://sanctuaries.noaa.gov/science/condition/fknms/welcome.html.*

[2] *https://www.federalregister.gov/documents/2023/01/06/2022-28225/national-marine-sanctuary-regulations.*

[3] *https://nmsfloridakeys.blob.core.windows.net/floridakeys-prod/media/archive/review/documents/scopingcommentssummary.pdf.*

[4] *https://nmsfloridakeys.blob.core.windows.net/floridakeys-prod/media/archive/sac/othermaterials/121211draftworkplan.pdf.*

[5] These working groups included 35 additional community member participants, many of whom represented local, small Florida Keys businesses. For details see: *https://floridakeys.noaa.gov/review/workgroups.html.*

The draft EIS, also referred to as the Florida Keys National Marine Sanctuary Restoration Blueprint, evaluated the environmental consequences of four specific alternatives and provided an in-depth resource assessment. The alternatives in the draft EIS considered sanctuary boundary expansion to protect ecologically connected habitats; proposed new or modified sanctuary-wide regulations; proposed to establish new and modify existing marine zones to protect additional sensitive and threatened coral reef, seagrass, hardbottom habitats and species dependent on these habitats; and included an updated draft management plan. The draft EIS alternatives aimed to address threats and protect sanctuary resources by separating conflicting uses and managing high intensity and concentrated use activities while still allowing sustainable uses compatible with FKNMS natural resource protection goals.

A final EIS was prepared following the release of the 2022 Notice of Proposed Rulemaking (NOPR) described below. The final EIS includes the four alternatives evaluated in the draft EIS, the 2022 NOPR proposal, and a preferred alternative. The preferred alternative in the final EIS matches the regulations in this rule. The final EIS was released on December 13, 2024 and is available at *https://floridakeys.noaa.gov/blueprint/.*

All alternatives analyzed in the final EIS are consistent with NOAA's mission to conserve and manage coastal and marine ecosystems and resources, would further the FKNMS mission to ''protect the marine resources of the Florida Keys while facilitating human uses that are consistent with the primary objective of sanctuary resource protection,'' would provide for more comprehensive management and protection of important and vulnerable ecological and cultural resources in the Florida Keys, and would provide important opportunities for research and recovery of resources from observed impacts. No significant adverse impacts to the human environment were identified under any alternative considered in the final EIS.

3. The Notice of Proposed Rulemaking

The proposed rule combined individual aspects of each of the four alternatives presented in the draft EIS, was directly informed by the thousands of public and agency comments received on the draft EIS, and considered updated environmental and socioeconomic information.

On July 18, 2022, NOAA published a NOPR modifying the FKNMS boundary, sanctuary-wide regulations, and marine zones and associated regulations (87 FR 42800). NOAA hosted five public comment meetings, throughout the Florida Keys and virtually, and accepted written comments from July 18, 2022, to October 26, 2022. NOAA accepted comments in the form of letters and written comments through electronic submissions to *http://regulations.gov,* letters submitted by mail, and both in-person and virtual public hearings. NOAA received 426 unique comments during the public comment period on the NOPR. All public comments on the proposed rule are available at *https://www.regulations.gov/docket/NOAA-NOS-2019-0094.* NOAA's response to the public comments is set forth in Section V of this document.

In addition to public comment, NOAA consulted with and received technical assistance and comment from several Federal agencies, fishery management councils (FMCs), and State agencies. A brief summary of engagement follows.

a. U.S. Fish & Wildlife Service Consultation

USFWS has been engaged in the Restoration Blueprint process since NOAA and USFWS jointly published a **Federal Register** notice of intent on April 19, 2012, to notify the public of the agencies' intent to prepare a draft EIS and to initiate the scoping process. 77 FR 23425 (April 19, 2012). USFWS participated in the public scoping events and relevant community working groups and provided subject matter expertise throughout development of the draft EIS, the proposed rule and this final rule. In addition, NOAA initiated informal Endangered Species Act (ESA) consultation with USFWS Ecological Services in August 2019 and received comment on June 22, 2020. In that comment letter, USFWS Ecological Services concurred with NOAA's determination that the proposed action is unlikely to adversely affect listed species or adversely modify critical habitat and noted that coordination with the Florida Keys National Wildlife Refuges would be ongoing in the development of the proposed and final rule. NOAA provided USFWS the proposed rule on July 18, 2022 and on February 21, 2024, a description of the minor changes anticipated to that rule following public comment. NOAA concluded that these updates to the regulations since publication of the draft EIS do not change NOAA's determination, and USFWS concurred on February 23, 2024.

b. Regional Fishery Management Council Consultation

Pursuant to NMSA Section 304(a)(5), NOAA sent letters on August 22, 2019, to initiate consultation with the Gulf of Mexico Fishery Management Council (GMFMC) and the South Atlantic Fishery Management Council (SAFMC) on potential regulatory changes that affect Federal fisheries. NOAA also provided multiple updates at the respective Council meetings and various advisory and technical committees over the course of the development of the draft EIS and throughout the public comment period following its release. Both the GMFMC and SAFMC submitted comment letters on the draft EIS on February 21, 2020 and March 13, 2020 respectively.

NOAA continued to engage with and provide briefings for both FMCs and their individual advisory panels during the proposed rule public comment period. Both the GMFMC and SAFMC submitted comment letters on the proposed rule on February 15 and February 22, 2023, respectively, which are responded to below.

c. U.S. Department of Defense Coordination

The Department of the Navy provided a summary of their operational environment and activities at Naval Air Station (NAS) Key West during development of the 2019 draft EIS, in a comment letter on March 2, 2020, and during development of the proposed and final rule. This information was used to inform the updated list of military activities that are exempted from NOAA regulations under 922.163(d) (see Appendix F of the final EIS).

d. State of Florida Coordination

NOAA has worked closely with several Florida State agencies throughout the public scoping process, and development of the draft and final EISs and the proposed and final rule. Approximately 60 percent of the sanctuary is within Florida State waters, and the sanctuary is cooperatively managed with the State of Florida, with the Department of Environmental Protection (DEP) and Florida Fish and Wildlife Conservation Commission (FWC) as lead agencies. The Florida Department of State through the State Historic Preservation Office (SHPO) is also a key resource management partner for sanctuary historical resources. NOAA coordinates with other State agencies as needed on topic-specific issues. Several co-trustee agreements outline a framework for this cooperative

management relationship. Finally, NOAA has evaluated this final rule to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act specifically in relation to the enforceable policies of Florida's Coastal Zone Management Program. NOAA submitted its consistency determination to the State on May 21, 2024.

Florida Department of Environmental Protection

NOAA coordinated extensively with Florida DEP throughout the process. DEP was represented at most Sanctuary Advisory Council community working group meetings where they provided management perspective and resource status and use data and has an official seat on the Sanctuary Advisory Council. DEP submitted comment letters to NOAA on the 2019 draft EIS on May 1, 2020, and on the proposed rule on March 31, 2023.

Florida Fish and Wildlife Conservation Commission

Florida FWC staff has coordinated directly with sanctuary staff, notably with Florida Fish and Wildlife Research Institute (FWRI) experts assigned to provide scientific and technical support for each of the Sanctuary Advisory Council community working groups. Florida FWC staff also served as a co-chair to facilitate one of the working groups, and has an official seat on the Sanctuary Advisory Council. NOAA also provided multiple updates at FWC meetings over the course of the development of the 2019 draft EIS and throughout the public comment period. In addition, FWRI research findings directly informed various regulatory and zoning aspects of this final rule. FWC submitted a comment letter to NOAA on the 2019 draft EIS on April 29, 2020, and for the proposed rule on March 30, 2023.

Florida State Historic Preservation Office

The Florida SHPO and Florida Division of Historical Resources staff have coordinated with FKNMS staff to review and develop an updated draft *Programmatic Agreement under Section 106 of the National Historic Preservation Act regarding Florida Keys National Marine Sanctuary Operations, Management, and Permitting* (Programmatic Agreement), which was included in the draft EIS (Appendix C) for public comment. In addition, the SHPO submitted a comment letter to NOAA on the 2019 draft EIS on January 31, 2020, that noted the draft EIS Preferred Alternative (Alternative 3) would sufficiently address NOAA's National Historic Preservation Act Section 106 (54 U.S.C. 306108) responsibilities through implementation of the new management plan and Section 106 Programmatic Agreement. On October 13, 2022, NOAA sent a follow-up letter to the SHPO notifying the SHPO of the publication of the NOPR and an updated management plan and providing a finding of no adverse effects to historic properties. The SHPO did not offer further comment.

III. Changes From Proposed to Final Rule

1. Sanctuary Boundary

In this rule, NOAA is modifying the sanctuary boundary to expand the sanctuary's area from the existing 3,800 square miles to 4,539 square miles but is not including the proposed expansion area in Pulley Ridge. The final sanctuary boundary is expanded to include the Area To Be Avoided (ATBA) regulatory zone and the Tortugas Region, as was proposed in the 2022 NOPR. Concurrent with considering boundary expansion to include Pulley Ridge, as noted in the proposed rule, the United States proposed that the International Maritime Organization (IMO) designate a No Anchoring Area in the southern portion of Pulley Ridge, which was approved and implemented starting June 1, 2023 (IMO SN.1/Circ.342 [6]). Therefore, given the IMO action to protect these habitats from anchor damage from all vessels and the additional protections in place through GMFMC Habitat Area of Particular Concern (HAPC) regulations for fishing vessels, NOAA has determined that sanctuary expansion to include Pulley Ridge is not necessary at this time, and it is not included in this final rule.

2. Sanctuary-Wide Regulations

a. Definitions

NOAA amends the definitions for ''anchoring'' and ''no anchoring'' from the definition in the proposed rule to include an exception for allowing the use of a mooring buoy. Commenters raised concerns that the proposed definitions would prohibit use of a mooring buoy since a mooring buoy is technically anchored to the seabed. NOAA amends the definition for ''at risk of becoming derelict'' and ''deserting'' to align with the State of Florida definition, which was updated since release of the 2022 NOPR.

NOAA amends the definition for ''traditional fishing'' to set the baseline of activities considered traditional to those fishing activities customarily conducted in the sanctuary as of the effective date of this rule. The NOPR had set the baseline of traditional fishing activities as those described in the 1996 Florida Keys National Marine Sanctuary FMP/EIS (Vol. II), consistent with the existing regulation. This change is made based on comments received from the FWC, SAFMC, and GMFMC. This change is intended to define ''traditional fishing'' as those fishing activities customarily conducted in the sanctuary, as managed by the FWC in State waters and by NMFS in the EEZ, as of the effective date of this rule. Fishing regulations change, and by defining traditional fishing as those activities customarily conducted as of the effective date of this rule, NOAA does not intend to exclude fishing activities subject to routine changes to state and federal fishery management regulations. Routine changes include changes to size limits, bag limits, vessel limits, trip limits, possession limits, retention limits, quotas, harvest, catch limits, or catch targets and routine season modifications including in-season adjustments or closures. On the other hand, substantial changes to state and federal fishery management regulations for a fishing activity would make that activity no longer considered traditional fishing and the changes to that fishing activity would not be exempted from the corresponding sanctuary prohibition. Substantial changes include new or modified regulations that allow use of new gear types or methods or that modify allowable or authorized gear types or methods. Any future update to the traditional fishing definition would require a separate rulemaking in order to consider public comment and to conduct an environmental analysis under NEPA of the potential impacts of new or innovative gear types or fishing activities on sanctuary resources. NOAA would collaborate closely with, and rely on the expertise of, fishery managers for the FWC, FMCs, and NMFS when considering any updates to the definition of traditional fishing. Appendix G of the 2024 final EIS provides additional description of the fishing activities managed by the FWC in State waters and by NMFS in the EEZ that are intended to be considered traditional fishing.

Between the draft and final rule, NOAA has added a definition for ''derelict vessels'' and amends definitions of ''at-risk of becoming

[6] See also *https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/NCSR-9th-session.aspx.*

derelict'' and ''deserting'' to align more clearly with the State of Florida's program for addressing derelict vessels and vessels at-risk of becoming derelict. The timelines for 24-hour notification and removal of such vessels within 72 hours of notification have been moved from the definition of ''deserting'' to the prohibition at 922.163(a)(5)(viii) to reduce confusion and redundancy and to make it clearer that these timelines also apply to derelict vessels and vessels at risk of becoming derelict, regardless of whether the vessel is occupied.

b. Discharge and Deposit Regulation Exception

Consistent with the proposed rule, NOAA updates the existing discharge and deposit regulation to explicitly prohibit the discharge or deposit of any material or other matter from a cruise ship, except cooling water, and to simplify and clarify terminology by removing the exception for ''exhaust gas'' and ''water generated by routine vessel operations.'' In response to public comment on the proposed rule, the final rule further clarifies the exception for the discharge or deposit of deck washdown by adding the term ''runoff'' to the list of exceptions, thereby allowing weather/rain runoff to be discharged or deposited into the sanctuary from a vessel other than a cruise ship.

c. Large Vessel Mooring Buoys

As explained above in the **DATES** section of this document, NOAA is delaying the effective date for the large vessel mooring buoy requirement (§ 922.163(a)(5)(x)) for two years beyond the effective date of this final rule. The purpose of this delay is to provide NOAA with adequate time to finalize a mooring buoy plan, including numbers and locations of mooring buoys; to secure materials; and to install new mooring buoys. Until this provision is effective, large vessels may continue to use regular mooring buoys.

d. Temporary Regulation for Emergency and Adaptive Management

With regard to the issuance of temporary emergency regulations, NOAA's final rule is the same as the proposed rule with one minor technical correction to 922.165(c)(2) which provides an opportunity for public comment after publication of a temporary emergency rule. As required under section 553 of the APA, NOAA will collect public comment before issuing an emergency rule and will delay the effective date by 30 days, unless NOAA finds good cause that doing so is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B), (d)(3). The proposed rule provided that the Director shall receive public comments on the necessity for, and extent of, the temporary regulation for a period of 15 days after the effective date of notification. This final rule changes the word ''shall'' to ''may.'' NOAA may choose to collect public comment for 15 days after issuing an emergency temporary rule when, in NOAA's discretion, it determines that post-decision comment would be necessary and in the public interest, such as to inform potential modifications to the emergency or temporary response action and/or its duration. While NOAA has every intention of accepting public comment after publication of a temporary emergency rule whenever NOAA is unable to collect pre-publication notice and comment, there may be cases where public comment would not inform a further agency action and post-publication public comment would serve no agency or public interest.

e. Authorizations of Sunken Military Craft Act Permits

Sunken military craft in FKNMS are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. NOAA will develop an MOA with the appropriate agencies regarding collaboration on implementing the Sunken Military Craft Act. The ONMS Director will request approval from the respective Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft in FKNMS.

3. Marine Zone Boundaries and Associated Marine Zone Regulations

a. Conservation Areas

This final rule adopts the same boundaries and associated regulations for Conservation Areas as the proposed rule. In addition, as explained above in the **DATES** section of this document, NOAA is delaying the effective date for the prohibition on anchoring in CAs for two years beyond the effective date of this final rule. The purpose of this delay is to provide NOAA with adequate time to finalize a mooring buoy plan including numbers and locations of mooring buoys, secure materials, and install new mooring buoys. All other CA regulations will become effective as described in the **DATES** section above (*i.e.,* after the close of a review period of forty-five days of continuous session of Congress).

b. Sanctuary Preservation Areas (SPAs)

In this final rule, NOAA modifies the size of two SPAs presented in the proposed rule. Turtle Rocks is modified slightly from 2.3 square miles in the proposed rule to 2.5 square miles in this final rule in order to align this SPA with the existing John Pennekamp Coral Reef State Park marine zone. Sombrero Key is modified from 0.52 square miles in the proposed rule to 0.33 square miles in this final rule. This change is made to focus SPA protection on the area with the greatest amount of coral and to exclude areas of primarily sandy bottom.

In addition, as explained above in the **DATES** section of this document, NOAA is delaying the effective date for the prohibition on anchoring on SPAs for two years beyond the effective date of this final rule. The purpose of this delay is to provide NOAA with adequate time to finalize a mooring buoy plan, including numbers and locations of mooring buoys, to secure materials, and to install new mooring buoys. All other SPA regulations will become effective as of the effectiveness date of this final rule (*i.e.,* after the close of a review period of forty-five days of continuous session of Congress), including eliminating the exception for catch and release fishing by trolling in Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs, and stopping the practice of issuing permits for baitfishing in SPAs.

c. Restoration Areas

The final rule includes two Nursery Restoration Areas in addition to the nine other restoration areas that were included in the proposed rule. These two areas were established and permitted as coral nursery sites after the proposed rule was released for comment. NOAA received comments requesting that these two nursery sites be included as Nursery Restoration Areas in this final rule. Both sites are in the Upper Keys region and are in Federal waters of the sanctuary. Key Largo Nursery Restoration Area is approximately 0.07 square miles (46.8 acres) and Islamorada Nursery Restoration Area is approximately 0.07 square miles (47.2 acres).

In addition, as explained above in the **DATES** section of this document, NOAA is delaying the effective date for the prohibition on anchoring in SPAs for two years beyond the effective date of this final rule. Habitat and Nursery Restoration Areas apply the same prohibitions as SPAs, so the prohibition on anchoring in Restoration Areas will also be delayed two years.

d. Wildlife Management Areas

NOAA's final rule amends 9 WMAs from what was included in the proposed rule and eliminates two proposed new WMAs that were included in the proposed rule. Details follow.

- *Crocodile Lake:* In response to a request from USFWS, this zone is expanded slightly to include a rookery island.
- *Barnes-Card Sound:* In response to a request from FWC, the regulations applied in this zone are modified to be idle speed no wake instead of no motor.
- *Eastern Lake Surprise:* In response to a request from USFWS, the no entry area in the proposed rule is expanded to include the entire shoreline.
- *Whitmore Bight:* In response to a request from the Florida DEP and public comment, the no motor zone is expanded to include a John Pennekamp Coral Reef State Park no motor zone.
- *Dove and Rodriguez Key:* In response to public comment, the northern boundary is adjusted slightly, opening more area for general use.
- *Tavernier Key:* In response to public comment, the boundary is adjusted slightly, opening more area for general use, and this final rule does not include a no anchor regulation specific to this zone.
- *Ashbey-Horseshoe Key:* This area is within an existing Lignumvitae Key Aquatic Preserve and Lignumvitae Key Botanical State Park no motor zone; therefore this rule does not include a new sanctuary marine zone at this site at this time.
- *Channel Key Banks:* In response to public comment and input from the FWC, this zone is modified slightly to better align with the bank habitat areas, to add a no entry area around Channel Key, and to open additional channels for normal operation.
- *Red Bay Banks:* In response to public comment and input from the FWC, this zone's boundary is modified slightly to better align with existing channels.
- *East Content Keys and Upper Harbor Key Flats:* In response to a request from the Florida DEP and FWC, this zone's southern boundary is expanded slightly to include additional islands.
- *Howe Key:* In response to input from the USFWS, Florida DEP, FWC and public comment, the regulation applied in this zone is changed from no entry (NOPR) to no motor (this final rule).
- *Archer Key:* Informed by public comment and requests from Florida DEP and FWC, this rule does not include a new marine zone at this site.

IV. Summary of all Final Regulations

Based on public comments received between July and October 2023, internal deliberations, interagency consultations, meetings with constituent groups, and evaluation of this input with the USFWS and the State of Florida, with this final rule, NOAA is implementing the following measures.

These sections are organized in the same way they were presented in the 2019 draft EIS and 2024 final EIS for the FKNMS Restoration Blueprint:

1. sanctuary boundary;
2. sanctuary-wide regulations;
3. marine zone boundaries within the sanctuary; and
4. marine zone regulations.

A final management plan is included in the final EIS and is available at the address and website listed in the **ADDRESSES** section of this rule.

1. Sanctuary Boundary

As noted above, pursuant to the procedures in FKNMSPA, Sec. 5(a) Pub. L. 101–605 and section 304(a) of the NMSA, 16 U.S.C. 1434(a),[7] NOAA is modifying the sanctuary boundary to expand the sanctuary's area from 3,800 square miles to 4,539 square miles. The final sanctuary boundary is expanded to include the ATBA regulatory zone and the Tortugas Region.

First, the boundary expansion to align with the ATBA will result in a consistent regulatory boundary, which is intended to provide clarity for mariners and additional ecosystem protections. The ATBA areas within the sanctuary were established through the FKNMSPA and prohibit operating any tank vessel or vessel over 50 meters length within specified areas to protect coral reef habitat from potential vessel impacts, including groundings. Second, the expansion in the Tortugas Region aligns with the existing particularly sensitive sea area (PSSA), established by the IMO in 2002. PSSAs are used to protect areas for special ecological, socioeconomic, or scientific reasons and areas that are vulnerable to damage by international maritime activities. This expansion provides additional protections for important ecological resources and the ecological connectivity in the region, particularly between Tortugas North and South Conservation Areas and Tortugas Bank. In addition, expansion in the Tortugas Region takes into account recently collected and compiled mapping coverage data and remotely operated vehicle imagery in the southern portion of the existing Tortugas South Ecological Reserve, which show unique and sensitive habitat features in this area.

2. Sanctuary-Wide Regulations

a. Live Rock Aquaculture

The final rule is the same as the proposed rule, which maintains the current exception for live rock aquaculture from sanctuary-wide regulatory prohibitions if authorized by a Florida Sovereignty Submerged Land Live Rock Aquaculture Lease issued by the Florida Department of Agricultural and Consumer Services in conjunction with U.S. Army Corps of Engineers via the Programmatic General Permit SAJ–99, or a NMFS Aquacultured Live Rock permit, which is issued under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in conjunction with the U.S. Army Corps of Engineers via the Programmatic General Permit SAJ–71.

b. Discharge and Deposit Regulation Exception

The final rule updates the existing discharge and deposit regulation to explicitly prohibit the discharge or deposit of any material or other matter from a cruise ship, except cooling water, and to simplify and clarify terminology by removing the exception for ''exhaust gas'' and ''water generated by routine vessel operations.'' In response to public comment, the final rule provides an exception from the prohibition for the discharge or deposit of deck runoff for discharges from all vessels except cruise ships, thereby allowing weather/rain runoff to be discharged or deposited into the sanctuary. Each of these provisions are explained in more detail below.

NOAA has a long history of regulating various discharges under the NMSA to ensure that the discharges do not degrade water quality within the sanctuary. These regulations are often more stringent than regulations promulgated under other State or Federal authorities, such as the Clean Water Act (CWA), to recognize that the unique resources of the sanctuary

[7] Section 5(d) of the FKNMSPA authorized NOAA to make minor modifications to the sanctuary boundary no later than the issuance of the draft EIS, which under section 7(a) was one of the documents required to be completed within 30 months of the passage of the Act. Section 5(a) of the FKNMSPA provides that FKNMS shall be managed and regulations enforced under all applicable provisions of such title III as if the Sanctuary had been designated under such title. NOAA published the draft EIS in 1995, and, in 1997 finalized the designation process by publishing the final EIS/management plan, regulations, and terms of designation. Accordingly, 5(d) no longer applies and, pursuant to NMSA section 304(a), NOAA follows the process required in section 304 of the NMSA to modify the terms of designation and sanctuary boundaries.

deserve additional protections. When the original FKNMS regulations were promulgated in 1997, NOAA established prohibitions against discharging most material into the sanctuary, with limited and specified exceptions for bait or chum, biodegradable effluent from approved marine sanitation devices, graywater and deck washdown during routine vessel operations, and vessel cooling water and engine exhaust. In sanctuary zones, such as Sanctuary Preservation Areas and Ecological Reserves, NOAA established more stringent regulations to only allow discharge of vessel cooling water and engine exhaust. The 1997 regulations also prohibited the discharge of material or other matter from outside the sanctuary that enters and injures a sanctuary resource. In 1999, the U.S. Environmental Protection Agency (EPA) established a No Discharge Zone under the CWA for vessel sewage in Key West, Florida, within State waters, in response to a petition from the State of Florida. The No Discharge Zone prohibited the discharge of untreated or treated vessel sewage, including from marine sanitation devices. Subsequently EPA expanded the No Discharge Zone to all State waters of the sanctuary (67 FR 35735 [8]; May 21, 2002). In 2010, NOAA removed the exception for discharges from marine sanitation devices in the entire sanctuary under the NMSA, thereby making all sanctuary waters a no discharge zone under the NMSA (*75 FR 72655* [9]; Nov. 26, 2010). Comments on NOAA's rulemaking at that time also supported banning harmful vessel graywater discharges, especially from large cruise ships and cargo vessels. While NOAA did not ban graywater discharges in 2010, NOAA responded by noting that additional water quality regulations may be considered in future FKNMS management plan reviews.

Under its NMSA authorities, NOAA now further restricts discharges from cruise ships while in the sanctuary. Specifically, the rule prohibits discharges or deposits of any material or other matter from a cruise ship except cooling water. This change results in prohibiting the discharges or deposits of graywater and deck washdown from cruise ships, which are currently exempt from the prohibitions. Cruise ships are among the largest vessels traversing the sanctuary and the source of a considerable volume of graywater discharges generated by carrying passengers (*e.g.,* showers, laundry, sinks, kitchens). In addition, certain routine maintenance activities may occur while a cruise ship is in port within the sanctuary, including deck washdown, which may affect water quality. These routine maintenance activities could occur outside of the sanctuary in other less environmentally sensitive ports. Scientific literature discusses the adverse effects of various cruise ship discharges on the marine environment, including brine from desalination equipment, ballast water, and spa/pool water, among others. NOAA believes that it is feasible for cruise ships to successfully avoid discharging or depositing in sanctuary waters because cruise ship operations in sanctuary waters are limited to entering and leaving the port of Key West. In short, NOAA is prohibiting all discharges from cruise ships except for cooling water to avoid impacts to sanctuary resources and because it is feasible for cruise ships to avoid these discharges for the short period they are in the sanctuary waters. This final rule is informed by information received through coordination with the EPA, notably that agency's studies related to cruise ship discharges and vessel operations in other sensitive marine environments (classified as ''Waters Federally Protected wholly or in part for Conservation Purposes'' under the EPA Vessel General Permit). NOAA also considered information related to the successful management of cruise ship operations in certain national parks, including Glacier Bay, Alaska, where, through concession agreements, cruise ships operate with higher environmental standards when in park waters.

NOAA is also banning discharges besides cooling water from cruise ships to prevent pollution from new and emerging technologies and activities that may result in discharges into ocean waters, such as the increased use of exhaust gas cleaning systems (EGCS). While recent technology such as engine exhaust gas scrubbers may help reduce air emissions from large vessel engines that use high sulfur fuels, including cruise ships, this results in the pollution being discharged in waste water from the EGCS open loop system. While the wash water may be treated before discharge, the discharge still contains metals, polycyclic aromatic hydrocarbons, and higher pH. The long-term accumulation of metals and hydrocarbons in estuaries or harbors is greater, and of more concern to scientists, than the long-term discharge of these contaminants in the open ocean (Teuchies et al., 2020). Vessels with EGCS currently switch to low sulfur fuels in other areas where EGCS discharges are prohibited.

NOAA will continue to provide an exception to the discharge and deposit prohibition for cooling water from all vessels, including cruise ships, because it is currently technologically infeasible for ships to operate without discharging or depositing cooling water. However, this exception does not apply if cooling water is mixed with other substances. In particular, cooling water that is mixed with any other substances, such as EGCS wash water, brine, and ballast water is prohibited.

NOAA is removing the exception for exhaust gas from its discharge and deposit prohibitions for all vessels to reduce confusion that the exemption for exhaust gas was intended to exempt EGCS washwater, which it does not. NOAA does not exempt discharges of EGCS washwaters from the discharge and deposit prohibition. The original intent of this exception was to allow the discharge or deposit of boat engine wet exhaust, rather than exempting exhaust emissions or EGCS washwater. NOAA interprets the term ''cooling water'' to encompass boat engine wet exhaust, which is defined in the EPA Vessel General Permit (Section 2.2.21) as the ambient water that is injected into the exhaust for cooling and noise reduction purposes and then discharged, typical of marine outboard engine operation.

NOAA is also simplifying the exception for discharges and deposits of water generated by routine vessel operations. The current regulatory exception for discharges or deposits of ''water generated by routine vessel operations (*e.g.,* deck wash down and graywater as defined in section 312 of the CWA), excluding oily wastes from bilge pumping,'' does not clearly define what types of discharges or deposits are allowed. Specifically, the term ''water generated by routine vessel operations'' is not defined in FKNMS or other agency rules (compared with the terminology used by the Clean Water Act for ''discharges incidental to the normal operation of a vessel''), creating ambiguity as to what, if any, additional discharges or deposits are meant to be excepted from the regulatory prohibition besides deck washdown and graywater. Based on a review of the original regulations and management plan for the sanctuary, NOAA believes the intention of this exception was simply to allow discharges or deposits of cooling water (including boat engine wet exhaust), deck washdown and runoff, and graywater, and to explicitly prohibit the discharge or deposit of oily

[8] *https://www.govinfo.gov/app/details/FR-2002-05-21/02-12283.*

[9] *https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/management/fr/75_fr_72655.pdf.*

bilge wastes. At this time, NOAA is making technical corrections to the discharge and deposit exceptions to simplify this provision to clearly explain that cooling water, deck washdown and runoff, and graywater are allowable discharges and deposits from vessels other than cruise ships, but oily wastes from bilge pumping are not. Under this rule, the terms ''cooling water,'' ''deck washdown and runoff,'' ''graywater,'' and ''oily wastes from bilge pumping'' continue to have the same meaning as these terms hold under section 312 of the CWA and any implementing regulations, but NOAA believes that citing the CWA in the regulatory text is unnecessary. Discharges or deposits of fish and fish parts when part of a traditional fishing activity are allowed under another exception to the discharge and deposit prohibitions and will not change.

Of note, on December 4, 2018, Congress passed the Vessel Incidental Discharge Act (VIDA) (Title IX of the Frank LoBiondo Coast Guard Authorization Act of 2018), CWA 312(p). VIDA requires the EPA to develop new national standards of performance for commercial vessel incidental discharges and the United States Coast Guard to develop corresponding implementing regulations. EPA published a final rule on October 9, 2024 (89 FR 82074), but at the time of publication of this final rule, implementing regulations for VIDA have not yet been promulgated by the United States Coast Guard. However, when those regulations are finalized, there will be additional discharge prohibitions placed on vessels operating in federally protected waters such as national marine sanctuaries. NOAA will review any VIDA implementing regulations to ensure they are consistent with the sanctuary's primary goal of resource protection (16 U.S.C. 1431(b)(6)) and to determine whether conforming changes to the sanctuary regulations may be necessary and appropriate.

c. Temporary Regulation for Emergency and Adaptive Management

The final rule updates the existing regulations to allow for rapid, temporary rulemaking to facilitate time-sensitive, adaptive management and to respond to emergencies. First, this rule expands the time frame during which any temporary regulation could remain in place from 60 days to six months, with the option for one additional extension of six months (rather than the currently authorized additional 60 days). This increased time frame is consistent with the emergency time frames outlined in section 305(c) of the MSA, as well as NOAA's regulations for other national marine sanctuaries. While NOAA is extending the potential time frame that a temporary regulation could be in effect, NOAA would consider the specific circumstances and craft any temporary regulation for the appropriate duration, which may be less than the maximum time allowed under this regulation. Second, this rule outlines three categories for which NOAA will issue temporary regulations (as outlined below in this section). Third, this rule sets out the procedure by which a temporary regulation would be promulgated, including the requirement that the agency provide a justification for the time sensitivity of the action to comply with the Administrative Procedure Act (5 U.S.C. 553(b)(B)). This procedure also (1) addresses notice and comment requirements, and (2) requires State approval for any temporary regulations proposed in State waters.

NOAA identified three categories for temporary regulation to protect sanctuary resources when time is of the essence. The first category will allow for temporary regulations to prevent or minimize destruction of, loss of, or injury to sanctuary resources from any human-made or natural circumstances, including a concentration of human use, change in migratory or habitat use patterns, vessel impacts, natural disaster or similar emergency, disease, or bleaching. Second, temporary regulations may be used to initiate restoration, recovery, or other activities where a delay would undermine the success of the activity. Lastly, NOAA may use temporary regulations to initiate research where an unforeseen event produces an opportunity for scientific research that may be lost if it is not initiated immediately.

Importantly, temporary regulations will only allow NOAA to shorten or bypass minimum public comment periods if NOAA makes a finding of good cause that such procedures are impracticable, unnecessary, or contrary to the public interest pursuant to the APA, 5 U.S.C. 553(b)(B). This finding must be made before promulgating a temporary regulation without following the full rulemaking procedures, including public notice and comment. While NOAA must make this required finding before promulgating a temporary regulation under this proposal, NOAA believes that all three of the temporary regulation categories will satisfy this good cause requirement because each of these categories requires NOAA to take rapid, immediate actions in order to address an important and time-sensitive environmental need. However, when any given issue arises, NOAA will review it on a case-by-case basis to determine if application of a temporary rule is consistent with the APA. Where the agency determines that time is available without jeopardizing the effectiveness of the action, NOAA will follow notice and comment procedures before taking action. Additionally, NOAA may choose to collect public comment for 15 days after issuing an emergency temporary rule when, in the agency's discretion, it determines that post-decision comment would be worthwhile, such as to inform potential modifications to the emergency or temporary response action.

While NOAA is updating these regulations to allow greater responsiveness to emerging issues and in response to public comment, since FKNMS was designated in 1990, NOAA has only issued emergency regulations four times. In 1997, the emergency regulation was used to prohibit anchoring of vessels 50 meters or greater in an area of Tortugas Bank, which was subsequently established through a full rulemaking process. In 2002, an area of approximately 0.58 acres was identified as an area to avoid for a period of 104 days at the M/V *Wellwood* grounding site. In 2003, two areas totaling 425 acres were closed for a period of 60 days to prevent additional injury to living coral in an area impacted by a rapidly spreading coral disease outbreak. Most recently, in 2023 in response to extreme ocean temperatures, a 0.07 square mile temporary special use area was established to protect endangered corals relocated to a nursery in deeper water locations with conditions more conducive to coral survival. This emergency regulation was effective September 6 through November 6, 2023, and was extended for an additional 60-days until January 5, 2024.

d. Historical Resources Permitting

The rule updates historical resource permitting by replacing the current survey/inventory, research/recovery, and deaccession/transfer permit categories with a new, single archaeological research permit category. This rule also defines the term ''archaeological research,'' explains criteria that must be met in order for NOAA to issue an archaeological research permit (including applicant qualifications), and prescribes certain conditions that will apply to these permits. This aligns sanctuary historical resource permitting with State permitting regulations for archaeological research promulgated under Chapter 1A–32, Florida Administrative Code, and optimizes compliance with the

Federal archaeology program.[10] The Federal archaeology program is a general term used to encompass archeological activities on public land, as well as archaeological activities for federally financed, permitted, or licensed activities on non-federal land. Its foundation is based upon historic preservation laws like the National Historic Preservation Act and Archaeological Resources Protection Act. Dozens of Federal agencies, including NOAA, undertake archeological activities and contribute to the Federal archeology program. The Secretary of the Interior is charged with providing general guidance and coordination for all of Federal archeology.

The single archaeological research permit category simplifies permitting research focused on historical resources in the sanctuary, including the State waters portion of the sanctuary. Research that results in adverse effects to historic properties would not qualify for a permit under this simplified permitting process. For example, adverse effects to historical resources may result from site excavation, in which case the proposed activity would need to be separately permitted by the State and sanctuary.

The current permitting system is unnecessarily complicated and confusing to applicants as it artificially bisects the archaeological research process. Division of permits into either survey/inventory or research/recovery often resulted in insufficient research plans to meet project goals. The archaeological research permit category will require that applicants commit to following an explicit statement of objectives and that project methods be chosen to gather the information required to meet the stated objectives.

This new archaeological research permit category also requires that an applicant be the project's supervising archaeologist whose qualifications meet the Secretary of the Interior's Professional Qualification Standards for archaeology. This aligns with the required credentials for investigators receiving a State archaeological research permit under Chapter 1A–32, Florida Administrative Code. Additionally, this permit category requires that the supervising archaeologist be on site for any excavation and/or artifact recovery. As a result of these changes, NOAA believes that the quality of the research, both proposed and conducted, will be improved. NOAA anticipates that the reporting of research results will also be of higher quality when directed by a professional archaeologist with the required field experience. For the above reasons, NOAA believes that this new archaeological research permit category with associated application and review criteria will increase the protection of historical resources throughout the sanctuary.

In addition to the above changes, this rule eliminates the permit category allowing for the deaccession/transfer of historical resources. Eliminating the deaccession/transfer of historical sanctuary resources is consistent with Chapter 1A–31, Florida Administrative Code, which states that the State of Florida will not issue permits for exploration and recovery of historic shipwreck sites by commercial salvors or for transferring objects recovered by commercial salvors for areas of FKNMS. Eliminating the deaccession/transfer permit category is also consistent with the Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs and Standards for the Treatment of Historic Properties, which focus on the preservation and long-term curation of any recovered historical resources for the benefit of the public (as opposed to private ownership). Likewise, this approach is consistent with the Abandoned Shipwreck Act Guidelines, which recommend that, at a minimum, state-owned shipwrecks located within a national marine sanctuary or in other areas (like habitat areas or coralline formations) protected under Federal or State statute, order, or regulation not be available for commercial salvage, treasure hunting or personal collecting. These Federal guidelines, and the statutes that underpin them, are part of the Federal archaeology program and align with NOAA's long-standing classification and protection of historical resources as sanctuary resources under the NMSA.

To date, no deaccession/transfer permit has ever been issued and, as such, the impact of this change will be minimal. NOAA intends to continue engaging directly with current sanctuary historical resource permit holders and entities with pre-existing, valid rights of access to clarify how updated historical resource permitting regulations would or would not affect potential future activities.

e. Sunken Military Craft Act Permitting

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108–375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often also serve as maritime graves, carry unexploded ordnance, or contain oil and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources.

Sunken military craft are administered under the SMCA by the respective secretaries of the various military departments and, in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.

Sunken military craft are administered by the respective Secretary concerned pursuant to the SMCA. The Secretary concerned is solely responsible for authorizing disturbance of sunken military craft under the SMCA, specifically for archaeological, historical, or educational purposes, and will consult with NOAA when considering permitting such activities. The Secretary concerned is also responsible for determinations of sunken military craft status and ownership, publicly disclosing the location of sunken military craft, and determining eligibility and nominating sunken military craft as historic properties to the National Register of Historic Places. Any agreements with foreign sovereigns regarding sunken military craft in U.S waters are negotiated by the Secretary of Defense, the Secretary of State, and the Secretary of the Navy, according to authorities vested in each by the SMCA. The final rule provides that the Secretary concerned or his or her designee and NOAA will ensure coordination and foster collaboration on any research, monitoring, and educational activities pertaining to sunken military craft located within the sanctuary system. The Director will request approval from the Secretary concerned for any terms and conditions of FKNMS authorizations that may involve sunken military craft.

f. Fish Feeding

The final rule includes a new sanctuary-wide regulation prohibiting the feeding or attracting of fish, including sharks, or other marine

[10] *https://www.nps.gov/archeology/sites/fedarch.htm.*

species from any vessel and/or while diving and new definitions for ''diving,'' and ''feeding.'' The terms ''attract'' and ''attracting'' are already defined in the National Marine Sanctuary System-wide regulations at 15 CFR 922.11. The regulatory text has been developed with additional input from agency staff with expertise in impacts to sharks and shark depredation, human safety concerns, and compliance and enforcement. NOAA does not provide a ''grandfather'' clause for current eco-tour/fish feeding operations (*i.e.,* an exemption for pre-existing operators), although NOAA received some comments requesting such a provision. Instead, NOAA will consider issuing general permits to pre-existing eco-tour/fish feeding operators who are able to satisfy all general permit application requirements. Any permits would contain specific terms and conditions to protect sanctuary resources.

This new fish feeding regulation does not affect the existing regulatory exception that allows the discharge or deposit of fish, fish parts, chumming materials, or bait that is used or generated incidental to and while conducting traditional fishing in the sanctuary.

As noted in the Changes from Proposed Rule to Final Rule section above, NOAA is modifying the regulatory definition for traditional fishing to set the baseline of activities considered traditional to the effective date of this rule. Any future update to the definition of ''traditional fishing'' would be done through a separate rulemaking in order to consider public comment and to conduct an environmental analysis under NEPA of the potential impacts of new or innovative gear types or fisheries activities on sanctuary resources. NOAA would collaborate closely with, and rely on the expertise of, the FWC, FMCs, and NMFS when considering any updates to the list of traditional fishing activities.

g. Grounded, Deserted, and Derelict Vessels and Harmful Matter

NOAA's final rule prohibits anchoring, mooring, operating, deserting, or occupying a derelict vessel or a vessel at risk of becoming derelict or deserting a vessel aground or adrift in the sanctuary. Deserted, aground, derelict, or at risk of becoming derelict vessels are subject to the same 24-hour notification requirements and must be removed from the sanctuary within 72 hours of such notification, unless the Director approves of an exception. This provision has been updated to align with the State of Florida's regulatory procedures for derelict vessels.

Operators or owners of a vessel that strikes the seabed or runs aground must notify the Director within 24 hours of such incident regardless of whether or not sanctuary resources are injured. Vessels will be considered unlawfully deserted unless operators or owners of a vessel notify the Director within 24 hours of leaving a vessel unoccupied that is adrift or run aground or 24 hours after the Director has taken reasonable steps to notify the operator or owner of a vessel found adrift or aground. This definition of ''deserting'' will apply in FKNMS instead of the system-wide definition of ''deserting'' found in section 922.11.

Vessels that are aground, deserted, derelict, or at risk of becoming derelict must be removed within 72 hours of the Director's notification absent extenuating circumstances like weather or safety or unless otherwise consistent with a removal plan approved by the Director. NOAA has chosen one deadline of 72 hours to be consistent with the State of Florida's requirements to remove grounded vessels under Florida's Coral Reef Protection Act, Florida Statute 403.93345. While the State of Florida has several different deadlines for removal of derelict vessels or vessels at risk of becoming derelict, NOAA adopts a 72-hour deadline for removing all such vessels for simplicity and consistency. NOAA intends to use its discretion to grant exceptions to the 72-hour deadline for safety, weather, and approved removal plans, to align with State removal deadlines, where appropriate.

The final rule also prohibits leaving harmful matter aboard a grounded, deserted, derelict, or at risk of becoming derelict vessel. The term ''harmful matter'' is already defined in the National Marine Sanctuary System-wide regulations at 15 CFR 922.11.

h. Large Vessels Use of Mooring Buoys

NOAA's final rule requires large vessels to use designated large vessel mooring buoys and all other vessels to use regular mooring buoys. An associated new definition for ''large vessel'' is also added. Mooring buoys serve as an important management tool in FKNMS, providing boaters the ability to moor their vessel safely and avoid damaging coral reefs and other important ecosystems. However, mooring buoy use by large vessels has been shown to damage the mooring buoy anchoring hardware and in some cases the substrate to which the hardware is secured. As explained above in the **DATES** section of this document, NOAA is delaying the effective date for the large vessel mooring buoy requirement for two years beyond the effective date of this final rule to provide NOAA with adequate time to finalize a mooring buoy plan, including numbers and locations of mooring buoys, to secure materials, and to install new mooring buoys. Until this provision is effective, large vessels may continue to use regular mooring buoys. Additional information about sanctuary mooring buoy management, including plans to engage user groups to help identify areas of use, numbers of users, and placement of mooring buoys, is included in the final management plan.

i. Technical Revisions to Sanctuary Regulations

NOAA's final rule includes technical revisions and updates to regulatory definitions, terms, and provisions (see the general summary included in Appendix D of the final EIS). As this is the first comprehensive review of FKNMS regulations since they were implemented in 1997, NOAA has undertaken a thorough review of all existing regulations. These technical changes can be grouped in four broad categories described below.

Definitions and Terms are updated for greater consistency with the F.A.C., National Marine Sanctuary System-wide regulations, other sanctuary-specific regulations, FKNMS regulations, and the revised management plan. For example, due to new regulations, several new terms and definitions are added including, but not limited to, ''anchoring,'' ''derelict,'' ''at risk of becoming derelict,'' ''continuous transit,'' and ''deserting.'' Several terms that are no longer needed or are being replaced with new terms are eliminated, such as ''Ecological Reserve,'' ''no access buffer,'' and ''closed.'' Terms that are now defined in National Marine Sanctuary System-wide regulations at 922.11 are removed, including ''seagrass'' and ''vessel.'' While the new National Marine Sanctuary System-wide definitions at 922.11 include a definition for ''deserting,'' this rule provides a modified version for the sanctuary to align with the State of Florida timelines and procedures for derelict vessels.

Changes Required for Consistency With the NMSA

NOAA updates one and eliminates another regulatory provision to eliminate redundancy or confusion pertaining to the authority granted to State Governors under the NMSA. Under section 304(b)(1) of the NMSA, at the time of sanctuary designation, the Governor of any State in which a national marine sanctuary is located

partially or entirely within the state's seaward boundary may certify that the designation or any of its terms is unacceptable and the designation or unacceptable term will not take effect in State waters. Under 304(a)(4), the terms of designation may be modified only by the same procedures by which the original designation is made, which includes the procedures at 304(b)(1). In this rule, NOAA is eliminating the provisions at 922.163(g) and 922.164(f) because these provisions provide that new sanctuary regulations will not take effect in Florida State waters unless approved by the Board of Trustees of the Internal Improvement Trust Fund, and, regarding fishing regulations in the sanctuary, until established by the Florida Marine Fisheries Commission. These provisions inappropriately provided additional authorities to State entities, other than the Governor, that were not delegated to the states by Congress under the NMSA.

Military Exemption

NOAA's final rule revises the existing military exemption regulation in two ways. First, NOAA updates the list of exempted military activities from the list found in the 1996 Final Environmental Impact Statement and Management Plan for the sanctuary to the 2024 final EIS for the sanctuary. Second, NOAA clarifies the process for new military activities to be exempted from sanctuary prohibitions. Each change is described below.

Current FKNMS regulations reference military activities conducted by the Department of Defense (DOD) in the sanctuary and, for certain military activities, provide an exemption from sanctuary prohibitions. The current exemptions for DOD military activities in the sanctuary reference existing classes of military activities that were conducted prior to the effective date of these regulations as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. NOAA has long interpreted this exemption to refer to the description of military activities contained in the 1996 FKNMS FEIS (Volume II, pages 93–96), which was prepared prior to the effective date of the 1997 regulations. Through this rule, NOAA is updating this exemption to include military activities currently conducted within the sanctuary that NOAA has determined are appropriate for exemption because the activities are not likely to injure sanctuary resources or will be carried out in a manner that avoids to the maximum extent practical any adverse impact on sanctuary resources and qualities. An updated list is provided in Appendix F of the final EIS that reflects current DOD activities conducted in the sanctuary that NOAA considers to be exempt. The updated list includes activities that are already exempt, the effects of which were analyzed in the 1996 FKNMS FEIS, and are considered in the 2024 final EIS. In addition, the updated list includes one new activity, the effects of which were analyzed in the Navy's 2018 Atlantic Fleet Testing and Training Environmental Impact Statement and is considered in the 2024 final EIS. The updated list of exemptions does not include DOD activities that occur outside of the sanctuary or DOD activities that occur inside the sanctuary but are not prohibited by FKNMS regulations. The updated exemptions apply to activities that occur within the current sanctuary boundary and boundary expansion area.

NOAA commits to working with DOD to consider exempting new activities from the prohibitions. NOAA would use the same standard to exempt new activities as used to update the list of DOD exemptions in the 2024 final EIS. In other words, NOAA would exempt a new activity from the prohibitions if NOAA determines such activity is not likely to injure sanctuary resources or will be carried out in a manner that avoids to the maximum extent practical any adverse impact on sanctuary resources and qualities. Any changes to this list of exempted military activities would only occur after compliance with all applicable laws, such as the APA and NEPA, as necessary, and after public notice and comment, as applicable.

NOAA has removed from the military exemption regulation reference to NMSA 304(d) Interagency Cooperation. The regulation previously referenced 304(d) as the mechanism for exempting new DOD activities from the prohibitions. However, NOAA has removed the reference to the 304(d) Interagency Cooperation process because 304(d) applies to all Federal agency actions that are likely to destroy, cause the loss of, or injure sanctuary resources, including those conducted by DOD, regardless of whether the specific actions are prohibited by sanctuary regulations. Additionally, certain activities that DOD may seek to exempt from the prohibitions would not require 304(d) consultation if the activities are not likely to injure sanctuary resources (see also final EIS Appendix F).

General Editorial changes are made to clarify, remove redundancy, and reorganize and simplify regulations where possible to make them easier to understand. These changes are solely editorial, grammatical, or stylistic, and no new requirements are established by these changes.

Editorial changes to permitting regulations are made to reduce redundancy with National Marine Sanctuary System-wide permitting regulations (15 CFR part 922 subpart D), which were recently updated and consolidated (*88 FR 953;* January 6, 2023). These changes are solely editorial, and no new requirements are established by these changes.

First, since the 1997 FKNMS regulations, NOAA has published application guidelines to aid potential applicants for permits in national marine sanctuaries. The *application guidelines*[11] explain the necessary parts of an application and how to submit it. Updated National Marine Sanctuary System-wide regulations (15 CFR part 922 subpart D) codify these requirements. As such, in this final rule, NOAA removes redundant application instructions from the FKNMS-specific regulations.

Second, this rule also includes two new general permit categories that are unique to FKNMS—one for Archaeological Research and one for Restoration—which are discussed in detail in other sections of this document. A third general permit category specific to FKNMS, activities that further FKNMS purposes, is found at 15 CFR part 922 subpart D. This final rule specifies only where different or additional information or procedures are needed for general permit categories that are unique to FKNMS (such as Tortugas North Conservation Area access permits).

Lastly, this rule adds a provision for the certification of any valid lease, permit, license, or right of subsistence use or access that is in existence when the revised sanctuary terms of designation (see Section VI of this rule) become effective. Under National Marine Sanctuary System-wide regulations, NOAA currently has authority to certify such pre-existing rights of access or use (15 CFR 922.10). This rule adds procedures and criteria to clarify how NOAA would issue such certification permits for FKNMS. A certification permit would be available to persons holding such valid and pre-existing rights of access or use in the sanctuary expansion areas. Certification permits would also be available to persons holding valid and pre-existing rights of access or use to conduct activities in the sanctuary that were not

[11] *https://sanctuaries.noaa.gov/management/permits/welcome.html.*

previously regulated but now will be regulated.

3. Marine Zone Boundaries and Associated Regulations Within the Sanctuary

The final rule includes five marine zone types: Management Areas, Conservation Areas, Sanctuary Preservation Areas, Restoration Areas, and Wildlife Management Areas (WMAs). This section includes a summary of the marine zones and associated regulations in this rule. In addition to marine zone-specific regulations, sanctuary-wide regulations apply within all marine zones of the sanctuary. Global Positioning System (GPS) coordinates for all marine zones included in NOAA's final rule can be found in Appendices C through I. An interactive map and updated individual marine zone maps are available at the website listed in the **ADDRESSES** section above in this rule.

a. Management Areas

The final rule maintains the existing Key Largo and Looe Key marine zones as Management Areas. These two areas were designated as national marine sanctuaries in 1975 and 1981, respectively, which preceded designation of FKNMS and were therefore included within the FKNMS boundary and referred to as ''Existing Management Areas.'' With this rule, all marine zones established with the 1997 regulations could be considered existing; therefore this qualifier is removed from the Key Largo and Looe Key marine zones.

In the final rule, the Key West and Great White Heron National Wildlife Refuges, which are currently referred to as Existing Management Areas, are referred to by their full names. Existing sanctuary regulations in the Key West and Great White Heron National Wildlife Refuges are maintained with the exception of a minor change to the area where personal watercraft are allowed (see part III, section 4q. *Personal Watercraft* below).

b. Conservation Areas

The final rule combines the existing Ecological Reserves and Special Use Areas (SUA) into one Conservation Area zone type and maintains and applies the existing SUA regulations prohibiting fishing, requiring continuous transit without interruption, and requiring stowage of gear in such areas. ''Conservation Area'' means an area of the sanctuary that provides natural spawning, nursery, and residence areas for the replenishment and genetic protection of marine life and protects and preserves groups of habitats and species, within which activities are subject to conditions, restrictions and prohibitions to achieve these objectives. These areas consist of contiguous, diverse habitats; protect a variety of sanctuary resources; and/or facilitate scientific research that promotes sanctuary management or recovery of sanctuary resources. In addition, these areas, with the exception of Western Sambo, have similar regulations, which are intended to provide the greatest level of protection to these contiguous habitats and areas set aside to support scientific research.

The final rule includes six Conservation Areas, all of which are existing sanctuary marine zones. The final rule slightly expands the spatial area of three existing zones (Tennessee Reef, Western Sambo, and Tortugas South) and eliminates one zone (the existing Looe Key SUA). Western Sambo is also included as a Conservation Area with slightly different regulations as outlined below. With the exception of the zone name change to Conservation Area, NOAA makes no changes to the existing Conch Reef SUA, Eastern Sambo SUA, or Tortugas North Ecological Reserve. The Conservation Areas range in size from the smallest, Conch Reef, at 0.15 square miles to the largest, Tortugas North, at 109.05 square miles. The total area included in the six Conservation Areas is 213.11 square miles.

A summary of the Conservation Areas included in this final rule and changes from current FKNMS zoning and regulations follows. Note that for all of the zones below, the zone name will be changed to Conservation Area.

- *Conch Reef:* No changes to the regulations or area.
- *Tennessee Reef:* No changes to regulations. This zone is extended to the 90-foot contour line to capture additional deep reef habitats.
- *Looe Key:* This existing SUA zone is eliminated. This area will, instead, be managed as part of the larger Looe Key Management Area, as described above in section 3.a. *Management Areas.*
- *Eastern Sambo:* No changes to the regulations or area.
- *Western Sambo:* This existing zone is extended to the 90-foot contour line to capture additional deep reef habitats. In addition, no-anchor restrictions apply for the southern portion of the zone in the area of most prominent coral reef development. All other existing regulations in Western Sambo are maintained, including, but not limited to, prohibitions on discharging or depositing any matter or other material, fishing by any means, and harvesting any marine life. This is the only Conservation Area that allows access for snorkeling and diving.
- *Tortugas North:* No changes to the regulations or area. In addition, see part III, section 4. *Additional Marine Zone Regulations,* below, for information on administrative changes to Tortugas North Access Permit requirements.
- *Tortugas South:* No changes to the regulations. This zone is extended to the west by one mile along its entire length. This expansion captures additional habitat west of Riley's Hump that is known to support fish spawning aggregations and important deep reef habitats. Recently collected and compiled mapping coverage data and remotely operated vehicle (ROV) imagery show unique habitat features in this area, including rock escarpment formations and a well-defined ledge. These data also showed the presence of a diversity of fish species. Therefore, the final rule maintains the southern boundary of the Tortugas South Conservation Area as proposed despite some comments on the draft EIS.

c. Sanctuary Preservation Areas (SPAs)

The final rule includes 17 SPAs, defined as a discrete, biologically important area of the sanctuary within which activities are subject to conditions, restrictions, and prohibitions to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. The SPAs range in size from the smallest, Cheeca Rocks SPA, at 0.07 square miles to the largest, Carysfort Reef SPA, at 3.78 square miles. The total area included in the 17 SPAs is 12.14 square miles.

SPA regulations included in this rule eliminate the current exception allowing catch and release fishing in four existing SPAs (Conch Reef, Alligator Reef, Sombrero Key, and Sand Key). In addition, anchoring is prohibited in all SPAs. This final rule includes a new definition for ''anchoring,'' which means securing a vessel to the seabed by any means except when using a mooring buoy. All other existing SPA regulations remain, including, but not limited to, prohibitions on discharging or depositing any matter except cooling water, fishing by any means, and harvesting any marine life. Consistent regulations throughout SPAs are intended to clarify for the public what is allowed and what is restricted to promote understanding and compliance

and to facilitate enforcement and management. Finally, the management practice of issuing permits allowing baitfishing in all SPAs will be phased out over a 3-year period.

As explained above in the **DATES** section of this document, NOAA is delaying the effective date for the no anchoring regulation in all SPAs (§ 922.164(e)(3)) for two years beyond the effective date of this final rule. The purpose of this delay is to provide NOAA with adequate time to finalize a mooring buoy plan, including numbers and locations of mooring buoys, to secure materials, and to install new mooring buoys. The no anchoring prohibition will likewise be delayed for Habitat and Nursery Restoration Areas under sections 922.164(g)(1), (h)(1), which apply the SPA prohibitions. All other SPA regulations will become effective as of the effectiveness date of this final rule (*i.e.,* after the close of a review period of forty-five days of continuous session of Congress), including eliminating the exception for catch and release fishing by trolling in Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs and stopping the practice of issuing permits for baitfishing in SPAs. A summary of Sanctuary Preservation Areas included in the final rule follows (listed northeast to southwest). For all of the zones listed below, the SPA regulations as outlined above and at 15 CFR 922.164(e) will apply.

- *Turtle Rocks:* This rule establishes a new SPA.
- *Carysfort Reef:* This existing SPA is expanded to the 90-foot contour to include additional deep reef habitat.
- *The Elbow:* Existing SPA; no boundary change.
- *Key Largo Dry Rocks-Grecian Rocks:* The final rule connects two existing SPAs into a single SPA.
- *Molasses Reef:* Existing SPA; no boundary change.
- *Conch Reef:* Existing SPA; no boundary change. The regulatory exception that allows catch and release fishing by trolling in the SPA is removed.
- *Davis Reef:* Existing SPA; no boundary change.
- *Hen and Chickens Reef:* Existing SPA; no boundary change.
- *Cheeca Rocks:* Existing SPA; no boundary change.
- *Alligator Reef:* This existing SPA is expanded to the 90-foot contour to include additional deep reef habitat. The regulatory exception that allows catch and release fishing by trolling in the SPA is removed.
- *Turtle Shoal:* This rule establishes a new SPA.
- *Coffins Patch:* Existing SPA; no boundary change.
- *Sombrero Key:* This existing SPA is expanded slightly to include remnant elkhorn corals, a species listed under the Endangered Species Act. The regulatory exception that allows catch and release fishing by trolling in the SPA is removed.
- *Newfound Harbor Key:* Existing SPA; no boundary change.
- *Looe Key:* Existing SPA; no boundary change.
- *Eastern Dry Rocks:* Existing SPA; no boundary change.
- *Sand Key:* Existing SPA; no boundary change. The regulatory exception that allows catch and release fishing by trolling in the SPA is removed.

d. Restoration Areas

Given the increase in important habitat restoration activities in the sanctuary over the past two decades, NOAA's final rule includes a new Restoration Area zone type to support species or habitat recovery. The zone includes two distinct designations:

- *Nursery Restoration Area* zone type encompasses existing nursery areas and are regulated similar to Conservation Areas to provide the highest level of protection to sensitive corals and other organisms while they are being propagated. These regulations prohibit, among other things, fishing, anchoring, and discharges or deposits and require that vessels remain in transit through the area.
- *Habitat Restoration Area* zone type protects sites where active transplanting and restoration activities are ongoing. These areas are managed with the same regulations that apply to SPAs to provide for access and educational opportunities while prohibiting, among other things, fishing, anchoring, and discharges or deposits.

As explained above in the **DATES** section of this document, NOAA is delaying the effective date for the no anchoring regulation for all SPAs (§ 922.164(e)(3)) for two years beyond the effective date of this final rule. This delay will apply to the no anchoring prohibition for Habitat Restoration Zones, which apply the SPA regulations.

i. Nursery Restoration Areas

Specifically, this final rule includes eleven Nursery Restoration Areas with regulations prohibiting, among other things, fishing, anchoring, and discharges or deposits, and requiring that vessels remain in transit through the area. All Nursery Restoration Areas are very small (individual zones are approximately 70 acres (0.1 square miles)) and are designed to protect the underwater nursery structures and associated corals growing on them with a 200-yard buffer. The total area of Nursery Restoration Areas is 748.8 acres (1.17 square miles).

NOAA establishes all existing, permitted coral nurseries as distinct Nursery Restoration Areas. The following existing, permitted coral nurseries are included in the final rule as distinct Nursery Restoration Areas (listed northeast to southwest):

- *Carysfort Reef*
- *Key Largo:* This area was established and permitted as a coral nursery site after the proposed rule was released for comment. NOAA received comments requesting that this site be included as a Nursery Restoration Area in this final rule. Key Largo Nursery Restoration Area, approximately 0.07 square miles (46.8 acres), is in Federal waters of the Upper Keys region of the sanctuary.
- *Pickles Reef West*
- *Islamorada:* This area was established and permitted as a coral nursery site after the proposed rule was released for comment. NOAA received comments requesting that this site be included as a Nursery Restoration Area in this final rule. Islamorada Nursery Restoration Area, approximately 0.07 square miles (47.2 acres), is in Federal waters of the Upper Keys region of the sanctuary.
- *The Elbow Reef*
- *Marathon*
- *Middle Keys*
- *Looe Key East*
- *Looe Key West*
- *Key West*
- *Sand Key*

ii. Habitat Restoration Areas

NOAA is also establishing four new Habitat Restoration Areas to protect existing, permitted active coral reef restoration sites. All Habitat Restoration Areas are small, ranging from 5 to 220 acres (<0.01 to 0.35 square miles), with an average size of 85 acres (0.13 square miles), and are designed to protect sites supporting active coral restoration with a 200-yard buffer. The total area of Habitat Restoration Areas is 339 acres (0.53 square miles). The final rule establishes the following Habitat Restoration Areas with regulations prohibiting, among other things, fishing, anchoring, and discharges or deposits:

- *Horseshoe Reef*
- *Pickles Reef East*
- *Cheeca Rocks East*
- *Cheeca Rocks South*

In this rule all Habitat Restoration Areas protect active coral reef

restoration; however, NOAA does not intend to limit application of this new zone type to coral restoration activities only. The Habitat Restoration Area zone type could be applied in the future in any area to support and facilitate restoration of other degraded habitats or species (*e.g.,* seagrass, hardbottom, etc.). In addition, a framework for establishing short-term, time-sensitive protections to support critical management including habitat restoration is described in the updated temporary regulation for emergency and adaptive management (see part IV, section 2. *Sanctuary-wide Regulations* above and the full regulatory text included in 15 CFR 922.165.) Additional information about how this zone type may be used in the future can be found in the final management plan. Future nursery and habitat restoration area site locations, sizes, and duration will be informed by site-specific habitat restoration plans, which could be prepared as part of a disease response or Restoration permit application.

Finally, to further facilitate habitat restoration and to complement this zone type, this rule includes a new category of general permit for Restoration.

e. Wildlife Management Areas (WMAs)

The final rule includes 44 WMAs, defined as an area of the sanctuary in which various access and use restrictions are applied to manage, protect, preserve, and minimize disturbance to sanctuary wildlife resources, including, but not limited to, endangered or threatened species or the habitats, special places, or conditions on which they rely. Access and use restrictions applied in WMAs address the specific protections necessary to minimize disturbances to sanctuary habitats and wildlife and are therefore tailored for the specific location and resource need. In addition, these access and use restrictions may be for a limited or seasonal time period. These WMAs aim to balance resource protection with compatible uses. This final rule generally favors sanctuary resource protection over access where biological and impact data demonstrate a need; however, the least restrictive access regulations and zone size needed to meet the resource protection goals are applied.

The final rule includes no change and/or only minor technical modifications to existing regulations for nine existing WMAs, spatial and/or regulatory modifications for 15 existing WMAs, and 20 new WMAs. In addition, the final rule eliminates three existing WMAs. The average size of WMAs (excluding the existing Tortugas Bank zone) is 0.62 square miles, ranging from 0.01 to 6.37 square miles (the newly established Pelican Shoal WMA and Marquesas Turtle WMA, respectively). The total area included in WMAs is 64.87 square miles of which 32.23 square miles is the existing Tortugas Bank no anchor zone.

Nine of the twenty-eight existing WMAs have no spatial or regulatory changes, or only minor technical changes, in this rule. The minor technical changes include (1) spatial changes that clarify exceptions to access regulations for certain channels and (2) regulatory changes in zone access terminology such that the existing ''no access buffer'' and ''closed'' regulations are changed to ''no entry'' to be consistent with the intent of the regulation and with State regulations.

NOAA is eliminating the existing no access buffer and closed zone regulations and is replacing them with a no entry regulation that has the same effect. The existing no access buffer zones are portions of the sanctuary where vessels are prohibited from entering regardless of the method of propulsion. In general practice, the no access buffer, closed, and no entry regulations have similar intent. In addition, this change in nomenclature creates consistency in application of this regulation throughout the sanctuary and aligns with State regulations. In addition to the zones discussed in this section, the no-access buffer zones at Crocodile Lake and Marquesas Keys WMAs are eliminated; however, both of these WMAs have additional minor spatial and/or regulatory changes and are more fully discussed in the section below.

The WMAs in this rule with no spatial or regulatory changes, or only minor technical changes, follow:

- *Horseshoe Key:* This is an existing 300 foot no access buffer zone with the island closed by the USFWS to decrease disturbance to nesting and roosting birds. NOAA is making a technical update to change the existing no access buffer regulation to no entry.
- *West Content Keys:* This is an existing zone with idle speed no wake in selected creeks and no access buffer in one cove to decrease disturbance to shorebirds using the area for nesting and foraging. NOAA is making a technical update to change the existing no access buffer regulation to no entry.
- *Sawyer Key:* This is an existing zone where the tidal creeks on the south side are closed to decrease disturbance to nesting birds. NOAA is making a technical update to change the existing closed regulation to no entry.
- *East Harbor Key:* This is an existing 300 foot no access buffer zone to decrease disturbance to various resting and nesting birds. NOAA is making a technical update to change the existing no access buffer regulation to no entry.
- *Cayo Agua Keys:* This is an existing zone with idle speed no wake in all navigable creeks to decrease disturbance to nesting and roosting birds, including great white heron, osprey, and the large numbers of resting shorebirds. There is no change from the status quo.
- *Big Mullet Key:* This is an existing 300 foot no motor zone around the island to decrease disturbance to nesting birds and resting shorebirds. There is no change from the status quo.
- *Little Mullet Key:* This is an existing 300 foot no access buffer zone to decrease disturbance to nesting, roosting, and foraging birds and shallow seagrass flats around the island, which exhibit prop scarring. NOAA is making a technical update to change the existing no access buffer regulation to no entry.
- *Pelican Shoal:* This is an existing no access buffer zone to decrease disturbance to nesting roseate terns and is an area that is thought to be the last active ground-breeding location for this ESA-listed species in Florida. Additionally, this is an FWC Critical Wildlife Area that was established in 1990. NOAA is making a technical update to change the existing no access buffer regulation to no entry.
- *Tortugas Bank:* This is an existing sanctuary zone prohibiting anchoring by vessels over 50 meters in length, which protects coral and hardbottom habitats on Tortugas Bank from anchor damage. NOAA is making no change in the spatial area or regulations for this zone.

As noted above, WMAs protect important habitats and species dependent on those habitats with access and use restrictions tailored for the specific location and resource need. Listed below (approximately northeast to southwest) are existing WMAs with changes to spatial boundaries, regulations, or a combination of both. Informed by public and agency comments, and additional data on resources and human uses, the final rule refines the spatial areas included in WMAs and the specific regulations that apply to most efficiently protect sanctuary resources while allowing the greatest level of use compatible with the resource protection goals.

- *Crocodile Lake:* This existing March 1 to October 1 no access buffer WMA is modified to become a year-round no entry zone except for Steamboat Creek. The final rule expands the WMA slightly to encompass an important bird

nesting site. The portion of the existing Crocodile Lake WMA on the northwestern shoreline of Eastern Lake Surprise becomes part of the Eastern Lake Surprise WMA as it is contiguous with that area.

- *Eastern Lake Surprise:* This existing WMA is modified to include a no entry area along the western shoreline that is currently part of the Crocodile Lake WMA. In the canal and basin on the southeast side of Eastern Lake Surprise, the existing regulations are changed from idle speed no wake to no entry; in addition, the no entry regulation is extended along the entire shoreline.
- *Dove and Rodriguez Keys:* These two existing WMAs are combined to create one no motor zone WMA. The existing regulation that closes two small islands near Dove Key is eliminated.
- *Tavernier Key:* This is an existing no motor zone. The final rule maintains the no motor regulation with exceptions for Tavernier Creek and the unnamed channel to the northeast leading to it.
- *Snake Creek:* This existing no motor zone is extended to the west along the shoreline up to but not including the existing Monroe County no motor zone. An exception to the no motor regulations is made for Snake Creek itself and the three channels providing access to Windley Key.
- *Cotton Key:* This existing no motor zone is extended to include an area west of Cotton Key that exhibits prop scarring.
- *East Content Keys and Upper Harbor Key Flats:* East Content Keys and Upper Harbor Key Flats are both existing marine zones. East Content Keys WMA consists of an existing small idle speed no wake zone in the largest tidal creek. This final rule applies additional idle speed no wake regulations in the remaining tidal creeks at East Content Keys. In addition, the seagrass flats to the east, north, and south of East Content Key, extending beyond Upper Harbor Key, are designated as idle speed no wake as this area exhibits scarring. Upper Harbor Keys WMA is an existing 300-foot no access zone around the entire island. NOAA is making a technical update to change the existing no access buffer regulation to no entry. This zone will be encompassed within the larger East Content Keys and Upper Harbor Key Flats idle speed no wake WMA.
- *Snipe Keys:* This existing marine zone is modified with the addition of a no entry area, which is an important roosting area for magnificent frigatebirds that are easily disturbed by motorized and non-motorized boat traffic. The existing no motor and idle speed no wake areas will not change.
- *Mud Keys:* This existing marine zone includes idle speed no wake and closed areas within the channels. This final rule updates this to idle speed no wake in all channels.
- *Lower Harbor Keys:* This existing zone includes idle speed no wake in selected tidal creeks. This final rule expands the idle speed no wake area to further protect and decrease disturbance to various nesting, roosting, and wading birds.
- *Bay Keys:* This existing marine zone is modified by expanding the current idle speed no wake area in the channel leading to the northwest island, maintaining that island as no motor, and includes an additional adjacent island to the southeast as no motor.
- *Cottrell Key:* This existing no motor zone is changed to a no entry zone to decrease disturbance to nesting and roosting birds. Cottrell Key has one of the highest annual counts of nesting great white herons in the Lower Keys, and serves as an important island for other nesting, roosting and foraging birds.
- *Woman Key:* This existing zone, which currently includes one-half of the beach and sand spit as closed, is changed to no entry and expanded to include 300-feet offshore of the beach to further decrease disturbance to nesting and roosting birds and ESA-listed sea turtles, which may be impacted during nesting by high concentrations of visitors.
- *Boca Grande Key:* This existing zone currently includes a closed area on the south half of the beach and the island is closed by the USFWS. In this final rule, the WMA is changed to no entry and expanded to include 300-feet offshore of the beach to decrease disturbance to nesting and roosting birds and ESA-listed sea turtles, which may be impacted during nesting by high concentrations of visitors.
- *Marquesas Keys:* This is an existing zone with a 300-foot no motor regulation around three keys, a 300-foot no access buffer zone around one island (all on the western side of Mooney Harbor), and idle speed no wake in a southwest tidal creek. NOAA's final rule maintains all of these areas; however, the no motor and no access buffer zones are changed to no entry, and one additional island on the south end of Mooney Harbor is added as no entry.

NOAA's final rule includes 20 new WMAs, eleven of these fall within USFWS National Wildlife Refuge boundaries, nine of which specifically serve to protect USFWS trust species (*e.g.,* species for which the Refuge was established to protect and/or Migratory Bird Treaty Act species).

- *Barnes-Card Sound:* This final rule establishes a new idle speed no wake WMA.
- *Whitmore Bight:* This final rule establishes a new no motor WMA that includes an area along the shoreline in John Pennekamp State Coral Reef Park that includes the State Park managed no motor zone.
- *Pelican Key:* This final rule establishes a new no entry WMA.
- *Pigeon Key:* This final rule establishes a new no entry WMA.
- *Channel Key Banks:* This final rule establishes a new idle speed no wake WMA. This final rule allows exceptions for normal operation in established channels and includes Channel Key as a no entry area.
- *Red Bay Bank:* This final rule establishes a new idle speed no wake WMA.
- *Marathon Oceanside Shoreline:* This final rule establishes a new idle speed no wake WMA with exceptions for established channels.
- *East Bahia Honda Key:* This final rule establishes a new no motor WMA.
- *West Bahia Honda Key:* This final rule establishes a new no motor WMA.
- *Little Pine Key Mangrove:* This final rule establishes a new no entry WMA.
- *Water Key Mangroves:* This final rule establishes a new no entry WMA.
- *Howe Key Mangrove:* This final rule establishes a new no motor WMA.
- *Torch Key Mangroves:* This final rule establishes a new no entry WMA.
- *Crane Key:* This final rule establishes a new no entry WMA.
- *Northeast Tarpon Belly Keys:* This final rule establishes a new no motor WMA.
- *Happy Jack Key:* This final rule establishes a new no entry WMA.
- *Western Dry Rocks:* This final rule establishes a new WMA that will mirror newly established *FWC regulations* [12] (February 2021) with a seasonal no fishing prohibition from April 1 to July 31 and a no anchor regulation during this same seasonal time period.
- *Barracuda Keys:* This final rule establishes a new idle speed no wake WMA.
- *Ballast and Man Keys Flats:* This final rule establishes a new idle speed no wake WMA.
- *Marquesas Turtle:* This final rule establishes a new idle speed no wake WMA.

This final rule does not include two WMAs that were included in the 2022 NOPR:

- *Archer Key:* This final rule does not include a new sanctuary marine zone at

[12] *https://www.flrules.org/gateway/ruleNo.asp?id=68B-6.004.*

this site due to comments received from the public and requests from Florida DEP and FWC.

• *Ashbey-Horseshoe Key:* This final rule does not include a new sanctuary marine zone at this site. This area is an existing no motor zone within Lignumvitae Key Aquatic Preserve and Lignumvitae Key Botanical State Park therefore this rule does not include a new sanctuary marine zone at this site at this time.

4. Additional Marine Zone Regulations

a. Motorized Personal Watercraft

NOAA's final rule includes regulatory changes to allow motorized personal watercraft (PWC) operation in a small portion of the Key West National Wildlife Refuge, west of the Key West main ship channel around marker G13, where PWC operation is otherwise prohibited.

b. Tortugas North Access Permits

The final rule streamlines the permit application process for persons wishing to enter the Tortugas North Conservation Area. The current regulation requires that access permits must be requested at least 72 hours, but no earlier than one month, before the date that access is requested. This final rule removes the current requirement to request access permits no earlier than one month before the date of entrance to the area and removes the requirement to notify FKNMS before entering and upon leaving the area. The requirement to request an access permit at least 72 hours in advance will remain.

c. Catch and Release Fishing by Trolling in Four SPAs

The final rule eliminates the exception allowing catch and release fishing by trolling in four SPAs (Conch Reef, Alligator Reef, Sombrero Key, and Sand Key). Over two decades of management experience with marine zones in the sanctuary points to providing zones with consistent and clear regulations and indicates that user compliance is greatly reduced and enforcement greatly hindered when exceptions to regulations in specific zones are provided.

d. Bait Fishing Permits

NOAA is eliminating over a three-year period the practice of issuing bait fishing permits of any kind in all SPAs. As noted above, over two decades of management experience with marine zones in the sanctuary points to providing zones with consistent and clear regulations and indicates that user compliance is greatly reduced and enforcement greatly hindered when exceptions to regulations in specific zones are provided.

5. Sanctuary Management Plan

The final EIS includes a final revised management plan. The management plan, which includes non-regulatory actions, complements and further supports this rulemaking. The management plan actions are largely focused on understanding and improving the condition of sanctuary resources by reducing threats and addressing emerging issues. Actions also include engaging with and strengthening partnerships to address issues and impacts that occur outside the sanctuary boundary and fall within the jurisdiction or authority of partner Federal or State agencies. A copy of the final management plan is available at the address and website listed in the **ADDRESSES** section of this rule.

V. Changes to the Sanctuary Terms of Designation

1. Summary of Changes to the Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) the geographic area of the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and (3) the types of activities subject to regulation by NOAA to protect those characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made, including public notice and comment, and preparation of an EIS. Terms of designation include the geographic area of the sanctuary, characteristics of the area that give it value, and the types of activities that will be subject to regulation. Therefore, the revised FKNMS terms of designation set forth below:

1. Modify Article I (''Designation and Effect'') to include the expanded sanctuary boundary;

2. Modify Article II (''Description of the Area'') by changing the geographic description and size of the sanctuary;

3. Modify Article III (''Characteristics of the Area That Give it Particular Value'') by updating the size of the sanctuary and the description of the special resources contained within it;

4. Modify Article IV (''Scope of Regulation'') by simplifying descriptions of the categories of activities that may be subject to regulation. As originally drafted, the Terms of Designation contain a level of detail similar to, if not the same, as the regulations. Instead, NOAA proposes to provide broad categories of activities to be more consistent with the legislative intent of section 304(a)(4) of the NMSA to merely identify the ''types of activities'' and rely on the regulations themselves to provide the specific regulatory details (see *e.g.,* 15 CFR 922.163). Otherwise, the ''Scope of Regulation'' section would be duplicative of the regulations and serve no purpose. By simplifying the activity descriptions, NOAA is not broadening in any way the scope of the regulations and is not adding any new or different activities to be subject to regulation. The regulations themselves contain the operative language and only the regulations are enforceable;

5. Modify Article V (''Effect on Leases, Permits, Licenses, and Rights'') by modifying language to be consistent with section 304(c) of the NMSA related to any valid lease, permit, license, approval, or other authorization or right in existence prior to the effective date of the revised terms of designation, and to cite the correct section of Office of National Marine Sanctuaries regulations for certifying such valid rights; and

6. Modify the ''Florida Keys National Marine Sanctuary Boundary Coordinates'' to include the expanded sanctuary boundary.

Terms of Designation for the Florida Keys National Marine Sanctuary

Article I. Designation and Effect

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), Pub. L. 101–605 (16 U.S.C. 1433 note), became law. That Act designated an area of waters and submerged lands, including the living and nonliving resources within those waters, as described therein, as the Florida Keys National Marine Sanctuary (sanctuary). The FKNMSPA specifies that the sanctuary, is designated . . . under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*). The Sanctuary shall be managed and regulations enforced under all applicable provisions of such title III as if the Sanctuary had been designated under such title. FKNMSA Sec. 5(a). In 2001, pursuant to the procedures outlined in section 304 of the NMSA, 16 U.S.C. 1434, the boundary of the sanctuary was expanded to include important coral reefs and other resources in two areas west of the Dry Tortugas National Park, including Sherwood Forest and Riley's Hump. In 2024, the boundary of the sanctuary was further expanded to include areas: (a)

north of the existing northern extent of the sanctuary, offshore of Miami-Dade County, to align with the Area To Be Avoided, (b) seaward of the existing southern boundary of the sanctuary to align with the ATBA, (c) at the far western end of the existing sanctuary boundary, to extend by approximately one mile westward and encompass the outer boundaries of the Tortugas South Conservation Area (formerly the Tortugas South Ecological Reserve) and square off the sanctuary boundary in its northwestern corner.

Section 304 of the NMSA, 16 U.S.C. 1434, authorizes the Secretary of Commerce to issue such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article IV of the Terms of Designation lists activities of the type that are presently being regulated or may have to be regulated in the future in order to protect sanctuary resources and qualities. Listing in section 1 does not mean that a type of activity will be regulated in the future; however, if a type of activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 is amended, following the procedures for designation of a sanctuary set forth in paragraphs (a) and (b) of section 304 of the NMSA, to include the type of activity.

Article II. Description of the Area

The Florida Keys National Marine Sanctuary boundary encompasses a total of approximately 3,427 square nautical miles (4,539 square statute miles) of coastal, ocean, and Gulf of Mexico waters, and the submerged lands thereunder, surrounding the Florida Keys in south Florida. The northernmost point of the sanctuary lies just east of Miami and Key Biscayne. The contiguous area boundary on the Atlantic Ocean side of the Florida Keys runs south from just north of Biscayne National Park generally curving in a southwesterly direction along the Florida Keys archipelago until southwest of the Dry Tortugas and Loggerhead Key. The contiguous area boundary on the Gulf of Mexico side of the Florida Keys continues from this southwestern point to the north approximately 32 miles until it reaches a point northwest of Loggerhead Key and the Dry Tortugas. The boundary then continues east to approximately 8 miles north of Cottrell Key, and then from there it continues generally to the northeast to just north of Sprigger Bank. The boundary then generally approximates the southeastern Everglades National Park boundary until it continues along the western shore of Manatee Bay, Barnes Sound, and Card Sound. The boundary then generally approximates the southern boundary of Biscayne National Park and continues to do so north along the park's eastern boundary until it reaches the sanctuary's northeastern most point.

The landward boundary of the contiguous sanctuary area is the shoreline as defined by the mean high-water line. The Dry Tortugas National Park is not included within the sanctuary and the inner sanctuary boundary in this location is coterminous with this national park boundary. The sanctuary boundary encompasses the entire Florida coral reef tract, all of the mangrove islands of the Florida Keys, and some of the seagrass meadows of the Florida Keys. The precise boundary of the sanctuary is set forth at the end of this Designation Document.

Article III. Characteristics of the Area That Give it Particular Value

The Florida Keys extend approximately 223 miles southwest from the southern tip of the Florida peninsula. Adjacent to the Florida Keys land mass are located spectacular unique, nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs. These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values which give this area special national significance. These environments are the marine equivalent of tropical rain forests in that they support high levels of biodiversity, are fragile and easily susceptible to damage from human activities, and possess high value to humans if properly conserved. These marine environments are subject to damage and loss of their ecological integrity from a variety of sources of disturbance.

The Florida Keys are a limestone island archipelago. The Keys are located at the southern edge of the Florida Plateau, a large carbonate platform made of a depth of up to 7000 meters of marine sediments, which have been accumulating for 150 million years and which have been structurally modified by subsidence and sea level fluctuation. The Keys region is generally divided into five distinct areas: the Florida reef tract, one of the world's largest coral reef tracts and the only barrier reef in the United States; Florida Bay, a large, shallow seagrass-dominated estuary and world-famous game fishing region that sits at the interface between the Florida Everglades and the Florida Reef Tract; the Southwest Continental Shelf; the Straits of Florida; and the Keys themselves.

The sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora. In addition to the Florida reef tract, the sanctuary includes thousands of patch reefs, various hardbottom habitats, mangrove fringed shorelines and mangrove islands, and a substantial portion of one of the world's largest seagrass communities that covers 3.6 million acres of the nearshore marine environment in south Florida. These diverse habitats provide shelter and food for thousands of species of marine plants and animals, including more than 50 species of animals identified under Federal or State law as endangered or threatened. The Keys were at one time a major seafaring center for European and American trade routes to the Caribbean, and submerged cultural and historic resources (*i.e.,* shipwrecks) abound in the surrounding waters. In addition, the sanctuary contains substantial archaeological resources of pre-European cultures.

The uniqueness of the marine environment draws multitudes of visitors to the Keys. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats and marinas, as well as hotels and restaurants. The abundance of the resources also supports a large commercial fishing employment sector.

The number of visitors to the Keys grows each year, with a concomitant increase in the number of residents, homes, jobs, and businesses. As population grows and the Keys accommodate ever-increasing resource use pressures, the quality and quantity of sanctuary resources are increasingly threatened. These pressures require coordinated and comprehensive monitoring and researching of the Florida Keys' region.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA, either throughout the entire sanctuary or within identified portions of it or, as indicated, in areas beyond the boundary of the sanctuary, to the extent necessary and reasonable. Such regulation may

include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area (*e.g.,* 15 CFR 922.163). Because an activity is listed here does not mean that such activity is being or will be regulated. Listing an activity here means that the Secretary of Commerce can regulate the activity in accordance with all applicable laws without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). Further, no regulation issued under the authority of the NMSA may take effect in Florida State waters within the sanctuary if the Governor of the State of Florida certifies to the Secretary of Commerce that such regulation is unacceptable within the forty-five day review period specified in NMSA.

Activities Subject to Regulation:

1. Mineral or hydrocarbon exploration, development, or production;

2. Destroying, causing the loss of, or injuring coral or live rock or attempting to do so;

3. Altering or placing any structure, object, or other material on the seabed, except as authorized by appropriate permits or as part of lawful fishing;

4. Discharging or depositing any material or discharging or depositing any material beyond the sanctuary that then enters the sanctuary and injures a sanctuary resource or quality;

5. Operating a vessel, including anchoring, in a manner that may destroy, cause the loss of, or injure sanctuary resources or property or in a manner that may injure or endanger the life of sanctuary users;

6. Diving in a manner that could harm sanctuary resources, sanctuary property, or other users of the sanctuary;

7. Stocking within the sanctuary or releasing within or from beyond the boundary of the sanctuary any non-native or exotic species;

8. Defacing, marking, or damaging in any way or displacing, removing, or tampering with any markers, signs, notices, placards, navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment;

9. Moving, removing, injuring, preserving, curating, and managing historic resources;

10. Taking, removing, moving, catching, collecting, harvesting, feeding, attracting, injuring, destroying, or causing the loss of or attempting to take, remove, move, catch, collect, harvest, feed, attract, injure, destroy, or cause the loss of any sanctuary resource;

11. Conducting or attempting to conduct any manner of activities within specially designated marine areas, including removing, injuring, or disturbing any living or dead organism or bottom formation; possessing or using certain fishing gear; operating or anchoring vessels; entering areas; and diving;

12. Harvesting marine life species;

13. Possessing or using explosives, electrical charges, or toxic substances within the sanctuary, or using explosives, electrical charges, or toxic substances beyond the sanctuary that then enter the sanctuary and injure a sanctuary resource or quality;

14. Abandoning fishing gear or vessels and removing (including salvaging) fishing gear and grounded, derelict, or abandoned vessels;

15. Maintaining or deserting a derelict vessel or vessel at risk of becoming derelict and leaving harmful matter aboard a grounded or deserted vessel; and,

16. Interfering with any enforcement action.

Section 2. Emergency and/or temporary regulation.

Any and all activities are subject to immediate emergency and/or temporary regulation, including any not listed in Section 1 of this article.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to paragraph (c)(1) of section 304 of the NMSA, 16 U.S.C. 1434(c)(1), a person may conduct an activity prohibited by sanctuary regulations if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization or right in existence prior to the effective date of these revised terms of designation, provided that the holder of the lease, permit, license, approval, or other authorization complies with the procedures outlined in this subpart and subpart E.

However, in no event may the Secretary of Commerce or his or her designee issue any form of approval for the: (1) exploration, leasing, development, or production of minerals or hydrocarbons; (2) disposal of dredged material within the sanctuary other than in connection with beach renourishment or sanctuary restoration projects; or (3) discharge of untreated or primary treated sewage. Any purported authorizations issued by other authorities for any of these activities within the sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined in paragraph (a) of section 304 of the NMSA, 16 U.S.C. 1434(a), may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b), including public hearings, consultation with interested Federal, State, and local government agencies, review by the appropriate congressional committees, review by the Governor of the State of Florida, and approval by the Secretary of Commerce, or his or her designee. No designation, term of designation, or implementing regulation may take effect in Florida State waters within the sanctuary if the Governor of the State of Florida certifies to the Secretary of Commerce that such designation, term of designation, or regulation is unacceptable within the forty-five day review period specified in NMSA.

Florida Keys National Marine Sanctuary Boundary Coordinates

The Florida Keys National Marine Sanctuary (sanctuary) encompasses an area of 3,427 square nautical miles (4,539 square miles) of coastal, ocean, and Gulf of Mexico waters and the submerged lands thereunder from the boundary to the shoreline as defined by the mean high water tidal datum surrounding the Florida Keys in southern Florida. The precise boundary coordinates are listed in Appendix I to this Subpart.

The sanctuary boundary begins approximately 4 miles east of the northern extent of Key Biscayne at Point 1 and continues roughly south and then southwest and west in numerical order to Point 15 approximately 27 miles SW of Loggerhead Key. From Point 15 the sanctuary boundary continues north to Point 17 which is approximately 18 miles NW of Loggerhead Key and then continues roughly east in numerical order to Point 23 just north of Sprigger Bank. From Point 23 the boundary continues in numerical order roughly SE to Point 26 just north of Old Dan Bank. From Point 26 the boundary continues NE in numerical order through Bowlegs Cut and Steamboat Channel to Point 42 near the southern entrance to Cowpens Cut west of Plantation Key.

From Point 42 the boundary continues towards Point 43 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNE until it intersects the line segment formed between Point 44 and Point 45.

From this intersection the boundary continues NNE to Point 45 and then roughly NE in numerical order to Point 61 just west of Hammer Point in Tavernier, FL. From Point 61 the boundary continues in numerical order roughly north and then NW to Point 64 just west of Pigeon Key. From Point 64 the boundary continues in numerical order roughly NE then NNE through Baker Cut to Point 69. From Point 69 the boundary continues in numerical order roughly NE through Buttonwood Sound to Point 73.

From Point 73 the boundary continues towards Point 74 until it intersects the shoreline near the southern entrance to Grouper Creek west of Key Largo, FL. From this intersection the boundary follows the shoreline NE along Grouper Creek until it intersects the line segment formed between Point 75 and Point 76. From this intersection the boundary continues towards Point 76 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly east until it intersects the line segment formed between Point 77 and Point 78.

From this intersection the boundary continues to Point 78 and then roughly ESE in numerical order through Tarpon Basin to Point 85. From Point 85 the boundary continues NE and then NW to Point 92.

From Point 92 the boundary continues towards Point 93 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly north along Dusenberry Creek until it intersects the line segment formed between Point 94 and Point 95.

From this intersection the boundary continues to Point 95 and then NE in numerical order through Blackwater Sound to Point 102 south of the entrance to Jewfish Creek.

From Point 102 the boundary continues towards Point 103 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNE and then NW until it intersects the line segment formed between Point 104 and Point 105. From this intersection the boundary continues towards Point 105 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNE and then roughly west along southwestern Barnes Sound and around Division Point until it intersects the line segment formed between Point 106 and Point 107 near Manatee Creek east of Long Sound. From this intersection the boundary continues towards Point 107 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNW until it intersects the line segment formed between Point 108 and Point 109. From this intersection the boundary continues towards Point 109 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly east until it intersects the line segment formed between Point 109 and 110. From this intersection the boundary continues towards Point 110 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly north and then NE until it intersects the line segment formed between Point 111 and Point 112. From this intersection the boundary continues towards Point 112 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly east and then north around Bay Point and then west until it intersects the line segment formed between Point 113 and Point 114. From this intersection the boundary continues towards Point 114 until it intersects the shoreline. From this intersection the boundary follows the shoreline north along the western side of Manatee Bay until it intersects the line segment formed between Point 115 and Point 116. From this intersection the boundary continues towards Point 116 until it intersects the shoreline.

From this intersection the boundary follows the shoreline around northern Manatee Bay and Barnes Sound until it intersects the line segment formed between Point 117 and Point 118. From this intersection the boundary continues towards Point 118 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly to the SE south of FL State Route 905A—Card Sound Road then NW and roughly north along western Little Card Sound and then Card Sound cutting off the mouths of canals and drainage ditches until it intersects the line segment formed between Point 119 and Point 120 south of Midnight Pass. From this intersection the boundary continues to Point 120 and then roughly SE to each successive point in numerical order approximating the southern boundary of Biscayne National Park to Point 142 approximately 3 miles ENE of Turtle Rocks. From Point 142 the boundary continues roughly N to each successive point in numerical order ending at Point 158.

The inner landward sanctuary boundary is defined by and follows the shoreline where not already specified in the description above.

Dry Tortugas National Park is not included within the FKNMS and the inner sanctuary boundary in this area is coterminous with this national park boundary and begins at Point DT1 and continues in numerical order counterclockwise around the national park ending at Point DT10.

VI. Response to Comments

NOAA collected comments on the 2019 draft EIS as well as the 2022 proposed rule. For the purposes of full transparency and responsiveness, the following section addresses all of these comments. The subject matter of each comment category is first summarized, followed by NOAA's response. Responses may refer to portions of the regulations, management plan, or EIS that NOAA modified as a result of comments it received. Comments and responses are organized primarily by applicable regulation or to a few cross-cutting categories of comments.

General

Comment 1: NOAA received comments that opposed any additional regulatory action and called for no change to the current regulations and management plan.

Response: As described in Section I.2 above, NOAA determined it was necessary to update the FKNMS management framework, including modifying regulations, in order to ensure long-term resource viability and ecosystem function and to address current and future threats to sanctuary resources such as diminished water quality originating from both within and outside the sanctuary, significant decrease in coral cover, and habitat degradation from vessel impacts including anchor damage, propeller-scarring, and groundings. Each of these threats has major implications for FKNMS. In addition, the 2011 FKNMS Condition Report [13] concluded that resources in the Florida Keys appear to be in fair to fair/poor condition and are generally either stable or in decline. Since the release of the 2011 condition report, sanctuary resources have been further degraded by Hurricane Irma (2017), a serious and widespread coral disease outbreak, a seagrass die-off, and warming ocean temperatures as evident during the summer 2023 marine heat wave, among other threats. New regulations are necessary to address these conditions.

Sanctuary Boundary

Comment 2: NOAA received comments supporting the sanctuary boundary expansion alternative to include the ATBA, the Tortugas region,

[13] *https://sanctuaries.noaa.gov/science/condition/fknms/welcome.html.*

and Pulley Ridge. Comments noted support for sanctuary-wide boundary expansion to reduce confusion and create consistency, particularly through the ATBA boundary expansion. Comments acknowledged the need for greater ecological protection in the Florida Keys that could be achieved through boundary expansion, particularly by including the entire Tortugas region and Pulley Ridge. NOAA received comments opposing the sanctuary boundary expansion alternatives, largely due to concern about loss of access for traditional fishing activities.

Response: NOAA's action to include the final preferred alternative aligns the sanctuary boundary with the ATBA boundary to create a consistent geographic and regulatory boundary. In addition, including the ATBA and the Tortugas region provides additional protections for the resources that are present in the expanded area, including those that are ecologically connected. In response to concerns about sanctuary boundary expansion resulting in loss of fishing access, the boundary expansion does not affect activities that are considered traditional fishing as defined at 15 CFR 922.162.

Comment 3: NOAA received comments supporting and opposing expanding the sanctuary boundary to include a distinct unit at Pulley Ridge. Comments in support noted its value as the deepest known photosynthesizing coral reef off the continental U.S. with physical and biological connections to the Florida Keys. Comments in opposition noted this area is already regulated as a HAPC with associated GMFMC regulations and requested that NOAA pursue other avenues to protect the area from all vessel anchoring.

Response: The final rule does not include Pulley Ridge in the sanctuary boundary. The existing HAPC with associated GMFMC regulations prohibits, among other things, anchoring by fishing vessels. NOAA's purpose for proposing a designation of a new unit in Pulley Ridge was to protect important mesophotic reef habitat from anchoring by all vessels. Concurrent with considering boundary expansion to include Pulley Ridge, as noted in the proposed rule, the United States proposed that the IMO designate a No Anchoring Area in the southern portion of Pulley Ridge, which was approved and implemented starting June 1, 2023 (IMO SN.1/Circ.342). The IMO designation has prohibited all anchoring on Pulley Ridge and, therefore, the need for additional regulation by NOAA is greatly reduced. Finally, given that this area of Pulley Ridge is managed as a HAPC with associated fishing regulations under the MSA, the final rule does not restrict fishing in this area.

Comment 4: NOAA received comments that opposed any change to the sanctuary boundary citing reasons including (1) the lack of sufficient enforcement; (2) concern of restricting use/access for the public, particularly for commercial fishing and most notably shrimp fishing; (3) budget and management limitations; and (4) socioeconomic consequences to certain industries.

Response: NOAA considered all of these concerns throughout the Restoration Blueprint process, including at the draft EIS and draft management plan phase, the notice of proposed rulemaking, the final EIS and final management plan, and in this final rule. Specifically, (1) enforcement is identified as one of six management priorities in the final management plan (see the priorities section and activities 3.3.1 and 5.3.2). NOAA/ONMS will work with partners to enhance enforcement capacity to achieve visible resource protection benefits. ONMS is also committed to enhancing public knowledge, understanding, and compliance through establishing consistent regulations, where feasible, and targeted education and interpretation of those regulations. These efforts will strengthen enforcement of the final regulations. (2) Public access, including fishing access, is not affected by expanding the sanctuary boundary. Sanctuary-wide regulations will apply, which may affect how someone operates (*e.g.,* prohibition on impact to the seabed) but do not affect access. Specific to fishing activity, exemptions from specific sanctuary-wide regulations exist for traditional fishing activities, the definition for which is updated in the final rule. (3) NOAA will address resource limitations by identifying priorities towards which resources will be directed. NOAA's final management plan includes a suite of six management priorities and Appendix I outlines a prioritization framework that initially evaluates cost and level of effort needed followed by consideration of the following five factors: importance, impact, feasibility, requirements, and connection to one of the six priority themes. In addition, NOAA will continue to work with partners that play an essential role in how the sanctuary conducts its operations and programs. Appendix II includes a list of representative partners. (4) As summarized in the 2022 Socioeconomic Report (Schwarzmann et.al., 2022), the estimated economic effects of the 2022 NOPR alternative are not considered significant under section 3(f)(1) of Executive Order 12866. Estimated losses to small businesses in the commercial fishing and recreational for-hire fishing sectors resulting from proposed boundary changes are expected to be less than 1% of average revenue with the exception of the lobster fishery, which may experience a loss of roughly 2%. In this final rule, NOAA is selecting a smaller sanctuary boundary expansion than the 2022 NOPR Alternative; therefore, socioeconomic impacts are expected to be less than what was estimated in the 2022 Socioeconomic Report.

Sanctuary-Wide Regulations

Comment 5: Commenters requested NOAA consider adding an exception to the proposed anchoring definition to include an exemption for push poles and power poles.

Response: NOAA's final rule prohibits anchoring in all SPAs, Habitat Restoration Areas, and Conservation Areas, except in the Western Sambo Conservation Area. Given that these areas prohibit take (*i.e.,* fishing) and the use of push poles and power poles is not commonplace, the final rule does not modify the anchoring definition to allow exceptions. The final rule does not regulate anchoring for nearshore WMAs, where push poles and power poles are more commonplace. See the response to comments in the WMA section.

Comment 6: NOAA received comments requesting a definition for trolling given the existing exception for catch and release fishing by trolling in 4 SPAs and the proposal to include a ''trolling only'' zone at the proposed Western Dry Rocks (Alternatives 2 and 3).

Response: The final rule does not include any provisions related to trolling, so a definition is not needed.

Comment 7: NOAA received comments opposing the proposed update to the traditional fishing definition. Commenters requested that the definition more fully capture existing fishing regulations promulgated by State and Federal authorities and allow for the future development and use of innovative gear types intended to reduce impacts on FKNMS resources. Commenters also recommended that the final rule include the complete definition of traditional fishing, instead of being included as a reference to another section or document.

Response: After further consideration and close coordination with the Florida Fish and Wildlife Conservation Commission, the GMFMC, and the

SAFMC, NOAA agrees with the recommendation to capture existing fishing practices in the definition of traditional fishing rather than limiting the definition to activities that were in existence as of 1997. NOAA has included an updated definition for ''traditional fishing'' in the final rule that includes fishing activities taking place as of the effective date of this final rule.

NOAA provides further guidance in final EIS Appendix G that includes an updated description of the current fisheries managed by the FWC in State waters and by NMFS in the EEZ. The traditional fishing activities described in Appendix G are currently occurring in this sanctuary subject to FWC/NMFS regulation and will remain subject to the sanctuary's marine zone regulations where additional protections are needed to address impacts of traditional fishing activities on sanctuary resources.

NOAA agrees that it may be appropriate to update the traditional fishing definition in the future, particularly to recognize new or innovative gear types that become widely used and are demonstrated to reduce impacts to sanctuary resources. Any update to the definition and the fishing activities that are considered traditional fishing would be done through a separate rulemaking in order to consider public comment and to conduct an environmental analysis under NEPA of the potential impacts of new or innovative gear types or fisheries activities on sanctuary resources. New or innovative gear types, along with other new or modified fishing activities, would continue to require sanctuary permits or authorization while they are being tested. NOAA would collaborate closely with, and rely on the expertise of, FWC and the FMCs when considering any updates to the definition of traditional fishing activities.

Discharge and Deposit Regulation Exception

Comment 8: NOAA received comments strongly supporting a specific regulation to limit discharges from cruise ships and asserting that cruise ship discharges are a significant cause of water quality problems in the FKNMS. Specific comments requested clarification about exceptions from the discharge prohibitions for certain discharges (*e.g.,* rainwater, ballast water) from cruise ships. Commenters also requested that NOAA continually review this provision to see if technology advances warrant additional or modified discharge regulations. Commenters also stated that discharges from cruise ships are sufficiently regulated by the U.S. EPA, including through the CWA and VIDA. Finally, commenters claimed there is no scientific support for prohibiting exhaust gas cleaning system discharges and no need to rely on the precautionary principle.

Response: NOAA has updated and clarified the cruise ship discharge and deposit prohibition in this final rule to more clearly prohibit discharging or depositing of any material or other matter from a cruise ship except cooling water. NOAA determined that other alternatives, which proposed instead to specify certain discharges that would be allowed by cruise ships (*e.g.,* ''clean wash water''), would be extremely difficult to define based on changing industry standards. The use of such terms could be interpreted differently among stakeholders, which could create compliance and enforcement challenges. EPA has recently issued a final rule setting national standards of performance for commercial vessel incidental discharges, but these standards will not be effective until the United States Coast Guard has promulgated implementing regulations. Additionally, the sanctuary was designated by Congress, in part, for the purpose of protecting water quality, and sanctuary regulations have long imposed more stringent vessel discharge standards than the CWA. For instance, the sanctuary's current discharge and deposit prohibition, which provides a limited exception for certain routine vessel discharges, was promulgated almost ten years before EPA began regulating incidental vessel discharges in 2007.

Discharges of EGCS wash water contain PAH's, higher pH water, and heavy metals. EPA's national standards for discharge of EGCS wash water is based largely on the IMO 2015 Guidelines for Exhaust Gas Cleaning Systems (Resolution MEPC.259(68)), but these standards may not be sufficiently protective for FKNMS. Although the degree of harm of these releases depends on the local environmental conditions, scientific studies indicate a cause for concern of impacts to sensitive ecosystems such as FKNMS (Teuchies et al., 2020). NOAA does not require scientific certainty to prohibit EGCS wash water discharges. While EPA's regulations do not ban EGCS wash water, a ban narrowly tailored to cruise ships in FKNMS is feasible. Cruise ships spend a short time traveling in the Sanctuary to visit Key West, and cruise ships currently switch to low sulfur fuels when entering harbors and ports where EGCS discharges are prohibited. Though low-sulfur fuel is more costly, cruise ships spend a very short time traveling through the sanctuary to visit Key West. This regulatory change meets the express purpose of the Act to facilitate uses in the sanctuary to the extent compatible with the primary objective of resource protection by, in this case, considering the low economic impact on cruise ships and the risk of harm to sanctuary resources. 16 U.S.C. 1431(b)(6).

Comment 9: NOAA received comments raising concerns about compliance with the prohibition of discharges from cruise ships and enforcement of violations. Specifically, commenters noted that this regulation lacks the appropriate enforcement mechanism and mandatory penalty consequences.

Response: Cruise ships are subject to a comprehensive system of regulation and oversight. State and Federal agencies may conduct announced and unannounced inspections and enforce compliance with State and Federal laws and regulations. A cruise ship found to be in violation of the sanctuary's discharge and deposit prohibition could be subject to civil penalties under the NMSA, 16 U.S.C. 1437(d), or, in some cases, criminal prosecution. If a discharge and deposit results in destruction, loss of, or injury to sanctuary resources, a cruise ship may also be liable for resulting response costs and damages under 16 U.S.C. 1443.

Comment 10: NOAA received public comments requesting that proposed discharge prohibition for cruise ships be extended to all commercial vessels over 79 feet.

Response: NOAA appreciates these comments and considered them carefully. Cruise ships are a unique source of a considerable volume of greywater discharges generated by carrying passengers (*i.e.,* showers, laundry, sinks, kitchens, etc.) and have the ability to refrain from discharging during their short time in the sanctuary. NOAA may consider extending this discharge prohibition to other large vessels in a future rulemaking after evaluating water quality monitoring data and assessing the types, numbers, and sizes of vessels present in FKNMS.

Comment 11: NOAA received comments recommending that a regulation be added to specifically address turbidity (*e.g.,* suspended sediments in the water column) generated from cruise ships and other large vessels.

Response: NOAA's final rule was designed to limit discharges of greywater and runoff from cruise ships

because these discharges are well studied as having potential adverse effects on water quality, and cruise ships are capable of reducing these discharges while in the sanctuary. More study is needed to weigh the costs and benefits of any regulation aimed at reducing turbidity from cruise ship transit. Ship-caused turbidity could have localized impacts to sanctuary resources in the vicinity of the transit channel. It is unclear if measures to address those impacts could be taken other than reducing the size or frequency of cruise ships entering Key West, which could have measurable economic impacts.

Additionally, the Florida DEP is responsible for reviewing, establishing and revising water quality standards, including turbidity. Pursuant to the Federal Clean Water Act, DEP conducts a comprehensive review of water quality standards every three years. The Water Quality Protection Program (WQPP) may invite additional review, discussion and recommendations about proposed or adopted revisions to water quality standards that impact waters of the Florida Keys.

Comment 12: NOAA received comments acknowledging that in some cases vessels provide affordable housing options. These commenters were concerned about the use of these vessels as homes, the use of vessels as overnight rentals, and the potential environmental impact of discharge from such vessels if they aren't regulated specifically.

Response: NOAA acknowledges the reality of vessels serving as affordable housing and that the use of vessels as short-term rentals could potentially cause harm to the environment from discharges from residential uses. However, NOAA already regulates vessel discharges, regardless of the duration of a visit. State waters of the Florida Keys have been designated as a No Discharge Zone since 2002. This designation was extended into Federal waters in 2010, and current sanctuary regulations prohibit the discharge or deposit of any material or other matter into the sanctuary, with limited exceptions. NOAA continues to work with the FKNMS Water Quality Protection Program (WQPP) (established through the FKNMSPA and administered by the U.S. EPA and the State of Florida's DEP in cooperation with NOAA), its partners, and the community to support outreach to vessel owners about sanctuary discharge regulations and options for marine sanitation device pump out. NOAA also continues to support NOAA OLE, FWC, and USCG enforcement efforts related to discharge. See also the comments and responses to Overnight Mooring Buoys.

Temporary Regulation for Emergency and Adaptive Management

Comment 13: NOAA received comments supporting an expanded time frame for the existing emergency regulation to allow increased responsiveness to emergencies and emerging issues that would benefit from immediate management action. NOAA also received comments expressing concerns that an increased time frame could subvert the public comment process required for rulemaking. Commenters also suggested that the sanctuary consider different time frames for sanctuary-wide versus marine zone-specific emergencies. Finally, NOAA received comments that ''emergency'' was not clearly defined which raised uncertainty about the drivers that would potentially allow for greater flexibility in modifying zones to address changing resource management needs.

Response: The final rule includes a new regulatory framework for temporary emergency rules that was developed in response to public comments. The final rule includes an increased time frame for the Temporary Regulation for Emergency and Adaptive Management in order to provide the greatest level of flexibility to NOAA for responding to emergency management needs in the sanctuary. While NOAA's final rule has a maximum time frame (six months with one six-month extension), NOAA will consider shorter time frames where appropriate to meet management needs. In addition, this extended time frame provides sufficient time for NOAA to go through a full rulemaking process if the situation warranted. An increased time frame also aligns with the emergency time frames outlined in section 305(c) of the MSA. This increased time frame is also consistent with other national marine sanctuaries that have emergency regulations.

In addition, the final rule addresses the comments in a number of ways. Specifically:

- To address concerns about subverting the public notice and comment process, NOAA is making clear that the existing APA requirements—to provide for prior notice and opportunity for public comment, unless NOAA can demonstrate good cause apply to these emergency rulemakings;
- To respond to questions regarding what NOAA would consider an emergency, the agency has identified categories for which temporary regulations may be promulgated. NOAA believes it is clearer and more efficient to establish well-defined categories, criteria, and processes for temporary regulations to respond to time-sensitive needs to manage sanctuary resources, rather than attempt to define ''emergency;'' and
- With respect to concerns raised about application of emergency action in State waters, the final rule explicitly acknowledges that temporary regulations shall be subject to the Governor's review pursuant to section 304(b)(1) of the NMSA.

Historical Resources Permitting

Comment 14: NOAA received comments supporting updating historical resource permits to align with the State process, noting that historic resources are nonrenewable resources and NOAA has an obligation to manage them as such. Comments specifically acknowledged that aligning NOAA's historical resource permits with Florida's archaeological research permit standards should make the permitting process more efficient for researchers working in the State waters of the sanctuary. Some commenters noted that this alignment would in turn serve to increase protection of FKNMS historical resources.

Response: NOAA agrees and is updating the historical resource permits for these reasons. The current permitting system is unnecessarily complicated and confusing to applicants as it artificially bisects the archaeological research process into either survey/inventory or research/recovery, often resulting in insufficient research plans to meet project goals. The archaeological research permit category requires that applicants commit to following an explicit statement of objectives and that project methods be chosen to gather the information required to meet the stated objectives. The quality of the research, both proposed and conducted, will be improved by these changes, and the reporting of research results will also be of higher quality when directed by a professional archaeologist with the required education and experience. Finally, the archaeological research permit category with associated application and review criteria will increase the protection of historical resources throughout the sanctuary. These changes support the agency's efforts to meet National Historic Preservation Act (NHPA) responsibilities in combination with the new management plan and the proposed NHPA Programmatic Agreement for FKNMS Operations, Management, and Permitting. NOAA concludes only minor socio-economic impacts will

result from increasing regulation of historic resource permitting.

Comment 15: NOAA received comments opposing changes to the historical resource permit categories due to the potential impact to private property rights for those involved in salvage of historic shipwrecks. NOAA also received comments that organizations holding Federal Admiralty Court rights of access should not be exempt from updated historical resource permitting regulations. More generally, NOAA received comments both supporting and opposing historic shipwreck salvage and the resulting removal of historical resources from the sanctuary for private gain. Commenters in support of the status quo indicated a belief that private sector salvage was a better way to preserve historical resources. Comments opposing historic shipwreck salvage were supportive of NOAA's proposal to remove current permitting provisions allowing for the deaccession/transfer of sanctuary artifacts.

Response: Holders of pre-existing, valid admiralty rights are not required to obtain a deaccession/transfer permit under the current sanctuary policies, and, as such, will not be affected by the elimination of this permit category in the final rule. In the 1996 FKNMS final management plan and final environmental impact statement (Vol. 2, pg. 99), NOAA recognized that admiralty rights of access to specific historic shipwrecks had been granted by Federal courts to certain organizations and individuals prior to congressional designation of the sanctuary. NOAA continues to recognize such rights of access for those organizations and individuals that have continued to maintain the underlying admiralty rights and will recognize any right to seek adjudication of title to articles of salvage in accordance with the entities' admiralty rights.

The removal of a deaccession/transfer permit category for those without Federal Admiralty rights is consistent with Federal archaeological preservation laws, collectively referred to as the Federal Archaeology Program, which promote the ''in place'' conservation of archaeological sites on public lands, rather than private salvage/recovery. Furthermore, archaeological excavation and artifact recovery from public lands should be undertaken for public benefit to answer specific research questions. The resulting artifact collections should be maintained intact for future study. NOAA's changes to FKNMS historical resource permitting categories in the final rule aligns FKNMS regulations with these national historic preservation standards.

Those holding pre-existing, valid admiralty rights are not exempt from regulation or other historic resource permitting requirements. In accordance with section 304(c) of the NMSA and ONMS regulations at 15 CFR 922.10 and 922.167, these rights of access are subject to regulation and restriction by NOAA and must be carried out in a manner consistent with other applicable laws such as the Abandoned Shipwreck Act (ASA), ASA guidelines, NHPA, NMSA, and FKNMSPA.

Comment 16: NOAA received comments specifically related to the Draft NHPA Programmatic Agreement for FKNMS Operations, Management, and Permitting, which was included in Appendix C of the 2019 draft EIS. Commenters expressed frustration that the previous NHPA Programmatic Agreement had expired prior to the development and implementation of an updated version. Commenters expressed concern that this updated draft was not fairly publicly vetted and approved with full consultation of the relevant Florida State offices. Some commenters indicated a desire to have the draft agreement made available through a separate public review process.

Response: NOAA has been working with the State of Florida and the Advisory Council on Historic Preservation (ACHP) since 2015 to develop a NHPA Programmatic Agreement for FKNMS Operations, Management, and Permitting. NHPA implementing regulations under 36 CFR 800.14(b)(2)(ii) require the agency official to arrange for public participation appropriate to the subject matter and scope of the proposed agreement. NOAA determined that the 2019 draft EIS process would be a suitable way to notify the public of the draft programmatic agreement and receive public comment. In addition to public meetings during which NOAA presented information about its management update, including the draft programmatic agreement, NOAA also held a meeting with FKNMS historical resource permittees and former permittees to make them aware of the 2019 draft EIS/draft programmatic agreement and associated public comment period. NOAA believes that the 5-month public comment period offered for the 2019 draft EIS/draft programmatic agreement was sufficient. NOAA, with FKNMS Sanctuary Advisory Council Submerged Cultural Resources members, hosted a special meeting just following release of the draft EIS in 2019 to further engage the interested public on issues related to the Programmatic Agreement. Since that time, NOAA, the State of Florida and the ACHP have been finalizing the agreement.

Fish Feeding

Comment 17: NOAA received comments that generally supported the proposal to prohibit feeding and attracting of fish, including sharks, or other marine species, from any vessel or while diving in the sanctuary, consistently in State and Federal waters. Specifically, comments opposed shark feeding for entertainment purposes, citing safety concerns of mixing feeding sharks with fishing, swimming, and snorkeling activities. Commenters also noted concern about habituating sharks to feeding and how that affects their behavior. NOAA also received comments that opposed this proposed regulation because of the potential loss of eco-tourism and educational opportunities and questioned the impacts of fish and shark feeding on the environment, human safety, and fish and shark behavior.

Response: NOAA determined the benefits of prohibiting fish feeding outweigh the potential costs to eco-tourism or educational opportunities. NOAA considered impacts to sharks and shark depredation, human safety concerns, and compliance and enforcement. In order to minimize the impacts to current eco-tourism and educational businesses that utilize fish feeding, NOAA will consider issuing general permits to pre-existing eco-tour operators. However, in order to minimize the negative impacts of fish feeding, this exception will only apply to pre-existing companies with the goal of phasing out the practice, and permit applicants must satisfy all general permit application requirements. Any permits would contain specific terms and conditions to protect sanctuary resources.

Comment 18: NOAA received comments questioning the difference between the prohibition of feeding fish for attracting and viewing purposes but allowing the use of bait in traditional fishing activities and the impact these activities have on the environment and fish behavior.

Response: This regulation was developed due to concerns about the safety of divers, swimmers, and the effects of concentrating and training predatory fish to associate humans with food. Moray eels, sharks, barracuda, groupers and a host of other species can pose an increased danger to divers as a result of hand-feeding. In addition, hand feeding generally occurs in the same locations, days, and time schedules and

creates a habitual feeding station for marine life. This is in contrast to fishing activity that is generally less regular and consistent in locations, times, and schedule. Marine species conditioned to being fed begin anticipating meals, which interrupts natural feeding cycles and can result in negative behavior and health impacts including that hand-fed fish are especially vulnerable to predators. The existing exemption for the discharge or deposit of fish, fish parts, chumming materials or bait used or generated incidental to and while conducting traditional fishing activities will be maintained. A description of activities considered traditional fishing is included in Appendix G of the final EIS.

Comment 19: NOAA received comments requesting that shore-based fish feeding be regulated, including that all business-scale feeding of tarpon and other species should be fully prohibited noting the habituation of a wild animal.

Response: NOAA has decided not to regulate shore-based activity at this time due to the large number of shore-based fish feeding venues. These venues are mostly small-scale, coin operated operations with a handful of larger-scale operations at points throughout the sanctuary, which would be difficult to control and manage to ensure compliance.

Grounded and Deserted Vessels, and Harmful Matter

Comment 20: NOAA received comments supporting the proposal providing the sanctuary greater authority to address grounded and deserted vessels. Commenters noted that NOAA should ensure that definitions and application of any proposed regulations are consistent with the State of Florida regulations and enforcement authorities. NOAA also received comments acknowledging that enforcement of a new regulation could prove challenging given the number of deserted vessels in the sanctuary and broad geographic area where they are found. NOAA received comments supporting additional coordination with the towing and salvage operators to develop best practices for vessel removal recognizing that sometimes additional damage can occur during the removal process.

Response: NOAA agrees with the need for the sanctuary to have its own specific regulations to respond to the threat of deserted vessels and harmful matter. The final rule is consistent with State regulations. NOAA will continue to work in partnership with the State of Florida, Monroe County, the U.S. Coast Guard and others due to the challenging scope of this issue. Finally, the management plan includes additional details for how NOAA will engage with towing and salvage operators to develop best management practices and a permitting process for removing grounded and deserted vessels (See Appendix A, Activity 3.3.4).

Large Vessels Mooring Buoys

Comment 21: NOAA received comments that support delineating large and small vessel mooring buoys. Commenters requested clarification about the size delineation including length, combined length of rafted vessels, and vessel tonnage. Some comments supported this regulation and the potential application to limit access to sensitive areas that have been damaged by overcrowding and intensive use. Commenters also recommended boater education courses to increase boater knowledge regarding proper use of and regulations associated with mooring buoys. Commenters raised concern about the number of large vessel mooring buoys and if that would be sufficient to meet demand.

Response: NOAA agrees with comments about delineating mooring buoys based on vessel sizes and provides further clarification in the definition for ''large vessel'' in the rule. In addition, large vessel mooring buoys include a sticker indicating the vessel length that can use such buoys. The management plan includes activities related to review and update of the sanctuary mooring buoy program including plans to engage user groups to help identify areas of use, numbers of users, and placement of mooring buoys. Finally, the sanctuary website includes information and tutorials about the proper use of mooring buoys, information is included in the Bluestar Program education materials, and the sanctuary has a voluntary boater education course and participates in and provides sanctuary specific content for boater training courses hosted by the U.S. Coast Guard Auxiliary and others.

Live Rock Aquaculture

Comment 22: NOAA received comments that supported the development of a Memorandum of Agreement with the Florida Department of Agriculture and Consumer Services (FDACS) and NMFS for better coordination of this activity. Commenters opposed the requirement of an additional sanctuary permit for live rock aquaculture operations.

Response: NOAA agrees and the final rule does not include an additional sanctuary permit for live rock aquaculture. The final management plan includes activity 3.2.3 calling for the development of a Memorandum of Agreement with the Florida FDACS and NMFS for better coordination of this activity.

Comment 23: NOAA received specific comments requesting that existing live rock aquaculture sites be considered when evaluating the final marine zone locations, regulations, and continued access for existing permitted live rock aquaculture operators.

Response: NOAA has evaluated the existing live rock aquaculture site locations in relation to the proposed new or modified marine zones. Currently, there is only one marine zone where live rock aquaculture occurs (in the vicinity of the proposed new Tavernier Nursery Restoration Area). Due to the fact that the Tavernier Nursery Restoration Area is proposed transit only, the live rock aquaculturist will need to obtain a sanctuary permit to enter and operate in this zone. In addition, for this site, and more generally, live rock aquaculture practitioners must have a valid State license or Federal permit to operate. As long as they have a copy of this documentation and a sanctuary permit on their vessel if and when operating in the sanctuary marine zone, enforcement action will not be taken with respect to lawful and authorized live rock aquaculture operations within this marine zone. NOAA and FWC will ensure that their enforcement officers are aware that valid State license or Federal permit holders may continue to conduct this activity as licensed or permitted.

Overnight Use of Mooring Buoys

Comment 24: NOAA received comments that were generally not supportive of prohibiting overnight use of mooring buoys, largely due to issues of public safety (*e.g.,* safe harbor during storms), public access, and enforcement. Some public comments, however, highlighted concern about new and increasing practice of anchored and moored vessels being used for overnight accommodation (*e.g.,* vacation rental by owner) and possible impacts from such use, including prohibited discharges. Comments also include alternative proposals including limiting visitors to a maximum 14-day stay to prevent long-term use of moorings.

Response: Mooring buoys are intended to increase boating accessibility while reducing impact to critical and sensitive sanctuary resources caused by anchoring. In the EIS, NOAA considered an alternative that would prohibit use of mooring buoys overnight in response to concerns

about impacts of longer term uses such as increased discharges and increased impacts on sanctuary resources, like harvesting of fish. In response to safety concerns, in this alternative NOAA also considered an exception to this regulation for vessels seeking safe harbor. The benefits of this alternative would be to facilitate equitable access to the mooring buoys and to ensure compliance with sanctuary rules while at mooring buoys while continuing to allow overnight use for safety. However, NOAA does not restrict overnight use in the final rule in response to public and agency comments that were generally not supportive of prohibiting overnight use of mooring buoys, largely due to issues of public safety, limiting public access, and enforcement.

Shoreline Slow Speed

Comment 25: NOAA received comments that were generally supportive of modifying the existing idle speed, no wake regulation along all residential shoreline (922.163(a)(5)(iii)(D)) to a more general shoreline slow speed regulation and applying it to all shorelines within the sanctuary. Commenters noted the benefits of such a regulation including (1) potentially decreasing the number of individual WMAs (where speed is regulated); (2) reducing the need for, or at least the number of, marker buoys and signage; and (3) providing additional protections for nearshore habitats and species. Commenters also noted concern regarding the feasibility of enforcing a shoreline slow speed regulation and the number of exceptions that may be required for channels, passes, and ability to access deeper areas nearshore.

Response: The sanctuary's existing regulations prohibit operating a vessel at a speed greater than 4 knots or in a manner which creates a wake within 100 yards of residential shorelines. In Alternative 4, NOAA considered modifying this regulation so that it applies to 100 yards of all shorelines (not just residential) and simplifying the speed restriction by prohibiting ''creating an extensive wake.'' NOAA acknowledges the value of expanding slow speed regulations for the reasons identified by the commenters, as well as the value that additional shoreline protections could provide in light of potential impacts from climate change and sea level rise. However, in the final rule, NOAA retains the existing regulatory language due to the number of exceptions that may be required for channels and passes and the potential loss of access to deeper areas nearshore. In the preferred final alternative, NOAA carefully considered all of the proposed existing, modified, and new WMAs to ensure that the WMAs will provide additional protections for nearshore habitats and species in the areas of greatest need without a slow speed restriction.

Marine Zones and Associated Regulations

Comment 26: NOAA received numerous suggestions for new or different areas to be designated marine zones.

Response: NOAA carefully assessed all suggestions for new or modified marine zones throughout the Restoration Blueprint process. NOAA's assessment was based on reviewing the resources present in the areas, the condition of those resources, risks to the resources, and the nature and extent of the public's use of those areas. NOAA carried forward new or modified marine zones for additional analysis in the final rule if NOAA identified a potential need for protection that outweighs potential negative effects on the public's use. The new marine zones include: South Islamorada Coral Gardens, Cannon Patch, Sister Creek, Hurricane Key, Don Quixote Key, Howell Key, South Picnic Island, Pine Channel Island, Upper Sugarloaf Sound, Little Saddlebunch, Coconut Key, Bill Finds Key, Veterans Key, Upper Matacumbe Key, Cheeca Rocks Flat, Lower Matacumbe Key, Ocean Reef, and Plantation Key Colony.

Comment 27: NOAA received comments expressing concern that NOAA is establishing new marine zones with access restrictions, particularly impacting fishing access, but NOAA does not subsequently re-open areas for fishing once the marine zone has either achieved its purpose or resource conditions have shifted.

Response: NOAA's final rule eliminates five existing marine zones including one Conservation Area (Looe Key SUA), two SPAs (Rock Key and French Reef) and two WMAs (Little Crane Key and Tidal Flat South of Marvin Key). These existing marine zones are eliminated due to resource condition changes and an opportunity to evaluate different management regimes. The elimination of these zones removes restrictions on fishing in these areas.

In addition, NOAA proposed 13 new marine zones in the 2019 draft EIS that are not included in the proposed or final rule. These proposed marine zones are not being finalized for a range of reasons including the need for additional scientific and user data and concerns about fishing access and other recreational uses within these areas.

Management Areas

Comment 28: NOAA received comments supporting the proposal to change the Existing Management Area zone type to Management Area.

Response: NOAA agrees and is changing the zone type from Existing Management Areas to simply Management Areas. This change is common sense given that all marine zones within FKNMS will now be considered existing. Key Largo and Looe Key areas (which predated and were encompassed in the designation of the FKNMS) are now be referred to as Management Areas with all existing regulations maintained. Great White Heron NWR and Key West NWR, which are referred to as Existing Management Areas, will now simply be referred to as national wildlife refuges. Existing sanctuary regulations in the Key West and Great White Heron NWRs will be maintained with the exception of a minor change to a particular area where personal watercraft will be allowed to operate in Key West NWR where they are otherwise prohibited.

Comment 29: NOAA received comments opposing the proposed no anchor regulations in the Key Largo Management Area and Looe Key Management Area. Specific to the Key Largo Management Area, comments noted that a no anchor regulation would impact the multi-use activities there, including fishing, and the area includes sandy bottom habitats where a no anchor regulation is not needed. Comments did, however, support the use of no anchor regulations in smaller, targeted areas with sensitive habitats that would benefit from protection from anchor damage.

Response: NOAA agrees the area includes sandy bottom habitat and a no anchor regulation is not needed, and the proposed and final rule do not include a no anchor regulation in Key Largo or Looe Key Management Areas. The final rule does, however, include a no anchor regulation in all SPAs and Restoration Areas, which is described below in those respective sections.

Comment 30: NOAA received comments opposing the proposal in the 2019 draft EIS to change the Looe Key Management Area boundary by expanding the Looe Key SPA and Looe Key SUA boundaries because this change would have reduced the extent of the areas where certain fishing activities are currently allowed.

Response: NOAA's final rule maintains the greatest amount of area in the Looe Key Management Area available for fishing. The areas of the Looe Key Management Area, Looe Key

SPA, and Looe Key SUA were modified in different configurations in each of the draft EIS alternatives for a few reasons, including to provide additional protections for habitats and species in those areas and in an attempt to simplify the zoning scheme in this area. As in the proposed rule, the final rule does not change the current Looe Key SPA boundary, and the Looe Key SUA is eliminated, thereby opening the area up for fishing that has been closed since 1997. The final rule includes two small Nursery Restoration Areas within the Looe Key Management Area where fishing is prohibited.

Exception for Motorized Personal Watercraft

Comment 31: NOAA received comments related to the operation of motorized PWC in the sanctuary that ranged from banning PWC throughout the sanctuary to opposing any restrictions on where PWC could operate, with the majority of comments supporting some level of continued use of PWCs within the sanctuary. Specific to the proposal to provide a small area open for PWC operation in the Key West NWR, comments included (1) support, (2) recommendations to allow PWC use in areas parallel to the entire length of the Key West ship channel to further public safety, (3) additional licensing requirements for PWC tour operators, and (4) the State of Florida should take the lead for regulating PWC under Chapter 327.60 Florida Statutes.

Response: The current sanctuary regulatory prohibition on the operation of PWC and airboats within the Great White Heron and Key West NWRs prevents the disruption of roosting, foraging, and nesting birds over a widespread area. At this time, NOAA has concluded that the risk of disturbance to sanctuary resources such as birds does not warrant banning PWCs throughout the sanctuary. NOAA finds that it is appropriate to maintain and refine the existing regulation for PWC operations in the areas where the resources of greatest sensitivity are found including the NWRs and the network of islands. The final rule provides a small area for PWC operation in the Key West NWR that is adjacent to the shipping channel to allow for the separation of users engaged in different and conflicting activities while continuing to meet the resource protection goals over the broader area. The Lower Keys Guides Association and the PWC Cooperative requested NOAA allow PWCs in this small area in a presentation to the FKNMS Advisory Council to address concerns about conflict between the operation of PWC and fishing activities in this area including on the eastern side of the shipping channel. NOAA and the Florida Keys NWR support this change to avoid this conflicting use in this very congested shipping channel. All vessel operators have a responsibility to observe the navigation rules and practice good seamanship while transiting this area.

Regarding additional licensing requirements for PWC tour operators, business and livery licensing for PWC tour operators falls under the purview of state, county, and municipal entities, which provide adequate training and screening. Finally, regarding comments asserting that the State of Florida should take the lead for regulating PWC, the State has not enacted regulations to protect sanctuary resources from PWC. Comments also asserted that the current prohibition on PWC does not comply with Florida Statute 327.60, but that provision applies to a county or municipality, not the Federal government. Therefore, the final rule establishes additional regulations on PWC in order to prevent the disturbance of sanctuary wildlife.

Comment 32: NOAA received comments that additional regulation and enforcement of existing regulations of the use of thrill craft (*e.g.,* PWC, airboats, parasails) in the national wildlife refuges is needed.

Response: Existing NOAA regulations prohibit the operation of PWC and airboats within the Great White Heron and Key West NWRs. The Federal Aviation Administration regulates parasail activities and the USCG regulates small passenger vessels that conduct parasail operations. Therefore, at this time, additional regulation and enforcement of existing regulations of the use of thrill craft (*e.g.,* PWC, airboats, parasails) in the national wildlife refuges is not included in the final rule.

Conservation Areas

Comment 33: NOAA received comments supportive of combining the existing Ecological Reserve zone type and existing Special Use zone type into one new Conservation Area zone type and maintaining the existing regulations (*e.g.,* continuous transit only).

Response: NOAA agrees and in an attempt to simplify zone terminology created one Conservation Area zone type that includes the zones with the most restrictive regulations.

Tortugas North Conservation Area Access Permits

Comment 34: NOAA received comments that were supportive of the proposed administrative changes to these permits.

Response: NOAA thanks the commenters for their comments.

Comment 35: NOAA received comments both supporting and opposing establishing three large, contiguous Conservation Areas in each region of the sanctuary (Carysfort Reef, Long Key Tennessee Reef, and Tortugas Corridor). Comments in support were numerous and generally noted the value of providing additional ecosystem-level management and protection. Opposing comments were also numerous and provided specific impacts related to loss of access and opportunity for recreational use in all the proposed areas, particularly related to fishing access.

Response: NOAA considered including large contiguous marine zones in the draft EIS Alternatives 2, 3, and 4 with more area and restrictive regulations in each subsequent alternative to better meet a Sanctuary Advisory Council goal for this review: Protect large, contiguous, diverse, and interconnected habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and protect and preserve all habitats and species. While NOAA believes there is great value in a system of marine zones that includes large contiguous marine zones in each region of the Florida Keys, public sentiment from local Florida Keys residents, location-specific impacts to users (*e.g.,* in some cases a large portion of recreational access would be lost for specific communities), and in some cases (Tortugas Region) additional data is needed. NOAA is committed to working with the community and user groups, agency partners, and researchers to evaluate further refinement of the existing marine zones and to advance a network of marine reserves in the future.

Comment 36: NOAA received comments both supporting and opposing expanding existing marine zones to include deep reef habitat (Tennessee Reef and Western Sambo). Supporting comments noted that expansions would provide additional protections to deep reef habitats that show potential resilience to the stony coral tissue loss disease, could serve as a source for coral reef seed stock, and would provide greater ecosystem level protection. Opposing comments expressed general opposition to limiting any access for fishing activity. Some commenters specifically requested that in the deep reef expansion areas, hook and line trolling or drift fishing be

allowed, noting their desire to allow as much user access as possible while still protecting coral reef habitat from physical damage.

Response: The final rule includes the expansion of these two existing zones to include deep reef habitat. Expanding these zones will support ecological resilience in this area and potentially serve as seed stock for shallow coral reefs. Conservation areas are designed to protect interconnected habitat types to facilitate research and protect the full range of habitats and species life cycle needs. Due to the overarching purpose and intent of this zone, NOAA determined that allowing an exception for fishing in these expansion areas would not be compatible with Conservation Areas as the most protective marine zones. The expansion area is 0.97 square miles for Western Sambo and 0.53 square miles for Tennessee Reef. Additionally, NOAA determined that consistent regulations across all Conservation Areas and within specific zones would better facilitate public understanding of what is allowed versus prohibited (*e.g.,* no take) and therefore compliance with zone-specific regulations.

Comment 36: NOAA received comments both supporting and opposing expanding Tortugas South westward to include additional habitat and an area shown to support multi-fish aggregation activity. Comments also requested that, if NOAA extends this zone to the west, that NOAA also consider removing 34 square miles from the southern portion of this zone to allow for fishing opportunities in an area that has been closed to fishing since 2001. Opposing comments expressed general opposition to limiting any access for fishing activity. Specific concerns were raised about the loss of access for the commercial shrimp fishery.

Response: NOAA's final rule includes expansion of Tortugas South to provide additional protection for habitats shown to support multi-species fish spawning aggregation activity. NOAA evaluated recently collected and compiled mapping coverage data and remotely operated vehicle (ROV) imagery showing unique habitat features in this area, including rock escarpment formations and a well-defined ledge. These data also showed the presence of a diversity of fish species. NOAA determined that maintaining protection in the southern portion of Tortugas South is warranted.

Comment 37: NOAA received comments both supporting and opposing the proposal to establish two new Conservation Areas (Channel Key Banks and Red Bay Bank) to protect shallow mixed hardbottom habitat that is not currently well represented in sanctuary marine zones. Comments generally supported additional protections for these areas due to the impacts from vessel prop scarring; however, most commenters did not support applying Conservation Area regulations (*e.g.,* transit only) due to the level of reported fishing use in the area (*e.g.,* lobster). In addition, NOAA received comments requesting that Channel Key within the Channel Key Banks proposed marine zone have no-entry regulations applied given the presence of a high number of nesting and roosting birds.

Response: Alternatives in the draft EIS included a range of different options for establishing marine zones to protect shallow mixed habitat in the bayside Florida Keys. Given the amount of habitat damage in these areas, new protections through marine zoning are warranted; however, informed by public comment about the level of reported use in these areas, the final regulations require idle speed no wake rather than transit only. The final rule also includes much smaller, more targeted areas than initially proposed and allows normal operation through established channels. It includes additional protections at Channel Key due to the high number of roosting and nesting birds; some reports indicate the highest numbers congregating in the Middle Keys region. Under the final rule, these marine zones are considered WMAs rather than Conservation Areas.

Restoration Areas

Comment 38: NOAA received comments supporting establishing new marine zones to facilitate habitat restoration and protect coral reef nursery sites. Public comment also specifically requested that these new zones be considered Restoration Areas through the creation of a new general Restoration Area zone category.

Response: Informed by public comment, the final rule includes a new Restoration Area zone category, which includes two distinct designations: Habitat Restoration Areas where active restoration is taking place and Nursery Restoration Areas where nursery species are propagated. The final rule includes all existing permitted coral reef nursery sites (11 total) as Nursery Restoration Areas and existing permitted coral reef restoration sites (4 total) as Habitat Restoration Areas. NOAA takes this action to recognize the increase in important habitat restoration activities in the sanctuary over the past two decades. Finally, while the final Restoration Area zones are all coral reef sites, this zone type could be used for other habitat areas (*e.g.,* seagrass, sponge, hardbottom). New zones would need to be established in future rulemaking processes.

Comment 40: NOAA received comments requesting two additional coral nursery sites be established as Nursery Restoration Areas. These two nursery sites were installed by restoration practitioners following the release of the 2022 NOPR so were not included in the NOPR alternative.

Response: NOAA has added these two areas to the final rule because the value of including these two additional coral nursery sites is consistent with the goals of this zone type. These new zones are Key Largo Nursery Restoration Area (0.07 square miles, 46.8 acres) and Islamorada Nursery Restoration Area (0.07 square miles, 47.2 acres).

Sanctuary Preservation Areas

Comment 41: NOAA received comments opposing the application of an idle speed no wake regulation in all SPAs due to several factors, including the size of many zones and the inclusion of portions of Hawk Channel in some SPAs.

Response: NOAA agrees and determined that an idle speed no wake regulation in all SPAs is not practicable; therefore, it was not carried forward in the final rule.

Comment 42: NOAA received comments supporting the application of a no anchoring regulation in all SPAs to provide greater protections to coral and other sensitive habitats from anchor damage. Commenters also expressed the need for additional, well placed and maintained mooring buoys, particularly if additional no anchor restrictions would be applied. Commenters requested that updates to the mooring buoy program include input from user groups.

Response: The final rule includes a no anchor regulation for all SPAs in order to provide greater protections from anchor damage for areas with sensitive habitats. The management plan also includes activities related to review and update of the sanctuary mooring buoy program including plans to engage user groups to help identify areas of use, numbers of users, and placement of mooring buoys (see Management Plan comments and responses below).

Comment 43: NOAA received comments both supporting and opposing the proposal to establish two new SPAs to protect patch reef habitat (Turtle Rocks and Turtle Shoals). The majority of commenters supported establishing these new zones. Some

commenters also supported establishing these areas as Conservation Areas to provide the greatest level of protection for these sensitive habitats. Opposing commenters expressed concern regarding limiting any access for fishing activity due to the fact that SPA regulations prohibit fishing.

Response: The draft EIS alternatives included a range of options for establishing marine zones at these two sites, including designating these areas as Conservation Areas (the most protective marine zone) and SPAs (allowing access but no take). Informed by public comment, the final rule includes these two sites as new SPAs to protect important patch reef habitat. Establishing these areas as SPAs will allow access for diving and snorkeling and will prohibit fishing in these areas.

Comment 44: NOAA received comments supporting the proposal to combine two existing SPAs (Key Largo Dry Rocks and Grecian Rocks) into one larger SPA zone. Commenters in support noted the value of larger SPA zones for greater protection to habitats and species. The majority of commenters supporting combining these two zones requested that the expanded zone be more targeted on the core area of coral reef habitat. NOAA also received comments that opposed combining these two zones, most noting that the expansion includes large areas of sand bottom rather than coral reef and opposing limiting any access for fishing.

Response: Informed by public comment, NOAA modified the size of this zone for the NOPR and Final Rule to focus the zone on the high relief reef areas to balance protection with greater access in the surrounding waters (Alternatives 2, 3, and 4 include a proposed 1.2 square mile zone and the NOPR and Final Rule include a 0.5 square mile zone). Through the final rule, NOAA will more fully protect the habitats and species present at this site as data show that the larger zone size more adequately captures the area necessary for different life cycle stages of some fish species.

Comment 45: NOAA received comments both supporting and opposing expanding existing marine zones to include deep reef habitat (Carysfort Reef and Alligator Reef). Supporting comments noted that expansions would provide additional protections to deep reef habitats that show potential resilience to stony coral tissue loss disease, could serve as a source for coral reef seed stock, and would provide greater ecosystem level protection. Opposing commenters expressed concern with limiting any access for fishing activity. Some commenters specifically requested that in the deep reef expansion areas, hook and line trolling or drift fishing be allowed, noting their desire to allow as much user access as possible while still protecting coral reef habitat from physical damage.

Response: The final rule expands these two existing zones to include deep reef habitat. Including deep reef habitat in the marine zone will further support ecological resilience in this area and potentially serve as seed stock for shallow coral reefs. SPAs are established, in part, to separate conflicting uses (*e.g.,* diving/snorkeling and fishing). Therefore, allowing an exception for fishing in these expansion areas would not be compatible with the purpose and intent of SPAs to separate conflicting uses. Additionally, consistent regulations across all SPAs and within specific zones will better facilitate public understanding of what is allowed and result in greater compliance with associated regulations. The expansion area is 1.6 square miles for Carysfort Reef and 0.20 square miles for Alligator Reef.

Catch and Release Fishing by Trolling in Four Sanctuary Preservation Areas

Comment 46: NOAA received comments supporting the elimination of the exception in four SPAs for catch and release fishing by trolling. Commenters noted the benefit of consistent regulations within all SPAs and that SPAs should be fully no-take zones as the area in the sanctuary that is truly no-take is very small. NOAA received comments that opposed the elimination of this exception due to concerns about the loss of fishing access in these SPAs, noting that this exception was part of trade-off with fishermen to gain their support for the establishment of SPAs in 1997 and that this agreement should continue to be upheld and that trolling is not likely to impact the benthic habitats in these areas.

Response: NOAA's final rule eliminates catch and release trolling in SPAs in order to standardize all regulations for SPAs. NOAA acknowledges that catch and release trolling may not impact the benthic habitats in these areas, but NOAA's analysis suggests that having consistent regulations in all SPAs outweighs maintaining this exception that was instituted over 26 years ago. NOAA has attempted through this and other regulatory changes to create consistent regulations within all SPAs. Given the numbers of individuals accessing and recreating in these specific marine zones, having consistent regulations increases the likelihood that users know and understand what activities are allowed versus prohibited to facilitate increased compliance with marine zone-specific regulations. Eliminating this exception will also facilitate enforcement against unlawful fishing. Given that an overarching purpose of SPA zones is to reduce user conflict, fully separating fishing and diving/snorkeling activity more fully realizes this zone's purpose. Through this change, a total of 1.22 square miles (779 acres) that once allowed catch and release fishing by trolling will no longer allow such fishing.

Bait Fish Permits in Sanctuary Preservation Areas

Comment 47: NOAA received comments supporting the proposal to stop issuing permits for baitfishing in SPAs noting that allowing this activity in these zones creates (1) confusion for the public regarding what is and is not allowed, (2) provides an incentive to fish in no-fishing zones, and (3) creates enforcement challenges given public confusion. Commenters also supported NOAA's intent to create consistent regulations in all SPAs. NOAA also received comments opposing the elimination of baitfishing permits in SPAs. These commenters generally noted that allowing baitfishing in SPAs was part of an original trade-off with fishermen to gain their support for the establishment of SPAs and that this agreement should continue to be upheld. Commenters also more specifically stated that the gear type used does not impact the benthic habitat and that this activity is generally undertaken early in the morning thereby limiting the potential overlap of fishing activity with diving and snorkeling.

Response: Beginning on the effective date of this final rule, NOAA will begin to phase out the practice of issuing baitfishing permits for SPAs over a 3-year period to create fully no take SPAs. NOAA's elimination of the practice of issuing baitfish permits does not require a change to the regulations and will be implemented via changes to FKNMS's permitting policies. When final FKNMS regulations become effective, existing baitfishing permit holders will have the option to renew their permit annually for three years, but NOAA will not issue any baitfishing permits to any additional persons. After the third year, NOAA will no longer issue permits for this activity. This change, while not requiring a change to the regulations, contributes to creating consistent regulations in all SPAs, will aid in user understanding and compliance, and will facilitate enforcement. Consistency of

regulations and practices in SPAs outweighs issuing baitfish permits as initiated over 26 years ago. This decision is based on over 25 years of management of the network of marine zones within the sanctuary, including a review of catch log data submitted by permit holders over the past five years. These reports indicate that there is a limited number of recreational and commercial fishermen using the permits to catch baitfish, with over half of the permitted fishermen reporting annually they are not using the permit (*i.e.,* not catching baitfish within the SPAs. To see a summary of baitfishing permit usage analysis see Appendix B in the Updated Socioeconomic Supporting Documentation for the 2019 Draft Environmental Impact Statement and 2022 Proposed Rule, which is available at the website listed in the **ADDRESSES** section above in this rule). Those fishermen that do state they are harvesting baitfish within the SPAs report very low catch numbers, leading NOAA to believe that very few users will be adversely affected by this change and that most fishermen are already catching baitfish outside of the SPAs. Given that an overarching purpose of SPA zones is to reduce user conflict, fully separating fishing and diving/snorkeling activity more fully realizes this zone's purpose.

Restricted Access in Select Sanctuary Preservation Areas

Comment 48: NOAA received comments specific to the proposal to limit access in select SPAs, with the majority of comments opposing any proposal that would restrict local boater access. While not supporting this specific proposal, commenters noted concern about increasing numbers and intensity of use and expressed support for considering ways to manage the numbers of users in the sanctuary in both coral reef and the waters and islands on the Gulf side of the Florida Keys (*i.e.,* backcountry areas). Many commenters acknowledged that other resource protection entities (U.S. Forest Service, National Park Service, and international marine parks, among others) manage use, access, and overall numbers of users through various regulatory and non-regulatory mechanisms, and some commenters provided ideas and recommendations for consideration. While public comment generally supported the concept of limiting access, there was little support for the specific locations selected for closure to the public by NOAA in the draft EIS. In addition, the public did not support the proposal to limit access by only allowing certain commercial operators (*i.e.,* Blue Star Program participants), because commercial operators bring more individuals to a site than individual boaters.

Response: Draft EIS Alternatives 3 and 4 would have limited commercial access in three SPAs to Blue Star designated operators. In the final rule, NOAA does not include this regulation or any regulation that specifically restricts access by setting a limit on the number of users allowed to access specific sanctuary marine zones. Informed by public comment, NOAA determined that more information, additional public input, and evaluation of additional management tools would be needed prior to implementing a limited access regulation. Part of this evaluation would include consideration of how NOAA would manage and enforce a limited access regulation in some SPAs. Finally, in response to comments acknowledging the need to address the increasing numbers of users and visitors, the final management plan includes additional information about NOAA's intent to better assess sanctuary carrying capacity, evaluate regulatory and non-regulatory tools to manage use and number of users of the sanctuary, and consider how existing regulations and management activities can be more strategically applied to better manage use and impacts from use (*e.g.,* boater education, mooring buoys, proposed no anchor regulation in SPAs, etc.). With this additional evaluation and further public and agency engagement, NOAA may consider regulatory action to manage the number of users and impacts of this use on sanctuary resources in the future.

Wildlife Management Areas

Comment 49: NOAA received comments that supported no change to existing zones (*e.g.,* status quo) and other comments that supported creating additional WMAs and/or expanding existing WMAs. Even those comments that supported no change to the zones generally supported taking action to protect sanctuary resources while also allowing the greatest level of access and use. Most public comments included some mention of the importance and challenge of marking WMAs and educating the public (particularly the visiting, non-resident public) about the nature of navigating in the backcountry and shallow waters of the Florida Keys. NOAA received comments specific to every WMA including comments regarding the size and shape of WMAs and the regulations applied within them.

Response: WMAs are established for location-specific resource management needs and issue-specific regulations are applied (*e.g.,* idle speed no wake vs. no entry). NOAA used two criteria when developing WMAs: (1) favor resource protection goals over access when data demonstrates the need and (2) implement the least restrictive access regulations and zone size to achieve resource protection goals. Additional considerations included simplifying zones and associated regulations to enhance user understanding of the zone area and associated regulations to facilitate greater compliance. Finally, with respect to those zones focused on shallow water habitat/seagrass protection, NOAA considered the success of existing no motor zones (*e.g.,* Tavernier Key WMA) and utilized recent prop scar mapping data to determine where additional restrictions were necessary. The selection of the WMAs in the final rule reflects a careful consideration and balancing of these factors.

Contour of 300 Feet Around Islands vs. Straight Line Zones

Comment 50: NOAA received comments supporting using straight lines for WMAs for easier marking, compliance, and enforcement. NOAA received comments opposing using straight lines for WMAs noting that more area than needed for the resource protection goals would be included in the marine zone thereby affecting the area accessible by various user groups.

Response: NOAA's rule includes a 300 foot (100 yard) buffer zone around sensitive islands and creates zone boundaries that align with the habitats intended for protection within the marine zone rather than straight line boundaries. NOAA considered straight line WMA boundaries, which have an advantage because they further simplify the zone shape, improve the ability to mark, and improve enforcement. Despite these benefits, NOAA ultimately decided in this final rule to define boundaries that follow the contours around islands and other natural features (*e.g.,* seagrass beds, bank habitats) in order to provide the least restrictive access regulations and zone size to achieve resource protection goals.

Recommendation of a 50 Foot No Entry Zone Surrounded by a 300 Foot No Motor Zone

Comment 51: NOAA received comments recommending a modified regulatory scheme for several WMAs of a 50 foot no entry area closest to shore (*e.g.,* about two-boat lengths)

surrounded by an outer additional 300 foot no motor area. The intent of these recommendations is to allow the greatest user access while still maintaining protections for sensitive habitat, bird nesting and roosting sites, and turtle nesting beaches.

Response: NOAA evaluated these recommendations and for several reasons did not include them in the final rule. Primarily, NOAA's decision criteria favor resource protection over access when data demonstrates the need. These decisions were further informed by comments and data submitted by the USFWS that a minimum 100-yard distance (*i.e.,* 100-yard no entry zone) is needed to minimize disturbance to wading and migratory birds. Bird species will be disturbed and negatively impacted where no-entry zones are less than 100 yards and boater traffic of any kind (including kayaks and other paddle craft) is allowed. Aside from sea-level rise, the number one threat to the long-term persistence of these bird species in the national wildlife refuges is human disturbance. Secondarily, the proposed scheme is complicated, and an overarching goal for the marine zoning component of this rulemaking is to simplify and create consistent regulations where possible to facilitate compliance and enforcement.

Idle Speed No Wake and Channel Access

Comment 52: NOAA received comments specific to several proposed idle speed no wake zones that, while supporting the zone, requested maintaining normal operation in channels.

Response: NOAA agrees and in the final rule has clarified where channels are open for normal operation (*e.g.,* Marathon WMA) and in some cases has added additional channels based on user feedback (*e.g.,* Channel Key WMA).

No Anchor

Comment 53: NOAA received comments specific to the proposed no anchor WMAs, including that they are not necessary (*e.g.,* Archer Key) and that safe harbor anchoring and anchoring for educational purposes should be excluded (*e.g.,* Tavernier Key).

Response: The final rule does not include a new no anchor zone at Archer Key as proposed in draft EIS Alternative 2. The purpose and intent of this zone—to protect seagrass and hardbottom habitat—is sufficiently addressed through the three existing FKNMS mooring buoys installed in that area. The final rule also does not include a no anchor regulation at Tavernier WMA and Dove Key and Rodriguez Key WMA because of public use of these areas for recreation and, specific to the sailing community, the use of these areas for both safe harbor and sailing and anchoring education. Both of these high use marine zones still include the no motor regulation aimed at protecting habitat from vessel damage. For all of these WMAs, if impacts to the habitat increase, NOAA could reevaluate regulations at these locations.

Clarification of No Motor Regulation

Comment 54: NOAA received comments seeking clarification about the proposed no motor WMAs, specifically whether vessels could have motors and/or what types of motors may be allowed in these WMAs.

Response: The final rule maintains the existing ''no motor'' definition, which applies to all modified or no motor WMAs (12 WMAs) and means the use of internal combustion motors is prohibited. NOAA will provide information in outreach and educational products to help boaters understand and comply with this regulation. A vessel with an internal combustion motor on board may still access a no motor zone, but only through the use of a push pole, paddle, sail, electric motor, or similar means of operation. It is prohibited from using its internal combustion motor.

Change of No Access Buffer and Closed Regulation to No Entry

Comment 55: NOAA received comments both supporting and opposing the proposed change of the existing no access buffer and closed regulation to no entry. The majority of commenters supported the change, noting that it made sense to simplify the language and be consistent with State zone types and associated regulations. Those who opposed the change asserted that the existing regulation was sufficient for the resource protection goals.

Response: The final rule changes the no access buffer and closed regulations to no entry to be consistent with the intent of the regulation and with complimentary State regulations. The existing no access buffer zone identifies a portion of the sanctuary where vessels are prohibited from entering regardless of the method of propulsion. In general practice, the no access buffer, closed, and no entry regulations have similar intent. This change applies to nine of the existing WMAs.

No Entry and Access for Education and Eco-Tour Operators

Comment 56: NOAA received comments specific to certain proposed no entry WMAs related to continued educational and eco-tour operation (*e.g.,* Pelican Key). Comments included (1) opposition to no entry due to the loss of access and (2) support for no entry if access for educational and eco-tour operators would be allowed.

Response: The resources present at many of these locations need the greatest level of protection and, therefore, these zones are no entry in the final rule. In addition, given the educational opportunities some of these sites provide to advance understanding and stewardship ethic of these resources, NOAA will consider using its existing permit categories to permit educational and eco-tour operators. Permits will be issued on a case-by-case basis and will help inform the numbers, types, and frequency of use in these areas. NOAA will also work with partners to evaluate the potential impacts of use in these areas to determine if continued access should be allowed and permitted.

Other Zone-Specific Comments

Comment 57: NOAA received comments both supporting and opposing protections for a multi-species fish spawning aggregation site at Western Dry Rocks. Comments included support for year-round closure, seasonal closure, no action, and deferring to FWC to take action as this area is in State waters.

Response: The final rule includes a WMA at Western Dry Rocks with regulations that align with existing FWC regulations (as of February 2021) with a seasonal no fishing prohibition from April 1 to July 3 and a no anchor regulation during that same time period. NOAA includes additional anchoring restrictions because the ecological features present at this site contribute to the establishment and maintenance of a fish spawning aggregation site.

Comment 58: NOAA received comments both supporting and opposing a proposed new marine zone protecting an internationally important sea turtle foraging habitat area. Comments included (1) support for the greatest level of protection (*e.g.,* transit only) in the largest area where sea turtles are shown to be present in high numbers; (2) support for a smaller targeted area; (3) support for less restrictive regulations (*e.g.,* idle speed no wake); (4) questioning the need of such a zone given the perceived increase in turtle numbers and lack of data for turtle strikes that can be attributed to vessel traffic in this specific area; (5) opposition to this zone due to the need to transit through this area to take safe harbor in the Marquesas

Keys; and (6) opposition to this zone due to the potential loss of fishing access depending on the regulation applied.

Response: NOAA determined that protecting this internationally important sea turtle foraging habitat area is needed and will apply idle speed no wake regulations in this area to protect this habitat from vessel impacts. In developing the final rule, NOAA reviewed updated data for this site and now modifies the size of the marine zone and includes the area of greatest habitat variability and highest numbers of turtle sightings. This size modification removes the southern portion, which allows safe transit to the Marquesas Keys. In addition, by applying an idle speed no wake regulation instead of a no entry or transit only regulation, this area is still accessible for fishing activities and other uses.

Comment 59: NOAA received comments suggesting numerous additional areas to include as new WMAs (*e.g.,* Hurricane Key, Don Quixote, Bill Finds Key).

Response: NOAA used the two criteria for considering new WMA marine zones (resource protection need and public access/use) and evaluated all additional marine zones proposed by public comment under these criteria. NOAA is not including any additional WMAs beyond those included in the 2022 NOPR. Through the updated WMA zones, NOAA prioritized modifying or creating new WMAs where resources demonstrated the greatest need for additional protections while balancing user access. In response to changing resource conditions or levels, types, and intensity of use, NOAA will continue to work with sanctuary users, agency partners, and research partners to evaluate existing zones and the need to consider modified or new protections.

VII. Classification

1. National Marine Sanctuaries Act

Section 301(b) of the NMSA provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA requires that the procedures specified in Section 304 for designating a national marine sanctuary be followed for modifying any terms of designation. This action is revising the terms of designation (*e.g.,* expanding the boundary) for FKNMS. Pursuant to NMSA Section 303(b)(2), NOAA provided notice of this action at the draft EIS and proposed rule phases to the Committee on Resources of the House of Representatives; the Committee on Commerce, Science, and Transportation of the Senate; and the Secretaries of State, Defense, Transportation, and the Interior, and invited further consultation.

Section 304(a)(5) of the NMSA also requires that NOAA consult with the appropriate FMC on any action proposing to regulate fishing in Federal waters. Consultation with the SAFMC and GMFMC is discussed above in part II, *The Restoration Blueprint Process.* Pursuant to Section 304(b)(1) of the NMSA, NOAA will submit a notice of this action to Congress, and the Governor of Florida will also have the opportunity to review this final action.

2. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of NEPA (42 U.S.C. 4321 et. seq.). NOAA has prepared a final EIS to evaluate the impacts of this action. For more information on the final EIS and steps leading to the action, please refer above to part II, *The Restoration Blueprint Process,* section 2. The final EIS contains a statement of the purpose and need for the project, description of alternatives, including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. Based on the evaluation of the alternatives, NOAA determined that no significant adverse impacts to resources and the human environment are expected if any of the alternatives are adopted, and this conclusion applies to this action.

This EIS applies CEQ's 1978 NEPA regulations because review of this proposed action began on August 20, 2019, which preceded the effective date of CEQ's which preceded the effective date of CEQ's Phase 2 NEPA regulations (July 1, 2024)

NOAA has also issued a ROD. Copies of the final EIS and ROD are available at the address and website listed in the **ADDRESSES** section of this final rule.

3. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined this rule is significant under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 190 (Oct 4, 1993), as supplemented and reaffirmed E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023). Please see final EIS Appendix K: Cost-Benefit Analysis, which is available at the address and website listed in the **ADDRESSES** section of this final rule for more information. Based upon information provided in Cost-Benefit Analysis, the NOAA estimates annual effect of this rulemaking is less than $200 million, and the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. Under the baseline for this action, NOAA would maintain the existing sanctuary boundary, sanctuary-wide regulations, marine zones and associated regulations, and management plan. The existing activities occurring in the sanctuary are described in the final EIS by resource area under the No Action Alternative subsections in Chapter 4: Affected Environment. With this action, changes to marine zones that may restrict certain commercial and recreational uses (*e.g.,* recreational boaters, fishers, divers) in those areas are spatially small compared to the area of FKNMS that will remain available for those uses, resulting in limited impacts. Some costs are expected to occur within the commercial and recreational fishing industries, while the majority of benefits will accrue to the non-consumptive users (*e.g.,* divers, snorkelers, kayakers, wildlife viewers). Some of the costs that may be experienced are loss of fishing revenue and loss of recreational fishing activity. Benefits include improvements to natural resource conditions resulting in improved visitor experience. Detailed analyses of the costs and benefits of this rulemaking are provided in the 2022 Socioeconomic Report which is available in the **ADDRESSES** section of this final rule.

4. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. This rule will not have a substantial or direct effect on states or local governments. NOAA has coordinated closely with State partners throughout the development of this rule and, where applicable and practicable, aligns with and/or defers to existing State regulations for proposals within State waters of the sanctuary. NOAA has aimed for consistent regulations throughout sanctuary waters including those within State and Federal jurisdiction.

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

Executive Order 13175 reaffirms the Federal government's commitment to tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policies on issues that impact Indian communities. This action is not anticipated to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibility between the Federal government and Indian tribes. The Seminole Tribe of Florida Tribal Historic Preservation Office provided comments on the draft EIS specific to the *Programmatic Agreement under Section 106 of the National Historic Preservation Act regarding Florida Keys National Marine Sanctuary Operations, Management, and Permitting,* and consultation related to archaeological research permits.

6. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 *et seq.,* requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that the proposed rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble of the proposed rule (87 FR 42800, July 18, 2022), and in the supporting 2022 Socioeconomic Report, which is available on the website listed in the **ADDRESSES** section above in this rule. NOAA primarily considered the years 2015–2019 for commercial fishing and 2014–2018 for recreational fishing, the latest data available at the time of this analysis. NOAA relied on commercial fishing data from FWC and recreational fishing data from NMFS' Marine Recreational Information Program. ONMS also consulted with NMFS to utilize estimates of economic impact and data from fishery management council reports to estimate changes to the commercial and recreational fishing sectors.

Small entities are defined by the Small Business Administration (SBA). The definition of the relevant small businesses are presented here and are from the most recent size standards published by the SBA in 2019 (US SBA, 2019). Size standards are based upon the average annual receipts (all revenue) or the average employment of a firm. The commercial size standards for finfish fishing (NAICS code—114111) is $22.0 million, shellfish fishing (NAICS code—114112) is $6.0 million and other marine fishing (NAICS code—114119) is $8.0 million. Scenic and sightseeing transportation, water-based businesses such as for-hire recreational fishing operations, and dive/snorkeling for-hire operations (NAICS code—487210) have size standards of $8.0 million.

NOAA found, in summary, that this action is not expected to reduce the profits of any small businesses directly regulated by this rule. This is in part due to the potential for substitution of location for activities and that the rule is informed by and responsive to comments from the potentially impacted user groups (*e.g.,* two specific marine zones included in the draft EIS are were not included in the proposed or final rule due, in part, to comments from lobster fishermen regarding their expected maximum potential loss of access and use). Costs to the fishing sector assume the maximum potential loss and that there is no replacement value (*i.e.,* moving activities to a different location). Overall losses were less than 1% of annual revenue for all fisheries except the spiny lobster fishery, where an approximate 2% annual loss was estimated. This regulatory action would not establish any new reporting or record-keeping requirements. No duplicative, overlapping, or conflicting federal rules have been identified.

Although NOAA has made minor changes to the regulations from the proposed rule to the final rule, none of the changes alter the initial determination that this rule will not have a significant impact on a substantial number of small entities. The changes between the proposed and final rule for this action are nominal; the changes clarify a few of the regulatory definitions and slightly modify several marine zone boundaries and their associated regulations (see Section III of this final rule preamble for additional details). Between the proposed and final rule, NOAA has reduced the sizes of the zones within which small entities would be affected; therefore, NOAA expects less cost to operators in FKNMS than reported in the proposed rule. NOAA also did not receive any comments on the certification or conclusions. Therefore, for the reasons stated above, the determination that this rule will not have a significant economic impact on a substantial number of small entities remains unchanged. As a result, a final regulatory flexibility analysis was not required and none was prepared.

7. Paperwork Reduction Act

The existing FKNMS regulations contain a collection-of-information requirement for persons making an application for a permit. This collection of information is subject to the Paperwork Reduction Act (PRA), approved by the Office of Management and Budget (OMB), under control number 0648–0141 (expires November 30, 2024), for collection-of-information for reporting and recordkeeping requirements under 15 CFR part 922. This rule will not increase or otherwise revise the existing paperwork burdens.

The public reporting burden for national marine sanctuary general permit applications is estimated to average 1 hour 30 minutes per application, including the time for reviewing the application instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For special use permits, a collection-of-information requirement is necessary to determine whether the activities are consistent with the terms and conditions of special use permits prescribed by the NMSA. The public reporting burden for this collection of information is estimated to average eight (8) hours per response (application, annual report, and financial report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current OMB-approved collection-of-information requirement also includes other types of permits that may be issued by FKNMS, such as Tortugas North access permits, authorization permits, and certification permits. The estimates set forth in the OMB approval do not include additional time that may be required should the applicant be required to provide information to NOAA for the preparation of documentation that may be required under NEPA (16 U.S.C. 1431 *et seq.*).

NOAA does not expect that this rule will appreciably change the average annual number of applicants or the reporting burden for the information

requirements supporting general or special use permits, authorization permits, or certification permits because sanctuary boundaries, marine zones, and regulations are not being modified in such a way that a significant number of new permits are expected or required. Uses that require permits are anticipated to continue with similar frequencies as current operations. NOAA believes that the updated regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act. However, an increase in the number of ONMS permit requests would require a change to the reporting burden certified for OMB control number 0648–0141. While not expected, if such permit requests do increase, an update to this control number for the processing of ONMS permits would be requested.

In the most recent Information Collection Request revision and approval for national marine sanctuary permits (dated November 30, 2021), NOAA reported approximately 424 national marine sanctuary permitting actions each year, including applications for all types of ONMS permits, requests for permit amendments, and the conduct of administrative appeals. NOAA determined that this final rule does not necessitate a modification to its information collection approval by OMB under the Paperwork Reduction Act because no increase in the number of permits requested is anticipated. NOAA solicited comments on this determination in the proposed rule, and no public comments were received. NOAA is also requesting a revision and extension of its approved information collection request, outside of this rulemaking, for national marine sanctuary permits to include the additional estimated permit numbers, which will apply to FKNMS.

8. National Historic Preservation Act

The National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*) is intended to preserve historical and archaeological sites in the United States. The NHPA created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices (SHPO). Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The review process mandated by Section 106 is outlined in regulations issued by the ACHP (*36 CFR part 800*[14]).

In coordinating its responsibilities under Section 106 of the NHPA with the release of the 2019 draft EIS, NOAA solicited for and identified potential consulting parties, identified historic properties in the area of potential effects, and assessed the effects of the undertaking on such properties in consultations with those identified parties. NOAA received official comment letters from the Florida SHPO, the Seminole Tribe of Florida, non-governmental organizations, associations, sanctuary historical resource permittees, and other interested members of the public. Pursuant to *36 CFR 800.16*,[15] the term ''historic property'' means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties as well as properties of traditional religious and cultural importance to an Indian tribe . . . that meet the National Register criteria.

NOAA determined that the action will have no adverse effects on the historic properties within the area of potential effects. NOAA received comment from the Florida SHPO that the draft EIS sufficiently addressed the sanctuary's NHPA Section 106 responsibilities through implementation of the new management plan and through the development of an updated Section 106 Programmatic agreement.

In addition, NOAA initiated consultation with the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida. NOAA received comments from the Seminole Tribe of Florida requesting that NOAA specifically include reference to its Section 106 responsibility to consult with interested federally recognized Tribes before issuing permits for archaeological research and on all undertakings with the potential to affect historic properties. NOAA has incorporated these comments into the final EIS. NOAA invited further comment on the notice of proposed rulemaking and received no additional comments from either the Florida SHPO or Tribes. For associated correspondence, see EIS Appendix J.

NOAA will continue coordination with the Florida SHPO, ACHP, and other consulting parties to finalize the draft *Programmatic Agreement under Section 106 of the National Historic Preservation Act regarding Florida Keys National Marine Sanctuary Operations, Management, and Permitting,* which is a separate effort from this rulemaking.

9. Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to conduct their activities in a manner that is consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program if such activities will affect any coastal uses or resources of the State. NOAA provided copies of the draft EIS to the State of Florida and requested that the State identify any enforceable policies of its coastal management program applicable to the proposed action. In compliance with the CZMA, NOAA prepared a consistency determination, and on May 21, 2024 submitted it to the State of Florida. On August 6, 2024 the State of Florida issued a letter of conditional concurrence to NOAA.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Incorporation by reference, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

For the reasons set forth above, NOAA is amending 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart P also issued under Public Law 101–605.

■ 2. Revise subpart P to read as follows:

Subpart P—Florida Keys National Marine Sanctuary

Sec.

922.160 Purpose.
922.161 Boundary.
922.162 Definitions.
922.163 Prohibited activities—Sanctuary-wide.
922.164 Additional activity regulations by designated sanctuary area.

[14] *https://www.ecfr.gov/current/title-36/chapter-VIII/part-800.*

[15] *https://www.ecfr.gov/current/title-36/chapter-VIII/part-800/subpart-C/section-800.16.*

922.165 Temporary regulation for emergency and adaptive management.
922.166 National Marine Sanctuary permitting—General permits, special use permits, and authorizations.
922.167 National Marine Sanctuary permitting—Certifications.
922.168–922.178 [Reserved]
922.179 Incorporation by reference.
Appendix A to Subpart P of Part 922—Florida Keys National Marine Sanctuary Boundary Coordinates
Appendix B to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates
Appendix C to Subpart P of Part 922—Management Areas Boundary Coordinates
Appendix D to Subpart P of Part 922—National Wildlife Refuges Boundary Coordinates
Appendix E to Subpart P of Part 922—Wildlife Management Areas Boundary Coordinates and Access Restrictions
Appendix F to Subpart P of Part 922—Sanctuary Preservation Areas Boundary Coordinates
Appendix G to Subpart P of Part 922—Conservation Areas Boundary Coordinates
Appendix H to Subpart P of Part 922—Restoration Areas—Habitat Boundary Coordinates Appendix I to Subpart P of Part 922—Restoration Areas—Nursery Boundary Coordinates

§ 922.160 Purpose.

(a) The purpose of the regulations in this subpart is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the sanctuary or any of the qualities, values, or purposes for which the sanctuary is designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this subpart are intended to protect, restore, and enhance the living resources of the sanctuary, contribute to the maintenance of natural assemblages of living resources for future generations, provide places for species dependent on such living resources to survive and propagate, facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the sanctuary not prohibited under other authorities, reduce conflicts between such compatible uses, and achieve other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

(b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five-year review of the sanctuary management plan and regulations, the Secretary will re-propose the regulations in their entirety with any proposed changes thereto. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies any such regulation as unacceptable, it will not take effect in State waters of the sanctuary.

§ 922.161 Boundary.

The sanctuary consists of an area of approximately 3,427 square nautical miles (4,539 square statute miles) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix A to this subpart sets forth the precise sanctuary boundary.

§ 922.162 Definitions.

The following definitions apply to the Florida Keys National Marine Sanctuary regulations. Other terms appearing in the regulations in this part are defined at 15 CFR 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act (MRPSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.,* and/or the Florida Keys National Marine Sanctuary and Protection Act, Public Law 101–605. To the extent that a term appears in § 922.11 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that would independently or cumulatively damage, diminish, degrade, impair, destroy, or otherwise harm any sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of those qualities, values, or purposes for which the sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Anchoring means securing a vessel to the seabed by any means, except when using a mooring buoy in full compliance with this Subpart.

At risk of becoming derelict means a vessel when any of the following conditions exist:

(1) The vessel is taking on or has taken on water without an effective means to dewater;

(2) Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;

(3) The vessel has broken loose or is in danger of breaking loose from its anchor or mooring;

(4) The vessel is listing due to water intrusion; or

(5) The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from any authorized officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.

(6) The vessel is tied to an unlawful or unpermitted structure or mooring.

Conservation Area means an area of the sanctuary that provides natural spawning, nursery, and residence areas for the replenishment and genetic protection of marine life and that protects and preserves groups of habitats and species, within which activities are subject to conditions, restrictions and prohibitions to achieve these objectives. These areas consist of contiguous, diverse habitats; protect a variety of sanctuary resources; and/or facilitate scientific research that promotes sanctuary management or recovery of sanctuary resources. Appendix G to this subpart sets forth the geographic coordinates of these areas.

Continuous transit without interruption means a vessel must keep traveling through a designated area and fishing by any means is prohibited. However, fish, invertebrates, and marine plants may be possessed aboard a vessel if such organisms have not been harvested or removed from within the designated area. Any organisms must be stowed in a cabin, locker, or similar storage area prior to entering and during transit through a designated area, and any gear used to harvest or remove such organisms must not be available for immediate use, as defined in this section, when entering and during transit through the designated area.

Coral means, but is not limited to, the corals of the Class Hydrozoa (stinging and hydrocorals); Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals); Class Anthozoa, Subclass Ceriantipatharia,

Order Antipatharia (black corals); and Class Anthozoa, Subclass Ocotocorallia, Order Gorgonacea, species *Gorgonia ventalina* and *Gorgonia flabellum* (sea fans).

Coral reefs means hardbottoms, patch reefs, mid-channel reefs, and all parts of the reef tract.

Derelict vessel means a vessel that is:

(1) In a wrecked, junked, or substantially dismantled condition upon any waters of the sanctuary.

(i) A vessel is wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.

(ii) A vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion.

(2) A vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken:

(i) The steering system,

(ii) The propulsion system, or

(iii) The exterior hull integrity.

(3) Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion.

Deserting means leaving a vessel unoccupied that is adrift, aground, derelict, or at risk of becoming derelict unless:

(1) Within 24 hours of leaving such a vessel, the Director has been notified or it has been more than 24 hours since the Director made a reasonable attempt to notify a vessel owner/operator of an unoccupied vessel adrift, aground, derelict, or at risk of becoming derelict, and the vessel owner/operator has not responded; and

(2) Removing or causing to be removed a vessel has been removed within 72 hours in accordance with 15 CFR 922.163(a)(5)(i) or (viii).

Diving means an activity during which a person is wholly or partially submerged in the water and is equipped with a face mask, face mask and snorkel, or underwater breathing apparatus.

Exotic species means any species whose natural zoogeographic range does not include the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Feeding means offering, giving, or attempting to give any food or other substance to fish, including sharks, or other marine species, except for the purpose of harvesting marine species during traditional fishing as defined in this section.

Hardbottom means a submerged marine community comprised of organisms attached to solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed no wake means that a vessel must proceed at a speed no greater than that which will maintain steerageway and headway and which does not cause a visible wake. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

Large vessel means a vessel greater than 65′ length or the combined lengths of two or more vessels if, when tied together, the vessels would be greater than 65′ length.

Length means the straight line horizontal measurement of the overall length from the foremost part of the boat to the aftermost part of the boat, measured from end to end over the deck excluding sheer and measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the measurement.

Live rock means any living marine organism or an assemblage thereof and the hard substrate to which it is attached, including hard bottom, dead coral, rock, banks, or reefs, but not individual mollusk shells (*e.g.,* scallops, clams, oysters). Such attached living marine organisms may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actiniaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryozoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), coralline algae, green feather and green grape algae (*Caulerpa* spp.), and watercress (*Halimeda* spp.).

Marine life species means any species of fish, invertebrate, or plant designated as restricted species in subsections (2), (3), and (4) of F.A.C. 68B–42.001 (incorporated by reference, see § 922.179).

Military activity means an activity conducted by the Department of Defense, with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No anchor means securing a vessel to the seabed by any means is prohibited, except when using a mooring buoy in full compliance with this Subpart.

No anchor by vessels >50m length means securing a vessel greater than 50 meters (164 feet) length to the seabed by any means is prohibited.

No entry means all vessels and all persons are prohibited from entering the area.

No motor means the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor, or similar means of operation but is prohibited from using its internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, *e.g.,* by being stowed and unbaited in a cabin, locker, rod holder, or similar storage area or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (*e.g.,* cutting seagrass rhizomes).

Residential shoreline means any human-made or natural shoreline, canal mouth, basin, or cove, when any of these features are adjacent to any residential land use district under the

Monroe County land development regulations (including: improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home) or residential land use district under any other municipal regulations.

Restoration Area means an area of the sanctuary that supports species or habitat recovery, including protection for restoration sites (referred to as Habitat Restoration Areas) and short- and long-term propagation nurseries (referred to as Nursery Restoration Areas), within which activities are subject to conditions, restrictions, and prohibitions to achieve these objectives. Appendices H and I to this subpart set forth the geographic coordinates of these areas.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the sanctuary that encompasses a discrete, biologically important area, within which activities are subject to conditions, restrictions, and prohibitions to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix F to this subpart sets forth the geographic coordinates of these areas.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States,

(2) Operates on the navigable waters of the United States, or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States (46 U.S.C. 2101).

Traditional fishing means those commercial or recreational fishing activities customarily conducted within the sanctuary as of January 17, 2025.

Tropical fish means any species of fish designated as a restricted species in F.A.C. 68B–42.001(2) and defined as tropical fish under F.A.C. 68B–42.002(18) (incorporated by reference, see § 922.179).

Wildlife Management Area means an area of the sanctuary in which various access and use restrictions are applied to manage, protect, preserve, and minimize disturbance to sanctuary wildlife resources, including but not limited to endangered or threatened species or the habitats, special places, or conditions on which they rely. Appendix E to this subpart lists these areas and their access and use restrictions.

§ 922.163 Prohibited activities—Sanctuary-wide.

(a) Except as specified in paragraphs (b) and (c) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.* Moving, removing, harvesting, damaging, disturbing, touching, breaking, cutting, otherwise injuring, or possessing, in or from the sanctuary, any living or dead coral or coral formation, or live rock, or attempting any of these activities, except as authorized by an aquacultured live rock permit issued by the National Marine Fisheries Service or a Florida Sovereignty Submerged Land Live Rock Aquaculture Lease issued by the Florida Department of Agriculture and Consumer Services.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, otherwise altering the seabed of the sanctuary, or engaging in prop-dredging; or constructing, placing, or abandoning any structure, material, or other matter on or in the seabed of the sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this subpart;

(ii) Traditional fishing activities not otherwise prohibited by this subpart;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Dredging within Key West Harbor, its approach channels, and turning basins, only in federally dredged areas in existence as of July 1, 1997;

(v) Construction, repair, replacement, or rehabilitation of minor structures including docks, swim/observation platforms, floating vessel platforms, boat ramps, boat notches, boat lifts, mooring piles, seawalls, rip rap revetments, culverts, bulkheads, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction; or

(vi) Placement of approved rock material pursuant to the terms and conditions of an aquacultured live rock permit issued by the National Marine Fisheries Service or a Florida Sovereignty Submerged Land Live Rock Aquaculture Lease issued by the Florida Department of Agriculture and Consumer Services.

(4) *Discharge or deposit of materials or other matter.* (i) Within the boundary of the sanctuary, discharging or depositing any material or other matter from a cruise ship except cooling water;

(ii) Within the boundary of the sanctuary, discharging or depositing any material or other matter except:

(A) Fish, fish parts, chumming materials, or bait used or generated incidental to and while conducting traditional fishing in the sanctuary;

(B) From a vessel other than a cruise ship, cooling water, deck washdown and runoff, and graywater, discharged in compliance with 33 U.S.C. 1322 *et seq.* Vessels may not discharge oily wastes from bilge pumping.

(iii) Beyond the boundary of the sanctuary, discharging or depositing any material or other matter that subsequently enters the sanctuary and injures a sanctuary resource or quality, except:

(A) Materials or other matter listed in paragraphs (a)(4)(ii)(A) and (B) of this section;

(B) Sewage from a vessel in compliance with United States Coast Guard regulations at 33 CFR 159.7;

(C) Materials or other matter authorized under, and in compliance with, Monroe County land use permits; or

(D) Materials or other matter authorized under, and in compliance with, State of Florida permits.

(5) *Operation of vessels.* (i) Operating a vessel in such a manner as to strike or otherwise injure coral, coral reefs, hardbottom, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(A) The owner and/or operator of any vessel that has been operated in a manner described in paragraph (a)(5)(i) of this section must notify the Director of such an event within 24 hours after its occurrence. If the vessel has run aground, the owner and/or operator must remove or cause the removal of the vessel within 72 hours after the initial incident unless otherwise prohibited or restricted by the United States Coast Guard, the Director agrees that extenuating circumstances such as weather or marine hazards would prevent safe removal of the vessel, or if the removal is otherwise subject to a removal plan approved by the Director. The owner and/or operator must remove or cause the removal of the vessel in a manner that avoids injury to sanctuary

resources and shall consult with the Director in accomplishing this task.

(B) [Reserved].

(ii) Anchoring a vessel on living coral.

(iii) Except in officially marked channels, operating a vessel at a speed greater than idle speed no wake within:

(A) An area designated as idle speed no wake;

(B) 300 feet (100 yards) of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);

(C) 300 feet (100 yards) of residential shorelines; or

(D) 300 feet (100 yards) of a stationary vessel.

(iv) Operating a vessel at a speed greater than idle speed no wake less than 100 feet (33.3 yards) from a divers-down flag on an inlet or navigation channel; or less than 300 feet (100 yards) from a divers-down flag on all waters other than inlets and navigation channels.

(v) Operating a vessel in such a manner as to injure wading, roosting, or nesting birds, or marine mammals.

(vi) Operating or mooring a vessel in a manner that endangers life, limb, sanctuary resources, or property.

(vii) Having a marine sanitation device that is not secured in a manner that prevents discharges or deposits of treated or untreated sewage. Acceptable methods include, but are not limited to, all methods that have been approved by the United States Coast Guard.

(viii) Anchoring, mooring, deserting, operating, or occupying a derelict vessel or a vessel at risk of becoming derelict, or deserting a vessel aground or adrift in the sanctuary. Deserted vessels, derelict vessels, or vessels at risk of becoming derelict, must be removed within 72 hours of when the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency approved body camera, or written notice which may be provided by facsimile, electronic mail, or other electronic means, stating removal is necessary from the Director or any authorized officer or the Director makes reasonable attempts to provide notice using any of these means, unless the Director agrees that extenuating circumstances, such as weather or marine hazards, would prevent safe removal, or if removal is consistent with a removal plan approved by the Director. The owner and/or operator must remove or cause the removal of the vessel in a manner that avoids injury to sanctuary resources and shall consult with the Director in accomplishing this task. The Director may require the preparation of and approval of a removal plan.

(ix) Leaving harmful matter aboard a grounded, deserted, derelict, or at risk of becoming derelict vessel in the sanctuary.

(x) Tying a large vessel to a mooring buoy not specifically designated for large vessels or tying a vessel other than a large vessel to a mooring buoy specifically designated for large vessels.

(6) *Conduct of diving/snorkeling without a flag.* Diving or snorkeling without displaying a divers-down flag from the highest point of the vessel or such other location from which the visibility of the divers-down flag is not obstructed in any direction.

(i) Divers must stay within 100 feet (33.3 yards) of the divers-down flag on inlets and navigation channels.

(ii) Divers must stay within 300 feet (100 yards) of the divers-down flag on all waters in the sanctuary other than rivers, inlets, and navigation channels.

(7) *Release of exotic species.* Introducing or releasing any exotic species into the sanctuary.

(8) *Damage or removal of markers.* Marking, defacing, damaging in any way, displacing, removing, tying to, or tampering with any official markers, signs, notices, or placards, whether temporary or permanent, or any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Movement of, removal of, injury to, or possession of sanctuary historical resources.* Moving, removing, injuring, or possessing or attempting to move, remove, injure, or possess a sanctuary historical resource.

(10) *Conduct of prohibited activities under the MMPA, ESA, and MBTA.* Conducting any activity that is prohibited under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.,* the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.,* or the Migratory Bird Treaty Act, as amended, (MBTA) 16 U.S.C. 703 *et seq.,* except as authorized under those statutes.

(11) *Possession or use of explosives or electrical charges.* Possessing, using, or releasing explosives or electrical charges within the sanctuary, except powerheads and distress signaling devices when necessary and proper for safety.

(12) *Harvest or possession of marine life species.* Harvesting, fishing for, possessing, or landing any marine life species, or part thereof, in or from the sanctuary, except as authorized by a valid State of Florida license or exemption.

(13) *Interference with law enforcement.* Interfering with, obstructing, delaying, or preventing an investigation, a boarding, a search, a seizure, or the disposition of seized property in connection with enforcement of the NMSA or FKNMSPA or any regulation or permit issued under the Acts.

(14) *Fish feeding.* Attracting or feeding fish, including sharks, or other marine species from any vessel and/or while diving. Attracting or feeding does not include using bait or chum when conducting traditional fishing.

(b) *Exemption for military activities.* (1) The prohibitions in paragraph (a) of this section and § 922.164 do not apply to existing classes of military activities that were conducted prior to the effective date of these regulations, as identified in the 2024 FKNMS Final Environmental Impact Statement (for availability, see *http://www.floridakeys.noaa.gov*) for the sanctuary. New military activities in the sanctuary may be exempted from the prohibitions in paragraph (a) of this section and in § 922.164 by the Director after consultation between the Director and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a sanctuary resource or quality, including, but not limited to, spills and groundings caused by the Department of Defense, the cognizant component of the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to, or mitigate the harm and, if possible, restore or replace the sanctuary resource or quality.

(c) *Exemption for law enforcement.* The following prohibitions do not apply to Federal, State, or local officers while performing enforcement duties in their official capacities or responding to emergencies that threaten life, property, or the environment:

(1) Those contained in paragraphs (a)(2), (a)(5), and (a)(8) through (a)(12) of this section;

(2) Those contained in paragraph (a)(4), except that all discharges of sewage must be in compliance with United States Coast Guard regulations at 33 CFR 159.7;

(3) Those contained in § 922.164(b)(1), (2) and (4); and

(4) Those contained in § 922.164(d) through (h).

(d) In no event may the Director issue a permit, including a certification or authorization, under § 922.10, subpart D of this part, § 922.166, or § 922.167 authorizing, or otherwise approving, the exploration for, leasing, development, or production of minerals or hydrocarbons within the sanctuary, the disposal of dredged material within the sanctuary other than in connection with beach

renourishment or sanctuary restoration projects, or the discharge of untreated or primary treated sewage, and any purported authorizations issued by other authorities for any of these activities within the sanctuary shall be invalid.

§ 922.164 Additional activity regulations by designated sanctuary area.

(a) *Areas to be avoided.* Operating a tank vessel or a vessel greater than 50 meters (164 feet) in length, or towing vessel(s), equipment, or materials such that the combined length of the tow vessel and all towed vessels, equipment, or materials is greater than 50 meters, is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix B to this subpart sets forth the geographic coordinates of these areas, which are established under Florida Keys National Marine Sanctuary and Protection Act, Public Law 101–605 and International Maritime Organization advisory SN/Circ. 145.

(b) *Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas described in appendix C to this subpart:

(1) Removing, collecting, damaging, harming, breaking, cutting, spearing, or similarly injuring, or possessing, in or from the management area, any coral or other marine invertebrate, or any plant, soil, rock, or other material, except that commercial harvesting of spiny lobster and stone crab by trap and recreational harvesting of spiny lobster by hand or by hand gear is allowed if consistent with the regulations in this part and regulations under the Magnuson-Stevens Fishery Conservation and Management Act.

(2) Collecting or harvesting tropical fish.

(3) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(4) Fishing with, carrying, or possessing pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns, or similar devices known as spearguns.

(c) *Great White Heron and Key West National Wildlife Refuges.* Operating a personal watercraft, operating an airboat, water skiing, and landing recreational aircraft are prohibited within the Great White Heron and Key West National Wildlife Refuges (described in appendix D to this subpart), except that operating a personal watercraft is allowed only in six areas described in appendix D.

(d) *Wildlife Management Areas.* Appendix E to this subpart sets forth the geographic coordinates of Wildlife Management Areas. The following access and use restrictions apply in individual Wildlife Management Areas. Certain exceptions from the access and use restrictions are also provided. All restrictions apply year-round unless specified.

TABLE 1 TO PARAGRAPH (d)

Wildlife management area	Access and use restriction
Barnes-Card Sound Wildlife Management Area	Idle speed no wake.
Crocodile Lake Wildlife Management Area	No entry within 300 feet (100 yards) of shorelines. Exceptions: Steamboat Creek.
Eastern Lake Surprise Wildlife Management Area	Idle speed no wake east of Highway 1. No entry within 300 feet (100 yards) of shorelines. No entry in the canal and basin on the southeast side.
Whitmore Bight Wildlife Management Area	No motor.
Pelican Key Wildlife Management Area	No entry.
Dove and Rodriguez Keys Wildlife Management Area	No motor.
Pigeon Key Wildlife Management Area	No entry.
Tavernier Key Wildlife Management Area	No motor. Exceptions: Tavernier Creek. Unnamed channel to the northeast of Tavernier Creek.
Snake Creek Wildlife Management Area	No motor. Exceptions: Snake Creek. Three channels providing access to Windley Key.
Cotton Key Wildlife Management Area	No motor.
Channel Key Banks Wildlife Management Area	Idle speed no wake. No entry around Channel Key.
Marathon Oceanside Shoreline Wildlife Management Area	Idle speed no wake. Exceptions: Ten channels providing access to Marathon.
Red Bay Bank Wildlife Management Area	Idle speed no wake.
East Bahia Honda Key Wildlife Management Area	No motor.
West Bahia Honda Key Wildlife Management Area	No motor.
Horseshoe Keys Wildlife Management Area	No entry.
Little Pine Key Mangrove Wildlife Management Area	No entry.
Water Key Mangroves Wildlife Management Area	No entry.
Howe Key Mangrove Wildlife Management Area	No motor.
East Content Keys and Upper Harbor Key Flats Wildlife Management Area.	Idle speed no wake in all tidal creeks and shallow flats. No entry around Upper Harbor Key.
West Content Keys Wildlife Management Area	Idle speed no wake in the eastern tidal creek. No entry in the western cove.
Torch Key Mangroves Wildlife Management Area	No entry.
Northeast Tarpon Belly Keys Wildlife Management Area	No motor.
Crane Key Wildlife Management Area	No entry.
Sawyer Key Wildlife Management Area	No entry.

TABLE 1 TO PARAGRAPH (d)—Continued

Wildlife management area	Access and use restriction
Happy Jack Key Wildlife Management Area	No entry.
Barracuda Keys Wildlife Management Area	Idle speed no wake.
Pelican Shoal Wildlife Management Area	No entry.
Snipe Keys Wildlife Management Area	Idle speed no wake in the main tidal creek. No motor in all other tidal creeks. No entry around the two small southern islands.
Mud Keys Wildlife Management Area	Idle speed no wake.
Lower Harbor Keys Wildlife Management Area	Idle speed no wake.
East Harbor Key Wildlife Management Area	No entry.
Cayo Agua Keys Wildlife Management Area	Idle speed no wake.
Bay Keys Wildlife Management Area	Idle speed no wake in the channel north of the western island. No motor around the eastern and western islands.
Big Mullet Key Wildlife Management Area	No motor.
Cottrell Key Wildlife Management Area	No entry.
Little Mullet Key Wildlife Management Area	No entry.
Ballast and Man Keys Flats Wildlife Management Area	Idle speed no wake. Exception: Two channels between the keys.
Western Dry Rocks Wildlife Management Area	From April 1 to July 31, continuous transit without interruption and no anchor.
Woman Key Wildlife Management Area	No entry.
Boca Grande Key Wildlife Management Area	No entry.
Marquesas Keys Wildlife Management Area	Idle speed no wake in the creek east of Gull Keys. No entry around the small island west of Gull Key. No entry around three smallest islands on the western side of Mooney Harbor.
Marquesas Keys Turtle Wildlife Management Area	Idle speed no wake.
Tortugas Bank Wildlife Management Area	No anchor by vessels >50m length.

(e) *Sanctuary Preservation Areas.* Appendix F to this subpart sets forth the geographic coordinates of Sanctuary Preservation Areas. The following activities are prohibited within the Sanctuary Preservation Areas:

(1) Discharging or depositing any material or other matter, except cooling water from vessels.

(2) Moving, fishing, harvesting, removing, collecting, damaging, disturbing, breaking, cutting, spearing, otherwise injuring, or possessing, in or from the area, any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel provided that the vessel remains in continuous transit without interruption.

(3) Anchoring a vessel.

(f) *Conservation Areas.* Appendix G to this subpart sets forth the geographic coordinates of Conservation Areas. The following activities are prohibited within the Conservation Areas:

(1) Conducting any activity prohibited at 922.164(e)(1) and 922.164(e)(2).

(2) Anchoring a vessel, except in a portion of the Western Sambo Conservation Area where anchoring is allowed landward of the line connecting the points 24.498774, −81.725441 and 24.504693, −81.693012.

(3) Entering a Conservation Area other than the Western Sambo Conservation Area, except for continuous transit without interruption.

(g) *Habitat Restoration Areas.* Appendix H to this subpart sets forth the geographic coordinates of Habitat Restoration Areas. Conducting any activity prohibited at 922.164(e) is prohibited within the Habitat Restoration Areas.

(h) *Nursery Restoration Areas.* Appendix I to this subpart sets forth the geographic coordinates of Nursery Restoration Areas. The following activities are prohibited within the Nursery Restoration Areas:

(1) Conducting any activity prohibited at 922.164(e).

(2) Entering any Nursery Restoration Area, except for continuous transit without interruption.

§ 922.165 Temporary regulation for emergency and adaptive management.

(a) Any and all activities are subject to temporary regulation, including prohibition of any activity, restriction of access or uses, or designation or modification of any areas identified in §§ 922.164(d) through (h), subject to the limitations in this section.

(b) The Director may temporarily regulate activities in the sanctuary only if the Director determines, based on the best available information, that immediate action is reasonably necessary to:

(1) Prevent or minimize destruction of, loss of, or injury to sanctuary resources, or risk of the same, from any human-made or natural circumstances. These circumstances may include, but are not limited to, a concentration of human use, change in migratory or habitat use patterns, vessel impacts, natural disaster or similar emergency, disease, or bleaching;

(2) Initiate restoration, recovery, or other activity to improve or repair living habitats and species where a delay in time would impair the ability of such activity to succeed; or

(3) Initiate research where an unforeseen event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(c) Any temporary regulation issued under this section shall be subject to the following procedure:

(1) No temporary regulation issued under this section will take effect unless the proposed rule is published in the **Federal Register** for public comment and the final rule is published not less than 30 days before its effective date, unless the Director finds for good cause that notice and comment rulemaking and a 30 day delay of the effectiveness date under the Administrative Procedure Act, 5 U.S.C. 553, is

impracticable, unnecessary, or contrary to the public interest.

(2) If the Director decides, for good cause, that a temporary rule is to be made effective immediately without affording prior notice and opportunity for public comment, the Director may decide to receive public comments on the necessity for, and extent of, the temporary regulation for a period of 15 days after the effective date of notification.

(3) Notification in the **Federal Register** of temporary regulation issued by the Director under this section will include the following information:

(i) A description of the regulation;

(ii) Reason(s) for the regulation under paragraph (b) of this section and the good cause determinations required under paragraph (c)(1) of this section; and

(iii) The effective date and termination date of such regulation.

(d) Any temporary regulation may be in effect for up to six months (180 days), with one six-month (additional 186-day) extension. NOAA will announce any extension by publishing a notice in the **Federal Register**.

(e) Temporary regulations under this section shall not take effect in Florida State waters until approved by the Governor of the State of Florida.

(f) It is unlawful for any person to violate any temporary regulation imposed under this section.

§ 922.166 National Marine Sanctuary permitting—General permits, special use permits, and authorizations

(a) *National Marine Sanctuary general permits.* (1) Except as noted at § 922.163(d), a person may conduct an activity prohibited by § 922.163 or 922.164 if such activity is specifically allowed by and conducted in accordance with the scope, purpose, and terms and conditions of a general permit issued under this section or subpart D of this part.

(2) The Director, at his or her discretion, may issue a general permit under this section subject to such terms and conditions as he or she deems appropriate if the Director finds that the activity falls within one of the general permit categories at § 922.30(b) or one of the following categories:

(i) *Archaeological research:* Activities involving the scientific study of the physical remains of human activity and its surrounding environmental context, utilizing research questions to inform society's understanding of the past;

(ii) *Restoration:* Activities that further restoration of natural resources of the sanctuary; and

(iii) *Tortugas North Conservation Area Access:* Activities that involve access to and entry into the Tortugas North Conservation Area.

(b) *Application requirements and procedures.* (1) Applications for general permits, special use permits, and authorizations under this section or subpart D of this part, other than for Tortugas North Conservation Area Access shall be addressed to the Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040, or sent by electronic means as defined in the instructions for the ONMS permit application. All applications, except those for Tortugas North Conservation Area Access, shall comply with the requirements and procedures under subpart D of this part.

(2) Applications for general permits for Tortugas North Conservation Area shall be requested via telephone to FKNMS at (305) 809–4700 or by email to *TortugasNorthPermit@noaa.gov* at least 72 hours before the date the permit is desired to be effective. All applications shall include:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and operator;

(iii) Name, address, and telephone number of applicant;

(iv) USCG documentation, State license, or registration number;

(v) Home port;

(vi) Length of vessel and propulsion type (*i.e.,* motor or sail);

(vii) Number of divers; and

(viii) Requested effective date (date of ingress) and date of egress. General permits for Tortugas North Conservation Area Access shall be issued for a period not exceeding two weeks.

(c) *Review procedures and evaluation.* (1) *General permits, special use permits, and authorizations.* The Director shall review and evaluate an application for a general permit, special use permit, or authorization in accordance with this section and subpart D of this part.

(2) *General permits for archaeological research.* The Director shall not issue a general permit for archaeological research unless the Director conducts the required review and evaluation required by paragraph (c)(1) of this section and further finds that:

(i) The applicant is a supervising archaeologist responsible for project planning, field operations, research analysis, and reporting and will directly supervise and be on site for any excavation and/or historical resource recovery operations. A supervising archaeologist shall have underwater archaeological experience related to the research proposed and shall meet the requirements for prehistoric or historic archaeology in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, which are:

(A) A graduate degree in archaeology, anthropology, or closely related field;

(B) At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration, or management;

(C) At least four months of supervised field and analytic experience in general North American archaeology;

(D) Demonstrated ability to carry research to completion; and

(E) A professional in prehistoric archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of prehistoric period archaeological resources. A professional in historic archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of historic period archaeological resources;

(ii) The applicant commits to following an explicit statement of objectives and methods that respond to needs identified in the planning process;

(iii) The methods and techniques of the proposed activity are selected to obtain the information required by the statement of objectives; and

(iv) The applicant commits to assess the results against the statement of objectives and integrate them into the planning process.

(3) *Activities in designated sanctuary areas.* The Director shall not issue a general permit, special use permit, or authorization under this section or subpart D of this part for activities within any of the areas described in § 922.164(b) through (h) unless the Director finds that such activities will further and are consistent with the purposes for which such area was established as described in §§ 922.162 and 922.164 and in the currently applicable FKNMS management plan for the sanctuary.

(d) *Terms and conditions.* (1) In addition to any terms and conditions in subpart D of this part, general permits, special use permits, and authorizations issued under this section or subpart D of this part shall be subject to the following terms and conditions:

(i) Except for Tortugas North Conservation Area Access Permits, the signed permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer;

(ii) All permitted activities shall be conducted in a manner that does not

destroy, cause the loss of, or injure sanctuary resources or qualities, except to the extent that such may be specifically authorized;

(iii) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities; and

(iv) All necessary Federal, State, and/or local leases, permits, licenses, approvals, or other authorizations from all agencies with jurisdiction over the proposed activities shall be secured before commencing any activities authorized pursuant to a sanctuary permit.

(2) General permits for archaeological research shall be subject to the terms and conditions in paragraph (d)(1) of this section and to the following terms and conditions:

(i) An agreement with a conservation laboratory shall be in place before historical resource recovery operations begin, where a qualified marine archaeological materials conservator shall be in charge of planning, conducting, and supervising the conservation of any historical resources and other materials recovered. To be considered a qualified marine archaeological materials conservator, the individual shall have a graduate degree in archaeology, history, anthropology, or science with experience conserving archaeological materials recovered from the marine environment documented in a Curriculum Vitae and professional references; and

(ii) A curation agreement with a museum or facility for curation, public access, periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations involving historical resource recovery. The curation facility shall meet the requirements of 36 CFR part 79.

(3) The Director, at his or her discretion, may subject a general permit, special use permit, or authorization issued under this section of subpart D of this part to such additional terms and conditions as he or she deems appropriate. These may include but are not limited to the following:

(i) Any data, information, or results obtained pursuant to the permit shall be made available to NOAA and the public;

(ii) A NOAA official shall be allowed to observe any activity conducted pursuant to the permit;

(iii) The permittee shall submit to NOAA one or more reports on the status, progress, or results of any activity authorized by the permit, including all revenues derived from such activities during the year and/or term of the permit, as applicable; and

(iv) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

(4) Sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. The Director will enter into a Memorandum of Agreement regarding collaboration with other Federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft.

§ 922.167 National Marine Sanctuary permitting—Certifications.

(a) Except as noted at § 922.163(d), a person may conduct an activity prohibited by § 922.163 or 922.164 within the sanctuary if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of the final regulations for the designation or any revised terms of designation for the Florida Keys National Marine Sanctuary, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with § 922.10 and provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of the revised terms of designation of the existence and location of such authorization or right and requests certification of such authorization or right; and

(2) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director to achieve the purposes for which the sanctuary was designated.

(b) Requests for certifications shall be addressed to the Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040, or sent by electronic means as defined in the instructions for the ONMS permit application. A copy of the lease, permit, license, or right of subsistence use or of access must accompany the request.

(c) A certification requester with an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.163 or 922.164 may continue to conduct the activity without being in violation of applicable provisions of § 922.163 or 922.164 pending the Director's review of and decision regarding his or her certification request.

(d) The Director may request additional information from the certification requester as the Director deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the sanctuary was designated. The Director must receive the information requested within 45 days of the date of the Director's request for information. Failure to provide the requested information within this time frame may be grounds for denial by the Director of the certification request.

(e) In considering whether to issue a certification, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate by the Director.

(f) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency and shall set forth the reason(s) for the decision or action taken.

(g) The Director may amend, suspend, or revoke any certification issued under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the certification holder and the agency that issued the underlying lease, permit, license, or right of subsistence use or of access, and shall set forth reason(s) for the action taken.

(h) The Director may amend any certification issued under this section whenever additional information becomes available that he or she determines justifies such an amendment.

(i) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(j) It is unlawful for any person to violate any terms and conditions in a certification issued under this section.

§§ 922.168–922.178 [Reserved]

§ 922.179 Incorporation by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the National Oceanic and Atmospheric Administration (NOAA) and at the National Archives and Records Administration (NARA). Contact NOAA at: the Office of National Marine Sanctuaries (ONMS), 1305 East-West Highway, Silver Spring, MD 20910; website: *https://sanctuaries.noaa.gov/contact.html.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the following source:

(a) *State of Florida—Department of State.* R.A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399–0250; phone:(850)245–6270; email: *AdministrativeCode@dos.myflorida.com;* website: *https://flrules.org/.*

(1) *F.A.C. 68B–42.001.* Florida Administrative Code chapter 68B–42, Marine Life, rule 68B–42.001, Purpose and Intent; Designation of Restricted Species; Definition of Marine Life, effective November 1, 2012; IBR into § 922.162.

(2) *F.A.C. 68B–42.002.* Florida Administrative Code chapter 68B–42, Marine Life, rule 68B–42.002, Definitions, effective November 1, 2012; IBR into § 922.162.

(b) [Reserved]

Appendix A to Subpart P of Part 922—Florida Keys National Marine Sanctuary Boundary Coordinates

The Florida Keys National Marine Sanctuary (sanctuary) encompasses an area of 3,622 square nautical miles (4,797 square miles) of coastal, ocean, and Gulf of Mexico waters and the submerged lands thereunder from the boundary to the shoreline as defined by the mean high water tidal datum surrounding the Florida Keys in southern Florida.

The sanctuary boundary begins approximately 4 miles east of the northern extent of Key Biscayne at Point 1 and continues roughly south and then southwest and west in numerical order to Point 15 approximately 27 miles SW of Loggerhead Key. From Point 15 the sanctuary boundary continues north to Point 17 which is approximately 18 miles NW of Loggerhead Key and then continues roughly east in numerical order to Point 23 just north of Sprigger Bank. From Point 23 the boundary continues in numerical order roughly SE to Point 26 just north of Old Dan Bank. From Point 26 the boundary continues NE in numerical order through Bowlegs Cut and Steamboat Channel to Point 42 near the southern entrance to Cowpens Cut west of Plantation Key.

From Point 42 the boundary continues towards Point 43 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNE until it intersects the line segment formed between Point 44 and Point 45.

From this intersection the boundary continues NNE to Point 45 and then roughly NE in numerical order to Point 61 just west of Hammer Point in Tavernier, FL. From Point 61 the boundary continues in numerical order roughly north and then NW to Point 64 just west of Pigeon Key. From Point 64 the boundary continues in numerical order roughly NE then NNE through Baker Cut to Point 69. From Point 69 the boundary continues in numerical order roughly NE through Buttonwood Sound to Point 73.

From Point 73 the boundary continues towards Point 74 until it intersects the shoreline near the southern entrance to Grouper Creek west of Key Largo, FL. From this intersection the boundary follows the shoreline NE along Grouper Creek until it intersects the line segment formed between Point 75 and Point 76. From this intersection the boundary continues towards Point 76 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly east until it intersects the line segment formed between Point 77 and Point 78.

From this intersection the boundary continues to Point 78 and then roughly ESE in numerical order through Tarpon Basin to Point 85. From Point 85 the boundary continues NE and then NW to Point 92.

From Point 92 the boundary continues towards Point 93 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly north along Dusenberry Creek until it intersects the line segment formed between Point 94 and Point 95.

From this intersection the boundary continues to Point 95 and then NE in numerical order through Blackwater Sound to Point 102 south of the entrance to Jewfish Creek.

From Point 102 the boundary continues towards Point 103 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNE and then NW until it intersects the line segment formed between Point 104 and Point 105. From this intersection the boundary continues towards Point 105 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNE and then roughly west along southwestern Barnes Sound and around Division Point until it intersects the line segment formed between Point 106 and Point 107 near Manatee Creek east of Long Sound. From this intersection the boundary continues towards Point 107 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly NNW until it intersects the line segment formed between Point 108 and Point 109. From this intersection the boundary continues towards Point 109 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly east until it intersects the line segment formed between Point 109 and 110. From this intersection the boundary continues towards Point 110 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly north and then NE until it intersects the line segment formed between Point 111 and Point 112. From this intersection the boundary continues towards Point 112 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly east and then north around Bay Point and then west until it intersects the line segment formed between Point 113 and Point 114. From this intersection the boundary continues towards Point 114 until it intersects the shoreline. From this intersection the boundary follows the shoreline north along the western side of Manatee Bay until it intersects the line segment formed between Point 115 and Point 116. From this intersection the boundary continues towards Point 116 until it intersects the shoreline.

From this intersection the boundary follows the shoreline around northern Manatee Bay and Barnes Sound until it intersects the line segment formed between Point 117 and Point 118. From this intersection the boundary continues towards Point 118 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly to the SE south of FL State Route 905A—Card Sound Road then NW and roughly north along western Little Card Sound and then Card Sound cutting off the mouths of canals and drainage ditches until it intersects the line segment formed between Point 119 and Point 120 south of Midnight Pass. From this intersection the boundary continues to Point 120 and then roughly SE to each successive point in numerical order approximating the southern boundary of Biscayne National Park to Point 142 approximately 3 miles ENE of Turtle Rocks. From Point 142 the boundary continues roughly N to each successive point in numerical order ending at Point 158.

The inner landward sanctuary boundary is defined by and follows the shoreline where not already specified in the description above.

Dry Tortugas National Park is not included within the FKNMS and the inner sanctuary boundary in this area is coterminous with this national park boundary and begins at Point DT1 and continues in numerical order counterclockwise around the national park ending at Point DT10.

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

FLORIDA KEYS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Point	Latitude	Longitude
1	25.72274	−80.08695
2	25.64500	−80.04500
3	25.36667	−80.05000
4	25.10633	−80.17467
5	24.93950	−80.32100
6	24.63167	−80.78833
7	24.48667	−81.28833
8	24.37167	−81.71950
9	24.38333	−81.89167
10	24.38333	−82.05833
11	24.38749	−82.22133
12	24.38854	−82.26357
13	24.36667	−82.80000
14	24.30000	−83.08333
15	24.30084	−83.16711
16	24.54992	−83.16627
17	24.76760	−83.16665
18	24.76670	−83.10000
19	24.76667	−82.90000
20	24.76333	−82.80000
21	24.73333	−81.91667
22	24.85000	−81.43333
23	24.91667	−80.93333
24	24.87555	−80.89054
25	24.87315	−80.88754
26	24.85164	−80.83258
27	24.86699	−80.77381
28	24.89338	−80.74983
29	24.90039	−80.73560
30	24.90073	−80.73483
31	24.91255	−80.72551
32	24.93676	−80.67597
33	24.93859	−80.67223
34	24.93891	−80.67163
35	24.94153	−80.66370
36	24.94315	−80.65854
37	24.96567	−80.63474
38	24.99620	−80.56513
39	24.99637	−80.56482
40	24.99756	−80.56322
41	24.99919	−80.56088
42	25.00054	−80.56067
43 *	25.00130	−80.56032
44 *	25.00597	−80.55863
45	25.00722	−80.55812
46	25.00786	−80.55769
47	25.00883	−80.55694
48	25.01038	−80.55553
49	25.01590	−80.54977
50	25.01695	−80.54876
51	25.02295	−80.53795
52	25.02304	−80.53783
53	25.02309	−80.53768
54	25.02361	−80.53499
55	25.02687	−80.53021
56	25.03011	−80.52417
57	25.03095	−80.52186
58	25.03179	−80.51954
59	25.03388	−80.51809
60	25.03398	−80.51804
61	25.03409	−80.51801
62	25.03740	−80.51778
63	25.03825	−80.51790
64	25.05836	−80.52178
65	25.06772	−80.49982
66	25.08144	−80.47469
67	25.09063	−80.46820
68	25.09088	−80.46808
69	25.09294	−80.46779
70	25.09387	−80.46704
71	25.12097	−80.44703
72	25.12126	−80.44688

FLORIDA KEYS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Point	Latitude	Longitude
73	25.12142	−80.44684
74*	25.12214	−80.44683
75*	25.12785	−80.44378
76*	25.12845	−80.44309
77*	25.12878	−80.44084
78	25.12875	−80.44022
79	25.12870	−80.43984
80	25.12834	−80.43776
81	25.12787	−80.43414
82	25.12772	−80.43313
83	25.12739	−80.43078
84	25.12690	−80.42809
85	25.12667	−80.42678
86	25.12815	−80.42335
87	25.12839	−80.42307
88	25.12889	−80.42266
89	25.12942	−80.42242
90	25.12972	−80.42234
91	25.13040	−80.42244
92	25.13126	−80.42273
93*	25.13200	−80.42327
94*	25.14298	−80.42513
95	25.14339	−80.42491
96	25.14359	−80.42472
97	25.14390	−80.42416
98	25.14744	−80.41865
99	25.17698	−80.39366
100	25.17961	−80.39071
101	25.17986	−80.39049
102	25.18009	−80.39037
103*	25.18302	−80.38932
104*	25.18612	−80.39050
105*	25.18637	−80.39084
106*	25.23068	−80.43215
107*	25.23093	−80.43225
108*	25.23170	−80.43239
109*	25.23193	−80.43244
110*	25.23245	−80.43118
111*	25.23533	−80.42929
112*	25.23578	−80.42858
113*	25.24041	−80.43052
114*	25.24081	−80.43041
115*	25.25651	−80.42968
116*	25.25692	−80.43006
117*	25.30013	−80.38710
118*	25.30034	−80.38658
119*	25.37260	−80.31062
120	25.36649	−80.28245
121	25.35144	−80.25593
122	25.34986	−80.25492
123	25.34899	−80.25473
124	25.34633	−80.25384
125	25.34545	−80.25288
126	25.34484	−80.25239
127	25.34370	−80.25134
128	25.34246	−80.25012
129	25.34203	−80.24950
130	25.34151	−80.24892
131	25.34107	−80.24829
132	25.34069	−80.24776
133	25.33956	−80.24736
134	25.33816	−80.24685
135	25.33724	−80.24628
136	25.33661	−80.24578
137	25.33587	−80.24482
138	25.33530	−80.24386
139	25.33531	−80.24328
140	25.33638	−80.21007
141	25.32064	−80.19434
142	25.29144	−80.16515
143	25.30885	−80.15424
144	25.46608	−80.10667

FLORIDA KEYS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Point	Latitude	Longitude
145	25.48154	−80.10296
146	25.49758	−80.09999
147	25.51415	−80.09664
148	25.52104	−80.09524
149	25.52554	−80.09471
150	25.55760	−80.09125
151	25.57223	−80.09004
152	25.59328	−80.08848
153	25.59972	−80.08808
154	25.60242	−80.08791
155	25.61437	−80.08784
156	25.63198	−80.08743
157	25.64476	−80.08736
158	25.72274	−80.08695
DT1	24.72612	−82.79849
DT2	24.72537	−82.86646
DT3	24.71690	−82.89975
DT4	24.64904	−82.96770
DT5	24.56533	−82.96789
DT6	24.56624	−82.90040
DT7	24.61764	−82.79902
DT8	24.66867	−82.76542
DT9	24.70164	−82.76522
DT10	24.72612	−82.79849

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Appendix B to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The boundary for the following Area to be Avoided zones begins at Point 1 and continues to each successive point in numerical order until ending at the zone's last point as listed in its specific coordinate table.

ATBA 1

Point	Latitude	Longitude
1	24.37167	−81.71950
2	24.46667	−81.71950
3	24.47833	−81.72500
4	24.49667	−81.71950
5	24.55167	−81.58583
6	24.56000	−81.43333
7	24.63667	−81.11667
8	24.72000	−80.88667
9	24.76833	−80.76917
10	24.85167	−80.61833
11	24.95833	−80.45833
12	25.16500	−80.27000
13	25.40000	−80.15167
14	25.52500	−80.11667
15	25.66167	−80.11417
16	25.75000	−80.10167
17	25.72262	−80.08689
18	25.64500	−80.04500
19	25.36667	−80.05000
20	25.10633	−80.17467
21	24.93950	−80.32100
22	24.63167	−80.78833
23	24.48667	−81.28833
24	24.37167	−81.71950

ATBA 2

Point	Latitude	Longitude
1	24.46583	−81.81084
2	24.38333	−81.89167
3	24.44333	−81.97500

ATBA 2—Continued

Point	Latitude	Longitude
4	24.46250	−81.92834
5	24.48917	−81.89000
6	24.48917	−81.83334
7	24.46583	−81.81084

ATBA 3

Point	Latitude	Longitude
1	24.38854	−82.26357
2	24.39333	−82.46333
3	24.57500	−82.62500
4	24.71667	−82.44167
5	24.63850	−81.90100
6	24.63183	−81.89000
7	24.60250	−81.86300
8	24.57333	−81.84333
9	24.55733	−81.82883
10	24.52000	−81.86833
11	24.47833	−81.94666
12	24.44333	−81.99250
13	24.38333	−82.05833
14	24.38854	−82.26357

ATBA 4

Point	Latitude	Longitude
1	24.53333	−82.89167
2	24.53333	−83.00083
3	24.66167	−83.00083
4	24.76000	−82.90667
5	24.76000	−82.78667
6	24.71333	−82.73167
7	24.65833	−82.73167
8	24.59333	−82.77333
9	24.53333	−82.89167

Appendix C to Subpart P of Part 922—Management Areas Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The boundary for the following Management Area zones begins at each individual zone's Point 1 and continues to each successive point in numerical order until ending at that same zone's last point as listed in its specific coordinate table.

KEY LARGO MANAGEMENT AREA

Point	Latitude	Longitude
1	24.96750	−80.31889
2	25.02050	−80.39784
3	25.02111	−80.39765
4	25.02349	−80.39596
5	25.02480	−80.39511
6	25.02647	−80.39412
7	25.02835	−80.39311
8	25.03026	−80.39219
9	25.03239	−80.39127
10	25.03437	−80.39054
11	25.03582	−80.39006
12	25.03766	−80.38952
13	25.04131	−80.38859
14	25.04242	−80.38834
15	25.04466	−80.38792
16	25.04654	−80.38767
17	25.04899	−80.38745
18	25.05181	−80.38736

KEY LARGO MANAGEMENT AREA—Continued

Point	Latitude	Longitude
19	25.05367	−80.38740
20	25.05394	−80.38732
21	25.05501	−80.38504
22	25.05674	−80.38186
23	25.05817	−80.37953
24	25.05915	−80.37808
25	25.06050	−80.37585
26	25.06127	−80.37467
27	25.06219	−80.37338
28	25.06343	−80.37103
29	25.06500	−80.36841
30	25.06659	−80.36607
31	25.06791	−80.36430
32	25.06917	−80.36273
33	25.07090	−80.36078
34	25.07161	−80.35932
35	25.07319	−80.35646
36	25.07492	−80.35370
37	25.07627	−80.35170
38	25.07758	−80.34993
39	25.07871	−80.34852
40	25.07988	−80.34715
41	25.08122	−80.34569
42	25.08233	−80.34456
43	25.08376	−80.34320
44	25.08584	−80.34140
45	25.08816	−80.33961
46	25.09008	−80.33827
47	25.09123	−80.33754
48	25.09340	−80.33628
49	25.09508	−80.33461
50	25.09727	−80.33265
51	25.09909	−80.33118
52	25.10065	−80.33003
53	25.10306	−80.32842
54	25.10455	−80.32753
55	25.10675	−80.32633
56	25.10986	−80.32489
57	25.11178	−80.32356
58	25.11340	−80.32254
59	25.11593	−80.32113
60	25.11717	−80.31955
61	25.11860	−80.31788
62	25.12093	−80.31541
63	25.12266	−80.31379
64	25.12400	−80.31262
65	25.12523	−80.31162
66	25.12694	−80.31033
67	25.12887	−80.30900
68	25.13035	−80.30808
69	25.13203	−80.30711
70	25.13443	−80.30588
71	25.13689	−80.30478
72	25.13830	−80.30423
73	25.14048	−80.30347
74	25.14175	−80.30309
75	25.14388	−80.30178
76	25.14505	−80.30112
77	25.14692	−80.30015
78	25.14953	−80.29897
79	25.15236	−80.29789
80	25.15525	−80.29691
81	25.15781	−80.29618
82	25.16003	−80.29567
83	25.16189	−80.29534
84	25.16377	−80.29507
85	25.16640	−80.29484
86	25.16831	−80.29476
87	25.17038	−80.29477
88	25.17167	−80.29483
89	25.17332	−80.29382
90	25.17517	−80.29279

KEY LARGO MANAGEMENT AREA—Continued

Point	Latitude	Longitude
91	25.17672	−80.29201
92	25.17811	−80.29137
93	25.17936	−80.29046
94	25.18113	−80.28928
95	25.18344	−80.28789
96	25.18581	−80.28665
97	25.18754	−80.28585
98	25.18939	−80.28428
99	25.19109	−80.28297
100	25.19284	−80.28174
101	25.19464	−80.28059
102	25.19715	−80.27915
103	25.19887	−80.27828
104	25.20114	−80.27726
105	25.20274	−80.27663
106	25.20410	−80.27526
107	25.20523	−80.27420
108	25.20638	−80.27318
109	25.20756	−80.27221
110	25.21054	−80.26987
111	25.21246	−80.26852
112	25.21408	−80.26749
113	25.21540	−80.26671
114	25.21691	−80.26589
115	25.21947	−80.26464
116	25.22157	−80.26376
117	25.22312	−80.26299
118	25.22521	−80.26208
119	25.22681	−80.26146
120	25.22861	−80.26085
121	25.22973	−80.26014
122	25.23088	−80.25948
123	25.23240	−80.25831
124	25.23381	−80.25731
125	25.23571	−80.25608
126	25.23687	−80.25540
127	25.23879	−80.25310
128	25.24041	−80.25134
129	25.24283	−80.24901
130	25.24477	−80.24735
131	25.24725	−80.24545
132	25.24940	−80.24349
133	25.25105	−80.24211
134	25.25338	−80.24035
135	25.25547	−80.23894
136	25.25694	−80.23804
137	25.25835	−80.23724
138	25.26092	−80.23594
139	25.26355	−80.23480
140	25.26687	−80.23359
141	25.26915	−80.23204
142	25.27098	−80.23093
143	25.27251	−80.23008
144	25.27697	−80.22775
145	25.27997	−80.22644
146	25.28249	−80.22552
147	25.28432	−80.22495
148	25.28642	−80.22274
149	25.28768	−80.22149
150	25.29000	−80.21941
151	25.29197	−80.21783
152	25.29352	−80.21644
153	25.29547	−80.21481
154	25.29748	−80.21329
155	25.29940	−80.21199
156	25.30114	−80.20984
157	25.30329	−80.20751
158	25.30570	−80.20518
159	25.30734	−80.20377
160	25.30980	−80.20185
161	25.31204	−80.20031
162	25.31452	−80.19880

KEY LARGO MANAGEMENT AREA—Continued

Point	Latitude	Longitude
163	25.31588	−80.19805
164	25.31708	−80.19745
165	25.31853	−80.19611
166	25.32064	−80.19434
167	25.29144	−80.16515
168	25.26130	−80.13652
169	25.11806	−80.20139
170	24.96750	−80.31889

LOOE KEY MANAGEMENT AREA

Point	Latitude	Longitude
1	24.53389	−81.43333
2	24.56583	−81.43333
3	24.57083	−81.38333
4	24.53889	−81.38333
5	24.53389	−81.43333

Appendix D to Subpart P of Part 922—National Wildlife Refuges Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Note: The coordinates in the tables of this appendix marked with an asterisk (*) are not a part of the zone's boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Key West National Wildlife Refuge

The seaward boundary for the Key West National Wildlife Refuge begins at Point 1 and continues to each successive point in numerical order until ending at Point 5. The inner landward boundary for Key West National Wildlife Refuge is defined by and follows the shoreline at mean high water.

Note: This boundary description only represents the marine portions of the Key West National Wildlife Refuge that fall within the sanctuary. The full Key West National Wildlife Refuge boundary was established by Executive Order 923 in 1908.

KEY WEST NATIONAL WILDLIFE REFUGE

Point	Latitude	Longitude
1	24.66495	−82.16653
2	24.66715	−81.81657
3	24.44728	−81.81653
4	24.44690	−82.16601
5	24.66495	−82.16653

Great White Heron National Wildlife Refuge

The boundary description below only represents the marine portions of the Great White Heron National Wildlife Refuge that fall within the sanctuary. The full Great White Heron National Wildlife Refuge boundary was established by Executive Order 7993 in 1938, with additional islands acquired under the Migratory Bird Conservation Act (16 U.S.C., S. 715).

The Great White Heron National Wildlife Refuge boundary begins approximately 1.6 miles south of Cocoanut Key at Point 1 and continues west to Point 2 and then south to Point 3. From Point 3 the boundary continues west towards Point 4 until it intersects the shoreline at No Name Key. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues to Point 6 and then south towards Point 7 until it intersects the shoreline at Big Pine Key. From this intersection the boundary follows the shoreline generally north and then around to the south and then east until it intersects the line segment formed between Point 8 and Point 9. From this intersection the boundary continues south to Point 9 and then west towards Point 10 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west and then north until it intersects the line segment formed between Point 11 and Point 12. From this intersection the boundary continues north to Point 12 and then west towards Point 13 until it intersects the shoreline. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 14 and Point 15. From this intersection the boundary continues north to Point 15 and then west towards Point 16 until it intersects the shoreline. From this intersection the boundary follows the shoreline north around the northern end of Big Pine Key and then generally south until it intersects the line segment formed between Point 17 and Point 18. From this intersection the boundary continues towards Point 18 until it intersects the shoreline. From this intersection the boundary follows the shoreline west and then south until it intersects the line segment formed between Point 19 and Point 20. From this intersection the boundary continues west towards Point 20 until it intersects the shoreline at Big Torch Key. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 21 and Point 22. From this intersection the boundary continues north to Point 22 and then west towards Point 23 until it intersects the shoreline. From this intersection the boundary follows the shoreline north around the northern end of Big Torch Key and then generally south until it intersects the line segment formed between Point 24 and Point 25. From this intersection the boundary continues south towards Point 25 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 26 and Point 27. From this intersection the boundary continues south to Point 27 then west to Point 28 and south towards Point 29 until it intersects the shoreline. From this intersection the boundary follows the shoreline until it intersects the line segment formed between Point 30 and Point 31. From this intersection the boundary continues west to Point 31 and then south towards Point 32

until it intersects the shoreline at Cudjoe Key. From this intersection the boundary follows the shoreline west and then east until it intersects the line segment formed between Point 32 and Point 33. From this intersection the boundary continues south towards Point 33 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 34 and Point 35. From this intersection the boundary continues west to Point 35 and then south to Point 36 and west to Point 37 and north to Point 38. From Point 38 the boundary continues west towards Point 39 until it intersects the shoreline at Sugarloaf Key. From this intersection the boundary follows the shoreline around the northern end of Sugarloaf Key until it intersects the line segment formed between Point 40 and Point 41. From this intersection the boundary continues west to Point 41 and then generally SW to each successive point in numerical order to Point 45. From Point 45 the boundary continues south towards Point 46 until it intersects the shoreline at Saddlebunch Keys. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 47 and Point 48. From this intersection the boundary continues towards Point 48 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 48 and Point 49. From this intersection the boundary continues towards Point 49 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 50 and Point 51. From this intersection the boundary continues west to Point 51 and then south towards Point 52 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 53 and Point 54. From this intersection the boundary continues west to Point 54 and then south towards Point 55 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 55 and Point 56. From this intersection the boundary continues south to Point 56 and then west to Point 57 and then south to Point 58. From Point 58 the boundary continues towards Point 59 until it intersects the shoreline at Big Coppitt Key. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 60 and Point 61. From this intersection the boundary continues west to Point 61 and then south towards Point 62 until it intersects the shoreline at Rockland Key. From this intersection the boundary follows the shoreline south and then west until it intersects the line segment formed between Point 63 and Point 64. From this intersection the boundary continues towards Point 64 until it intersects the shoreline. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 65 and Point 66. From this intersection the boundary continues north to Point 66 and then west towards Point 67 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 67 and Point 68. From this intersection the boundary continues west towards Point 68 until it intersects the shoreline at Channel Key. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 69 and Point 70. From this intersection the boundary continues west to Point 70 and then generally NE to each successive point in numerical order to Point 78. From Point 78 the boundary continues south and then west to each successive point in numerical order ending at Point 81. The inner landward boundary of this National Wildlife Refuge is defined by and follows the shoreline where not already specified.

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE

Point	Latitude	Longitude
1	24.72002	−81.23787
2	24.71978	−81.26930
3	24.70532	−81.26938
4*	24.70505	−81.33922
5*	24.70504	−81.34280
6	24.70502	−81.34800
7*	24.69801	−81.34804
8*	24.69391	−81.34807
9	24.69081	−81.34809
10*	24.69087	−81.35670
11*	24.70579	−81.36417
12	24.71964	−81.36412
13*	24.71976	−81.37785
14*	24.72221	−81.37952
15	24.73455	−81.37969
16*	24.73458	−81.39071
17*	24.72233	−81.39533
18*	24.72180	−81.39532
19*	24.72005	−81.39747
20*	24.72017	−81.43404
21*	24.72197	−81.43521
22	24.73481	−81.43526
23*	24.73478	−81.43997
24*	24.73337	−81.45123
25*	24.72838	−81.45121
26*	24.72109	−81.45119
27	24.72012	−81.45119
28	24.71965	−81.49089
29*	24.70513	−81.49086
30*	24.70510	−81.49384
31	24.70498	−81.50701
32*	24.70121	−81.50701
33*	24.69340	−81.50703
34*	24.69042	−81.51572
35	24.69044	−81.52277
36	24.67596	−81.52261
37	24.67582	−81.53856
38	24.69038	−81.53872

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE—Continued

Point	Latitude	Longitude
39 *	24.69045	−81.55392
40 *	24.69047	−81.55588
41	24.69053	−81.57072
42	24.67611	−81.57031
43	24.67605	−81.58622
44	24.66152	−81.58615
45	24.66145	−81.60206
46 *	24.65367	−81.60210
47 *	24.65278	−81.60211
48 *	24.65161	−81.60212
49 *	24.64975	−81.60213
50 *	24.64716	−81.61461
51	24.64715	−81.61790
52 *	24.63403	−81.61779
53 *	24.63271	−81.62618
54	24.63278	−81.63326
55 *	24.62056	−81.63345
56	24.61820	−81.63349
57	24.61820	−81.66690
58	24.60367	−81.66677
59 *	24.60365	−81.67007
60 *	24.60363	−81.67520
61	24.60359	−81.68266
62 *	24.59486	−81.68266
63 *	24.58918	−81.69107
64 *	24.58905	−81.69613
65 *	24.59312	−81.69862
66	24.60374	−81.69868
67 *	24.60370	−81.70391
68 *	24.60360	−81.72036
69 *	24.60359	−81.72386
70	24.60338	−81.81000
71	24.73450	−81.81037
72	24.73433	−81.61816
73	24.82134	−81.61827
74	24.82180	−81.33316
75	24.79245	−81.33308
76	24.79258	−81.23840
77	24.82172	−81.23861
78	24.82103	−81.14278
79	24.73416	−81.14243
80	24.73455	−81.23785
81	24.72002	−81.23787

Personal Watercraft (PWC) Exception Area 1—Key West National Wildlife Refuge

Personal watercraft are allowed within the following area inside Key West National Wildlife Refuge. The boundary for PWC Exception Area 1 begins at Point 1 and continues to each successive point in numerical order until ending at Point 4 in the following coordinate table:

Point	Latitude	Longitude
1	24.52853	−81.81654
2	24.54833	−81.81655
3	24.54298	−81.82584
4	24.52853	−81.81654

PWC Exception Area 2—Great White Heron National Wildlife Refuge

Personal watercraft are allowed within the following area inside Great White Heron National Wildlife Refuge. The area begins just north of No Name Key at Point 1 and continues west towards Point 2 until it intersects the shoreline at No Name Key. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues west to Point 4 then south towards Point 5 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NW then south and then east until it intersects the line segment formed between Point 6 and Point 7. From this intersection the boundary continues south to Point 7 and then west towards Point 8 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NW until it intersects the line segment formed between Point 9 and Point 10. From this intersection the boundary continues north to Point 10 then east to Point 11 and then south to Point 12 where it ends. The inner landward boundary of this zone is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.70499	−81.33226
2*	24.70505	−81.33922
3*	24.70504	−81.34280
4	24.70502	−81.34800
5*	24.69801	−81.34804
6*	24.69391	−81.34807
7	24.69081	−81.34809
8*	24.69087	−81.35670
9*	24.70579	−81.36417
10	24.71964	−81.36412
11	24.71969	−81.33228
12	24.70499	−81.33226

PWC Exception Area 3—Great White Heron National Wildlife Refuge

Personal watercraft are allowed within the following area inside the Great White Heron National Wildlife Refuge. This area begins on Howe Key at the intersection of the shoreline and the line segment formed by Point 1 and Point 2. From this intersection the boundary continues east towards Point 2 until it intersects the shoreline at Big Pine Key. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west and south until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues west to Point 6 and then north towards Point 7 until it intersects the shoreline at Howe Key. From this intersection the boundary follows the shoreline generally south and east until it intersects the line segment formed between Point 8 and Point 9 where it ends. The inner landward boundary of this zone is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1*	24.73472	−81.40463
2*	24.73464	−81.39898
3*	24.72233	−81.39533
4*	24.72180	−81.39532
5*	24.72005	−81.39747
6	24.72025	−81.41181
7*	24.73480	−81.41169
8*	24.73472	−81.40463
9*	24.73464	−81.39898

PWC Exception Area 4—Great White Heron National Wildlife Refuge

Personal watercraft are allowed within the following area inside the Great White Heron National Wildlife Refuge. This area begins just west of Big Torch Key at Point 1 and continues west to Point 2 and then north towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues north to Point 5 and then east towards Point 6 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment between Point 6 and Point 7. From this intersection the boundary continues towards Point 7 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues towards Point 8 until it intersects the shoreline at Big Torch Key. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 9 and Point 10. From this intersection the boundary continues south towards Point 10 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 11 and Point 12. From this intersection the boundary continues south to Point 12 where it ends. The inner landward boundary of this zone is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.72012	−81.45119
2	24.72024	−81.45910
3*	24.72739	−81.45914
4*	24.72850	−81.45915
5	24.73470	−81.45913
6*	24.73472	−81.45545
7*	24.73472	−81.45506
8*	24.73474	−81.45214
9*	24.73337	−81.45123
10*	24.72838	−81.45121
11*	24.72109	−81.45119
12	24.72012	−81.45119

PWC Exception Area 5—Great White Heron National Wildlife Refuge

Personal watercraft are allowed within the following area inside the Great White Heron National Wildlife Refuge. This area begins just NW of Halfmoon Key at Point 1 and continues south to Point 2 and then west towards Point 3 until it intersects the shoreline at Big Coppitt Key. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues west to Point 5 and then north towards Point 6 until it intersects the shoreline at Duck Key. From this intersection the boundary follows the shoreline SW and then NW around Duck Key until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues east to Point 8 where it ends. The inner landward boundary of this zone is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.61820	−81.66690
2	24.60367	−81.66677
3*	24.60365	−81.67007
4*	24.60363	−81.67520
5	24.60359	−81.68266
6*	24.61716	−81.68207
7*	24.61821	−81.68201
8	24.61820	−81.66690

PWC Exception Area 6—Great White Heron National Wildlife Refuge

Personal watercraft are allowed within the following area inside the Great White Heron National Wildlife Refuge. This area begins just north of Rockland Key at Point 1. From Point 1 the boundary continues south towards Point 2 until it intersects the shoreline at Rockland Key. From this intersection the boundary follows the shoreline generally south and west until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues west towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues north to Point 6 and then east to Point 7 where it ends. The inner landward boundary of this zone is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.60359	−81.68266
2*	24.59486	−81.68266
3*	24.58918	−81.69107
4*	24.58905	−81.69613
5*	24.59312	−81.69862
6	24.60374	−81.69868
7	24.60359	−81.68266

Appendix E to Subpart P of Part 922—Wildlife Management Areas Boundary Coordinates and Access and Use Restrictions

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The access and use restriction for each zone is listed under the zone name and set forth at 15 CFR 922.164(d).

The boundary for the following Wildlife Management Areas begins at each individual zone's Point 1 and continues to each successive point in numerical order until ending at that same zone's last point as listed in its specific coordinate table.

Ballast and Man Keys Flats WMA 1

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.52370	−81.94818
2	24.52568	−81.94852
3	24.53128	−81.95063
4	24.53197	−81.95088
5	24.53253	−81.95179
6	24.53296	−81.95226
7	24.53342	−81.95250
8	24.53515	−81.95235
9	24.53455	−81.93151
10	24.52213	−81.93124
11	24.52370	−81.94818

Ballast and Man Keys Flats WMA 2

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.53526	−81.95645
2	24.53513	−81.95653
3	24.53507	−81.95660
4	24.53466	−81.95711
5	24.53398	−81.95777
6	24.53361	−81.95844
7	24.53336	−81.95918
8	24.53296	−81.95969
9	24.53242	−81.95984
10	24.53195	−81.95987
11	24.53135	−81.95991
12	24.53059	−81.96006
13	24.52984	−81.96056
14	24.52911	−81.96119
15	24.52803	−81.96208
16	24.52728	−81.96270
17	24.52645	−81.96261
18	24.52513	−81.96213
19	24.52499	−81.96205
20	24.52614	−81.96561
21	24.53545	−81.96303
22	24.53526	−81.95645

Ballast and Man Keys Flats WMA 3

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.53519	−81.95404
2	24.53482	−81.95413
3	24.53373	−81.95423
4	24.53298	−81.95422
5	24.53266	−81.95348
6	24.53234	−81.95281
7	24.53192	−81.95214
8	24.53153	−81.95139
9	24.53085	−81.95099
10	24.53006	−81.95075
11	24.52913	−81.95055
12	24.52806	−81.95035
13	24.52705	−81.95038
14	24.52630	−81.95049
15	24.52522	−81.95083
16	24.52400	−81.95136
17	24.52489	−81.96102
18	24.52510	−81.96119
19	24.52632	−81.96187
20	24.52710	−81.96176
21	24.52782	−81.96125
22	24.52858	−81.96083
23	24.52937	−81.96021
24	24.53002	−81.95986
25	24.53131	−81.95944
26	24.53214	−81.95929
27	24.53278	−81.95925
28	24.53307	−81.95871
29	24.53340	−81.95777
30	24.53430	−81.95707
31	24.53503	−81.95625
32	24.53517	−81.95610
33	24.53525	−81.95601
34	24.53519	−81.95404

Channel Key Banks WMA 1

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.79864	−80.91482
2	24.79054	−80.90649
3	24.78363	−80.91293
4	24.79325	−80.91988
5	24.79864	−80.91482

Channel Key Banks WMA 2

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.79341	−80.90382
2	24.79144	−80.90566
3	24.80042	−80.91454
4	24.80139	−80.91446
5	24.80827	−80.90440
6	24.80309	−80.90109
7	24.79341	−80.90382

Channel Key Banks WMA 3

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.80936	−80.90509
2	24.80357	−80.91428
3	24.81171	−80.91360
4	24.81164	−80.90655
5	24.80936	−80.90509

Channel Key Banks WMA 4

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.83778	−80.90001
2	24.82315	−80.89502
3	24.82025	−80.89590
4	24.82013	−80.89894
5	24.82623	−80.90103
6	24.82468	−80.90508
7	24.81429	−80.90823
8	24.81441	−80.91337
9	24.83992	−80.91123
10	24.84415	−80.90734
11	24.84561	−80.90353
12	24.83925	−80.90463
13	24.83778	−80.90001

Channel Key Banks WMA 5

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.87054	−80.88345
2	24.85033	−80.87681
3	24.84612	−80.89420
4	24.84127	−80.90120
5	24.83946	−80.90058

IDLE SPEED NO WAKE—Continued

Point	Latitude	Longitude
6	24.84016	−80.90280
7	24.84742	−80.90170
8	24.84649	−80.90518
9	24.85246	−80.89969
10	24.85295	−80.89489
11	24.85097	−80.88579
12	24.85682	−80.88193
13	24.87021	−80.88591
14	24.87054	−80.88345

Channel Key Banks WMA

The wildlife management area outer seaward boundary begins just north of Channel Key at Point 1. From Point 1 the boundary continues SE to Point 2 and to each successive point in numerical order ending at Point 5. The inner boundary is defined by the Channel Key Banks Wildlife Management Area No Entry Zone around Channel Key beginning at Point 1 of that zone and continuing to each successive point in numerical order until it ends at Point 159.

NO ENTRY

Point	Latitude	Longitude
1	24.79084	−80.91578
2	24.79083	−80.91570
3	24.79084	−80.91564
4	24.79085	−80.91549
5	24.79085	−80.91544
6	24.79086	−80.91539
7	24.79087	−80.91532
8	24.79089	−80.91524
9	24.79090	−80.91521
10	24.79094	−80.91512
11	24.79095	−80.91509
12	24.79097	−80.91502
13	24.79100	−80.91496
14	24.79104	−80.91489
15	24.79109	−80.91483
16	24.79114	−80.91477
17	24.79119	−80.91472
18	24.79122	−80.91470
19	24.79133	−80.91460
20	24.79138	−80.91454
21	24.79149	−80.91429
22	24.79152	−80.91424
23	24.79155	−80.91417
24	24.79160	−80.91411
25	24.79162	−80.91408
26	24.79173	−80.91395
27	24.79177	−80.91390
28	24.79181	−80.91387
29	24.79187	−80.91382
30	24.79193	−80.91378
31	24.79199	−80.91374
32	24.79206	−80.91371
33	24.79207	−80.91370
34	24.79217	−80.91367
35	24.79229	−80.91363
36	24.79260	−80.91357
37	24.79261	−80.91357
38	24.79268	−80.91356
39	24.79275	−80.91355
40	24.79277	−80.91356
41	24.79293	−80.91356
42	24.79313	−80.91352
43	24.79320	−80.91351
44	24.79327	−80.91351
45	24.79334	−80.91351
46	24.79341	−80.91352
47	24.79346	−80.91353
48	24.79355	−80.91356
49	24.79360	−80.91357
50	24.79364	−80.91359
51	24.79371	−80.91362

NO ENTRY—Continued

Point	Latitude	Longitude
52	24.79387	−80.91370
53	24.79390	−80.91371
54	24.79400	−80.91376
55	24.79405	−80.91378
56	24.79410	−80.91381
57	24.79413	−80.91383
58	24.79415	−80.91384
59	24.79420	−80.91386
60	24.79426	−80.91389
61	24.79432	−80.91393
62	24.79438	−80.91397
63	24.79444	−80.91402
64	24.79445	−80.91403
65	24.79461	−80.91418
66	24.79466	−80.91423
67	24.79470	−80.91428
68	24.79475	−80.91434
69	24.79478	−80.91441
70	24.79481	−80.91446
71	24.79489	−80.91463
72	24.79491	−80.91467
73	24.79493	−80.91470
74	24.79497	−80.91477
75	24.79500	−80.91484
76	24.79503	−80.91491
77	24.79504	−80.91496
78	24.79506	−80.91503
79	24.79507	−80.91508
80	24.79508	−80.91513
81	24.79509	−80.91521
82	24.79509	−80.91523
83	24.79511	−80.91530
84	24.79513	−80.91537
85	24.79514	−80.91543
86	24.79515	−80.91548
87	24.79515	−80.91554
88	24.79517	−80.91589
89	24.79517	−80.91591
90	24.79520	−80.91643
91	24.79520	−80.91647
92	24.79519	−80.91655
93	24.79518	−80.91663
94	24.79517	−80.91670
95	24.79517	−80.91671
96	24.79515	−80.91678
97	24.79514	−80.91681
98	24.79508	−80.91698
99	24.79503	−80.91708
100	24.79496	−80.91721
101	24.79496	−80.91723
102	24.79492	−80.91730
103	24.79487	−80.91736
104	24.79482	−80.91742
105	24.79477	−80.91747
106	24.79474	−80.91750
107	24.79470	−80.91753
108	24.79465	−80.91757
109	24.79457	−80.91763
110	24.79454	−80.91765
111	24.79450	−80.91768
112	24.79444	−80.91771
113	24.79437	−80.91774
114	24.79433	−80.91776
115	24.79428	−80.91777
116	24.79407	−80.91783
117	24.79403	−80.91784
118	24.79379	−80.91789
119	24.79376	−80.91790
120	24.79370	−80.91792
121	24.79363	−80.91794
122	24.79355	−80.91795
123	24.79348	−80.91795

NO ENTRY—Continued

Point	Latitude	Longitude
124	24.79341	−80.91795
125	24.79334	−80.91794
126	24.79331	−80.91793
127	24.79328	−80.91792
128	24.79322	−80.91791
129	24.79300	−80.91784
130	24.79295	−80.91782
131	24.79288	−80.91779
132	24.79227	−80.91748
133	24.79221	−80.91744
134	24.79216	−80.91741
135	24.79212	−80.91738
136	24.79200	−80.91728
137	24.79197	−80.91725
138	24.79191	−80.91719
139	24.79182	−80.91709
140	24.79169	−80.91701
141	24.79154	−80.91694
142	24.79149	−80.91691
143	24.79143	−80.91686
144	24.79137	−80.91682
145	24.79132	−80.91677
146	24.79128	−80.91672
147	24.79119	−80.91660
148	24.79118	−80.91659
149	24.79113	−80.91653
150	24.79109	−80.91646
151	24.79108	−80.91644
152	24.79095	−80.91617
153	24.79094	−80.91614
154	24.79092	−80.91610
155	24.79090	−80.91606
156	24.79088	−80.91601
157	24.79086	−80.91594
158	24.79085	−80.91586
159	24.79084	−80.91578

Marquesas Keys Turtle WMA

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.55110	−82.25453
2	24.57496	−82.25476
2	24.57546	−82.19300
4	24.55156	−82.19305
5	24.55110	−82.25453

Pelican Shoal WMA

NO ENTRY

Point	Latitude	Longitude
1	24.50252	−81.63114
2	24.50206	−81.63075
3	24.50164	−81.63064
4	24.50147	−81.63068
5	24.50132	−81.63078
6	24.50122	−81.63094
7	24.50118	−81.63113
8	24.50120	−81.63126
9	24.50135	−81.63162
10	24.50158	−81.63188
11	24.50193	−81.63207
12	24.50223	−81.63212
13	24.50245	−81.63212

NO ENTRY—Continued

Point	Latitude	Longitude
14	24.50259	−81.63207
15	24.50273	−81.63196
16	24.50282	−81.63179
17	24.50284	−81.63160
18	24.50280	−81.63141
19	24.50269	−81.63126
20	24.50252	−81.63114

Red Bay Bank WMA 1

IDLE SPEED NO WAKE

Point	Latitude	Longitude
1	24.75060	−81.13581
2	24.74698	−81.13746
3	24.75323	−81.15290
4	24.75430	−81.17123
5	24.75726	−81.16952
6	24.75960	−81.16188
7	24.75728	−81.15075
8	24.75060	−81.13581

Red Bay Bank WMA 2

Point	Latitude	Longitude
1	24.76489	−81.17336
2	24.76116	−81.17789
3	24.76932	−81.18551
4	24.77090	−81.17929
5	24.76489	−81.17336

Snake Creek WMA 1

NO MOTOR

Point	Latitude	Longitude
1	24.94965	−80.58774
2	24.94895	−80.58751
3	24.94821	−80.58710
4	24.94790	−80.58685
5	24.94761	−80.58643
6	24.94695	−80.58520
7	24.94676	−80.58495
8	24.94554	−80.58387
9	24.94439	−80.58404
10	24.94374	−80.58407
11	24.94327	−80.58395
12	24.94236	−80.58331
13	24.94151	−80.58182
14	24.94114	−80.58139
15	24.94047	−80.58102
16	24.93612	−80.58770
17	24.94352	−80.59103
18	24.94840	−80.59079
19	24.94965	−80.58774

Snake Creek WMA 2

NO MOTOR

Point	Latitude	Longitude
1	24.94824	−80.59116
2	24.94368	−80.59135
3	24.94737	−80.59330
4	24.94824	−80.59116

Snake Creek WMA 3

NO MOTOR

Point	Latitude	Longitude
1	24.94725	−80.59360
2	24.93974	−80.58991
3	24.94570	−80.59761
4	24.94725	−80.59360

Snake Creek WMA 4

NO MOTOR

Point	Latitude	Longitude
1	24.94540	−80.59785
2	24.93942	−80.58980
3	24.93584	−80.58814
4	24.93424	−80.59059
5	24.93594	−80.59222
6	24.93666	−80.59207
7	24.93715	−80.59183
8	24.93750	−80.59175
9	24.93772	−80.59177
10	24.93806	−80.59181
11	24.93873	−80.59213
12	24.93904	−80.59239
13	24.93919	−80.59258
14	24.93934	−80.59288
15	24.93943	−80.59321
16	24.93972	−80.59488
17	24.93972	−80.59536
18	24.93981	−80.59567
19	24.93981	−80.59581
20	24.93994	−80.59618
21	24.93996	−80.59675
22	24.93985	−80.59760
23	24.93984	−80.59972
24	24.93994	−80.60078
25	24.94007	−80.60166
26	24.94020	−80.60233
27	24.94046	−80.60274
28	24.94061	−80.60290
29	24.94082	−80.60298
30	24.94111	−80.60335
31	24.94540	−80.59785

Tortugas Bank WMA

NO ANCHOR BY VESSELS >50m LENGTH

Point	Latitude	Longitude
1	24.53333	−83.00080
2	24.61666	−83.10000
3	24.65000	−83.10000
4	24.65000	−83.00080

NO ANCHOR BY VESSELS >50m LENGTH—Continued

Point	Latitude	Longitude
5	24.53333	−83.00080

Western Dry Rocks WMA

FROM APRIL 1 TO JULY 31, CONTINUOUS TRANSIT WITHOUT INTERRUPTION AND NO ANCHOR

Point	Latitude	Longitude
1	24.42822	−81.92479
2	24.42802	−81.95011
3	24.43694	−81.95018
4	24.43712	−81.92488
5	24.42822	−81.92479

The seaward boundary for the following Wildlife Management Areas begins at each individual zone's Point 1 and continues to each successive point in numerical order until ending at that same zone's last point as listed in its specific coordinate table. The inner landward boundary for each individual zone below is defined by and follows the shoreline at mean high water.

Bay Keys WMA 1

NO MOTOR

Point	Latitude	Longitude
1	24.63604	−81.76179
2	24.63575	−81.76133
3	24.63530	−81.76112
4	24.63469	−81.76077
5	24.63400	−81.76062
6	24.63310	−81.76065
7	24.63218	−81.76082
8	24.63178	−81.76125
9	24.63111	−81.76203
10	24.63071	−81.76286
11	24.63099	−81.76382
12	24.63123	−81.76472
13	24.63160	−81.76550
14	24.63204	−81.76629
15	24.63289	−81.76629
16	24.63353	−81.76601
17	24.63416	−81.76584
18	24.63511	−81.76579
19	24.63559	−81.76530
20	24.63589	−81.76457
21	24.63584	−81.76399
22	24.63603	−81.76353
23	24.63613	−81.76319
24	24.63622	−81.76258
25	24.63604	−81.76179

Bay Keys WMA 2

NO MOTOR

Point	Latitude	Longitude
1	24.63560	−81.77521
2	24.63493	−81.77494
3	24.63452	−81.77470
4	24.63414	−81.77460
5	24.63384	−81.77461
6	24.63364	−81.77467
7	24.63323	−81.77490
8	24.63302	−81.77509
9	24.63288	−81.77531
10	24.63277	−81.77576
11	24.63279	−81.77619
12	24.63322	−81.77719

NO MOTOR—Continued

Point	Latitude	Longitude
13	24.63355	−81.77758
14	24.63378	−81.77774
15	24.63402	−81.77784
16	24.63423	−81.77788
17	24.63444	−81.77786
18	24.63484	−81.77774
19	24.63549	−81.77748
20	24.63573	−81.77733
21	24.63591	−81.77714
22	24.63595	−81.77709
23	24.63610	−81.77691
24	24.63620	−81.77672
25	24.63621	−81.77668
26	24.63627	−81.77643
27	24.63627	−81.77619
28	24.63620	−81.77588
29	24.63607	−81.77561
30	24.63585	−81.77536
31	24.63560	−81.77521

Big Mullet Key WMA

NO MOTOR

Point	Latitude	Longitude
1	24.58096	−81.91817
2	24.58090	−81.91758
3	24.58080	−81.91723
4	24.58051	−81.91671
5	24.58029	−81.91649
6	24.58001	−81.91630
7	24.57930	−81.91618
8	24.57897	−81.91606
9	24.57803	−81.91612
10	24.57730	−81.91636
11	24.57690	−81.91667
12	24.57677	−81.91683
13	24.57659	−81.91714
14	24.57647	−81.91762
15	24.57650	−81.91818
16	24.57665	−81.91856
17	24.57690	−81.91886
18	24.57758	−81.91929
19	24.57757	−81.91952
20	24.57761	−81.91975
21	24.57793	−81.92047
22	24.57863	−81.92131
23	24.57887	−81.92147
24	24.57917	−81.92155
25	24.57962	−81.92151
26	24.58006	−81.92128
27	24.58042	−81.92092
28	24.58068	−81.92051
29	24.58079	−81.92015
30	24.58106	−81.91976
31	24.58116	−81.91940
32	24.58112	−81.91861
33	24.58096	−81.91817

Cottrell Key WMA

NO ENTRY

Point	Latitude	Longitude
1	24.60377	−81.91824
2	24.60300	−81.91882

NO ENTRY—Continued

Point	Latitude	Longitude
3	24.60285	−81.91909
4	24.60262	−81.91937
5	24.60197	−81.91958
6	24.60109	−81.92023
7	24.60095	−81.92045
8	24.60061	−81.92084
9	24.60034	−81.92138
10	24.60020	−81.92193
11	24.59996	−81.92219
12	24.59984	−81.92238
13	24.59972	−81.92274
14	24.59969	−81.92298
15	24.59982	−81.92389
16	24.60029	−81.92486
17	24.60069	−81.92516
18	24.60112	−81.92528
19	24.60144	−81.92526
20	24.60176	−81.92512
21	24.60209	−81.92487
22	24.60271	−81.92470
23	24.60296	−81.92458
24	24.60317	−81.92441
25	24.60365	−81.92457
26	24.60402	−81.92463
27	24.60463	−81.92461
28	24.60482	−81.92465
29	24.60514	−81.92463
30	24.60537	−81.92456
31	24.60556	−81.92445
32	24.60584	−81.92407
33	24.60612	−81.92403
34	24.60647	−81.92408
35	24.60701	−81.92405
36	24.60734	−81.92386
37	24.60753	−81.92358
38	24.60764	−81.92319
39	24.60765	−81.92284
40	24.60759	−81.92245
41	24.60770	−81.92202
42	24.60765	−81.92152
43	24.60752	−81.92112
44	24.60734	−81.92085
45	24.60652	−81.92024
46	24.60646	−81.92009
47	24.60649	−81.91955
48	24.60627	−81.91899
49	24.60567	−81.91844
50	24.60534	−81.91826
51	24.60455	−81.91806
52	24.60430	−81.91808
53	24.60377	−81.91824

Crane Key WMA

NO ENTRY

Point	Latitude	Longitude
1	24.75715	−81.51346
2	24.75651	−81.51279
3	24.75602	−81.51237
4	24.75603	−81.51177
5	24.75562	−81.51127
6	24.75527	−81.51098
7	24.75436	−81.51080
8	24.75327	−81.51102
9	24.75218	−81.51170
10	24.75169	−81.51339
11	24.75232	−81.51475
12	24.75330	−81.51486

NO ENTRY—Continued

Point	Latitude	Longitude
13	24.75392	−81.51468
14	24.75491	−81.51549
15	24.75599	−81.51582
16	24.75709	−81.51581
17	24.75748	−81.51526
18	24.75753	−81.51437
19	24.75715	−81.51346

Dove and Rodriguez Keys WMA

NO MOTOR

Point	Latitude	Longitude
1	25.05010	−80.47599
2	25.05531	−80.44249
3	25.04935	−80.43991
4	25.04375	−80.45695
5	25.04506	−80.47474
6	25.04718	−80.47836
7	25.05010	−80.47599

East Bahia Honda Key WMA

NO MOTOR

Point	Latitude	Longitude
1	24.78258	−81.22843
2	24.78185	−81.22775
3	24.78061	−81.22719
4	24.77864	−81.22625
5	24.77759	−81.22590
6	24.77676	−81.22560
7	24.77592	−81.22468
8	24.77522	−81.22475
9	24.77521	−81.22593
10	24.77468	−81.22756
11	24.77484	−81.22917
12	24.77600	−81.22990
13	24.77704	−81.23140
14	24.77783	−81.23134
15	24.77834	−81.23113
16	24.77909	−81.23108
17	24.77950	−81.23098
18	24.78013	−81.23124
19	24.78055	−81.23169
20	24.78069	−81.23242
21	24.78138	−81.23261
22	24.78257	−81.23189
23	24.78284	−81.23101
24	24.78284	−81.22957
25	24.78258	−81.22843

East Content Keys and Upper Harbor Key Flats WMA 1

NO ENTRY

Point	Latitude	Longitude
1	24.81100	−81.44379
2	24.81136	−81.44433
3	24.81144	−81.44439
4	24.81175	−81.44454
5	24.81239	−81.44470

NO ENTRY—Continued

Point	Latitude	Longitude
6	24.81287	−81.44470
7	24.81356	−81.44459
8	24.81381	−81.44449
9	24.81402	−81.44431
10	24.81418	−81.44400
11	24.81425	−81.44356
12	24.81424	−81.44332
13	24.81419	−81.44309
14	24.81418	−81.44216
15	24.81414	−81.44176
16	24.81408	−81.44144
17	24.81401	−81.44128
18	24.81370	−81.44076
19	24.81351	−81.44056
20	24.81323	−81.44040
21	24.81294	−81.44033
22	24.81273	−81.44033
23	24.81235	−81.44042
24	24.81196	−81.44062
25	24.81160	−81.44088
26	24.81130	−81.44114
27	24.81099	−81.44147
28	24.81085	−81.44169
29	24.81075	−81.44190
30	24.81067	−81.44224
31	24.81067	−81.44252
32	24.81070	−81.44278
33	24.81100	−81.44379

Happy Jack Key WMA

NO ENTRY

Point	Latitude	Longitude
1	24.69922	−81.56774
2	24.69900	−81.56754
3	24.69868	−81.56741
4	24.69841	−81.56738
5	24.69810	−81.56746
6	24.69765	−81.56771
7	24.69732	−81.56797
8	24.69715	−81.56823
9	24.69707	−81.56861
10	24.69708	−81.56887
11	24.69717	−81.56917
12	24.69732	−81.56940
13	24.69758	−81.56967
14	24.69783	−81.56983
15	24.69846	−81.57007
16	24.69872	−81.57023
17	24.69901	−81.57031
18	24.69922	−81.57030
19	24.69938	−81.57026
20	24.69968	−81.57008
21	24.69989	−81.56980
22	24.69996	−81.56962
23	24.70000	−81.56939
24	24.70001	−81.56918
25	24.69998	−81.56895
26	24.69977	−81.56838
27	24.69961	−81.56814
28	24.69932	−81.56791
29	24.69922	−81.56774

Horseshoe Keys WMA

NO ENTRY

Point	Latitude	Longitude
1	24.78282	−81.29316
2	24.78271	−81.29266
3	24.78160	−81.29255
4	24.78133	−81.29209
5	24.78055	−81.29126
6	24.77962	−81.29059
7	24.77887	−81.29017
8	24.77867	−81.28991
9	24.77840	−81.28970
10	24.77820	−81.28961
11	24.77800	−81.28958
12	24.77817	−81.28908
13	24.77816	−81.28867
14	24.77804	−81.28833
15	24.77792	−81.28814
16	24.77774	−81.28746
17	24.77751	−81.28715
18	24.77734	−81.28700
19	24.77700	−81.28683
20	24.77679	−81.28678
21	24.77601	−81.28692
22	24.77585	−81.28665
23	24.77530	−81.28600
24	24.77512	−81.28588
25	24.77489	−81.28582
26	24.77464	−81.28562
27	24.77444	−81.28553
28	24.77423	−81.28550
29	24.77395	−81.28552
30	24.77375	−81.28560
31	24.77357	−81.28573
32	24.77316	−81.28561
33	24.77291	−81.28560
34	24.77291	−81.28526
35	24.77278	−81.28494
36	24.77249	−81.28453
37	24.77209	−81.28425
38	24.77188	−81.28420
39	24.77125	−81.28419
40	24.77093	−81.28432
41	24.77053	−81.28436
42	24.77029	−81.28448
43	24.77039	−81.28374
44	24.77011	−81.28284
45	24.76971	−81.28267
46	24.76963	−81.28273
47	24.76939	−81.28261
48	24.76804	−81.28243
49	24.76783	−81.28248
50	24.76760	−81.28261
51	24.76727	−81.28254
52	24.76701	−81.28259
53	24.76665	−81.28280
54	24.76649	−81.28295
55	24.76635	−81.28320
56	24.76613	−81.28400
57	24.76610	−81.28423
58	24.76612	−81.28446
59	24.76638	−81.28521
60	24.76764	−81.28733
61	24.76778	−81.28748
62	24.76789	−81.28783
63	24.76793	−81.28817
64	24.76821	−81.28889
65	24.76831	−81.28999
66	24.76866	−81.29104
67	24.76910	−81.29164
68	24.76935	−81.29183
69	24.76999	−81.29247
70	24.77012	−81.29286

NO ENTRY—Continued

Point	Latitude	Longitude
71	24.77046	−81.29327
72	24.77067	−81.29344
73	24.77099	−81.29354
74	24.77134	−81.29408
75	24.77163	−81.29431
76	24.77186	−81.29461
77	24.77216	−81.29485
78	24.77316	−81.29517
79	24.77343	−81.29514
80	24.77383	−81.29497
81	24.77417	−81.29510
82	24.77454	−81.29507
83	24.77448	−81.29520
84	24.77557	−81.29723
85	24.77572	−81.29705
86	24.77606	−81.29682
87	24.77624	−81.29658
88	24.77638	−81.29652
89	24.77678	−81.29666
90	24.77700	−81.29664
91	24.77720	−81.29657
92	24.77740	−81.29678
93	24.77764	−81.29663
94	24.77779	−81.29650
95	24.77797	−81.29623
96	24.77830	−81.29587
97	24.77835	−81.29572
98	24.77837	−81.29537
99	24.77842	−81.29532
100	24.77871	−81.29546
101	24.77898	−81.29551
102	24.78047	−81.29525
103	24.78078	−81.29510
104	24.78111	−81.29488
105	24.78170	−81.29405
106	24.78281	−81.29406
107	24.78290	−81.29384
108	24.78293	−81.29361
109	24.78290	−81.29337
110	24.78282	−81.29316

Howe Key Mangrove WMA

NO MOTOR

Point	Latitude	Longitude
1	24.77266	−81.43359
2	24.77228	−81.43272
3	24.77178	−81.43246
4	24.77106	−81.43234
5	24.77040	−81.43278
6	24.77026	−81.43410
7	24.77044	−81.43557
8	24.77101	−81.43616
9	24.77192	−81.43662
10	24.77300	−81.43639
11	24.77337	−81.43584
12	24.77338	−81.43524
13	24.77303	−81.43477
14	24.77281	−81.43429
15	24.77266	−81.43359

Little Mullet Key WMA

NO ENTRY

Point	Latitude	Longitude
1	24.58361	−81.94891
2	24.58321	−81.94826
3	24.58295	−81.94794
4	24.58272	−81.94778
5	24.58224	−81.94762
6	24.58199	−81.94762
7	24.58178	−81.94768
8	24.58151	−81.94787
9	24.58070	−81.94817
10	24.58033	−81.94850
11	24.58014	−81.94882
12	24.58006	−81.94904
13	24.58005	−81.94974
14	24.57994	−81.94996
15	24.57990	−81.95019
16	24.57991	−81.95113
17	24.58000	−81.95160
18	24.58016	−81.95197
19	24.58040	−81.95240
20	24.58067	−81.95266
21	24.58117	−81.95292
22	24.58145	−81.95297
23	24.58167	−81.95295
24	24.58217	−81.95278
25	24.58307	−81.95243
26	24.58326	−81.95232
27	24.58342	−81.95214
28	24.58356	−81.95190
29	24.58375	−81.95132
30	24.58378	−81.95090
31	24.58384	−81.95059
32	24.58388	−81.95008
33	24.58384	−81.94970
34	24.58373	−81.94926
35	24.58361	−81.94891

Little Pine Key Mangrove WMA

NO ENTRY

Point	Latitude	Longitude
1	24.75670	−81.34069
2	24.75666	−81.33996
3	24.75632	−81.33942
4	24.75569	−81.33901
5	24.75502	−81.33900
6	24.75434	−81.33963
7	24.75372	−81.34056
8	24.75333	−81.34189
9	24.75390	−81.34298
10	24.75431	−81.34336
11	24.75492	−81.34342
12	24.75534	−81.34361
13	24.75604	−81.34380
14	24.75641	−81.34362
15	24.75700	−81.34347
16	24.75723	−81.34325
17	24.75745	−81.34263
18	24.75748	−81.34190
19	24.75722	−81.34130
20	24.75689	−81.34101
21	24.75674	−81.34094
22	24.75670	−81.34069

Marquesas Keys WMA 1

NO ENTRY

Point	Latitude	Longitude
1	24.57552	−82.14685
2	24.57554	−82.14726
3	24.57569	−82.14771
4	24.57599	−82.14805
5	24.57633	−82.14822
6	24.57692	−82.14822
7	24.57725	−82.14811
8	24.57756	−82.14783
9	24.57774	−82.14742
10	24.57778	−82.14695
11	24.57764	−82.14651
12	24.57722	−82.14600
13	24.57688	−82.14583
14	24.57645	−82.14584
15	24.57595	−82.14613
16	24.57566	−82.14644
17	24.57552	−82.14685

Marquesas Key WMA 2

NO ENTRY

Point	Latitude	Longitude
1	24.57633	−82.14964
2	24.57590	−82.14952
3	24.57549	−82.14958
4	24.57519	−82.14976
5	24.57488	−82.14980
6	24.57459	−82.14995
7	24.57423	−82.15031
8	24.57391	−82.15098
9	24.57381	−82.15130
10	24.57236	−82.15268
11	24.57235	−82.15295
12	24.57246	−82.15366
13	24.57260	−82.15397
14	24.57279	−82.15417
15	24.57299	−82.15427
16	24.57331	−82.15435
17	24.57361	−82.15434
18	24.57381	−82.15426
19	24.57554	−82.15273
20	24.57580	−82.15233
21	24.57630	−82.15195
22	24.57652	−82.15172
23	24.57687	−82.15115
24	24.57697	−82.15068
25	24.57695	−82.15030
26	24.57684	−82.15003
27	24.57668	−82.14983
28	24.57633	−82.14964

Marquesas Keys WMA 3

NO ENTRY

Point	Latitude	Longitude
1	24.56599	−82.15858
2	24.56647	−82.15876
3	24.56674	−82.15878
4	24.56704	−82.15871
5	24.56723	−82.15860
6	24.56748	−82.15837
7	24.56775	−82.15788

NO ENTRY—Continued

Point	Latitude	Longitude
8	24.56792	−82.15724
9	24.56783	−82.15642
10	24.56775	−82.15620
11	24.56754	−82.15590
12	24.56738	−82.15574
13	24.56719	−82.15564
14	24.56667	−82.15555
15	24.56571	−82.15574
16	24.56532	−82.15600
17	24.56510	−82.15638
18	24.56504	−82.15664
19	24.56503	−82.15697
20	24.56511	−82.15735
21	24.56525	−82.15770
22	24.56554	−82.15821
23	24.56599	−82.15858

Marquesas Keys WMA 4

NO ENTRY

Point	Latitude	Longitude
1	24.55340	−82.13516
2	24.55248	−82.13464
3	24.55170	−82.13506
4	24.55169	−82.13633
5	24.55215	−82.13727
6	24.55300	−82.13727
7	24.55362	−82.13677
8	24.55378	−82.13566
9	24.55340	−82.13516

Northeast Tarpon Belly Keys WMA

NO MOTOR

Point	Latitude	Longitude
1	24.73167	−81.50581
2	24.73095	−81.50581
3	24.73060	−81.50606
4	24.73044	−81.50671
5	24.73042	−81.50717
6	24.73047	−81.50759
7	24.73064	−81.50789
8	24.73090	−81.50815
9	24.73114	−81.50851
10	24.73128	−81.50877
11	24.73137	−81.50897
12	24.73181	−81.50900
13	24.73207	−81.50902
14	24.73238	−81.50898
15	24.73262	−81.50880
16	24.73275	−81.50868
17	24.73290	−81.50854
18	24.73294	−81.50821
19	24.73293	−81.50769
20	24.73289	−81.50723
21	24.73278	−81.50707
22	24.73267	−81.50689
23	24.73252	−81.50663
24	24.73232	−81.50622
25	24.73205	−81.50587
26	24.73167	−81.50581

Pelican Key WMA

NO ENTRY

Point	Latitude	Longitude
1	25.09429	−80.45566
2	25.09324	−80.45404
3	25.09202	−80.45437
4	25.08935	−80.45648
5	25.09236	−80.45738
6	25.09338	−80.45711
7	25.09429	−80.45566

Pigeon Key WMA

NO ENTRY

Point	Latitude	Longitude
1	25.05874	−80.50884
2	25.05365	−80.50892
3	25.05367	−80.51362
4	25.05876	−80.51361
5	25.05874	−80.50884

NO ENTRY

Point	Latitude	Longitude
1	24.68464	−81.67036
2	24.68437	−81.66977
3	24.68443	−81.66914
4	24.68456	−81.66873
5	24.68463	−81.66823
6	24.68472	−81.66743
7	24.68456	−81.66699
8	24.68443	−81.66677
9	24.68429	−81.66655
10	24.68370	−81.66644
11	24.68300	−81.66677
12	24.68246	−81.66724
13	24.68208	−81.66778
14	24.68198	−81.66874
15	24.68216	−81.66928
16	24.68249	−81.66978
17	24.68255	−81.67000
18	24.68249	−81.67027
19	24.68216	−81.67057
20	24.68211	−81.67118
21	24.68213	−81.67210
22	24.68268	−81.67287
23	24.68338	−81.67292
24	24.68396	−81.67280
25	24.68445	−81.67252
26	24.68488	−81.67219
27	24.68506	−81.67173
28	24.68511	−81.67140
29	24.68504	−81.67106
30	24.68499	−81.67092
31	24.68464	−81.67036

Tavernier Key WMA 1

No Motor

The wildlife management area boundary begins at Point 1 and continues generally west to each successive point in numerical order until it reaches Point 9. From Point 9 the boundary continues towards Point 10 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east until it intersects the line segment formed between Point 11 and Point 12. From this intersection the boundary continues south to Point 12 and ends at Point 13.

Point	Latitude	Longitude
1	24.99714	−80.52042

Point	Latitude	Longitude
2	24.99669	−80.52156
3	24.99678	−80.52273
4	24.99718	−80.52350
5	24.99737	−80.52449
6	24.99814	−80.52557
7	24.99877	−80.52654
8	24.99903	−80.52697
9	24.99904	−80.52698
10*	24.99958	−80.52898
11*	25.00200	−80.51992
12	24.99800	−80.52098
13	24.99714	−80.52042

Torch Key Mangroves WMA 1

NO ENTRY

Point	Latitude	Longitude
1	24.74240	−81.46950
2	24.74188	−81.46907
3	24.74113	−81.46884
4	24.74050	−81.46898
5	24.73993	−81.46952
6	24.73970	−81.47021
7	24.73979	−81.47084
8	24.74002	−81.47115
9	24.74090	−81.47141
10	24.74162	−81.47180
11	24.74189	−81.47180
12	24.74223	−81.47173
13	24.74241	−81.47161
14	24.74259	−81.47116
15	24.74268	−81.47055
16	24.74276	−81.46996
17	24.74240	−81.46950

Torch Key Mangroves WMA 2

NO ENTRY

Point	Latitude	Longitude
1	24.73398	−81.47187
2	24.73345	−81.47166
3	24.73300	−81.47159
4	24.73253	−81.47185
5	24.73232	−81.47243
6	24.73221	−81.47312
7	24.73229	−81.47375
8	24.73260	−81.47403
9	24.73294	−81.47415
10	24.73319	−81.47420
11	24.73341	−81.47431
12	24.73373	−81.47436
13	24.73420	−81.47412
14	24.73432	−81.47386
15	24.73462	−81.47313
16	24.73458	−81.47252
17	24.73436	−81.47211
18	24.73398	−81.47187

Water Key Mangroves WMA 1

NO ENTRY

Point	Latitude	Longitude
1	24.74854	−81.34645
2	24.74837	−81.34611
3	24.74828	−81.34592
4	24.74790	−81.34566
5	24.74774	−81.34520
6	24.74755	−81.34494
7	24.74724	−81.34456
8	24.74672	−81.34442
9	24.74625	−81.34448
10	24.74571	−81.34494
11	24.74559	−81.34543
12	24.74557	−81.34602
13	24.74565	−81.34633
14	24.74593	−81.34659
15	24.74636	−81.34677
16	24.74659	−81.34683
17	24.74676	−81.34706
18	24.74687	−81.34741
19	24.74702	−81.34773
20	24.74733	−81.34796
21	24.74746	−81.34794
22	24.74754	−81.34799
23	24.74762	−81.34816
24	24.74771	−81.34824
25	24.74790	−81.34858
26	24.74810	−81.34869
27	24.74834	−81.34871
28	24.74860	−81.34874
29	24.74886	−81.34863
30	24.74904	−81.34853
31	24.74914	−81.34833
32	24.74924	−81.34808
33	24.74933	−81.34778
34	24.74931	−81.34735
35	24.74921	−81.34685
36	24.74883	−81.34649
37	24.74854	−81.34645

Water Key Mangroves WMA 2

NO ENTRY

Point	Latitude	Longitude
1	24.74448	−81.34500
2	24.74448	−81.34460
3	24.74448	−81.34437
4	24.74433	−81.34388
5	24.74392	−81.34358
6	24.74322	−81.34334
7	24.74260	−81.34305
8	24.74211	−81.34317
9	24.74181	−81.34369
10	24.74170	−81.34442
11	24.74188	−81.34512
12	24.74224	−81.34588
13	24.74252	−81.34616
14	24.74284	−81.34656
15	24.74320	−81.34678
16	24.74364	−81.34669
17	24.74406	−81.34664
18	24.74437	−81.34636
19	24.74449	−81.34604
20	24.74456	−81.34588
21	24.74458	−81.34571
22	24.74460	−81.34552
23	24.74455	−81.34514
24	24.74448	−81.34500

West Bahia Honda Key WMA

NO MOTOR

Point	Latitude	Longitude
1	24.78525	−81.27156
2	24.78470	−81.27108
3	24.78428	−81.27094
4	24.78352	−81.27019
5	24.78274	−81.26991
6	24.78195	−81.26989
7	24.78128	−81.26965
8	24.78047	−81.26962
9	24.77941	−81.26936
10	24.77877	−81.26932
11	24.77824	−81.26939
12	24.77777	−81.26967
13	24.77761	−81.27003
14	24.77754	−81.27073
15	24.77755	−81.27144
16	24.77779	−81.27204
17	24.77829	−81.27222
18	24.77860	−81.27223
19	24.77886	−81.27238
20	24.77912	−81.27259
21	24.77955	−81.27279
22	24.78067	−81.27283
23	24.78116	−81.27303
24	24.78156	−81.27303
25	24.78210	−81.27338
26	24.78234	−81.27391
27	24.78284	−81.27483
28	24.78295	−81.27513
29	24.78333	−81.27544
30	24.78401	−81.27555
31	24.78453	−81.27532
32	24.78487	−81.27512
33	24.78525	−81.27485
34	24.78556	−81.27449
35	24.78582	−81.27398
36	24.78587	−81.27368
37	24.78590	−81.27320
38	24.78585	−81.27253
39	24.78560	−81.27186
40	24.78525	−81.27156

Note: The coordinates in the tables below marked with an asterisk (*) are not a part of the zone's boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Barnes-Card Sound WMA

Idle Speed No Wake

The wildlife management area boundary begins SW of Middle Key in the NW corner of Barnes Sound at the intersection of the shoreline with the line segment formed between Point 1 and Point 2. From this intersection the boundary follows the shoreline generally around to the NE until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary continues to follow the shoreline generally to the SW and then to the east until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues SW to the intersection of the shoreline and the line segment formed between Point 7 and Point 8 on Middle Key. From this intersection the boundary follows the shoreline around the western side of Middle Key until it intersects the line segment between Point 9 and Point 10. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 11 and Point 12 where it ends.

Point	Latitude	Longitude
1*	25.27503	−80.39899
2*	25.27519	−80.39925
3*	25.29560	−80.38496
4*	25.29534	−80.38494
5*	25.29207	−80.38250
6*	25.29189	−80.38228
7*	25.28008	−80.39430
8*	25.28027	−80.39516
9*	25.27574	−80.39840
10*	25.27557	−80.39829
11*	25.27503	−80.39899

Point	Latitude	Longitude
12 *	25.27519	−80.39925

Bay Keys WMA 3

Idle Speed No Wake

The wildlife management area boundary begins at the intersection of the shoreline and the line segment formed between Point 1 and Point 2 on Bay Keys. From this intersection the boundary continues to Point 2 and then to the south and back generally to the north to each successive point in numerical order until it reaches Point 29. From Point 29 the boundary continues towards Point 30 until it intersects the shoreline. From this intersection the boundary continues around the eastern side of Bay Keys until it intersects the line segment formed between Point 31 and Point 32. From this intersection the boundary continues to Point 32 and to each successive point in numerical order until it reaches Point 38. From Point 38 the boundary continues towards Point 39 until it intersects the shoreline. From this intersection the boundary continues around the western side of Bay Keys until it intersects the line segment formed between Point 40 and Point 41 where it ends.

Point	Latitude	Longitude
1 *	24.64084	−81.77765
2	24.64039	−81.77751
3	24.63991	−81.77707
4	24.63927	−81.77672
5	24.63882	−81.77661
6	24.63834	−81.77669
7	24.63786	−81.77669
8	24.63705	−81.77692
9	24.63645	−81.77684
10	24.63621	−81.77668
11	24.63620	−81.77672
12	24.63610	−81.77691
13	24.63595	−81.77709
14	24.63644	−81.77736
15	24.63786	−81.77743
16	24.63879	−81.77724
17	24.63921	−81.77727
18	24.63952	−81.77752
19	24.63984	−81.77794
20	24.64020	−81.77830
21	24.64079	−81.77871
22	24.64083	−81.78048
23	24.64090	−81.78064
24	24.64137	−81.78126
25	24.64154	−81.78166
26	24.64189	−81.78113
27	24.64159	−81.78064
28	24.64151	−81.78042
29	24.64139	−81.77968
30 *	24.64152	−81.77950
31 *	24.64219	−81.77902
32	24.64249	−81.77886
33	24.64281	−81.77877
34	24.64295	−81.77860
35	24.64299	−81.77841
36	24.64289	−81.77823
37	24.64259	−81.77808
38	24.64237	−81.77804
39 *	24.64208	−81.77795
40 *	24.64084	−81.77765
41 *	24.64039	−81.77751

Boca Grande Key WMA

No Entry

The wildlife management area boundary begins just south of Boca Grande Key at Point 1. From Point 1 the boundary continues generally to the west and then north to each successive point in numerical order until it reaches Point 29. From Point 29 the boundary continues towards Point 30 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the south and then east until it intersects the line segment formed between Point 31 and Point 32. From this intersection the boundary continues to Point 32 and then to each successive point in numerical order ending at Point 34.

Point	Latitude	Longitude
1	24.52704	−82.00396
2	24.52705	−82.00424
3	24.52697	−82.00481
4	24.52689	−82.00508
5	24.52687	−82.00529

Point	Latitude	Longitude
6	24.52676	−82.00566
7	24.52676	−82.00591
8	24.52677	−82.00627
9	24.52678	−82.00636
10	24.52688	−82.00676
11	24.52696	−82.00697
12	24.52744	−82.00791
13	24.52748	−82.00799
14	24.52755	−82.00809
15	24.52778	−82.00832
16	24.52787	−82.00838
17	24.52799	−82.00845
18	24.52821	−82.00854
19	24.52837	−82.00857
20	24.52858	−82.00856
21	24.52883	−82.00867
22	24.52943	−82.00887
23	24.52950	−82.00890
24	24.52996	−82.00919
25	24.53071	−82.00957
26	24.53182	−82.01006
27	24.53192	−82.01010
28	24.53230	−82.01019
29	24.53298	−82.01037
30 *	24.53310	−82.00904
31 *	24.52812	−82.00374
32	24.52770	−82.00343
33	24.52721	−82.00335
34	24.52704	−82.00396

Crocodile Lake WMA 1

No Entry Within 300 Feet (100 Yards) of Shorelines

The wildlife management area boundary begins just north of the mouth of Steamboat Creek on the Card Sound side of North Key Largo at the intersection of the shoreline and the line segment formed between Point 1 and Point 2. From this intersection the boundary continues NW to Point 2 and then Point 3. From Point 3 the boundary continues generally NE to each successive point in numerical order until it reaches Point 32. From Point 32 the boundary continues roughly SE towards Point 33 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally to the SW until it intersects the line segment formed between Point 34 and Point 35 where it ends.

Point	Latitude	Longitude
1 *	25.28658	−80.32913
2	25.28713	−80.32954
3	25.28756	−80.32992
4	25.28770	−80.32975
5	25.28783	−80.32950
6	25.28793	−80.32909
7	25.28823	−80.32865
8	25.28833	−80.32844
9	25.28871	−80.32700
10	25.28874	−80.32669
11	25.28895	−80.32629
12	25.28947	−80.32552
13	25.28967	−80.32533
14	25.28984	−80.32506
15	25.28999	−80.32491
16	25.29038	−80.32445
17	25.29065	−80.32407
18	25.29131	−80.32276
19	25.29142	−80.32245
20	25.29157	−80.32232
21	25.29188	−80.32195
22	25.29271	−80.32078
23	25.29289	−80.32061
24	25.29340	−80.31995
25	25.29360	−80.31956
26	25.29384	−80.31921
27	25.29406	−80.31879
28	25.29433	−80.31857
29	25.29470	−80.31819
30	25.29493	−80.31804
31	25.29548	−80.31757
32	25.29591	−80.31714

Point	Latitude	Longitude
33 *	25.29532	−80.31608
34 *	25.28658	−80.32913
35	25.28713	−80.32954

Crocodile Lake WMA 2

No Entry Within 300 Feet (100 Yards) of Shorelines; Exception for Steamboat Creek

The wildlife management area boundary begins just NW of Cormorant Point on the Card Sound side North Key Largo at Point 1. From Point 1 the boundary continues generally to the east in Card Sound to each successive point in numerical order to Point 36. From Point 36 the boundary continues towards Point 37 until it intersects the shoreline on the western side of the northern mouth of Steamboat Creek. From this intersection the boundary follows the shoreline roughly west and then south until it intersects the line segment formed between Point 38 and Point 39 just north of the southern mouth of Steamboat Creek. From this intersection the boundary continues to Point 39 and then roughly west to each successive point in numerical order to Point 173 west of Barnes Point. From Point 173 the boundary continues roughly east to each successive point in numerical order to Point 253 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	25.29164	−80.34016
2	25.29157	−80.34000
3	25.29151	−80.33971
4	25.29141	−80.33947
5	25.29128	−80.33928
6	25.29108	−80.33912
7	25.29108	−80.33882
8	25.29101	−80.33860
9	25.29074	−80.33807
10	25.29062	−80.33790
11	25.29036	−80.33770
12	25.29005	−80.33751
13	25.28928	−80.33729
14	25.28891	−80.33706
15	25.28872	−80.33682
16	25.28842	−80.33658
17	25.28804	−80.33636
18	25.28788	−80.33600
19	25.28780	−80.33556
20	25.28790	−80.33522
21	25.28792	−80.33502
22	25.28790	−80.33482
23	25.28782	−80.33454
24	25.28744	−80.33396
25	25.28727	−80.33381
26	25.28707	−80.33372
27	25.28692	−80.33336
28	25.28677	−80.33284
29	25.28645	−80.33224
30	25.28644	−80.33203
31	25.28652	−80.33177
32	25.28653	−80.33131
33	25.28669	−80.33049
34	25.28670	−80.33026
35	25.28614	−80.33008
36	25.28585	−80.32979
37 *	25.28566	−80.33011
38 *	25.26721	−80.34202
39	25.26672	−80.34252
40	25.26657	−80.34307
41	25.26702	−80.34330
42	25.26724	−80.34334
43	25.26743	−80.34331
44	25.26770	−80.34321
45	25.26805	−80.34293
46	25.26821	−80.34287
47	25.26873	−80.34253
48	25.26901	−80.34240
49	25.26923	−80.34219
50	25.26949	−80.34208
51	25.26966	−80.34195
52	25.26981	−80.34188
53	25.27002	−80.34189
54	25.27030	−80.34182
55	25.27019	−80.34209
56	25.27011	−80.34263

Point	Latitude	Longitude
57	25.27011	−80.34285
58	25.27016	−80.34308
59	25.27068	−80.34411
60	25.27100	−80.34447
61	25.27119	−80.34460
62	25.27146	−80.34468
63	25.27161	−80.34468
64	25.27185	−80.34473
65	25.27205	−80.34472
66	25.27225	−80.34466
67	25.27250	−80.34453
68	25.27276	−80.34448
69	25.27318	−80.34432
70	25.27377	−80.34401
71	25.27411	−80.34399
72	25.27433	−80.34393
73	25.27487	−80.34403
74	25.27512	−80.34403
75	25.27544	−80.34412
76	25.27597	−80.34471
77	25.27635	−80.34548
78	25.27634	−80.34583
79	25.27637	−80.34609
80	25.27634	−80.34634
81	25.27621	−80.34657
82	25.27599	−80.34680
83	25.27579	−80.34715
84	25.27553	−80.34766
85	25.27539	−80.34808
86	25.27539	−80.34840
87	25.27551	−80.34878
88	25.27544	−80.34911
89	25.27547	−80.34959
90	25.27565	−80.35024
91	25.27579	−80.35058
92	25.27592	−80.35074
93	25.27608	−80.35088
94	25.27625	−80.35096
95	25.27655	−80.35102
96	25.27687	−80.35114
97	25.27736	−80.35152
98	25.27756	−80.35164
99	25.27792	−80.35178
100	25.27800	−80.35193
101	25.27805	−80.35219
102	25.27815	−80.35240
103	25.27832	−80.35261
104	25.27862	−80.35282
105	25.27831	−80.35296
106	25.27754	−80.35341
107	25.27725	−80.35369
108	25.27691	−80.35422
109	25.27668	−80.35469
110	25.27659	−80.35496
111	25.27648	−80.35567
112	25.27649	−80.35586
113	25.27640	−80.35619
114	25.27642	−80.35656
115	25.27651	−80.35681
116	25.27661	−80.35699
117	25.27677	−80.35715
118	25.27699	−80.35728
119	25.27716	−80.35758
120	25.27730	−80.35776
121	25.27775	−80.35809
122	25.27788	−80.35816
123	25.27813	−80.35822
124	25.27835	−80.35821
125	25.27829	−80.35852
126	25.27817	−80.35888
127	25.27814	−80.35912
128	25.27806	−80.35934
129	25.27803	−80.35966
130	25.27829	−80.36063

Point	Latitude	Longitude
131	25.27845	−80.36089
132	25.27867	−80.36107
133	25.27887	−80.36116
134	25.27901	−80.36119
135	25.27924	−80.36119
136	25.27971	−80.36124
137	25.28004	−80.36123
138	25.28041	−80.36133
139	25.28063	−80.36134
140	25.28122	−80.36121
141	25.28172	−80.36092
142	25.28208	−80.36086
143	25.28289	−80.36049
144	25.28313	−80.36065
145	25.28317	−80.36087
146	25.28330	−80.36114
147	25.28320	−80.36132
148	25.28312	−80.36157
149	25.28304	−80.36170
150	25.28283	−80.36189
151	25.28269	−80.36216
152	25.28262	−80.36265
153	25.28242	−80.36350
154	25.28230	−80.36371
155	25.28224	−80.36390
156	25.28205	−80.36412
157	25.28184	−80.36452
158	25.28164	−80.36477
159	25.28154	−80.36507
160	25.28153	−80.36530
161	25.28160	−80.36566
162	25.28150	−80.36589
163	25.28146	−80.36612
164	25.28147	−80.36636
165	25.28151	−80.36651
166	25.28161	−80.36672
167	25.28190	−80.36714
168	25.28207	−80.36728
169	25.28227	−80.36738
170	25.28253	−80.36741
171	25.28320	−80.36730
172	25.28342	−80.36732
173	25.28369	−80.36731
174	25.28405	−80.36721
175	25.28439	−80.36707
176	25.28477	−80.36680
177	25.28493	−80.36673
178	25.28512	−80.36661
179	25.28534	−80.36633
180	25.28566	−80.36606
181	25.28588	−80.36571
182	25.28613	−80.36559
183	25.28636	−80.36541
184	25.28649	−80.36522
185	25.28659	−80.36500
186	25.28663	−80.36485
187	25.28664	−80.36461
188	25.28653	−80.36418
189	25.28655	−80.36380
190	25.28661	−80.36361
191	25.28663	−80.36339
192	25.28657	−80.36298
193	25.28644	−80.36267
194	25.28626	−80.36244
195	25.28621	−80.36197
196	25.28610	−80.36163
197	25.28605	−80.36133
198	25.28588	−80.36086
199	25.28583	−80.36063
200	25.28560	−80.35995
201	25.28538	−80.35940
202	25.28530	−80.35909
203	25.28499	−80.35846
204	25.28477	−80.35819

Point	Latitude	Longitude
205	25.28467	−80.35799
206	25.28463	−80.35764
207	25.28436	−80.35684
208	25.28429	−80.35652
209	25.28425	−80.35617
210	25.28427	−80.35604
211	25.28439	−80.35564
212	25.28454	−80.35488
213	25.28477	−80.35467
214	25.28493	−80.35440
215	25.28510	−80.35389
216	25.28513	−80.35361
217	25.28536	−80.35331
218	25.28568	−80.35300
219	25.28639	−80.35223
220	25.28694	−80.35172
221	25.28713	−80.35147
222	25.28732	−80.35108
223	25.28743	−80.35028
224	25.28742	−80.34993
225	25.28727	−80.34936
226	25.28735	−80.34856
227	25.28734	−80.34825
228	25.28737	−80.34806
229	25.28784	−80.34645
230	25.28801	−80.34548
231	25.28810	−80.34520
232	25.28833	−80.34478
233	25.28863	−80.34442
234	25.28880	−80.34434
235	25.28896	−80.34421
236	25.28916	−80.34390
237	25.28964	−80.34394
238	25.28991	−80.34390
239	25.29008	−80.34385
240	25.29026	−80.34389
241	25.29048	−80.34388
242	25.29075	−80.34377
243	25.29102	−80.34353
244	25.29135	−80.34287
245	25.29144	−80.34251
246	25.29144	−80.34214
247	25.29152	−80.34187
248	25.29154	−80.34161
249	25.29164	−80.34129
250	25.29164	−80.34099
251	25.29170	−80.34073
252	25.29169	−80.34037
253	25.29164	−80.34016

Crocodile Lake WMA 3

No Entry Within 300 Feet (100 Yards) of Shorelines

The wildlife management area boundary begins just west of the southern mouth of Steamboat Creek on the Barnes Sound side of North Key Largo at Point 1. From Point 1 the boundary continues towards Point 2 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly to the SE until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues SW into Barnes Sound to Point 4. From Point 4 the boundary continues NW to Point 5 and Point 6. From Point 6 the boundary continues NE to Point 7 and then to Point 8 where it ends.

Point	Latitude	Longitude
1	25.26635	−80.34179
2 *	25.26608	−80.34141
3 *	25.26527	−80.34055
4	25.26447	−80.34149
5	25.26543	−80.34236
6	25.26588	−80.34258
7	25.26616	−80.34204
8	25.26635	−80.34179

Crocodile Lake WMA 4

No Entry Within 300 Feet (100 Yards) of Shorelines

The wildlife management area boundary begins at the intersection of the shoreline and the line segment formed between Point 1 and Point 2 near the northern mouth of Jewfish Creek on Key Largo. From this intersection the boundary continues roughly west into Barnes Sound to Point 2 and then Point 3. From Point 3 the boundary continues roughly north in Barnes Sound to Point 299. From Point 299 the boundary continues towards Point 300 until it intersects the shoreline just south of the southern mouth of Steamboat Creek on North Key Largo. From this intersection the boundary follows the shoreline roughly south until it intersects the line segment formed between Point 301 and Point 302 where it ends near the northern mouth of Jewfish Creek. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1 *	25.19810	−80.38422
2	25.19826	−80.38441
3	25.19862	−80.38523
4	25.19903	−80.38484
5	25.19921	−80.38457
6	25.19931	−80.38423
7	25.19933	−80.38395
8	25.19926	−80.38366
9	25.19934	−80.38348
10	25.19954	−80.38325
11	25.19975	−80.38277
12	25.19992	−80.38264
13	25.20016	−80.38239
14	25.20033	−80.38208
15	25.20051	−80.38183
16	25.20061	−80.38160
17	25.20068	−80.38134
18	25.20082	−80.38098
19	25.20090	−80.38056
20	25.20087	−80.38032
21	25.20075	−80.37991
22	25.20051	−80.37943
23	25.20026	−80.37921
24	25.20000	−80.37910
25	25.19975	−80.37874
26	25.19927	−80.37831
27	25.19917	−80.37814
28	25.19899	−80.37766
29	25.19899	−80.37715
30	25.19880	−80.37646
31	25.19887	−80.37610
32	25.19882	−80.37579
33	25.19873	−80.37558
34	25.19856	−80.37531
35	25.19840	−80.37515
36	25.19819	−80.37503
37	25.19831	−80.37480
38	25.19838	−80.37447
39	25.19853	−80.37426
40	25.19861	−80.37405
41	25.19887	−80.37396
42	25.19906	−80.37383
43	25.19924	−80.37362
44	25.19934	−80.37340
45	25.19960	−80.37342
46	25.19987	−80.37334
47	25.20012	−80.37316
48	25.20032	−80.37288
49	25.20041	−80.37281
50	25.20087	−80.37281
51	25.20123	−80.37288
52	25.20142	−80.37297
53	25.20163	−80.37302
54	25.20191	−80.37302
55	25.20226	−80.37294
56	25.20277	−80.37317
57	25.20298	−80.37322
58	25.20320	−80.37321
59	25.20347	−80.37311
60	25.20370	−80.37329
61	25.20392	−80.37336
62	25.20398	−80.37375
63	25.20407	−80.37398
64	25.20420	−80.37417
65	25.20437	−80.37431

Point	Latitude	Longitude
66	25.20464	−80.37442
67	25.20486	−80.37443
68	25.20507	−80.37438
69	25.20536	−80.37421
70	25.20572	−80.37388
71	25.20600	−80.37349
72	25.20639	−80.37264
73	25.20676	−80.37173
74	25.20683	−80.37146
75	25.20683	−80.37117
76	25.20657	−80.36968
77	25.20658	−80.36957
78	25.20662	−80.36944
79	25.20695	−80.36885
80	25.20726	−80.36818
81	25.20751	−80.36756
82	25.20771	−80.36685
83	25.20776	−80.36621
84	25.20776	−80.36572
85	25.20763	−80.36476
86	25.20743	−80.36409
87	25.20746	−80.36367
88	25.20742	−80.36254
89	25.20750	−80.36207
90	25.20766	−80.36159
91	25.20787	−80.36117
92	25.20796	−80.36088
93	25.20813	−80.36063
94	25.20837	−80.36008
95	25.20856	−80.35934
96	25.20877	−80.35887
97	25.20898	−80.35817
98	25.20916	−80.35732
99	25.20915	−80.35668
100	25.20911	−80.35635
101	25.20903	−80.35613
102	25.20891	−80.35595
103	25.20865	−80.35566
104	25.20852	−80.35558
105	25.20828	−80.35549
106	25.20806	−80.35543
107	25.20784	−80.35542
108	25.20763	−80.35548
109	25.20736	−80.35563
110	25.20707	−80.35570
111	25.20688	−80.35581
112	25.20667	−80.35602
113	25.20650	−80.35627
114	25.20623	−80.35640
115	25.20605	−80.35654
116	25.20588	−80.35675
117	25.20576	−80.35699
118	25.20563	−80.35708
119	25.20539	−80.35693
120	25.20516	−80.35686
121	25.20500	−80.35685
122	25.20494	−80.35631
123	25.20479	−80.35596
124	25.20473	−80.35564
125	25.20467	−80.35549
126	25.20455	−80.35532
127	25.20444	−80.35500
128	25.20424	−80.35473
129	25.20420	−80.35449
130	25.20442	−80.35403
131	25.20449	−80.35379
132	25.20474	−80.35378
133	25.20479	−80.35406
134	25.20497	−80.35442
135	25.20511	−80.35458
136	25.20535	−80.35475
137	25.20555	−80.35482
138	25.20570	−80.35483
139	25.20602	−80.35481

Point	Latitude	Longitude
140	25.20622	−80.35474
141	25.20642	−80.35460
142	25.20661	−80.35443
143	25.20680	−80.35415
144	25.20697	−80.35412
145	25.20717	−80.35405
146	25.20736	−80.35393
147	25.20750	−80.35376
148	25.20770	−80.35370
149	25.20798	−80.35357
150	25.20848	−80.35311
151	25.20872	−80.35282
152	25.20919	−80.35213
153	25.20926	−80.35195
154	25.20931	−80.35172
155	25.20929	−80.35128
156	25.20982	−80.35232
157	25.21002	−80.35254
158	25.21028	−80.35267
159	25.21052	−80.35271
160	25.21075	−80.35269
161	25.21098	−80.35260
162	25.21117	−80.35248
163	25.21137	−80.35227
164	25.21158	−80.35188
165	25.21197	−80.35149
166	25.21238	−80.35116
167	25.21316	−80.35032
168	25.21341	−80.35013
169	25.21357	−80.34991
170	25.21375	−80.34953
171	25.21412	−80.34905
172	25.21448	−80.34843
173	25.21483	−80.34835
174	25.21508	−80.34833
175	25.21550	−80.34820
176	25.21565	−80.34832
177	25.21609	−80.34858
178	25.21642	−80.34865
179	25.21664	−80.34866
180	25.21692	−80.34859
181	25.21731	−80.34842
182	25.21748	−80.34831
183	25.21767	−80.34824
184	25.21797	−80.34804
185	25.21834	−80.34767
186	25.21862	−80.34753
187	25.21914	−80.34705
188	25.21943	−80.34663
189	25.21956	−80.34631
190	25.21976	−80.34631
191	25.22006	−80.34625
192	25.22065	−80.34605
193	25.22090	−80.34600
194	25.22119	−80.34589
195	25.22144	−80.34585
196	25.22169	−80.34576
197	25.22238	−80.34566
198	25.22258	−80.34557
199	25.22277	−80.34543
200	25.22293	−80.34527
201	25.22304	−80.34507
202	25.22311	−80.34484
203	25.22312	−80.34459
204	25.22322	−80.34433
205	25.22344	−80.34441
206	25.22373	−80.34441
207	25.22411	−80.34425
208	25.22440	−80.34406
209	25.22462	−80.34382
210	25.22567	−80.34239
211	25.22597	−80.34208
212	25.22635	−80.34157
213	25.22672	−80.34127

Point	Latitude	Longitude
214	25.22718	−80.34076
215	25.22752	−80.34064
216	25.22777	−80.34048
217	25.22791	−80.34034
218	25.22855	−80.34002
219	25.22955	−80.33964
220	25.22976	−80.33960
221	25.22989	−80.33955
222	25.23009	−80.33942
223	25.23034	−80.33931
224	25.23097	−80.33891
225	25.23173	−80.33860
226	25.23226	−80.33827
227	25.23292	−80.33812
228	25.23351	−80.33781
229	25.23452	−80.33748
230	25.23549	−80.33731
231	25.23625	−80.33713
232	25.23688	−80.33683
233	25.23792	−80.33613
234	25.23849	−80.33589
235	25.23917	−80.33547
236	25.23985	−80.33528
237	25.24085	−80.33514
238	25.24115	−80.33502
239	25.24151	−80.33498
240	25.24168	−80.33493
241	25.24246	−80.33497
242	25.24440	−80.33526
243	25.24530	−80.33532
244	25.24561	−80.33530
245	25.24673	−80.33557
246	25.24739	−80.33564
247	25.24783	−80.33561
248	25.24821	−80.33549
249	25.24906	−80.33500
250	25.24985	−80.33448
251	25.25048	−80.33403
252	25.25093	−80.33375
253	25.25134	−80.33358
254	25.25194	−80.33341
255	25.25272	−80.33343
256	25.25362	−80.33336
257	25.25379	−80.33338
258	25.25414	−80.33335
259	25.25458	−80.33326
260	25.25480	−80.33316
261	25.25521	−80.33325
262	25.25612	−80.33330
263	25.25668	−80.33320
264	25.25729	−80.33333
265	25.25743	−80.33332
266	25.25763	−80.33325
267	25.25793	−80.33325
268	25.25807	−80.33321
269	25.25825	−80.33311
270	25.25847	−80.33310
271	25.25872	−80.33302
272	25.26013	−80.33313
273	25.26041	−80.33309
274	25.26061	−80.33303
275	25.26107	−80.33299
276	25.26124	−80.33294
277	25.26193	−80.33287
278	25.26275	−80.33293
279	25.26301	−80.33306
280	25.26311	−80.33317
281	25.26329	−80.33351
282	25.26373	−80.33394
283	25.26393	−80.33403
284	25.26429	−80.33410
285	25.26471	−80.33407
286	25.26480	−80.33427
287	25.26472	−80.33458

Point	Latitude	Longitude
288	25.26473	−80.33532
289	25.26468	−80.33573
290	25.26429	−80.33726
291	25.26425	−80.33793
292	25.26417	−80.33813
293	25.26389	−80.33909
294	25.26381	−80.33972
295	25.26381	−80.34022
296	25.26391	−80.34062
297	25.26405	−80.34089
298	25.26427	−80.34110
299	25.26461	−80.34057
300 *	25.26494	−80.33988
301 *	25.19810	−80.38422
302	25.19826	−80.38441

Eastern Lake Surprise WMA 1

Idle Speed No Wake

The wildlife management area boundary begins in Lake Surprise on North Key Largo at Point 1. From Point 1 the boundary continues NW to Point 2 and then towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally to the NW until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues roughly NE into Eastern Lake Surprise to Point 5. From Point 5 the boundary continues to each successive point in numerical order until it reaches Point 93 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	25.17978	−80.38141
2	25.18000	−80.38161
3 *	25.18118	−80.38331
4 *	25.18175	−80.38414
5	25.18236	−80.38348
6	25.18255	−80.38340
7	25.18277	−80.38341
8	25.18291	−80.38345
9	25.18349	−80.38383
10	25.18363	−80.38383
11	25.18358	−80.38356
12	25.18358	−80.38309
13	25.18367	−80.38278
14	25.18386	−80.38247
15	25.18403	−80.38232
16	25.18423	−80.38223
17	25.18450	−80.38220
18	25.18477	−80.38225
19	25.18502	−80.38216
20	25.18533	−80.38194
21	25.18585	−80.38133
22	25.18583	−80.38114
23	25.18586	−80.38091
24	25.18596	−80.38063
25	25.18609	−80.38043
26	25.18618	−80.38015
27	25.18622	−80.38003
28	25.18625	−80.37949
29	25.18637	−80.37919
30	25.18674	−80.37803
31	25.18677	−80.37762
32	25.18692	−80.37669
33	25.18711	−80.37634
34	25.18716	−80.37611
35	25.18730	−80.37583
36	25.18752	−80.37561
37	25.18778	−80.37548
38	25.18788	−80.37519
39	25.18806	−80.37488
40	25.18817	−80.37454
41	25.18800	−80.37450
42	25.18774	−80.37456
43	25.18758	−80.37456
44	25.18717	−80.37474
45	25.18683	−80.37480
46	25.18654	−80.37478
47	25.18634	−80.37469

Point	Latitude	Longitude
48	25.18612	−80.37448
49	25.18579	−80.37392
50	25.18571	−80.37352
51	25.18576	−80.37311
52	25.18570	−80.37305
53	25.18555	−80.37315
54	25.18516	−80.37333
55	25.18485	−80.37340
56	25.18456	−80.37334
57	25.18431	−80.37318
58	25.18402	−80.37313
59	25.18377	−80.37297
60	25.18358	−80.37307
61	25.18318	−80.37320
62	25.18303	−80.37321
63	25.18283	−80.37318
64	25.18268	−80.37335
65	25.18257	−80.37344
66	25.18228	−80.37356
67	25.18199	−80.37358
68	25.18181	−80.37355
69	25.18166	−80.37349
70	25.18140	−80.37364
71	25.18111	−80.37369
72	25.18097	−80.37368
73	25.18077	−80.37361
74	25.18043	−80.37338
75	25.18018	−80.37327
76	25.18009	−80.37332
77	25.17999	−80.37346
78	25.17979	−80.37362
79	25.17957	−80.37387
80	25.17911	−80.37413
81	25.17893	−80.37438
82	25.17878	−80.37483
83	25.17877	−80.37516
84	25.17870	−80.37542
85	25.17863	−80.37556
86	25.17849	−80.37573
87	25.17835	−80.37605
88	25.17817	−80.37632
89	25.17812	−80.37643
90	25.17806	−80.37665
91	25.17805	−80.37720
92	25.17733	−80.37783
93	25.17978	−80.38141

Eastern Lake Surprise WMA 2

No Entry

The wildlife management area boundary begins in Eastern Lake Surprise on North Key Largo at the intersection of the shoreline and the line segment formed between Point 1 and Point 2. From this intersection the boundary continues NW into the lake to Point 2 and then roughly NE to Point 3 and then to each successive point in numerical order to Point 89. From Point 89 the boundary continues towards Point 90 until it intersects the shoreline. From this intersection the boundary continues NW along the shoreline until it intersects the line segment formed between Point 91 and Point 92. From this intersection the boundary continues towards Point 92 until it intersects the shoreline. From this intersection the boundary continues along the shoreline around Eastern Lake Surprise until it intersects the line segment formed between Point 93 and Point 94 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1 *	25.17666	−80.37687
2	25.17733	−80.37783
3	25.17805	−80.37720
4	25.17806	−80.37665
5	25.17812	−80.37643
6	25.17817	−80.37632
7	25.17835	−80.37605
8	25.17849	−80.37573
9	25.17863	−80.37556
10	25.17870	−80.37542
11	25.17877	−80.37516
12	25.17878	−80.37483
13	25.17893	−80.37438

Point	Latitude	Longitude
14	25.17911	−80.37413
15	25.17957	−80.37387
16	25.17979	−80.37362
17	25.17999	−80.37346
18	25.18009	−80.37332
19	25.18018	−80.37327
20	25.18043	−80.37338
21	25.18077	−80.37361
22	25.18097	−80.37368
23	25.18111	−80.37369
24	25.18140	−80.37364
25	25.18166	−80.37349
26	25.18181	−80.37355
27	25.18199	−80.37358
28	25.18228	−80.37356
29	25.18257	−80.37344
30	25.18268	−80.37335
31	25.18283	−80.37318
32	25.18303	−80.37321
33	25.18318	−80.37320
34	25.18358	−80.37307
35	25.18377	−80.37297
36	25.18402	−80.37313
37	25.18431	−80.37318
38	25.18456	−80.37334
39	25.18485	−80.37340
40	25.18516	−80.37333
41	25.18555	−80.37315
42	25.18570	−80.37305
43	25.18576	−80.37311
44	25.18571	−80.37352
45	25.18579	−80.37392
46	25.18612	−80.37448
47	25.18634	−80.37469
48	25.18654	−80.37478
49	25.18683	−80.37480
50	25.18717	−80.37474
51	25.18758	−80.37456
52	25.18774	−80.37456
53	25.18800	−80.37450
54	25.18817	−80.37454
55	25.18806	−80.37488
56	25.18788	−80.37519
57	25.18778	−80.37548
58	25.18752	−80.37561
59	25.18730	−80.37583
60	25.18716	−80.37611
61	25.18711	−80.37634
62	25.18692	−80.37669
63	25.18677	−80.37762
64	25.18674	−80.37803
65	25.18637	−80.37919
66	25.18625	−80.37949
67	25.18622	−80.38003
68	25.18618	−80.38015
69	25.18609	−80.38043
70	25.18596	−80.38063
71	25.18586	−80.38091
72	25.18583	−80.38114
73	25.18585	−80.38133
74	25.18533	−80.38194
75	25.18502	−80.38216
76	25.18477	−80.38225
77	25.18450	−80.38220
78	25.18423	−80.38223
79	25.18403	−80.38232
80	25.18386	−80.38247
81	25.18367	−80.38278
82	25.18358	−80.38309
83	25.18358	−80.38356
84	25.18363	−80.38383
85	25.18349	−80.38383
86	25.18291	−80.38345
87	25.18277	−80.38341

Point	Latitude	Longitude
88	25.18255	−80.38340
89	25.18236	−80.38348
90 *	25.18175	−80.38414
91 *	25.18218	−80.38470
92 *	25.18283	−80.38464
93 *	25.17666	−80.37687
94	25.17733	−80.37783

Lower Harbor Keys WMA 1

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 just north of Lower Harbor Keys. From Point 1 the boundary continues to each successive point in numerical order until it reaches Point 9. From Point 9 the boundary continues towards Point 10 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the east until it intersects the line segment formed between Point 11 and Point 12. From this intersection the boundary continues towards Point 12 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 13 and Point 14. From this intersection the boundary continues to Point 14 and then to each successive point in numerical order until it reaches Point 22. From Point 22 the boundary continues towards Point 23 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the SE until it intersects the line segment formed between Point 23 and Point 24. From this intersection the boundary continues towards Point 24 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 24 and Point 25. From this intersection the boundary continues towards Point 25 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west and south until it intersects the line segment formed between Point 26 and Point 27. From this intersection the boundary continues to Point 27 and then to each successive point in numerical order until it ends at Point 41.

Point	Latitude	Longitude
1	24.65039	−81.73302
2	24.65042	−81.73330
3	24.65046	−81.73369
4	24.65054	−81.73444
5	24.65065	−81.73518
6	24.65106	−81.73609
7	24.65164	−81.73561
8	24.65138	−81.73502
9	24.65138	−81.73446
10 *	24.65145	−81.73357
11 *	24.65238	−81.73229
12 *	24.65286	−81.73252
13 *	24.65373	−81.73248
14	24.65397	−81.73231
15	24.65431	−81.73240
16	24.65458	−81.73294
17	24.65450	−81.73331
18	24.65407	−81.73414
19	24.65449	−81.73388
20	24.65473	−81.73335
21	24.65490	−81.73266
22	24.65467	−81.73248
23 *	24.65459	−81.73192
24 *	24.65378	−81.73136
25 *	24.65315	−81.73141
26 *	24.65288	−81.73189
27	24.65229	−81.73119
28	24.65171	−81.73116
29	24.65173	−81.73040
30	24.65133	−81.72978
31	24.65102	−81.72915
32	24.65187	−81.72797
33	24.64998	−81.72693
34	24.65020	−81.72884
35	24.65047	−81.72930
36	24.65076	−81.72973
37	24.65120	−81.73080
38	24.65089	−81.73139
39	24.65036	−81.73151
40	24.65033	−81.73223
41	24.65039	−81.73302

Lower Harbor Keys WMA 2

Idle Speed No Wake

The wildlife management area boundary begins at the intersection of the southern shoreline and the line segment formed by Point 1 and Point 2. From this intersection the boundary continues towards Point 2 until it intersects the northern shoreline. From this intersection the boundary follows the shoreline generally north until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues to Point 4 and then to each successive point in numerical order until it reaches Point 35. From Point 35 the boundary continues towards Point 36 until it intersects the shoreline. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 37 and Point 38. From this intersection the boundary continues towards Point 38 until it intersects the shoreline. From this intersection the boundary continues NE and then NW until it intersects the line segment formed between Point 39 and Point 40. From this intersection the boundary continues towards Point 40 until it intersects the shoreline. From this intersection the boundary follows the shoreline until it intersects the line segment formed between Point 41 and Point 42. From this intersection the boundary continues to Point 42 and then generally south to each successive point in numerical order until it reaches Point 58. From Point 58 the boundary continues towards Point 59 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 60 and Point 61 where it ends.

Point	Latitude	Longitude
1 *	24.63714	−81.72648
2 *	24.63786	−81.72658
3 *	24.64324	−81.72504
4	24.64357	−81.72482
5	24.64379	−81.72478
6	24.64398	−81.72471
7	24.64431	−81.72469
8	24.64453	−81.72475
9	24.64467	−81.72493
10	24.64488	−81.72525
11	24.64502	−81.72554
12	24.64512	−81.72578
13	24.64514	−81.72594
14	24.64506	−81.72610
15	24.64490	−81.72632
16	24.64481	−81.72669
17	24.64480	−81.72697
18	24.64475	−81.72733
19	24.64470	−81.72750
20	24.64459	−81.72765
21	24.64432	−81.72817
22	24.64418	−81.72849
23	24.64397	−81.72882
24	24.64378	−81.72928
25	24.64359	−81.72965
26	24.64334	−81.73000
27	24.64306	−81.73054
28	24.64269	−81.73109
29	24.64231	−81.73194
30	24.64192	−81.73319
31	24.64240	−81.73364
32	24.64239	−81.73331
33	24.64245	−81.73291
34	24.64258	−81.73221
35	24.64290	−81.73172
36 *	24.64366	−81.73050
37 *	24.64393	−81.73019
38 *	24.64423	−81.73019
39 *	24.64863	−81.72961
40 *	24.64875	−81.72928
41 *	24.64906	−81.72888
42	24.64909	−81.72802
43	24.64893	−81.72729
44	24.64860	−81.72812
45	24.64795	−81.72822
46	24.64775	−81.72862
47	24.64688	−81.72765
48	24.64640	−81.72754
49	24.64573	−81.72762
50	24.64529	−81.72752
51	24.64491	−81.72753
52	24.64495	−81.72682
53	24.64517	−81.72625
54	24.64532	−81.72589
55	24.64524	−81.72562
56	24.64460	−81.72447
57	24.64403	−81.72442
58	24.64344	−81.72451
59 *	24.64267	−81.72468

Point	Latitude	Longitude
60 *	24.63714	−81.72648
61 *	24.63786	−81.72658

Lower Harbor Keys WMA 3

Idle Speed No Wake

The wildlife management area boundary begins at the intersection of the southeastern shoreline and the line segment formed by Point 1 and Point 2. From this intersection the boundary continues towards Point 2 until it intersects the southwestern shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues towards Point 4 until it intersects the northeastern shoreline. From this intersection the boundary follows the shoreline generally SW until it intersects the line segment formed between Point 5 and Point 6 where it ends.

Point	Latitude	Longitude
1 *	24.63598	−81.72307
2 *	24.63671	−81.72340
3 *	24.63793	−81.72233
4 *	24.63763	−81.72191
5 *	24.63598	−81.72307
6 *	24.63671	−81.72340

Marathon Oceanside Shoreline WMA 1

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 just south of Vaca Key and continues south to Point 2. From Point 2 the boundary continues towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline west and then north until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues to Point 5 and then east and south to each successive point in numerical order ending at Point 12.

Point	Latitude	Longitude
1	24.69269	−81.07529
2	24.69203	−81.07537
3 *	24.69177	−81.07551
4 *	24.69376	−81.07932
5	24.69368	−81.07888
6	24.69356	−81.07840
7	24.69350	−81.07803
8	24.69346	−81.07746
9	24.69341	−81.07712
10	24.69340	−81.07675
11	24.69322	−81.07522
12	24.69269	−81.07529

Marathon Oceanside Shoreline WMA 2

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues towards Point 2 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 2 and Point 3. From this intersection the boundary continues to Point 3 and then to each successive point in numerical order until it reaches Point 20. From Point 20 the boundary continues towards Point 21 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally north until it intersects the line segment formed between Point 22 and Point 23. From this intersection the boundary continues towards Point 23 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 24 and Point 25. From this intersection the boundary continues to Point 25 where it ends.

Point	Latitude	Longitude
1	24.70081	−81.07727
2 *	24.70137	−81.07703
3	24.70133	−81.07685
4	24.70114	−81.07592
5	24.70099	−81.07551
6	24.70076	−81.07505
7	24.70054	−81.07481
8	24.70024	−81.07455
9	24.69997	−81.07442
10	24.69968	−81.07421
11	24.69952	−81.07411
12	24.69889	−81.07346
13	24.69528	−81.07496
14	24.69341	−81.07520
15	24.69351	−81.07594
16	24.69355	−81.07631

Point	Latitude	Longitude
17	24.69360	−81.07688
18	24.69362	−81.07743
19	24.69372	−81.07816
20	24.69387	−81.07886
21 *	24.69395	−81.07930
22 *	24.69559	−81.07875
23 *	24.69569	−81.07910
24 *	24.70020	−81.07787
25	24.70081	−81.07727

Marathon Oceanside Shoreline WMA 3

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2 and then to each successive point in numerical order until it reaches Point 11. From Point 11 the boundary continues towards Point 12 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 13 and Point 14. From this intersection the boundary continues to Point 15 where it ends.

Point	Latitude	Longitude
1	24.70296	−81.07077
2	24.69992	−81.07304
3	24.69907	−81.07339
4	24.69968	−81.07396
5	24.70001	−81.07420
6	24.70029	−81.07440
7	24.70061	−81.07467
8	24.70088	−81.07496
9	24.70112	−81.07539
10	24.70131	−81.07586
11	24.70148	−81.07676
12 *	24.70152	−81.07701
13 *	24.71061	−81.07095
14 *	24.71059	−81.07084
15	24.70296	−81.07077

Marathon Oceanside Shoreline WMA 4

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2 and then to each successive point in numerical order until it reaches Point 4. From Point 4 the boundary continues towards Point 5 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 6 and Point 7. From this intersection the boundary continues to Point 7 where it ends.

Point	Latitude	Longitude
1	24.70382	−81.07013
2	24.70345	−81.07041
3	24.71124	−81.07041
4	24.71160	−81.07013
5 *	24.70842	−81.07013
6 *	24.70814	−81.07013
7	24.70382	−81.07013

Marathon Oceanside Shoreline WMA 5

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2 and then to Point 3.

From Point 3 the boundary continues north towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the NE until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 6 and Point 7. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 7 and Point 8. From this intersection the boundary follows the shoreline generally to the NE until it intersects the line segment formed between Point 9 and Point 10. From this intersection the boundary continues south to Point 10 where it ends.

Point	Latitude	Longitude
1	24.70751	−81.06421
2	24.70582	−81.06865
3	24.70448	−81.06964
4 *	24.71254	−81.06968
5 *	24.71314	−81.06943
6 *	24.71351	−81.06927
7 *	24.71335	−81.06914

Point	Latitude	Longitude
8*	24.71350	−81.06895
9*	24.71556	−81.06431
10	24.70751	−81.06421

Marathon Oceanside Shoreline WMA 6

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2. From Point 2 the boundary continues north towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues towards Point 5 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 6 and Point 7. From this intersection the boundary continues south to Point 7 where it ends.

Point	Latitude	Longitude
1	24.70843	−81.06178
2	24.70762	−81.06391
3*	24.71557	−81.06392
4*	24.71557	−81.06380
5*	24.71549	−81.06339
6*	24.71565	−81.06177
7	24.70843	−81.06178

Marathon Oceanside Shoreline WMA 7

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2. From Point 2 the boundary continues north towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues to Point 5 where it ends.

Point	Latitude	Longitude
1	24.70909	−81.06003
2	24.70860	−81.06134
3*	24.71568	−81.06139
4*	24.71604	−81.06000
5	24.70909	−81.06003

Marathon Oceanside Shoreline WMA 8

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2. From Point 2 the boundary continues north towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 6 and Point 7. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 8 and Point 9. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 9 and Point 10. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 11 and Point 12. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 13 and Point 14. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 15 and Point 16. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 17 and Point 18. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 19 and 20. From this intersection the boundary continues south to Point 20 where it ends.

Point	Latitude	Longitude
1	24.71070	−81.05387
2	24.70930	−81.05937
3*	24.71645	−81.05956
4*	24.71694	−81.05857
5*	24.71683	−81.05843
6*	24.71705	−81.05819
7*	24.71724	−81.05789
8*	24.71724	−81.05769
9*	24.71718	−81.05754
10*	24.71722	−81.05740
11*	24.71771	−81.05691
12*	24.71764	−81.05676
13*	24.71798	−81.05676
14*	24.71819	−81.05665
15*	24.71872	−81.05617
16*	24.71859	−81.05604
17*	24.71881	−81.05600
18*	24.71896	−81.05588

Point	Latitude	Longitude
19*	24.72026	−81.05397
20	24.71070	−81.05387

Marathon Oceanside Shoreline WMA 9

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2. From Point 2 the boundary continues north towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 5 and Point 6. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 8 and Point 9. From this intersection the boundary follows the shoreline east until it intersects with the line segment formed between Point 10 and Point 11. From this intersection the boundary continues to Point 11 where it ends.

Point	Latitude	Longitude
1	24.71131	−81.05148
2	24.71083	−81.05339
3*	24.72015	−81.05343
4*	24.72135	−81.05298
5*	24.72127	−81.05279
6*	24.72145	−81.05268
7*	24.72148	−81.05217
8*	24.72135	−81.05203
9*	24.72148	−81.05184
10*	24.72150	−81.05155
11	24.71131	−81.05148

Marathon Oceanside Shoreline WMA 10

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues to Point 2. From Point 2 the boundary continues north towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline SE until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 5 and Point 6. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 8 and Point 9. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 10 and Point 11. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 11 and Point 12. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 13 and Point 14. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 14 and Point 15. From this intersection the boundary follows the shoreline NE until it intersects with the line segment formed between Point 16 and Point 17. From this intersection the boundary continues south to Point 17 where it ends.

Point	Latitude	Longitude
1	24.71265	−81.04627
2	24.71142	−81.05107
3*	24.72151	−81.05114
4*	24.72111	−81.05061
5*	24.72097	−81.05042
6*	24.72110	−81.05030
7*	24.72109	−81.04978
8*	24.72085	−81.04965
9*	24.72096	−81.04944
10*	24.72238	−81.04897
11*	24.72233	−81.04885
12*	24.72242	−81.04872
13*	24.72244	−81.04692
14*	24.72239	−81.04651
15*	24.72254	−81.04625
16*	24.72269	−81.04605
17	24.71265	−81.04627

Marathon Oceanside Shoreline WMA 11

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues north towards Point 2 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 4 and Point 5. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 6 and Point 7. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 7 and Point 8. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 9 and Point 10. From this intersection the boundary continues to the intersection of

the shoreline with the line segment formed between Point 10 and Point 11. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 12 and Point 13. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 13 and Point 14. From this intersection the boundary follows the shoreline generally east until it intersects the line segment formed between Point 15 and Point 16. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 17 and Point 18. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 19 and Point 20. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 20 and Point 21. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 22 and Point 23. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 23 and Point 24. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 25 and Point 26. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 26 and Point 27. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 28 and Point 29. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 30 and 31. From this intersection the boundary follows the shoreline east until it intersects with the line segment formed between Point 32 and Point 33. From this intersection the boundary continues south to Point 33 and then to each successive point in numerical order until it reaches Point 43 where it ends.

Point	Latitude	Longitude
1	24.71297	−81.04491
2*	24.72368	−81.04480
3*	24.72371	−81.04462
4*	24.72365	−81.04439
5*	24.72387	−81.04421
6*	24.72401	−81.04373
7*	24.72381	−81.04357
8*	24.72401	−81.04339
9*	24.72414	−81.04293
10*	24.72400	−81.04278
11*	24.72429	−81.04264
12*	24.72535	−81.04143
13*	24.72520	−81.04118
14*	24.72546	−81.04101
15*	24.72586	−81.03979
16*	24.72575	−81.03947
17*	24.72599	−81.03943
18*	24.72616	−81.03933
19*	24.72720	−81.03490
20*	24.72711	−81.03470
21*	24.72724	−81.03458
22*	24.72728	−81.03390
23*	24.72708	−81.03375
24*	24.72720	−81.03356
25*	24.72731	−81.03264
26*	24.72718	−81.03239
27*	24.72739	−81.03227
28*	24.72756	−81.03154
29*	24.72742	−81.03125
30*	24.72778	−81.03133
31*	24.72801	−81.03115
32*	24.72821	−81.03029
33	24.72521	−81.03060
34	24.72248	−81.03188
35	24.71857	−81.03016
36	24.71598	−81.02914
37	24.71362	−81.02521
38	24.71169	−81.02500
39	24.71234	−81.03006
40	24.71291	−81.03354
41	24.71342	−81.03673
42	24.71362	−81.03903
43	24.71297	−81.04491

Marquesas Keys WMA 5

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues west to Point 2. From Point 2 the boundary continues towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally north until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues east to Point 5. From Point 5 the boundary continues towards Point 6 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues west to Point 8 where it ends.

Point	Latitude	Longitude
1	24.54928	−82.12325
2	24.54925	−82.12387
3*	24.54932	−82.12463
4*	24.55071	−82.12565
5	24.55084	−82.12426
6*	24.55100	−82.12265
7*	24.54930	−82.12248
8	24.54928	−82.12325

Snake Creek WMA 5

No Motor

The wildlife management area boundary begins at Point 1 and continues north to Point 2 and Point 3. From Point 3 the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east until it intersects the segment formed between Point 5 and Point 6. From this intersection the boundary continues south to Point 6 and then to each successive point in numerical order until it reaches Point 14 where it ends.

Point	Latitude	Longitude
1	24.94988	−80.58636
2	24.95017	−80.58640
3	24.95120	−80.58686
4*	24.95213	−80.58686
5*	24.95365	−80.57247
6	24.95186	−80.57257
7	24.94680	−80.57271
8	24.94129	−80.58042
9	24.94368	−80.58226
10	24.94592	−80.58277
11	24.94742	−80.58409
12	24.94797	−80.58525
13	24.94863	−80.58603
14	24.94988	−80.58636

Tavernier Key WMA 2

NO MOTOR

Point	Latitude	Longitude
1	25.00175	−80.49206
2	24.99672	−80.48946
3	24.99390	−80.49587
4	24.98732	−80.51278
5	24.99099	−80.52419
6	24.99283	−80.52588
7	24.99646	−80.52861
8	24.99898	−80.52879
9	24.99885	−80.52771
10	24.99856	−80.52683
11	24.99823	−80.52632
12	24.99713	−80.52483
13	24.99687	−80.52417
14	24.99678	−80.52373
15	24.99658	−80.52314
16	24.99631	−80.52256
17	24.99619	−80.52227
18	24.99625	−80.52149
19	24.99679	−80.52019
20	24.99562	−80.51942
21	24.99766	−80.51215
22	25.00175	−80.49206

Tavernier Key WMA 3

No Motor

The wildlife management area boundary begins at Point 1 and continues generally south and then west to each successive point in numerical order until it reaches Point 6. From Point 6 the boundary continues towards Point 7 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the east until it intersects the line segment formed between Point 8 and Point 9. From this intersection the boundary continues east to Point 9 and then generally NE to each successive point in numerical order until it reaches Point 23 where it ends.

Point	Latitude	Longitude
1	24.99533	−80.52814
2	24.99333	−80.52659
3	24.98952	−80.52362
4	24.98458	−80.52899
5	24.98735	−80.53482
6	24.99049	−80.53631
7*	24.99154	−80.53528
8*	24.99304	−80.53406
9	24.99289	−80.53310
10	24.99284	−80.53281
11	24.99291	−80.53246
12	24.99287	−80.53218
13	24.99294	−80.53193
14	24.99297	−80.53182
15	24.99308	−80.53174
16	24.99312	−80.53171
17	24.99384	−80.53075
18	24.99380	−80.53042
19	24.99379	−80.53026
20	24.99407	−80.52967
21	24.99500	−80.52932
22	24.99635	−80.52893
23	24.99533	−80.52814

West Content Keys WMA 1

Idle Speed No Wake

The wildlife management area boundary begins at Point 1 and continues west towards Point 2 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues east to Point 4 and then south to Point 5. From Point 5 the boundary continues towards Point 6 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 6 and Point 7. From this intersection the boundary continues SW to Point 7. From Point 7 the boundary continues towards Point 8 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 9 and Point 10. From this intersection the boundary continues south to Point 10 where it ends.

Point	Latitude	Longitude
1	24.78196	−81.48875
2*	24.78194	−81.49159
3*	24.79184	−81.48926
4	24.79152	−81.48779
5	24.79037	−81.48830
6*	24.79030	−81.48832
7	24.79020	−81.48848
8*	24.79008	−81.48864
9*	24.78374	−81.48891
10	24.78196	−81.48875

West Content Keys WMA 2

No Entry

The wildlife management area boundary begins at the intersection of the shoreline and the line segment formed between Point 1 and Point 2. From this intersection the boundary follows the shoreline generally north until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues towards Point 6 until it intersects the shoreline. From this intersection the boundary follows the shoreline east and then south until it intersects the line segment formed between Point 7 and the intersection of the shoreline and the line segment formed between Point 8 and Point 9. From this intersection the boundary continues west to the intersection of the shoreline and the line segment formed between Point 8 and Point 9 where it ends.

Point	Latitude	Longitude
1*	24.78361	−81.49804
2*	24.78383	−81.49804
3*	24.78689	−81.50019
4*	24.78758	−81.50002
5*	24.78877	−81.49667
6*	24.78898	−81.49638
7*	24.78342	−81.49486
8*	24.78361	−81.49804
9*	24.78383	−81.49804

Whitmore Bight WMA

No Motor

The wildlife management area boundary begins at the intersection of the shoreline and the line segment formed between Point 1 and Point 2 near Upper Sound Point on Rattlesnake Key. From this intersection the boundary continues east to Point 3 and then roughly SW to Point 4. From Point 4 the boundary continues roughly west to each successive point in numerical order to Point 7. From Point 7 the boundary continues towards Point 8 until it intersects the shoreline on the eastern side of the mouth of South Sound Creek. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 9 and the intersection of the shoreline and the line segment formed between Point 10 and point 11. From this intersection the boundary continues across the mouth of South Creek to the intersection of the shoreline and the line segment formed between Point 10 and point 11. From this intersection the boundary follows the shoreline roughly north until it intersects the line segment formed between Point 12 and Point 13 near Sound Point. From this intersection the boundary continues to Point 13 and then to Point 14. From Point 14 the boundary continues towards Point 15 until it intersects the shoreline on Rattlesnake Key. From this intersection the boundary follows the shoreline roughly NE until it intersects the line segment formed between Point 16 and Point 17 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1 *	25.16915	−80.35011
2 *	25.16918	−80.34978
3	25.16672	−80.34438
4	25.09659	−80.39692
5	25.09868	−80.40633
6	25.09997	−80.41157
7	25.10046	−80.41261
8 *	25.10294	−80.41379
9 *	25.10368	−80.40861
10 *	25.10369	−80.40770
11 *	25.10384	−80.40763
12 *	25.15866	−80.35582
13	25.16045	−80.35397
14	25.16109	−80.35387
15 *	25.16314	−80.35469
16 *	25.16915	−80.35011
17 *	25.16918	−80.34978

Woman Key WMA

No Entry

The wildlife management area boundary begins at Point 1 SE of Woman Key and continues west to each successive point in numerical order until it reaches Point 24. From Point 24 the boundary continues north towards Point 25 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 26 and Point 27. From this intersection the boundary continues east to Point 27 then south to Point 28 and Point 29 where it ends.

Point	Latitude	Longitude
1	24.52295	−81.96687
2	24.52294	−81.96689
3	24.52291	−81.96698
4	24.52290	−81.96706
5	24.52289	−81.96714
6	24.52286	−81.96723
7	24.52283	−81.96740
8	24.52281	−81.96758
9	24.52281	−81.96773
10	24.52285	−81.96855
11	24.52286	−81.96866
12	24.52289	−81.96885
13	24.52290	−81.96913
14	24.52290	−81.96971
15	24.52291	−81.96981
16	24.52296	−81.97038
17	24.52296	−81.97069
18	24.52295	−81.97104
19	24.52282	−81.97202
20	24.52276	−81.97239
21	24.52269	−81.97282
22	24.52268	−81.97293
23	24.52265	−81.97340
24	24.52265	−81.97349
25 *	24.52391	−81.97363
26 *	24.52419	−81.96746
27	24.52420	−81.96700
28	24.52319	−81.96689
29	24.52295	−81.96687

Barracuda Keys WMA

Idle Speed No Wake

The wildlife management area seaward boundary begins just east of Barracuda Keys at Point 1 and continues SW to Point 2. From Point 2 the seaward boundary continues towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the NE and then generally SW until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues SW to Point 5 and then to each successive point in numerical order until it reaches Point 8 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.72801	−81.59614
2	24.71841	−81.60001
3*	24.71345	−81.60925
4*	24.71318	−81.60986
5	24.70529	−81.62653
6	24.71727	−81.63677
7	24.73373	−81.60053
8	24.72801	−81.59614

Cayo Agua Keys WMA

Idle Speed No Wake

The wildlife management area seaward boundary begins in northern Cayo Agua Keys at the intersection of the shoreline with the line segment formed between Point 1 and Point 2. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline SE until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues towards Point 6 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues towards Point 8 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 8 and Point 9. From this intersection the boundary continues towards Point 9 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 10 and Point 11. From this intersection the boundary continues towards Point 11 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west and then north until it intersects the line segment formed between Point 12 and Point 13. From this intersection the boundary continues towards Point 13 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 14 and Point 15. From this intersection the boundary continues towards Point 15 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east and then north until it intersects the line segment formed between Point 16 and Point 17. From this intersection the boundary continues towards Point 17 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 18 and Point 19. From this intersection the boundary continues to Point 19 and then to point 20 and to Point 21. From Point 21 the boundary continues towards Point 22 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 23 and Point 24. From this intersection the boundary continues towards Point 24 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 25 and Point 26. From this intersection the boundary continues to the intersection of the shoreline with the line segment formed between Point 27 and Point 28 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1*	24.63365	−81.74368
2*	24.63352	−81.74371
3*	24.63305	−81.74364
4*	24.63300	−81.74353
5*	24.63216	−81.74279
6*	24.63163	−81.74274
7*	24.63001	−81.74285
8*	24.62958	−81.74284
9*	24.62947	−81.74324
10*	24.62948	−81.74393
11*	24.62956	−81.74444
12*	24.63249	−81.74670
13*	24.63244	−81.74697
14*	24.63224	−81.74788
15*	24.63250	−81.74800
16*	24.63323	−81.74701
17*	24.63356	−81.74700
18*	24.63474	−81.74603
19	24.63485	−81.74580
20	24.63468	−81.74542
21	24.63370	−81.74540
22*	24.63326	−81.74553
23*	24.63270	−81.74530
24*	24.63258	−81.74514
25*	24.63366	−81.74419
26*	24.63374	−81.74406
27*	24.63365	−81.74368

Point	Latitude	Longitude
28 *	24.63352	−81.74371

Cotton Key WMA

No Motor

The wildlife management area seaward boundary begins just north of Cotton Key at Point 1 and continues to each successive point in numerical order until it reaches Point 13. From Point 13 the boundary continues to the intersection of the shoreline and the line segment formed by Point 14 and Point 15. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 16 and Point 17. From this intersection the boundary continues south to Point 17 and then to each successive point in numerical order until it reaches Point 34 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.96534	−80.62371
2	24.96217	−80.62222
3	24.95775	−80.62167
4	24.95604	−80.62041
5	24.95566	−80.62018
6	24.95510	−80.61969
7	24.95467	−80.61944
8	24.95382	−80.61882
9	24.95357	−80.61860
10	24.95342	−80.61853
11	24.95315	−80.61857
12	24.95207	−80.61844
13	24.95168	−80.61848
14 *	24.95134	−80.61852
15 *	24.95140	−80.61866
16 *	24.95048	−80.61950
17	24.95012	−80.61944
18	24.94987	−80.61950
19	24.94932	−80.61943
20	24.94901	−80.61933
21	24.94868	−80.61911
22	24.94778	−80.61887
23	24.94753	−80.61886
24	24.94740	−80.62102
25	24.94742	−80.62205
26	24.94748	−80.62268
27	24.94804	−80.62353
28	24.95682	−80.62360
29	24.95838	−80.62506
30	24.95650	−80.63762
31	24.96032	−80.63704
32	24.96016	−80.62849
33	24.96322	−80.62475
34	24.96534	−80.62371

East Content Keys and Upper Harbor Key Flats WMA 2

Idle Speed No Wake

The wildlife management area seaward boundary begins just NE of Upper Harbor Key at Point 1 and continues generally SW and then NW to each successive point in numerical order until it reaches Point 9. From Point 9 the boundary continues to the intersection of the shoreline and the line segment formed between Point 10 and Point 11. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 12 and Point 13. From this intersection the boundary continues north to Point 14 and then Point 15. From Point 15 the boundary continues towards Point 16 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 16 and Point 17. From this intersection the boundary continues towards Point 17 until it intersects the shoreline. From this intersection the boundary follows the shoreline SW until it intersects the line segment formed between Point 17 and Point 18. From this intersection the boundary continues towards Point 18 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 19 and Point 20. From this intersection the boundary continues towards Point 20 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south and then west until it intersects the line segment formed between Point 21 and Point 22. From this intersection the boundary continues towards Point 22 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 23 and Point 24. From this intersection the boundary continues to Point 24 and then to Point 25. From Point 25 the boundary continues towards Point 26 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally north and then NE until it intersects the line segment formed between Point 27 and Point 28. From this intersection the boundary continues towards Point 28 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 29 and Point 30. From this intersection the boundary continues towards Point 30 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly north until it intersects the line segment formed between Point 30 and Point 31. From this intersection the boundary continues towards Point 31 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east until it intersects the line segment formed between Point 31 and

Point 32. From this intersection the boundary continues towards Point 32 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 33 and Point 34. From this intersection the boundary continues to Point 34 and then to each successive point in numerical order until it reaches Point 38 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified. In addition the inner boundary is also defined by the East Content Keys and Upper Harbor Key Flats Wildlife Management Area No Entry Zone around Upper Harbor Key that begins at Point 1 of that zone and continues to each successive point in numerical order until it ends at Point 33.

Point	Latitude	Longitude
1	24.81837	−81.42989
2	24.81206	−81.43563
3	24.80073	−81.44120
4	24.79213	−81.45039
5	24.78816	−81.45029
6	24.78526	−81.45419
7	24.77345	−81.45394
8	24.77339	−81.46382
9	24.78344	−81.46760
10 *	24.78440	−81.46821
11 *	24.78451	−81.46802
12 *	24.78492	−81.46804
13 *	24.78493	−81.46825
14	24.78593	−81.46810
15	24.79541	−81.46748
16 *	24.79638	−81.46742
17 *	24.79588	−81.46810
18 *	24.79556	−81.46851
19 *	24.79537	−81.47051
20 *	24.79331	−81.47179
21 *	24.79230	−81.47551
22 *	24.79230	−81.47601
23 *	24.79361	−81.47575
24	24.79382	−81.47614
25	24.79593	−81.47599
26 *	24.79610	−81.47565
27 *	24.79978	−81.47308
28 *	24.80041	−81.47262
29 *	24.80184	−81.46881
30 *	24.80207	−81.46886
31 *	24.80228	−81.46889
32 *	24.80224	−81.46866
33 *	24.80322	−81.46592
34	24.80377	−81.46534
35	24.82795	−81.44055
36	24.82599	−81.43778
37	24.82329	−81.43647
38	24.81837	−81.42989

East Harbor Key WMA

No Entry

The wildlife management area seaward boundary begins just NE of East Harbor Key at Point 1 and continues to each successive point in numerical order until it reaches Point 8. From Point 8 the boundary continues towards Point 9 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the north until it intersects the line segment formed between Point 10 and Point 11. From this intersection the boundary continues to Point 11 and then to each successive point in numerical order until it reaches Point 36 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.65964	−81.73360
2	24.65919	−81.73347
3	24.65892	−81.73346
4	24.65871	−81.73349
5	24.65843	−81.73361
6	24.65820	−81.73377
7	24.65807	−81.73391
8	24.65794	−81.73410
9 *	24.65787	−81.73422
10 *	24.65779	−81.73518
11	24.65784	−81.73532
12	24.65797	−81.73552
13	24.65813	−81.73570
14	24.65827	−81.73598
15	24.65842	−81.73617

Point	Latitude	Longitude
16	24.65856	−81.73629
17	24.65881	−81.73645
18	24.65906	−81.73655
19	24.65931	−81.73657
20	24.65959	−81.73658
21	24.65981	−81.73652
22	24.66001	−81.73643
23	24.66017	−81.73632
24	24.66032	−81.73615
25	24.66040	−81.73601
26	24.66048	−81.73578
27	24.66049	−81.73549
28	24.66045	−81.73511
29	24.66041	−81.73496
30	24.66034	−81.73480
31	24.66031	−81.73454
32	24.66022	−81.73420
33	24.66013	−81.73402
34	24.65999	−81.73383
35	24.65983	−81.73369
36	24.65964	−81.73360

Mud Keys WMA

Idle Speed No Wake

The wildlife management area seaward boundary begins on the eastern side of Mud Keys at the intersection of the shoreline with the line segment formed between Point 1 and Point 2. From this intersection the boundary continues towards Point 2 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 3 and Point 4. From this intersection the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues towards Point 6 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues towards Point 8 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 9 and Point 10. From this intersection the boundary continues towards Point 10 until it intersects the shoreline. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 11 and Point 12. From this intersection the boundary continues towards Point 12 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 13 and Point 14. From this intersection the boundary continues towards Point 14 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 15 and Point 16. From this intersection the boundary continues towards Point 16 until it intersects the shoreline. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 17 and Point 18. From this intersection the boundary continues towards Point 18 until it intersects the shoreline. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 19 and Point 20. From this intersection the boundary continues towards Point 20 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east and then north and then west until it intersects the line segment formed between Point 21 and Point 22. From this intersection the boundary continues towards Point 22 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east and then north and then west until it intersects the line segment formed between Point 23 and Point 24. From this intersection the boundary continues towards Point 24 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 25 and Point 26. From this intersection the boundary continues towards Point 26 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 27 and Point 28. From this intersection the boundary continues towards Point 28 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally north and then east until it intersects the line segment formed between Point 29 and Point 30. From this intersection the boundary continues towards Point 30 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east until it intersects the line segment formed between Point 31 and Point 32. From this intersection the boundary continues towards Point 32 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 33 and Point 34. From this intersection the boundary continues towards Point 35 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally south until it intersects the line segment formed between Point 36 and Point 37 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1*	24.67121	−81.69116
2*	24.67064	−81.69055
3*	24.67040	−81.69063
4*	24.66977	−81.69077
5*	24.66936	−81.69118
6*	24.66866	−81.69180
7*	24.66809	−81.69341
8*	24.66820	−81.69402
9*	24.66824	−81.69461
10*	24.66856	−81.69564
11*	24.66899	−81.69598

Point	Latitude	Longitude
12 *	24.66861	−81.69695
13 *	24.66868	−81.69730
14 *	24.66862	−81.69785
15 *	24.66876	−81.69814
16 *	24.66961	−81.69805
17 *	24.66999	−81.69847
18 *	24.67044	−81.69861
19 *	24.67121	−81.69800
20 *	24.67132	−81.69766
21 *	24.67168	−81.69848
22 *	24.67243	−81.69841
23 *	24.67377	−81.69850
24 *	24.67412	−81.69866
25 *	24.67461	−81.69839
26 *	24.67488	−81.69850
27 *	24.67502	−81.69888
28 *	24.67581	−81.69883
29 *	24.67604	−81.69760
30 *	24.67656	−81.69672
31 *	24.67642	−81.68895
32 *	24.67529	−81.68934
33 *	24.67312	−81.69109
34 *	24.67292	−81.69091
35 *	24.67227	−81.69186
36 *	24.67121	−81.69116
37 *	24.67064	−81.69055

Sawyer Key WMA

No Entry

The wildlife management area seaward boundary begins at Point 1 and continues west to Point 2. From Point 2 the boundary continues west towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline SW until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues towards Point 5 until it intersects the shoreline. From this intersection the boundary follows the shoreline SW until it intersects the line segment formed between Point 6 and the intersection of the shoreline and the line segment formed between Point 7 and Point 8. From this intersection the boundary continues SW to the intersection of the shoreline and the line segment formed between Point 7 and Point 8. From this intersection the boundary follows the shoreline generally north until it intersects the line segment formed between Point 9 and Point 10. From this intersection the boundary continues towards Point 10 until it intersects the shoreline. From this intersection the boundary follows the shoreline NE until it intersects the line segment formed between Point 10 and Point 11. From this intersection the boundary follows the shoreline generally north and then east until it intersects the line segment formed between Point 12 and Point 13. From this intersection the boundary continues towards Point 13 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east until it intersects the line segment formed between Point 14 and Point 15. From this intersection the boundary continues south to Point 16 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.75564	−81.55825
2	24.75565	−81.55869
3 *	24.75564	−81.55915
4 *	24.75537	−81.56027
5 *	24.75502	−81.56068
6 *	24.75390	−81.56322
7 *	24.75174	−81.56691
8 *	24.75186	−81.56706
9 *	24.75761	−81.56705
10 *	24.75769	−81.56691
11 *	24.75785	−81.56602
12 *	24.75830	−81.56476
13 *	24.75826	−81.56416
14 *	24.75880	−81.55778
15 *	24.75851	−81.55730
16	24.75564	−81.55825

Snipe Keys WMA 2

Idle Speed No Wake

The wildlife management area seaward boundary begins at the intersection of the shoreline and the line segment formed between Point 1 and Point 2. From this intersection the boundary continues towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues towards Point 5 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 6 and Point 7. From this intersection the boundary continues towards Point 7 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 8 and Point 9. From

this intersection the boundary continues towards Point 9 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 10 and Point 11. From this intersection the boundary continues towards Point 11 until it intersects the shoreline. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 12 and Point 13. From this intersection the boundary continues towards Point 13 until it intersects the shoreline. From this intersection the boundary follows the shoreline NW until it intersects the line segment formed between Point 13 and Point 14. From this intersection the boundary continues NW to Point 14 and then west to Point 15. From Point 15 the boundary continues SW towards Point 16 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally SW until it intersects the line segment formed between Point 16 and Point 17. From this intersection the boundary continues towards Point 17 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 18 and Point 19. From this intersection the boundary continues west to Point 19 and then Point 20. From Point 20 the boundary continues towards Point 21 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 21 and Point 22. From this intersection the boundary continues towards Point 22 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 23 and Point 24. From this intersection the boundary continues towards Point 24 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 25 and Point 26. From this intersection the boundary continues towards Point 26 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 26 and Point 27. From this intersection the boundary continues NW to Point 27 and then to each successive point in numerical order until it reaches Point 34. From Point 34 the boundary continues east towards Point 35 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 36 and Point 37. From this intersection the boundary continues towards Point 37 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally east until it intersects the line segment formed between Point 38 and Point 39. From this intersection the boundary continues east to the intersection of the shoreline with the line segment formed between Point 40 and Point 41. From this intersection the boundary follows the shoreline east until it intersects with the line segment formed between Point 42 and Point 43. From this intersection the boundary continues east towards Point 43 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 44 and Point 45 where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1 *	24.69379	−81.66054
2 *	24.69368	−81.66045
3 *	24.69316	−81.66077
4 *	24.69355	−81.66239
5 *	24.69343	−81.66275
6 *	24.69298	−81.66378
7 *	24.69273	−81.66402
8 *	24.69167	−81.66801
9 *	24.69152	−81.66834
10 *	24.69174	−81.66910
11 *	24.69185	−81.67023
12 *	24.69241	−81.67087
13 *	24.69262	−81.67119
14	24.69293	−81.67142
15	24.69291	−81.67153
16 *	24.69285	−81.67160
17 *	24.69275	−81.67166
18 *	24.69278	−81.67176
19	24.69279	−81.67189
20	24.69276	−81.67206
21 *	24.69264	−81.67220
22 *	24.69259	−81.67231
23 *	24.69269	−81.67266
24 *	24.69263	−81.67287
25 *	24.69274	−81.67328
26 *	24.69281	−81.67341
27	24.69292	−81.67346
28	24.69343	−81.67337
29	24.69328	−81.67278
30	24.69330	−81.67221
31	24.69335	−81.67208
32	24.69327	−81.67196
33	24.69327	−81.67191
34	24.69335	−81.67182
35 *	24.69342	−81.67153
36 *	24.69345	−81.67122
37 *	24.69330	−81.67089
38 *	24.69295	−81.67030
39 *	24.69283	−81.67030
40 *	24.69309	−81.66963
41 *	24.69299	−81.66963
42 *	24.69337	−81.66454
43 *	24.69380	−81.66326
44 *	24.69379	−81.66054
45 *	24.69368	−81.66045

Snipe Keys WMA 3

No Motor

The wildlife management area seaward boundary begins at Point 1 at Snipe Keys and continues towards Point 2 until it intersects the shoreline. From this intersection the boundary follows the shoreline SE until it intersects the line segment formed between Point 2 and Point 3. From this intersection the boundary continues towards Point 3 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 4 and Point 5. From this intersection the boundary continues towards Point 5 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 6 and Point 7. From this intersection the boundary continues towards Point 7 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 7 and Point 8. From this intersection the boundary continues east to Point 8 and then to Point 9. From Point 9 the boundary continues towards Point 10 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 11 and Point 12. From this intersection the boundary continues towards Point 12 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 12 and Point 13. From this intersection the boundary continues to Point 13 and then Point 14. From Point 14 the boundary continues towards Point 15 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 15 and Point 16. From this intersection the boundary continues towards Point 16 until it intersects the shoreline. From this intersection the boundary follows the shoreline SE until it intersects the line segment formed between Point 17 and Point 18. From this intersection the boundary continues towards Point 18 until it intersects the shoreline. From this intersection the boundary follows the shoreline east until it intersects the line segment formed between Point 19 and Point 20. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 21 and Point 22. From this intersection the boundary continues towards Point 22 until it intersects the shoreline. From this intersection the boundary follows the shoreline NE and then east until it intersects the line segment formed between Point 23 and Point 24. From this intersection the boundary continues towards Point 24 until it intersects the shoreline. From this intersection the boundary follows the shoreline east and then south until it intersects the line segment formed between Point 25 and Point 26. From this intersection the boundary continues towards Point 26 until it intersects the shoreline. From this intersection the boundary follows the shoreline south and then west until it intersects the line segment formed between Point 27 and 28. From this intersection the boundary continues towards Point 28 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 29 and Point 30. From this intersection the boundary continues towards Point 30 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 30 and Point 31. From this intersection the boundary continues towards Point 31 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 31 and Point 33. From this intersection the boundary continues towards Point 33 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west until it intersects the line segment formed between Point 34 and Point 35. From this intersection the boundary continues towards Point 35 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally NW until it intersects the line segment formed between Point 36 and the intersection of the shoreline and the line segment formed between Point 37 and Point 38. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 37 and Point 38. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 39 and Point 40. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 41 and Point 42. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 43 and Point 44. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 45 and Point 46. From this intersection the boundary continues towards Point 47 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 48 and Point 49. From this intersection the boundary continues towards Point 49 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 50 and Point 51. From this intersection the boundary continues towards Point 51 until it intersects the shoreline. From this intersection the boundary follows the shoreline south until it intersects the line segment formed between Point 52 and Point 53. From this intersection the boundary continues towards Point 53 until it intersects the shoreline. From this intersection the boundary follows the shoreline west until it intersects the line segment formed between Point 54 and Point 55. From this intersection the boundary continues towards Point 55 until it intersects the shoreline. From this intersection the boundary follows the shoreline generally west and then north until it intersects the line segment formed between Point 56 and Point 57. From this intersection the boundary continues towards Point 57 until it intersects the shoreline. From this intersection the boundary follows the shoreline north until it intersects the line segment formed between Point 58 and the intersection of the shoreline and the line segment formed between Point 59 and Point 60. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 59 and Point 60. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 61 and Point 62. From this intersection the boundary follows the shoreline generally NE until it intersects the line segment formed between Point 63 and the intersection formed between the shoreline and the line segment formed between Point 64 and Point 65. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 64 and Point 65. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 66 and Point 67. From this intersection the boundary continues NE to Point 67. From Point 67 the boundary continues east towards Point 68 until it intersects the shoreline. From this intersection the boundary follows the shoreline until it intersects the line segment formed between Point 69 and Point 70. From this intersection the boundary continues north to Point 70 and Point 71 and then generally east to each successive point in numerical order until it reaches Point 83. From Point 83 the boundary continues towards Point 84 until it intersects the shoreline where it ends. The inner landward boundary is defined by and follows the shoreline where not already specified.

Point	Latitude	Longitude
1	24.69292	−81.67346
2*	24.69281	−81.67341
3*	24.69274	−81.67328
4*	24.69263	−81.67287
5*	24.69269	−81.67266
6*	24.69259	−81.67231
7*	24.69264	−81.67220

Point	Latitude	Longitude
8	24.69276	−81.67206
9	24.69279	−81.67189
10 *	24.69278	−81.67176
11 *	24.69275	−81.67166
12 *	24.69285	−81.67160
13	24.69291	−81.67153
14	24.69293	−81.67142
15 *	24.69262	−81.67119
16 *	24.69241	−81.67087
17 *	24.69185	−81.67023
18 *	24.69174	−81.66910
19 *	24.69152	−81.66834
20 *	24.69167	−81.66801
21 *	24.69273	−81.66402
22 *	24.69298	−81.66378
23 *	24.69343	−81.66275
24 *	24.69355	−81.66239
25 *	24.68938	−81.66143
26 *	24.68868	−81.66151
27 *	24.68598	−81.66518
28 *	24.68574	−81.66543
29 *	24.68572	−81.66562
30 *	24.68573	−81.66580
31 *	24.68577	−81.66598
32 *	24.68592	−81.66595
33 *	24.68604	−81.66622
34 *	24.68655	−81.66859
35 *	24.68733	−81.66899
36 *	24.68843	−81.67065
37 *	24.68852	−81.67164
38 *	24.68869	−81.67164
39 *	24.68832	−81.67239
40 *	24.68849	−81.67241
41 *	24.68821	−81.67283
42 *	24.68836	−81.67294
43 *	24.68780	−81.67317
44 *	24.68798	−81.67334
45 *	24.68753	−81.67355
46 *	24.68768	−81.67373
47 *	24.68702	−81.67392
48 *	24.68598	−81.67433
49 *	24.68579	−81.67505
50 *	24.68506	−81.67548
51 *	24.68481	−81.67598
52 *	24.68454	−81.67621
53 *	24.68420	−81.67739
54 *	24.68415	−81.67947
55 *	24.68453	−81.67966
56 *	24.68780	−81.68024
57 *	24.68815	−81.68001
58 *	24.68838	−81.67997
59 *	24.68883	−81.67993
60 *	24.68880	−81.67979
61 *	24.68970	−81.67984
62 *	24.68965	−81.67964
63 *	24.69017	−81.67882
64 *	24.69054	−81.67760
65 *	24.69029	−81.67763
66 *	24.69055	−81.67730
67	24.69078	−81.67719
68 *	24.69099	−81.67589
69 *	24.69180	−81.67492
70	24.69239	−81.67474
71	24.69256	−81.67476
72	24.69262	−81.67462
73	24.69256	−81.67437
74	24.69243	−81.67423
75	24.69256	−81.67406
76	24.69260	−81.67391
77	24.69288	−81.67376
78	24.69290	−81.67369
79	24.69296	−81.67367
80	24.69300	−81.67364
81	24.69302	−81.67354

Point	Latitude	Longitude
82	24.69299	−81.67350
83	24.69292	−81.67346
84 *	24.69281	−81.67341

Appendix F to Subpart P of Part 922—Sanctuary Preservation Areas Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The boundary for the following Sanctuary Preservation Areas (SPA) begins at each individual zone's Point 1 and continues to each successive point in numerical order until ending at that same zone's last point as listed in its specific coordinate table.

Alligator Reef SPA

Point	Latitude	Longitude
1	24.85383	−80.61950
2	24.84691	−80.60967
3	24.84002	−80.62083
4	24.84683	−80.62716
5	24.85383	−80.61950

Carysfort Reef SPA

Point	Latitude	Longitude
1	25.22734	−80.19447
2	25.19451	−80.20821
3	25.20476	−80.23208
4	25.23405	−80.21709
5	25.23671	−80.21573
6	25.23492	−80.21169
7	25.22734	−80.19447

Cheeca Rocks SPA

Point	Latitude	Longitude
1	24.90367	−80.61917
2	24.90700	−80.61517
3	24.90417	−80.61283
4	24.90167	−80.61667
5	24.90367	−80.61917

Coffins Patch SPA

Point	Latitude	Longitude
1	24.67917	−80.97217
2	24.68433	−80.97467
3	24.69117	−80.96133
4	24.68533	−80.95883
5	24.67917	−80.97217

Conch Reef SPA

Point	Latitude	Longitude
1	24.95800	−80.45783
2	24.95567	−80.45433
3	24.94986	−80.45703
4	24.94633	−80.45867
5	24.94933	−80.46217
6	24.95800	−80.45783

Davis Reef SPA

Point	Latitude	Longitude
1	24.92233	−80.50867
2	24.92683	−80.50450
3	24.92350	−80.50083
4	24.91850	−80.50583
5	24.92233	−80.50867

Eastern Dry Rocks SPA

Point	Latitude	Longitude
1	24.46200	−81.84767
2	24.46533	−81.84250
3	24.46217	−81.83883
4	24.45783	−81.84667
5	24.46200	−81.84767

Hen and Chickens SPA

Point	Latitude	Longitude
1	24.93400	−80.55317
2	24.93967	−80.54767
3	24.93683	−80.54383
4	24.93100	−80.54917
5	24.93400	−80.55317

Key Largo Dry Rocks – Grecian Rocks SPA

Point	Latitude	Longitude
1	25.10502	−80.30565
2	25.10880	−80.31061
3	25.12650	−80.29850
4	25.12432	−80.29468
5	25.10502	−80.30565

Looe Key SPA

Point	Latitude	Longitude
1	24.55200	−81.41350
2	24.55400	−81.40050
3	24.54500	−81.39750
4	24.54200	−81.41167
5	24.54745	−81.41267
6	24.55200	−81.41350

Molasses Reef SPA

Point	Latitude	Longitude
1	25.01767	−80.36400
2	25.00483	−80.37833
3	25.01200	−80.38050
4	25.01667	−80.37550
5	25.01767	−80.36400

Newfound Harbor Key SPA

Point	Latitude	Longitude
1	24.61233	−81.39667

Point	Latitude	Longitude
2	24.61667	−81.39767
3	24.61833	−81.38900
4	24.61417	−81.38800
5	24.61233	−81.39667

Sand Key SPA

Point	Latitude	Longitude
1	24.45033	−81.88250
2	24.46017	−81.88233
3	24.45967	−81.87150
4	24.45017	−81.87200
5	24.45033	−81.88250

Sombrero Key SPA

Point	Latitude	Longitude
1	24.62500	−81.10317
2	24.62083	−81.11483
3	24.62536	−81.11674
4	24.62629	−81.11398
5	24.63183	−81.11300
6	24.62832	−81.10790
7	24.62930	−81.10497
8	24.62500	−81.10317

The Elbow SPA

Point	Latitude	Longitude
1	25.14950	−80.26050
2	25.14917	−80.25367
3	25.13633	−80.26067
4	25.14167	−80.26783
5	25.14320	−80.26640
6	25.14720	−80.26266
7	25.14950	−80.26050

Turtle Rocks SPA

Point	Latitude	Longitude
1	25.30828	−80.20750
2	25.27452	−80.23195
3	25.28222	−80.24276
4	25.31519	−80.22184
5	25.30828	−80.20750

Turtle Shoal SPA

Point	Latitude	Longitude
1	24.73452	−80.92027
2	24.72375	−80.91202
3	24.71386	−80.93661
4	24.72406	−80.94341
5	24.73452	−80.92027

Appendix G to Subpart P of Part 922—Conservation Areas Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The boundary for the following Conservation Areas begins at each individual zone's Point 1 and continues to each successive point in numerical order until ending at that same zone's last point as listed in its specific coordinate table.

Conch Reef Conservation Area

Point	Latitude	Longitude
1	24.95167	−80.44883
2	24.94717	−80.45433
3	24.94986	−80.45703
4	24.95567	−80.45433
5	24.95167	−80.44883

Eastern Sambo Conservation Area

Point	Latitude	Longitude
1	24.48950	−81.66600
2	24.49617	−81.66717
3	24.49733	−81.65983
4	24.49250	−81.65583
5	24.48950	−81.66600

Tennessee Reef Conservation Area

Point	Latitude	Longitude
1	24.77003	−80.75115
2	24.75788	−80.74189
3	24.75157	−80.75147
4	24.76495	−80.75955
5	24.77003	−80.75115

Tortugas North Conservation Area

Point	Latitude	Longitude
1	24.76667	−83.10000
2	24.76667	−82.90000
3	24.76333	−82.80000
4	24.72610	−82.80000
5	24.72537	−82.86646
6	24.71690	−82.89975
7	24.65000	−82.96674
8	24.65000	−83.10000
9	24.76667	−83.10000

Tortugas South Conservation Area

Point	Latitude	Longitude
1	24.55017	−83.16643
2	24.55000	−83.08333
3	24.30000	−83.08333
4	24.30084	−83.16711
5	24.55017	−83.16643

Western Sambo Conservation Area

The Western Sambo Conservation Area boundary begins approximately 6 miles south of Boca Chica Key at Point 1. From Point 1 the boundary continues to Point 2 and Point 3. From Point 3 the boundary continues towards Point 4 until it intersects the shoreline. From this intersection the boundary continues east following the shoreline until it intersects the line segment formed between Point 5 and Point 6. From this intersection the boundary continues to Point 6 and ends at Point 7.

Point	Latitude	Longitude
1	24.47295	−81.70024
2	24.46655	−81.72928
3	24.49877	−81.72544
4*	24.55794	−81.71838
5*	24.56201	−81.67996
6	24.50469	−81.69301
7	24.47295	−81.70024

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone's boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Within the Western Sambo Conservation Area, an additional no anchor zone surrounds the offshore reef tract. The boundary for the Western Sambo Conservation Area No Anchor zone begins at Point 1 and continues to each successive point in numerical order until ending at Point 5.

Western Sambo Conservation Area

No Anchor

Point	Latitude	Longitude
1	24.49877	−81.72544
2	24.50469	−81.69301
3	24.47295	−81.70024
4	24.46655	−81.72928
5	24.49877	−81.72544

Appendix H to Subpart P of Part 922—Restoration Areas—Habitat Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The boundary for the following Restoration Areas—Habitat zones begins at each individual zone's Point 1 and continues to each successive point in numerical order until ending at that same zone's last point as listed in its specific coordinate table.

Cheeca Rocks East Restoration Area—Habitat

Point	Latitude	Longitude
1	24.90299	−80.61106
2	24.90298	−80.60901
3	24.90194	−80.60902
4	24.90195	−80.61106
5	24.90299	−80.61106

Cheeca Rocks South Restoration Area—Habitat

Point	Latitude	Longitude
1	24.89782	−80.62210
2	24.89846	−80.61492
3	24.89581	−80.61500
4	24.89587	−80.62216
5	24.89782	−80.62210

Horseshoe Reef Restoration Area—Habitat

Point	Latitude	Longitude
1	25.13797	−80.29796
2	25.14422	−80.29317
3	25.13806	−80.28500
4	25.13196	−80.28979
5	25.13797	−80.29796

Pickles Reef Restoration Area—Habitat

Point	Latitude	Longitude
1	24.97864	−80.43372
2	24.97866	−80.44120

Point	Latitude	Longitude
3	24.98488	−80.44055
4	24.98459	−80.43332
5	24.97864	−80.43372

Appendix I to Subpart P of Part 922—Restoration Areas—Nursery Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The boundary for the following Restoration Areas—Nursery zones begins at each individual zone's Point 1 and continues to each successive point in numerical order until ending at that same zone's last point as listed in its specific coordinate table.

Carysfort Reef Restoration Area—Nursery

Point	Latitude	Longitude
1	25.23492	−80.21169
2	25.23231	−80.21302
3	25.23405	−80.21709
4	25.23671	−80.21573
5	25.23492	−80.21169

Islamorada Restoration Area—Nursery

Point	Latitude	Longitude
1	24.88775	−80.56321
2	24.88777	−80.56754
3	24.89171	−80.56753
4	24.89169	−80.56319
5	24.88775	−80.56321

Key Largo Restoration Area—Nursery

Point	Latitude	Longitude
1	25.08091	−80.31483
2	25.08484	−80.31479
3	25.08482	−80.31048
4	25.08089	−80.31050
5	25.08091	−80.31483

Looe Key East Restoration Area—Nursery

Point	Latitude	Longitude
1	24.55911	−81.40124
2	24.56385	−81.40272
3	24.56554	−81.39802
4	24.56109	−81.39638
5	24.55911	−81.40124

Looe Key West Restoration Area—Nursery

Point	Latitude	Longitude
1	24.55149	−81.41663
2	24.55200	−81.4135
3	24.54745	−81.41267
4	24.54705	−81.41568
5	24.55149	−81.41663

Marathon Restoration Area—Nursery

Point	Latitude	Longitude
1	24.66333	−81.02078
2	24.66333	−81.02780
3	24.66986	−81.02781
4	24.66986	−81.02078
5	24.66333	−81.02078

Marker 32 Restoration Area—Nursery

Point	Latitude	Longitude
1	24.47712	−81.77809
2	24.48104	−81.77811
3	24.48105	−81.77368
4	24.47717	−81.77372
5	24.47712	−81.77809

Middle Keys Restoration Area—Nursery

Point	Latitude	Longitude
1	24.65659	−81.02141
2	24.65858	−81.01799
3	24.65533	−81.01548
4	24.65337	−81.01932
5	24.65659	−81.02141

Sand Key Restoration Area—Nursery

Point	Latitude	Longitude
1	24.45983	−81.88394
2	24.45605	−81.88389
3	24.45603	−81.88804
4	24.45981	−81.88808
5	24.45983	−81.88394

Tavernier Restoration Area—Nursery

Point	Latitude	Longitude
1	24.98883	−80.42110
2	24.99140	−80.41819
3	24.98708	−80.41356
4	24.98417	−80.41647
5	24.98883	−80.42110

The Elbow Restoration Area—Nursery

Point	Latitude	Longitude
1	25.14320	−80.26640
2	25.14515	−80.26901
3	25.14928	−80.26534
4	25.14720	−80.26266
5	25.14320	−80.26640

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Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Fuel System Integrity of Hydrogen Vehicles; Compressed Hydrogen Storage System Integrity; Incorporation by Reference; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2024–0090]

RIN 2127–AM40

Federal Motor Vehicle Safety Standards; Fuel System Integrity of Hydrogen Vehicles; Compressed Hydrogen Storage System Integrity; Incorporation by Reference

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule establishes two new Federal Motor Vehicle Safety Standards (FMVSS) specifying performance requirements for all motor vehicles that use hydrogen as a fuel source. The final rule is based on Global Technical Regulation (GTR) No. 13, Hydrogen and Fuel Cell Vehicles. FMVSS No. 307, ''Fuel system integrity of hydrogen vehicles,'' specifies requirements for the integrity of the fuel system in hydrogen vehicles during normal vehicle operations and after crashes. FMVSS No. 308, ''Compressed hydrogen storage system integrity,'' specifies requirements for the compressed hydrogen storage system to ensure the safe storage of hydrogen onboard vehicles. These two standards will reduce deaths and injuries from fires due to hydrogen fuel leakages and/or explosion of the hydrogen storage system.

DATES:

Effective date: This final rule is effective July 16, 2025.

IBR date: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 16, 2025.

Compliance Dates: The compliance date is September 1, 2028.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received no later than March 3, 2025.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590. All petitions received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: DOT will post any petition for reconsideration, and any other submission, without edit, to *http://www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* Anyone is able to search the electronic form of all submissions to any of our dockets by the name of the individual submitting the submission (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For technical issues, Ian MacIntire, General Engineer, Special Vehicles & Systems Division within the Division of Rulemaking, at (202) 493–0248 or *Ian.MacIntire@dot.gov.* For legal issues, Paul Connet, Attorney-Advisor, NHTSA Office of Chief Counsel, at (202) 366–5547 or *Paul.Connet@dot.gov* or Evita St. Andre, Attorney-Advisor, NHTSA Office of Chief Counsel, at (617) 494–2767 or *Evita.St.Andre@dot.gov.* The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

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I. Executive Summary

Vehicle manufacturers have continued to seek out renewable and clean fuel sources as alternatives to gasoline and diesel. Compressed hydrogen has emerged as a promising potential alternative because hydrogen is an abundant element in the atmosphere and does not produce tailpipe greenhouse gas emissions when used as a motor fuel. However, hydrogen must be compressed to high pressures to be an efficient motor fuel and is also highly flammable, similar to other motor fuels. NHTSA has already set regulations ensuring the safe containment of other motor vehicle fuels such as gasoline in FMVSS No. 301, ''Fuel system integrity,'' and compressed natural gas (CNG) in FMVSS No. 304, ''Compressed natural gas fuel container integrity,'' and the fuel integrity systems of those fuels in FMVSS No. 301 and FMVSS No. 303, ''Fuel system integrity of compressed natural gas vehicles,'' respectively. No such standards currently exist in the United States covering vehicles that operate on hydrogen. Accordingly, this document establishes two new FMVSS to address safety concerns relating to the storage and use of hydrogen in motor vehicles, and to align the safety regulations of hydrogen vehicles with those of vehicles that operate using other fuel sources.

NHTSA published the Notice of Proposed Rulemaking (NPRM) on April 17, 2024, seeking comments on the proposed standards.[1] This final rule responds to and addresses the comments to the NPRM, reflecting input from stakeholders on various concerns and recommendations. The rule was developed in concert with efforts to harmonize hydrogen vehicle standards with international partners through the GTR process and harmonizes the FMVSS with GTR No. 13, Hydrogen and Fuel Cell Vehicles.[2]

The two new FMVSS established by this document are: FMVSS No. 307, ''Fuel system integrity of hydrogen vehicles,'' and FMVSS No. 308, ''Compressed hydrogen storage system integrity.'' FMVSS No. 307 regulates the integrity of the fuel system in hydrogen vehicles during normal vehicle operations and after crashes. To this end, it includes performance requirements for the hydrogen fuel system to mitigate hazards associated with hydrogen leakage and discharge from the fuel system, as well as post-crash restrictions on hydrogen leakage, concentration in enclosed spaces, container displacement, and fire. FMVSS No. 308 regulates the compressed hydrogen storage system (CHSS) itself and primarily includes performance requirements that ensure the CHSS is unlikely to leak or burst during use, as well as requirements intended to ensure that hydrogen is safely expelled from the container when it is exposed to a fire. FMVSS No. 308 also specifies performance requirements for different closure devices in the CHSS.

FMVSS No. 308 applies to all motor vehicles that use compressed hydrogen gas as a fuel source to propel the vehicle, regardless of the vehicle's gross

[1] *See* 89 FR 27502 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

[2] A copy of GTR No. 13 as updated by the Phase 2 amendments is available at: *https://unece.org/sites/default/files/2023-07/ECE-TRANS-180-Add.13-Amend1e.pdf*

vehicle weight rating (GVWR), except vehicles that are only equipped with cryo-compressed hydrogen storage systems or solid-state hydrogen storage systems to propel the vehicle. Portions of FMVSS No. 307 also apply to all motor vehicles that use compressed hydrogen gas as a fuel source to propel the vehicle, regardless of the vehicle's GVWR. However, while FMVSS No. 307's fuel system integrity requirements during normal vehicle operations apply to both light vehicles (vehicles with a GVWR of 4,536 kg or less) and to heavy vehicles (vehicles with a GVWR greater than 4,536 kg), FMVSS No. 307's post-crash fuel system integrity requirements apply only to compressed hydrogen-fueled light vehicles and to all

II. Background

A. Overview of GTR No. 13

1. The GTR Process

The United States is a contracting party to the the Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles (''1998 Agreement''). This agreement entered into force in 2000 and is administered by the United Nations Economic Commission for Europe's (UN ECE's) World Forum for the Harmonization of Vehicle Regulations (WP.29). The purpose of this agreement is to establish Global Technical Regulations (GTRs).

At its 160th session in June 2013, UN ECE WP.29 formally adopted the proposal to establish GTR No. 13. NHTSA chaired the development of GTR No. 13 and voted in favor of establishing GTR No. 13. The Phase 2 updates to GTR No. 13 were adopted at the 190th Session of WP.29 on June 21, 2023.[3]

As a Contracting Party Member to the 1998 Global Agreement that voted in favor of GTR No. 13 and the Phase 2 updates to GTR No. 13, NHTSA is obligated to initiate the process used in the U.S. to adopt Phase 2 GTR No. 13 as an agency regulation. This process was initiated by the NPRM published on April 17, 2024. NHTSA is not obligated to adopt the GTR, in whole or in part, after initiating this process. Additionally, NHTSA may adopt a modified version of the GTR to ensure that it meets relevant requirements. In deciding whether to adopt a GTR as an FMVSS, NHTSA follows the requirements for NHTSA rulemaking, including the Administrative Procedure Act, the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act), Presidential Executive Orders, and DOT and NHTSA policies, procedures, and regulations. Among other things, FMVSS issued under the Vehicle Safety Act ''shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.''

2. GTR No. 13 and Phase 2 Updates

GTR No. 13 specifies safety-related performance requirements and test procedures with the purpose of minimizing human harm that may occur as a result of fire, burst, or explosion related to the hydrogen fuel system of vehicles. The regulation consists of system performance requirements for CHSS, CHSS closure devices, and the vehicle fuel delivery system. GTR No. 13 does not specify the type of crash tests for post-crash safety evaluation and instead permits Contracting Parties to use their domestic regulated crash tests.

The Phase 2 updates of GTR No. 13 accomplished several goals, including: broadening of the scope and application of GTR No. 13 to cover heavy/commercial vehicles; harmonizing, clarifying, and expanding the requirements for thermally-activated pressure relief device (TPRD) discharge direction in case of controlled release of hydrogen; strengthening test procedures for containers with pressures below 70 MPa, including comprehensive fire exposure tests; and extending the requirements to 25 years to more accurately capture the expected useful life of vehicles.

B. April 2024 NPRM

The April 2024 NPRM[4] proposed to establish two new FMVSS for hydrogen vehicles that are based on GTR No. 13, Phase 2. The proposed FMVSS No. 307, ''Fuel System Integrity of Hydrogen Vehicles,'' is designed to set performance requirements to ensure the integrity of the hydrogen fuel system during normal vehicle operations and after crashes. These requirements aimed to mitigate safety risks associated with hydrogen fuel leakages, fires, and explosions, ensuring that hydrogen would not pose risks to vehicle occupants or those nearby. The standard addressed the hazards posed by the flammability of hydrogen and its tendency to leak under high pressure, particularly in crash scenarios.

FMVSS No. 307 prescribes a series of performance standards aimed at ensuring the safety of hydrogen vehicle fuel systems during both normal operations and post-crash scenarios. The NPRM proposed five key performance requirements for hydrogen fueling receptacles to prevent leakage, incorrect fueling, and contamination from dirt or water. These included reverse flow prevention, clear labeling, positive locking, protection against contamination, and secure placement to avoid crash-related deformations. An over-pressure protection device requirement was proposed to protect downstream components from excessive pressure. The proposal also included requirements for hydrogen discharge mechanisms, specifying that vent lines must be protected from dirt and water and that hydrogen gas discharge must be directed safely away from critical components like the wheels, doors, and emergency exits.

The NPRM also proposed requirements in FMVSS No. 307 to protect against flammable conditions. These included a visual warning system that would alert the driver if hydrogen concentrations reached dangerous levels (above 3% in enclosed or semi-enclosed spaces), and an automatic shut-off valve closure if hazardous hydrogen concentrations were detected. The proposed standard further specified that hydrogen concentrations in the exhaust system must not exceed set thresholds during normal vehicle operation.

In post-crash scenarios, the proposal set limits on fuel leakage and specified crash tests to ensure that the hydrogen containers remained intact and that any post-crash hydrogen leakage remained within manageable limits. The proposal allowed a hydrogen leak rate not to exceed 118 normal liters per minute for a duration of 60 minutes after impact.

The NPRM also proposed establishing FMVSS No. 308, ''Compressed Hydrogen Storage System Integrity,'' focused on ensuring the safety and durability of the CHSS used in hydrogen vehicles. The proposed standard outlined performance requirements for the CHSS to prevent leaks, bursts, and other failures during normal vehicle use and under extreme conditions, such as exposure to fire. The proposal included tests and performance criteria to evaluate the CHSS's resistance to various stress factors that could occur over the vehicle's lifetime. The CHSS, which includes components such as the hydrogen container, check valve, shut-off valve, and TPRD, was required to meet several durability and safety benchmarks throughout its operational lifespan.

The proposal established specific requirements for hydrogen containers,

[3] *See https://unece.org/sites/default/files/2023-07/ECE-TRANS-180-Add.13-Amend1e.pdf.*

[4] *See* 89 FR 27502 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

which are the primary components of the CHSS. Testing procedures for these containers included hydraulic pressure tests to evaluate burst thresholds, pressure cycling tests to simulate long-term use in service, and tests applying a series of external stress factors such as impact, chemical exposure, high and low temperatures, high pressure hold, and over-pressure along with pressure cycling to assess the container's durability against leak or burst during its lifetime.

The proposed FMVSS No. 308 also included an on-road performance test for the entire CHSS to ensure the CHSS contains hydrogen without leak or burst. This test uses on-road operating conditions including fueling and defueling the container at different ambient conditions with hydrogen gas at low and high temperatures, a static high-pressure hold, and an overpressure, designed to replicate the stress factors the system could encounter during a vehicle's operational life.

Fire exposure testing was another critical aspect in the proposed FMVSS No. 308, evaluating whether the CHSS could prevent dangerous hydrogen release or explosion in a vehicle fire scenario. The proposed fire test includes a localized and engulfing stage, which were developed based on real vehicle fire data. The NPRM also proposed requirements for the CHSS's closure devices (check valves, shut-off valves, and TPRDs). Additionally, the NPRM proposed labeling requirements in FMVSS No. 308 for hydrogen containers.

Together, the two proposed standards, FMVSS No. 307 and FMVSS No. 308, aimed to align U.S. regulations with GTR No. 13 and address the specific safety challenges posed by hydrogen as a vehicle fuel source.

C. How the Final Rule Differs From the NPRM

The final rule largely mirrors the proposed standards, with some minor changes to the requirements and test procedures based on the public comments and feedback received. Details of the reasoning behind each of the changes is provided in relevant sections of the notice.

FMVSS No. 307, established by this final rule, differs from the proposed FMVSS No. 307 in the following ways:

- Revises the definition for enclosed or semi-enclosed spaces to be more specific and avoid ambiguity.
- Removes the requirement for an overpressure protection device.
- Removes the requirement that the fueling receptacle ''shall not be mounted to or within the impact energy-absorbing elements of the vehicle.''
- Removes the requirements for specific TPRD discharge angles.
- Eliminates the option to use an electronic leak detector in section S6.6, leaving leak detection liquid as the only applicable test method.
- Revises the regulatory text in instances where the NPRM stated that the vehicle is set to the ''on'' or ''run'' position (and preventing the vehicle from idling) to instead state that the propulsion system shall be operational.

FMVSS No. 308, established by this final rule, differs from the proposed FMVSS No. 308 in the following ways:

- Excludes cryo-compressed and solid-state hydrogen storage systems from the requirements in FMVSS No. 308.
- Requires manufacturers to provide the median initial burst pressure for a container (BP_O) within fifteen business days instead of five.
- Removes the requirement to include BP_O on the container label.
- Removes the requirement for container burst pressure variability to be within 10 percent of BP_O.
- Changes the requirement that the manufacturer specify the primary constituent of the container to specifying whether the primary constituent of the container is glass fiber composite.
- Increases the timeframe from 5 business days to 15 business days for manufacturers to submit vehicle-specific information for testing purposes.
- Revises the cycling rate for the baseline initial pressure cycle test to be no more than ten cycles per minute.
- Removes the minimum time of three minutes to sustain a visible leak before the baseline initial pressure cycle test can end successfully due to ''leak before burst.''
- Removes the proof pressure test from both the test for performance durability and the test for expected on-road performance.
- Permits the option to conduct the closure tests with an inert gas such as helium instead of hydrogen gas.

For both standards, various editorial and clerical updates were made to improve clarity and consistency throughout the document.

III. Summary of Comments

The NPRM preceding this final rule included requests for comment on several topics. From April 17, 2024, to July 17, 2024, the agency received 31 comments on the NPRM, four of which were requests to extend the NPRM comment period.[5] The comments were generally supportive of the proposed rule, particularly regarding harmonization with international regulations. Many commenters suggested modifications to the proposed requirements, including details of various test procedures. Of the 26 unique comments, the majority (21 comments) were submitted by vehicle and component manufacturers and industry associations. Comments were also submitted by standards testing laboratories (1 comment), and other stakeholders (4 comments).

The vehicle and component manufacturers that provided comments were Ballard Power Systems (''Ballard''), Daimler Truck North America (''DTNA''), Ford Motor Company (''Ford''), Glickenhaus Zero and Scuderia Cameron Glickenhaus LLC (collectively, ''Glickenhaus''), Hexagon Agility, Inc. (''Agility''), Hyundai America Technical Center, Inc. (''HATCI''), Hyundai Motor Group (''Hyundai''), Luxfer Gas Cylinders, New Flyer of America (''NFA''), Nikola Corporation (''Nikola''), Noble Gas Systems (''NGS''), Hyzon Motors Inc. (Hyzon), H2MOF, Inc. (''H2MOF''), Quantum Fuel Systems, LLC (''Quantum''), Verne, Inc. (''Verne''), Westport Fuel Systems Canada, Inc. (''WFS''), and Air Products and Chemicals, Inc. (''Air Products'').

The industry associations that provided comments were the Alliance for Automotive Innovation (''Auto Innovators''), The Vehicle Suppliers Association (''MEMA''), the Transport Project (''TTP''), and the Truck and Engine Manufacturers Association (''EMA''). Some manufacturers stated support for the comments submitted by an industry association.

The testing laboratory that provided comments was TesTneT Canada, Inc. (''TesTneT''). The other stakeholders that provided comments were Faurecia Hydrogen Solutions (''FORVIA''), Consumer Reports, Newhouse Technology, LLC (''Newhouse''), and an anonymous commenter.

IV. Response to Comments on Proposed Requirements

A. Deviation From GTR No. 13

Several commenters submitted repeated comments for many sections of the proposed FMVSS Nos. 307 and 308 asking that the agency follow GTR No.

[5] In response to the comments to extend the comment period, NHTSA extended the comment period for the NPRM by 30 days. The original comment period for the NPRM was scheduled to end on June 17, 2024. The extended comment period ended on July 17, 2024.

13 exactly, often without further explanation or justification. Several commenters also stated that the agency should completely harmonize with various industry standards.

Commenters seem to misunderstand the requirements of the 1998 Agreement and NHTSA's obligation under the Agreement. As noted earlier, under the 1998 Agreement, NHTSA must propose a GTR on which it has voted in the affirmative. NHTSA is committed to harmonizing to the extent practical, but NHTSA is not required to finalize the text of a GTR when it has justification to deviate from that text. The 1998 Agreement, by design, does not include mutual recognition [6] because the 1998 Agreement spans different regulatory regimes (*i.e.,* type approval and self-certification), and it acknowledges the domestic rulemaking and substantive legal requirements in the United States.

The FMVSS are designed to be a unique set of regulations tailored specifically for the United States' regulatory approach to vehicle safety. FMVSS must adhere strictly to principles of objectivity and verifiability, as these are foundational to the self-certification process required in the U.S. automotive market. Some other standards, like industry standards and regulations from other countries, may include some degree of subjectivity or flexibility in their criteria due to their broader focus and the differing regulatory frameworks across countries.

NHTSA aimed to harmonize FMVSS Nos. 307 and 308 with GTR No. 13 and the related industry standards to the maximum extent possible. However, it was not always feasible or appropriate to match the regulations word for word. FMVSS must remain objective, ensuring that every requirement is clear, measurable, and enforceable. FMVSS must also have clear, unambiguous test procedures with minimal discretion given to test facilities. This requirement ensures the integrity of the self-certification system and protects consumers and manufacturers alike. Ignoring these fundamental requirements for FMVSS would undermine the effectiveness of FMVSS and could potentially compromise vehicle safety in the U.S.

[6] Mutual recognition occurs when two or more countries or other institutions recognize one another's decisions or policies, for example in the field of conformity assessment, professional qualifications or in relation to criminal matters.

B. FMVSS No. 308, ''*Compressed Hydrogen Storage System Integrity*''

1. FMVSS No. 308 as a Vehicle-Level Standard

Background

Consistent with GTR No. 13, NHTSA proposed that FMVSS No. 308 be a vehicle-level standard, rather than an equipment standard. Some performance requirements and test procedures for the CHSS in FMVSS No. 308 are specific to the vehicle design and to its gross vehicle weight rating. NHTSA sought comment on whether FMVSS No. 308 should remain a vehicle standard.

Comments Received

Auto Innovators expressed concern about NHTSA's proposal to structure FMVSS No. 308 as a vehicle-level standard, arguing that the development and quality assurance of CHSS require specialized knowledge. Since many vehicle manufacturers source CHSS from independent suppliers, Auto Innovators suggested that compliance responsibility should lie with the CHSS supplier. It further stated that it is unclear how vehicle manufacturers could practically implement testing, given that CHSS design is more applicable to suppliers. It also emphasized the importance of including replacement parts in FMVSS No. 308 to maintain consistency and ensure integrity during repairs.

DTNA supported the proposal to maintain FMVSS No. 308 as a vehicle-level standard. It agreed that the performance requirements should apply only to originally equipped CHSS and stated that further research is needed before addressing replacement CHSS. It also concurred that the CHSS performance should be evaluated based on vehicle design and gross vehicle weight rating.

EMA recommended revising FMVSS No. 308 to apply as an equipment standard that would also include replacement containers. It proposed that both motor vehicles using compressed hydrogen gas and containers designed to store it should be subject to the standard.

Glickenhaus advocated for FMVSS No. 308 to focus on tank-level testing rather than vehicle-level certification, arguing that CHSS components should be certified by the component manufacturer. It pointed out that NHTSA has a precedent in other FMVSS standards for differentiating requirements based on vehicle weight and size, and suggested that FMVSS No. 308 could follow a similar approach. This approach, according to Glickenhaus, would reduce costs by allowing tanks to be certified for use across multiple vehicle platforms without re-certification for each vehicle.

H2MOF proposed that FMVSS No. 308 remain a component standard with applicability for hydrogen storage systems ranging from 10 MPa to 70 MPa.

Nikola stated that FMVSS No. 308 should remain a separate standard but questioned why replacement parts should not be required to meet the standard and suggested using separate markings to indicate which vehicle types a particular component is suitable for.

Newhouse suggested that FMVSS No. 308 should be an equipment standard focusing on the fuel container and directly integral components, such as the valve and TPRD. It recommended that FMVSS No. 307 cover system issues, including the connection of fuel containers with tubing.

FORVIA agreed with not extending FMVSS No. 308 to replacement parts, stating it would provide replacement parts equivalent to the original ones.

Luxfer Gas Cylinders referenced compliance with FMVSS No. 304, where CNG fuel containers were purchased directly from manufacturers, and questioned whether NHTSA intended to purchase hydrogen vehicles to obtain CHSS for testing. It also asked if NHTSA plans to test both containers and TPRDs from container manufacturers or vehicle providers. It stated that FMVSS No. 308 would be more appropriate as a component-level standard since it focuses on performance tests for CHSS rather than the vehicle as a whole.

Agency Response

NHTSA is maintaining FMVSS No. 308 as a vehicle-level standard, as proposed. Several requirements in FMVSS No. 308 are specific to the vehicle design and to the gross vehicle weight rating of the vehicle in which a CHSS is installed.[7] It is not possible to fully evaluate the performance of a CHSS without knowledge of the vehicle in which it is installed.

While CHSSs may be sourced from specialized equipment suppliers, vehicle manufacturers must ensure that the CHSS installed on their vehicles meet all applicable FMVSS requirements to certify that the entire vehicle is compliant. Vehicle manufacturers may consider working

[7] For example, as discussed below, the number of pressure cycles to which the container is subjected during the baseline initial pressure cycle test is dependent on the vehicle GVWR, with a different number of cycles required for light and heavy vehicles.

closely with CHSS suppliers regarding system design to ensure all requirements are met for a particular vehicle.

Following the lead of GTR No. 13, FMVSS No. 308 establishes standards intended to ensure the safety and integrity of the CHSS throughout the lifetime of a vehicle. NHTSA recognizes that some containers and parts may still need to be replaced due to damage incurred through extraordinary events or due to defects, but in general, the agency expects the demand for replacement CHSS parts to be minimal. Given the likely low demand for replacement containers by ordinary consumers, the limited current market penetration of hydrogen vehicles, and the fact that any recalls will be serviced by manufacturers, we expect the market for aftermarket products to be negligible, and that replacement parts will be supplied predominantly through OEMs, therefore obviating the safety need to set an equipment-level standard. However, NHTSA will monitor the deployment of hydrogen vehicles and how consumers are replacing parts of the fuel system and update the standard as necessary.

While NHTSA recognizes that some manufacturers would prefer that FMVSS No. 308 be an equipment standard, thus potentially shifting the burden of certification onto other entities like suppliers, NHTSA remains invested in ensuring that the end product it regulates—the vehicle—is as safe as possible. The safety of the end product is most important to protecting consumers and the public. Because a compliant CHSS is essential to certifying the safety of the end product, NHTSA maintains the vehicle-level standard. Additionally, NHTSA expects that manufacturers will maintain proper record-keeping practices, including detailed hardware bills of materials, to ensure traceability to originating suppliers.

Regarding the procurement of CHSS or subcomponents for compliance testing, NHTSA will have the option of purchasing complete vehicles or the relevant replacement parts from the vehicle or sub-component manufacturer. This flexibility will enable NHTSA to obtain the needed vehicle and components to conduct compliance testing efficiently.

Additionally, final-stage vehicle manufacturers will not necessarily be required to conduct CHSS testing themselves. Vehicle manufacturers must take reasonable care in certifying that their vehicles meet FMVSS No. 308, but they are not required to follow any set testing procedure and may, if they find it reasonable, work with CHSS suppliers to ensure compliance with FMVSS No. 308. This approach allows vehicle manufacturers to use their discretion in determining which party is best suited to conduct specific tests. This arrangement is often formalized through contractual obligations, with CHSS suppliers guaranteeing the functionality of their systems and agreeing to supply replacement parts exclusively through the vehicle manufacturer, ensuring consistency and regulatory compliance.

2. FMVSS No 307 and 308 as Separate Standards

Background

NHTSA sought comment on whether FMVSS Nos. 307 and 308 should be combined into a single standard in the final rule.

Comment Received

Luxfer Gas Cylinders commented that it would be better to keep FMVSS Nos. 307 and 308 separate. EMA also supported maintaining separate standards, recommending that FMVSS No. 308 be applicable to vehicles using hydrogen as a motor fuel, as well as to hydrogen containers designed for on-board storage, similar to FMVSS No. 304 for CNG containers. Glickenhaus agreed that FMVSS Nos. 307 and 308 should remain distinct. H2MOF similarly stated that the two standards should not be combined. Nikola argued that FMVSS No. 308 should remain its own standard, pointing out that component-specific testing is common in FMVSS regulations, citing examples such as FMVSS Nos. 106, 108, and 304. Nikola further suggested that FMVSS No. 307 should cover vehicle-level requirements, while FMVSS No. 308 should address component-specific requirements. Hyundai supported the separation of the standards, stating that it is logical to distinguish between fuel system integrity and hydrogen storage system requirements, drawing a parallel with FMVSS Nos. 303 and 304 for CNG vehicles. FORVIA, while generally neutral, expressed a preference for combining the standards, suggesting that doing so could simplify future amendments and create a more consistent alignment with GTR No. 13.

Agency Response

NHTSA is keeping FMVSS No. 307 and FMVSS No. 308 as separate standards, as proposed. This separation will make future management of the standards more efficient and is consistent with FMVSS No. 303, ''Fuel system integrity of compressed natural gas vehicles,'' and FMVSS No. 304. All commenters on this matter supported requirements in separate standards, as proposed. Regarding H2MOF's comment, NHTSA does not believe that combining FMVSS No. 307 and 308 into a single standard will improve consistency with GTR No. 13. Consistency relates to the specifics of the requirements themselves, and is not based on whether those requirements are in a single standard or in two standards.

3. Change of Design Table

Background

Some international standards include what is known as a ''change of design table.'' This type of table is used in type-approval regulatory systems to specify what qualification testing must be redone for a given change in an approved system's design. GTR No. 13 does not contain a change of design table because GTRs are neutral toward the different national certification systems used and change of design tables are only relevant in type-approval systems.

Comments Received

Quantum Fuel Systems, LLC commented that the proposed standard omits the deviation table, also known as a change of design table, that is included in Economic Commission for Europe Regulation No. 134, (UN ECE R134).[8] Quantum Fuel Systems, LLC stated that the only difference between GTR No. 13 and UN ECE 134 is that UN ECE 134 also includes a deviation table. Quantum Fuel Systems, LLC provided a copy of the change of design table in UN ECE R134. Quantum Fuel Systems, LLC stated it would like the change of design table to be added to the FMVSS Nos. 307 and 308 standards.

Agency Response

NHTSA is not including a change of design table in FMVSS Nos. 307 and 308. Change of design tables are not relevant to FMVSS because FMVSS are self-certification standards. Manufacturers themselves are responsible for determining if any design changes require re-certification of the overall design or system.

[8] *See* Economic Commission for Europe Regulation No. 134, *Uniform provisions concerning the approval of motor vehicles and their components with regard to the safety related performance of hydrogen-fuelled vehicles. https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2015/R134e.pdf.*

4. Compressed Hydrogen Storage System

a. Container Definition

Background

GTR No. 13 defines a container as ''the pressure-bearing component on the vehicle that stores the primary volume of hydrogen fuel in a single chamber or in multiple permanently interconnected chambers.'' NHTSA proposed a similar definition with the following modifications:

- Replace ''the vehicle'' with ''a compressed hydrogen storage system'' to clarify that the container is a subcomponent of a CHSS, and therefore a container cannot exist on its own without the other components of the CHSS.
- Remove the word ''primary'' because this word introduces ambiguity regarding secondary or tertiary volumes of stored hydrogen.
- Add the word ''continuous'' to clarify that a container does not have any valves or other obstructions that may separate its different chambers.

Thus, NHTSA proposed that ''container means pressure-bearing component of a compressed hydrogen storage system that stores a continuous volume of hydrogen fuel in a single chamber or in multiple permanently interconnected chambers.'' NHTSA sought comment on the proposed definition for the container.

Comments Received

Commenters provided a range of opinions on NHTSA's proposed definition of ''container'' in FMVSS No. 308. Auto Innovators suggested that NHTSA should harmonize with the definition in GTR No. 13, stating that it is well understood and provides sufficient clarity without necessitating a new definition. Similarly, DTNA raised concerns that removing the word ''primary'' could introduce ambiguity, particularly in relation to whether plumbing and piping systems might be considered part of the container and thus subject to the same testing requirements as the container itself. It requested clarification that such systems are not part of the container.

Glickenhaus and H2MOF expressed support for the proposed definition, with Glickenhaus backing the entire proposal and H2MOF agreeing with the characterization of a container as consisting of a single chamber or multiple interconnected chambers. However, Agility voiced concerns about the practicality of certain performance tests, specifically with live lines, and requested clarification on how multiple-chamber containers would be tested.

Several commenters, including Nikola, WFS, TesTneT, and FORVIA, advocated for retaining the definition from GTR No. 13. WFS suggested that if changes are necessary, only the modification to replace ''the vehicle'' with ''a compressed hydrogen storage system'' should be adopted, while the term ''primary'' should remain to prevent confusion between containers and the CHSS. FORVIA also opposed adding the term ''continuous,'' noting that it could mislead interpretations of interconnected chambers. It suggested that further clarification could be provided through additional notes, especially regarding the definition of ''permanently interconnected.''

HATCI supported NHTSA's proposed definitions for the container, closure devices, shut-off valves, and container attachments, stating agreement with the rationale provided.

Agency Response

NHTSA is maintaining the definition of container as proposed. It is important to indicate in the definition that a container is a component of a CHSS, rather than simply a component of a vehicle. This language makes clear that a container cannot exist outside a CHSS. In other words, there can be no ''independent'' containers that are not part of a CHSS. This clarification is important because the CHSS includes the critical safety functions of shut-off valve, check valve, and TPRD, as discussed below. A container without these functions is unsafe and is not permitted by the standard. All containers must exist as a component of a CHSS, and a vehicle may not have containers that are not part of a CHSS.

It is also important to remove the word ''primary'' from the definition of container. Including the word ''primary'' could introduce ambiguity about secondary or tertiary volumes of stored hydrogen, or secondary or tertiary containers on the vehicle. All containers onboard a vehicle that supply hydrogen to propel the vehicle need to be regulated by the standard, and including the word primary in the definition could imply that only the ''first'' or ''primary'' container is covered by the regulation, while other ''secondary'' containers and their respective CHSS are unregulated. This is not NHTSA's intent, and therefore the word ''primary'' has been removed.

Additionally, it is important to include the word ''continuous'' in the definition. This word is used to determine the specific volume that constitutes a container's single or multiple permanently interconnected chambers. The continuous volume that constitutes the container continues until it is ''interrupted'' or ''broken'' by a shut-off valve. Any continuous volume up to the shut-off valve is considered part of the container. For example, if there are lines [9] between a cylindrical chamber and the shut off valve, then those lines are considered part of the continuous volume that constitutes the container with hydrogen stored at high pressure. A conformable container design consisting of multiple small high-pressure cylinders interconnected by high-pressure piping that are all enclosed in a casing, and that collectively have one set of closure devices (*i.e.* shut-off valve, TPRD, check valve), would be considered as one container by this definition. Such conformable containers are in development for vehicle application in the near future.

Similarly, if two conventional high-pressure containers share a single shut-off valve through piping or lines, such lines present the same safety risks as the container itself, due to the large quantity of stored high-pressure hydrogen that could be uncontrollably released in the event of a failure of those lines to contain the hydrogen. Therefore, those lines would be required to undergo durability testing along with the remainder of the container. However, if the lines are attached to the cylindrical chamber with high pressure hydrogen after the shut-off valve, then they would not be considered part of the continuous volume that constitutes the container. These lines after the shut-off valve do not present the same safety risk of uncontrolled release of high-pressure hydrogen, due to the shut-off valve's ability to close and isolate the stored hydrogen.

Including the word continuous is also important to clarify that a container does not have any valves or other obstructions that may separate its different chambers, in the case of a container with multiple permanently interconnected chambers. There cannot be a shut-off valve or other obstruction between any of the chambers of a container that is composed of multiple permanently interconnected chambers (such as the example provided earlier of a conformable container). Containers composed of multiple chambers forming a continuous volume are tested as a single unit, whereas if there are valves or other obstructions that separate the chambers and ''break'' the continuous volume, the chambers are considered separate containers and are evaluated

[9] In this context, ''lines'' refers to any plumbing, piping, and/or connections where hydrogen fuel may be present.

separately. For example, in the case of three permanently interconnected chambers joined together by piping before a single shut-off valve, all three chambers and the piping together would be considered ''the container.'' Alternatively, if each of the three chambers had its own shut-off valve prior to the piping connections, then each of the three chambers would be a separate container.

Finally, NHTSA does not intend to apply the definition of container to fuel lines outside a CHSS after the shut-off valve, or to low pressure fuel system components downstream of the shut-off valve that may contain residual hydrogen. These lines are covered by other requirements such as the fuel system leakage requirement in FMVSS No. 307, discussed below, which specifies that the fuel system shall not leak, as evaluated by FMVSS No. 307 S6.6, *Test for fuel system leakage.*

b. Container Attachments Definition

Background

NHTSA proposed defining ''container attachments'' as ''non-pressure bearing parts attached to the container that provide additional support and/or protection to the container and that may be removed only with the use of tools for the specific purpose of maintenance and/or inspection.'' GTR No. 13 defined container attachments as ''non-pressure bearing parts attached to the container that provide additional support and/or protection to the container and that may be only temporarily removed for maintenance and/or inspection only with the use of tools.'' NHTSA's definition is similar to that in GTR No. 13 with some exceptions.

GTR No. 13 uses the phrase ''only temporarily removed for maintenance and/or inspection'' in the definition of container attachment. In the NPRM proposed definition, the words ''only temporarily'' and ''for maintenance and/or inspection,'' were removed because anything that can be removed temporarily can also be removed permanently. Additionally, from a regulatory perspective, it is not possible to control and monitor the purpose of removing the container attachments and so the phrase ''for maintenance and/or inspection'' was removed.

Comments Received

Several commenters, including Nikola, Auto Innovators, TesTneT, NGS, and FORVIA, suggested that the definition should remain aligned with GTR No. 13 to maintain consistency. Nikola expressed concern that changes could lead to unintended consequences, while Auto Innovators acknowledged NHTSA's rationale for removing the term ''temporary'' but stated that the amendment was unnecessary and recommended harmonization with GTR No. 13. TesTneT also noted that the proposed change was insignificant, and NGS recommended keeping the GTR No. 13 definition but adding a safety mark to parts critical to the system's function.

EMA proposed adding ''repair'' to the definition and emphasized the need for consistency between FMVSS Nos. 307 and 308. It pointed out a discrepancy in the wording of the definitions between the two standards and suggested it be addressed. FORVIA opposed permitting permanent removal of container attachments, stating that it could pose safety risks, and emphasized the need for allowing only temporary removal for repairs.

In contrast, H2MOF and HATCI supported NHTSA's proposed definition, with H2MOF agreeing directly and HATCI expressing support for the definitions of container attachments as well as other related components.

Agency Response

NHTSA is maintaining the definition of container attachments as proposed. The agency does not anticipate unintended consequences from removing the word ''temporary'' from the definition. By removing the word ''temporary,'' NHTSA is avoiding having to determine whether an attachment was designed to be removed permanently or temporarily. As stated in the NPRM, anything that can be removed temporarily can also be removed permanently, so a distinction between temporary removal and permanent removal is not meaningful.

It is also not necessary to add the word ''repair'' to the definition or keep the phrase ''for maintenance and/or inspection,'' because any attachments that can be removed for maintenance, inspection, or repair can also be removed for other reasons and FMVSS No. 308 cannot enforce the purpose of removing the attachments.

In response to the comment from EMA regarding discrepancy in the definition of container attachment in FMVSS Nos. 307 and 308, NHTSA acknowledges that the omission of ''and/'' from the definition in FMVSS No. 307 was a clerical omission and the definition has been corrected in this final rule.

c. Closure Devices Definition

Background

GTR No. 13 refers to closure devices as ''primary'' closure devices. This language creates ambiguity about potential secondary or tertiary closure devices. As a result, NHTSA proposed to define the term ''closure devices'' as ''the check valve(s), shut-off valve(s) and thermally-activated pressure relief device(s) that control the flow of hydrogen into and/or out of a CHSS'' and does not use the word ''primary.''

Comments Received

Commenters provided mixed feedback on NHTSA's proposal to remove the word ''primary'' from the definition of closure devices. HATCI supported NHTSA's proposed definitions and agreed with the rationale provided. On the other hand, Auto Innovators opposed the removal, stating that ''primary'' is necessary to distinguish between primary, secondary, and tertiary closure devices, which may be outside the regulation's scope. It recommended harmonizing with GTR No. 13, which it argued provides sufficient clarity by defining primary closure devices as those directly attached to the chamber or manifold. Glickenhaus also disagreed with the proposed change, noting that its design approach includes redundant safety measures for critical components. It questioned whether secondary shut-off valves would be considered part of the CHSS if the term ''primary'' was removed.

H2MOF commented that ''primary'' should remain, as additional devices like pressure-activated pressure relief devices may be required in some cases. It also suggested adding a clarification that CHSS test units do not need closure devices, as most tests are performed hydraulically. Nikola agreed that the definition should retain ''primary'' to differentiate between main shut-off valves and secondary valves like manual isolation valves, which are outside the document's scope.

DTNA noted its concern for removal of the word ''primary'' from the definition of ''closure devices.'' It stated that ''volumes of hydrogen that are located between other valves, often along the piping, could be considered part of the CHSS.'' WFS similarly recommended keeping the word ''primary,'' as its removal would create more ambiguity regarding the distinction between the CHSS and the broader fuel system. TesTneT and FORVIA also opposed the change, with FORVIA asserting that the differentiation between primary and

secondary closure devices is essential, as GTR No. 13 only covers primary devices. It stated that removing ''primary'' would create uncertainty about whether secondary closures are included.

Agency Response

NHTSA is keeping the proposed definition of closure devices. NHTSA's intention is to subject all TPRDs, check-valves, and shut-off valves that directly control flow of hydrogen into and/or out of the CHSS to the requirements of FMVSS No. 308 S5.1.5. Therefore, there is no need to identify closure devices as ''primary.'' Whether a closure device directly controls the flow into and/or out of the CHSS will be dispositive. Redundant, back-up, or downstream devices are not intended to be subject to the requirements of FMVSS No. 308 S.5.1.5.

There will be no confusion about ''other'' closure devices because the proposed definition specifically identifies only ''the check valve(s), shut-off valve(s) and thermally-activated pressure relief device(s) that control the flow of hydrogen into and/or out of a CHSS,'' and the CHSS is defined as ''a system that stores compressed hydrogen fuel for a hydrogen-fueled vehicle, composed of a container, container attachments (if any), and all closure devices required to isolate the stored hydrogen from the remainder of the fuel system and the environment.'' Any other device types, as well as any devices that do not directly control flow into and/or out of a CHSS, are not closure devices under this definition, or are not part of the CHSS and therefore are not subject to the requirements of FMVSS No. 308 S5.1.5. For example, a valve that is not providing the CHSS with one or all of its required functions of check valve, shut-off valve, and TPRD is not considered a closure device and would not be tested under the standard. Similarly, a valve located ''downstream'' from the CHSS shut-off valve is not considered a closure device since it would not be controlling flow into or out of the CHSS. Likewise, a ''manual isolation valve'' is not a shut-off valve because it is not automatically activated, and so would not be considered a closure device per the final rule.

d. Shut-Off Valve Definition

Background

GTR No. 13 defines a shut-off valve as ''a valve between the container and the vehicle fuel system that must default to the 'closed' position when not connected to a power source.'' NHTSA proposed adding the words ''electrically activated'' to the definition, so that a shut-off valve would be ''an electrically activated valve between the container and the vehicle fuel system that must default to the 'closed' position when not connected to a power source.''

Comments Received

Commenters expressed a strong preference for maintaining alignment with the definition of a shut-off valve as outlined in GTR No. 13. Nikola commented that the existing GTR No. 13 definition should be retained, arguing that other activation methods, such as pneumatic, are possible and that the proposed change to ''electrically activated'' would be overly prescriptive. Auto Innovators recommended harmonizing the definitions of shut-off valves in FMVSS Nos. 307 and 308 with the definition in GTR No. 13, noting that the definitions in these FMVSS standards are currently inconsistent. Similarly, DTNA requested the removal of ''electrically activated'' from the definition, suggesting that the term is not design-neutral and could limit future innovations. DTNA further proposed using the term ''automatically activated'' as a more inclusive option. EMA supported consistency with GTR No. 13 and recommended that NHTSA harmonize the definition of shut-off valves across FMVSS Nos. 307 and 308, offering an alternative definition that would omit ''electrically activated.''

Several commenters, including H2MOF and TesTneT, opposed adding ''electrically activated,'' with H2MOF stating that shut-off valves can also be pneumatically activated. WFS suggested that while leaving the definition as written in GTR No. 13 would suffice, there would be no harm in adding ''electrically activated'' if NHTSA felt it improved clarity. NGS and FORVIA also raised concerns about restricting future innovations, such as pneumatic systems, if the definition were limited to electrically activated valves. Both commenters advocated for retaining the GTR No. 13 wording to avoid stifling potential advancements in valve technology.

Agency Response

NHTSA agrees with the commenters and has removed the words ''electrically activated,'' consistent with the definition in GTR No. 13. This change avoids the possibility of being design restrictive by specifying ''electrically activated.'' NHTSA notes, however, that the definition indicates that the valve must default to the ''closed'' position when not connected to a power source, which directly implies the valve must utilize electrical actuation of some kind.

NHTSA made an editorial modification to the definition of ''shut-off valve'' by replacing the words ''when not connected to a power source'' with ''unpowered.'' This was an editorial change for conciseness. However, NHTSA omitted this update from the definition for shut-off valve in FMVSS No. 307, and only applied it in FMVSS No. 308. In the final rule, both definitions have been revised to reflect this update.

e. CHSS Definition

Background

NHTSA proposed a definition of the CHSS that matches the definition in GTR No. 13, with the exception of the removal of the word ''primary'' before ''closure devices,'' as discussed above.

Comments Received

Luxfer Gas Cylinders commented that the proposed definition of CHSS is appropriate but noted that most of the hydraulic performance tests in FMVSS No. 308 cannot be conducted with the check valve, shut-off valve, and TPRD attached to the container. NFA suggested that NHTSA should consider including Figure-3, the Typical CHSS diagram from the NPRM, in the standard to help clarify the definition.

Agency Response

NHTSA is maintaining the definition of CHSS as proposed. The regulatory text clearly specifies where the CHSS or its subcomponents, such as the container, must meet the various requirements. For example, FMVSS No. 308 S5.1.2 specifies that the test for performance durability is conducted only with the container, and in some cases, container attachments. As Luxfer Gas Cylinders points out, it is not possible to conduct hydraulic tests with the closure devices attached to the container.

NHTSA is not including a figure in the definition because the definition is already clear, and the referenced figure only shows a generic CHSS that may not be representative of all CHSS types that meet the definition.

f. Cryo-Compressed Hydrogen Systems

Background

Cryo-compressed hydrogen (CcH2) storage systems store compressed hydrogen gas at very low temperatures and high pressures. NHTSA proposed that FMVSS No. 307 and 308 would apply to ''each motor vehicle that uses compressed hydrogen gas as a fuel source.''

Comments Received

Verne, Inc. commented that many of the performance requirements in GTR No. 13 and FMVSS Nos. 307 and 308 are relevant for ensuring the safety of some aspects of cryo-compressed hydrogen storage systems. These aspects include crash safety, fire resistance, external vehicle hazards, and performance durability. However, Verne stated that these regulations do not adequately address the specific design, components, and service conditions of CcH2 systems. It further noted that CcH2 technology, which operates at a nominal working pressure (NWP) of 35 MPa and temperatures below −200 °C, is not sufficiently covered by existing global or local regulations, codes, and standards.

Verne requested clarification from NHTSA on whether CcH2 storage systems and hydrogen-powered vehicles using such systems fall under the scope of FMVSS Nos. 307 and 308 as a type of CHSS. Verne also stated that while CcH2 is not explicitly out of scope in GTR No. 13, there is a note in GTR No. 13 Part I Section C.3 that could suggest it should not be included. It emphasized that CcH2 systems meet the definition of CHSS, including key components like a container, TPRD, shut-off valve, and check valve.

Verne listed several ways in which CcH2 systems differ from conventional gaseous CHSS, such as the inclusion of additional devices like multiple pressure relief devices, insulation, and an all-metal vacuum jacket. It also highlighted that due to the pressure dynamics after fueling, the target and maximum fueling pressure should be set lower than 43.75 MPa, suggesting a target of 35 MPa and operational relief at 40 MPa. Furthermore, Verne noted that CcH2 systems are designed to operate at temperatures far below the typical range for gaseous hydrogen systems, with expected operational temperatures between −253 °C and +85 °C.

Verne requested an exemption from FMVSS No. 308 S5.1.3, *Test for expected on-road performance,* for CcH2 systems, stating that test primarily assesses the performance of non-metallic liners in Type 4 containers and non-metallic sealing interfaces. Verne stated that since CcH2 systems rely on metal-to-metal sealing designs to perform at cryogenic temperatures, they do not face the same vulnerabilities as systems using non-metallics. Verne also stated that the temperature conditions in the on-road performance test do not accurately reflect the normal or extreme operational conditions of CcH2 systems. It stated that the current requirements would make the test impossible to execute due to the lower setpoints of the PRDs in CcH2 systems. Finally, Verne stated that the test for on-road performance, as currently written, is costly and provides little safety assurance for CcH2 systems, recommending that it be revised to better suit the technology.

Agency Response

Verne, Inc. has highlighted significant differences between CcH2 and conventional CHSS,[10] including very low operational temperatures, the use of metal-to-metal sealing at cryogenic temperatures, and the presence of PRDs in the storage system. CcH2 systems operate under significantly different conditions than conventional CHSS, including lower temperatures and altered pressure dynamics. These technological distinctions would pose challenges for applying FMVSS No. 308 to CcH2 systems given that the current testing protocols do not adequately address these differences.[11]

GTR No. 13, on which FMSS No. 308 is based, was developed to consider conventional CHSS and does not yet provide sufficient guidance for CcH2 systems. GTR No. 13 acknowledges the potential inclusion of additional storage technologies, such as cryo-compressed systems, in future revisions of the GTR and as the development of these systems progresses. However, it is likely that more research and safety standard development will be required to address the technological distinctions between CcH2 systems and conventional CHSS before GTR No. 13 can be expanded to include these systems.

As such, applying the specific performance requirements of FMVSS No. 308 to vehicles utilizing CcH2 systems is not feasible. Therefore, NHTSA will not apply the requirements of FMVSS No. 308 to vehicles using CcH2 storage systems at this time. However, while CcH2 systems are unique hydrogen storage systems and distinct from conventional CHSSs, most of the vehicle fuel delivery system (piping, pressure regulators, filters, flow control valves, and heat exchangers) and the fuel cell system used to power and propel a vehicle with CcH2 storage systems are similar to those in hydrogen powered vehicles with conventional CHSSs. Additionally, the safety aspects associated with the hydrogen fuel delivery system and the fuel cell system in vehicles with CcH2 storage systems would be similar to that in vehicles with conventional CHSSs. Therefore, NHTSA will still require that vehicles utilizing CcH2, like all vehicles that use hydrogen fuel, meet the vehicle safety requirements outlined in FMVSS No. 307. These include provisions for in-use fuel system integrity and post-crash fuel system integrity, ensuring that vehicles using CcH2 technology maintain overall vehicle safety. Additionally, while NHTSA is exempting CcH2 systems from the requirements of FMVSS No. 308 at this time, NHTSA will continue to monitor developments in cryogenic storage technologies and associated safety standards to inform future regulatory actions.

g. Solid State Hydrogen Systems

Background

Solid-state hydrogen storage systems use advanced materials designed for the storage of hydrogen within solid structures. These materials are composed of porous frameworks onto which hydrogen can adsorb. These frameworks feature expansive internal surface areas that allow the capture and storage of hydrogen molecules within porous networks. These systems can store hydrogen at high densities due to their structural versatility and their ability to reversibly absorb and release hydrogen.

Comments Received

H2MOF commented that its solid-state hydrogen storage systems use adsorbent materials to store hydrogen safely and efficiently. H2MOF stated this method helps reduce costs associated with hydrogen storage, transportation, and use by avoiding the expenses of gas compression and cryogenic liquefaction. H2MOF stated its system involves hydrogen adsorption materials housed within a metallic pressure vessel, which typically operates at 5 MPa, and is enclosed in an insulated outer shell. H2MOF requested that low-pressure solid-state storage solutions operating below 10 MPa be exempted from the requirements of the NPRM, which H2MOF stated are designed for non-metallic high-pressure

[10] By ''conventional CHSS,'' we mean a CHSS that stores hydrogen in gaseous form at high pressures, typically 35 to 70 MPa

[11] There are varied CcH2 system designs under development and there are no standardized testing protocols that address safety issues unique to each of these CcH2 systems. CcH2 storage system manufacturers conduct Failure Modes Effects Analysis (FMEA) to identify potential failure modes, analyze the causes of these failures, and assess their potential effects on the system's safety and functionality, including hydrogen leaks, pressure surges, thermal issues, and component malfunctions. The manufacturers take steps to ensure their CcH2 system designs prevent occurrence of these failures and mitigate the safety effects of any failure mode.

vessels functioning at 35 MPa and 70 MPa.

Agency Response

Similar to the case of CcH2 systems discussed in the previous section, H2MOF has highlighted significant differences between its low-pressure solid-state storage systems and conventional CHSS. These distinctions include the use of adsorbent materials within metallic pressure vessels, lower operational pressures, and the avoidance of high-pressure compression fueling typically seen in traditional CHSS. As with CcH2 systems, these technological differences present challenges for applying the proposed FMVSS No. 308, which was developed for conventional high-pressure gaseous CHSS and does not consider the unique characteristics of solid-state hydrogen storage systems. As with CcH2 systems, NHTSA recognizes the need for more research and standards development to address the specific safety characteristics of solid-state hydrogen storage systems.

Therefore, NHTSA has determined that it is not feasible to apply the performance requirements of FMVSS No. 308 to vehicles using solid-state hydrogen storage systems. However, similar to vehicles with CcH2 storage systems and for the same reasoning, vehicles that use solid-state hydrogen storage technology must still comply with the overall vehicle safety requirements specified in FMVSS No. 307, including in-use fuel system integrity and post-crash fuel system integrity.[12] While NHTSA is exempting solid-state hydrogen storage systems from the requirements of FMVSS No. 308 at this time, NHTSA will continue to monitor advancements in solid-state hydrogen storage technology and consider future regulatory updates as these systems and associated safety standards further develop.

5. General Requirements for the CHSS

a. Maximum CHSS Working Pressure of 70 MPa

Background

Consistent with GTR No. 13, NHTSA proposed requiring that CHSS have a NWP of 70 MPa or less. This is because working pressures above 70 MPa for motor vehicle applications are currently considered impractical and may pose a safety risk given current known technologies. The energy density of hydrogen does not increase significantly when pressurized above 70 MPa, so there is no significant improvement in hydrogen storage efficiency at pressures above 70 MPa. Pressures above 70 MPa, however, may present a greater safety hazard. NHTSA sought comment on this requirement, and specifically asked commenters to identify any technologies that can safely store hydrogen at pressures above 70 MPa.

Comments Received

Nikola stated that CHSS are identified by NWP and maximum filling pressure, with pressures above 70 MPa offering diminishing returns. Nikola also commented that current industry does not have containers that operate above this threshold. Auto Innovators generally agreed with NHTSA's rationale but requested a plan for adapting to future technological developments. It recommended aligning with GTR No. 13, which sets 70 MPa as the highest NWP, and expressed that it would be inappropriate to specify anything higher. Luxfer Gas Cylinders commented that 70 MPa is the appropriate limit due to the absence of filling infrastructure for pressures above this level.

Glickenhaus raised concerns about unintended consequences from limiting the NWP of CHSS to 70 MPa. It pointed out that limiting pressures could hinder future research, comparing this to past limitations when 35 MPa was the industry standard. Glickenhaus commented that today's 70 MPa containers were made possible by technological advances, and a similar restriction in the past might have hindered progress. It also stated that high temperature conditions could reduce the effectiveness of refueling at a fueling station with 70 MPa containers, leading to slower refills and greater energy consumption due to the thermodynamics relating pressure, volume, temperature, and amount of gas.

H2MOF supported the proposal to limit NWP to 70 MPa and requested that FMVSS Nos. 307 and 308 apply to containers ranging from 10 MPa to 70 MPa NWP. WFS agreed with NHTSA's proposal, noting that it aligns with GTR No. 13 and the practical limit for on-board storage. While hydrogen can be safely stored above 70 MPa at fueling stations, it commented that 70 MPa is the practical upper limit for on-board storage.

TesTneT referenced the GTR No. 13 requirement that all new compressed hydrogen storage systems produced for on-road vehicle service have an NWP of 70 MPa or less. TesTneT also noted that there is no increased risk with higher storage pressures, and stated that greater container wall thickness at higher pressures provides more resistance to damage and fire effects. TesTneT noted that the safety issues at pressures higher than 70 MPa involves the ability to seal connections within valves and regulators. It mentioned that it currently use 95 MPa and 100 MPa containers for storing hydrogen at a fueling station. FORVIA agreed with the proposal and commented that introducing additional pressure levels would not benefit interoperability between vehicles and fueling stations, further supporting the 70 MPa limit.

Agency Response

NHTSA is adopting its proposal to limit the NWP of CHSS to 70 MPa or less. Most commenters agreed with the proposal, noting that NWP above 70 MPa offer diminishing returns and that current fueling infrastructure is not compatible with CHSS with NWP greater than 70 MPa. NHTSA has determined that limiting the NWP of CHSS to 70 MPa or less is critical due to safety concerns at higher pressures.

TesTneT noted that it uses 95 MPa and 100 MPa NWP containers to store hydrogen at a fueling station and that the thicker walls of these containers make them inherently safer against damage and fire. NHTSA notes that TesTneT's example of containers with NWP greater than 70 MPa are stationary storage containers. While containers with thicker walls are more resistant to damage and fire, they are significantly heavier and likely not practical for use in hydrogen vehicles.

The requirements in this final rule do not fully address the safety risks associated with storage pressures above 70 MPa. Higher pressures present a greater risk of severe leaks and/or rupture, and the consequences of such failures at increased pressures are more severe due to the larger quantity of energy that could be released. TPRD releases may also be unsafe due to the quantity of hydrogen that must be released at pressures above 70 MPa. Additionally, the test for performance durability of containers in this final rule may not be sufficient to address stress rupture risk for containers with NWP greater than 70 MPa. NHTSA is concerned that a container with NWP greater than 70 MPa may comply with the performance durability requirements and yet have a significant risk of catastrophic stress rupture. As a result, additional safety considerations are necessary for pressures exceeding 70 MPa, and the safety of such systems is not yet known.

[12] The vehicle fuel delivery system and the fuel cell system in vehicles using solid-state hydrogen storage systems are similar to hydrogen powered vehicles with conventional CHSSs.

Therefore, consistent with GTR No. 13, NHTSA is maintaining the requirement that all CHSS must have an NWP of 70 MPa or less.[13]

Glickenhaus stated that limiting the NWP of CHSS to 70 MPa could have unintended consequences by hindering technological advances in hydrogen storage. While Auto Innovators generally agreed with the proposal to limit NWP of CHSS to 70 MPa, it requested a plan for adopting future technological developments. NHTSA agrees with the commenters that technological advances are likely to continue in this space and the agency will monitor such advancement and continue research work on CHSS and hydrogen fuel system integrity. NHTSA coordinates closely with the U.S. Department of Energy (USDOE) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) on research, technical advancements, and standards development for hydrogen vehicles, and plans to update the standards in the future, as needed. Additionally, for vehicles using CHSS with NWP greater than 70 MPa, NHTSA has provisions for exemptions for alternative fuel vehicles that vehicle manufacturers may use.[14]

Glickenhaus commented that fueling stations with 70 MPa tanks would take longer and more energy to refuel hydrogen powered vehicle tanks in extremely hot weather. NHTSA notes that the NPRM and final rule apply to hydrogen storage systems in vehicles used for vehicle propulsion and not the tanks used in fueling stations. Generally, the tanks in fueling stations are at about 100 MPa (similar to those noted by TesTneT). This final rule does not apply to hydrogen tanks in fueling stations.

Limiting CHSS NWP to 70 MPa does not mean 70 MPa is the maximum pressure that can occur inside a CHSS. Under hot conditions or during fueling, a fully fueled CHSS may experience pressures of 125 percent NWP (87.5 MPa for a 70 MPa CHSS). Limiting CHSS NWP to 70 MPa does not limit the maximum allowable working pressure of the container to 70 MPa, nor does it limit manufacturers' ability to design containers that can withstand severe over-pressurization events as tested in subsequent tests.

Finally, H2MOF requested that low-pressure solid-state storage systems typically operating at pressure below 10 MPa be exempted from the requirements of the NPRM, which H2MOF stated are designed for non-metallic high-pressure vessels functioning at 35 MPa and 70 MPa. NHTSA notes that it is not limiting applicability of the standard to vehicles with CHSS pressures above 10 MPa. Instead, NHTSA is excluding low-pressure sold-state hydrogen storage systems from FMVSS No. 308 requirements, as explained earlier in this notice.

b. Mounting Closure Devices On or Within Each Container

Background

GTR No. 13 provided contracting parties with the discretion to require that the closure devices be mounted directly on or within each hydrogen fuel container. The relevant safety concern is that the high-pressure lines required to connect remotely located closure devices with the container could be susceptible to damage or leak. However, as discussed above, the definition of a container is sufficiently broad that it includes lines that are part of the continuous volume of stored hydrogen (as determined by the location of the shut-off valve or any other obstruction that ''breaks'' or ''interrupts'' the container's continuous volume). Thus, any lines that form part of the container's continuous volume are themselves part of the container and will be included in the container performance testing discussed below. If a container (which includes any lines that are part of the container's continuous volume) can successfully complete the performance testing in FMVSS No. 308, then the risk of failure of the lines has been addressed. As a result, NHTSA tentatively concluded that it is not necessary to specify that closure devices be mounted directly on or within each container. NHTSA sought comment on requiring closure devices to be mounted directly on or within each container.

Comments Received

Commenters generally supported NHTSA's proposal not to require closure devices to be mounted directly on or within each container, with most agreeing that this approach provides necessary flexibility for system design. Auto Innovators noted that discussions within the GTR No. 13 Phase 2 Informal Working Group suggested mounting the closure device directly on a chamber for single-chamber systems or on one of the chambers for multi-chamber systems, but also highlighted the benefits of allowing manufacturers discretion, particularly for non-traditional designs like conformable tanks. H2MOF, HATCI, and WFS also supported leaving the location of closure devices to manufacturer discretion, stating that this flexibility enhances design options. WFS and TesTneT pointed out that allowing remote TPRDs, which have been safely used in the CNG industry, could enhance system safety in fire protection. However, Nikola disagreed with NHTSA's approach, stating that ''CNG is not the same as hydrogen'' and that allowing this could lead to unintended issues. Luxfer Gas Cylinders and NGS agreed with NHTSA's proposal, with NGS emphasizing the importance of not limiting manufacturers' ability to design systems tailored to their specific applications.

Agency Response

NHTSA will not require closure devices to be mounted on or within each container. As discussed above, the definition of ''container'' in the final rule is sufficiently broad to include any lines that may form part of the container's continuous volume of pressurized hydrogen up to the closure device.[15] Therefore, these lines must be included in the applicable performance testing as part of the container itself. If a container, including all portions of the container's continuous volume, can successfully complete the performance testing in FMVSS No. 308, then the risk of failure of the lines has been sufficiently addressed.

c. Requiring Check Valve Functionality as Part of the CHSS

Background

During fueling, hydrogen enters the CHSS after passing through a check valve. The check valve prevents back-flow of hydrogen into the fueling supply line or even out of the fueling receptacle to the atmosphere. NHTSA proposed that the CHSS be required to include the functionality of a check valve. However, NHTSA is aware of CNG vehicles that do not include check valves as part of their CNG storage system. NHTSA sought comment on whether the check valves should be required as part of the CHSS.

[13] Storing hydrogen above 70 MPa is also impractical given current technology. As pressure increases beyond 70 MPa, hydrogen becomes increasingly difficult to compress. This difficulty leads to diminishing returns in terms of hydrogen storage density, where only a small increase in stored hydrogen results from a disproportionately higher input of compression energy. Storing hydrogen at higher pressures also requires containers with thicker walls to manage the increased stress from extreme pressurization. These thicker containers add considerable weight, which is impractical for vehicle use where minimizing weight is critical.

[14] *See* Part 555—Temporary Exemption from Motor Vehicle Safety and Bumper Standards, *https://www.ecfr.gov/current/title-49/part-555.*

[15] In this context, ''lines'' refers to any pluming, piping, and/or connections where hydrogen fuel may be present.

Comments Received

Commenters expressed mixed opinions on whether check valves should be required as part of the CHSS. Some, including Nikola, EMA, HATCI, and FORVIA, supported requiring check valves, citing the higher pressure of hydrogen and the role of check valves in ensuring safety, especially for multi-container systems. FORVIA stated that not including a check valve would leave the fueling line vulnerable to hydrogen leakage.

Others, such as Agility, Glickenhaus, H2MOF, and TesTneT, opposed making check valves a mandatory component of the CHSS. Agility stated that system-level protections are appropriate and requested clarification whether a single check valve near the fuel receptacle is adequate. Glickenhaus argued that a remotely located check valve could offer advantages. H2MOF pointed to the safety record of millions of CNG vehicles without check valves in its storage systems and suggested the requirement would be too design restrictive. TesTneT noted that check valve functionality could be integrated into other components, making a separate check valve unnecessary.

WFS commented that the key issue is not having a dedicated check valve but ensuring ''check valve functionality,'' which could be incorporated into other system components, as outlined in GTR No. 13.

Agency Response

Consistent with GTR No. 13, NHTSA is requiring that the CHSS include a check valve or the function of a check-valve. A check valve means ''a valve that prevents reverse flow.'' Therefore, each CHSS must have hydrogen flow control functionality equivalent to a valve that prevents reverse flow. This requirement is not design restrictive because manufacturers have the option to design systems that provide the required functionality without the need for a traditional check valve. For example, the functions of check valve and shut-off valve may be combined into a single device, or multiple containers may share a single check valve. Additionally, it may be possible for a vehicle to use a single check valve located at the fueling receptacle to provide check valve functionality to multiple CHSS. In such a design, each CHSS onboard the vehicle would derive the function of check valve from the single check valve located at the fueling receptacle.

6. Specification of BP_O on the Container Label

Background

Several of the performance tests in FMVSS No. 308 use a manufacturer-supplied value known as BP_O. A container's BP_O is a design parameter specified by the manufacturer that represents the median burst pressure for a batch of containers. To facilitate compliance testing, NHTSA proposed that manufacturers specify the BP_O associated with each container on the container label.

Comments Received

Several commenters addressed the proposal to include the manufacturer-specified median burst pressure (BP_O) on container labels. Nikola stated that BP_O is not useful to and could confuse end users, suggesting that if BP_O is not available for compliance testing, NHTSA should assume a value of 2.25 times NWP. Luxfer Gas Cylinders argued that requiring BP_O on labels is unnecessary, as the burst pressure is a quality control measure, and the median burst pressure of a batch is irrelevant to manufacturers or end users. Auto Innovators disagreed with the assertion that BP_O varies significantly between batches, stated that BP_O is based on manufacturer testing, and recommended consistency with GTR No. 13. Auto Innovators opposed including BP_O on labels, citing potential confusion for end users and lack of safety benefits, and noted that BP_O can be provided to NHTSA during testing without needing to be on the label. EMA echoed concerns about potential customer confusion and recommended alignment with GTR No. 13, suggesting that BP_O could be provided by the manufacturer upon request.

Glickenhaus supported a labeling requirement for burst pressure but raised concerns that NHTSA's proposed definition of BP_O could restrict manufacturers' ability to maintain higher safety margins. It proposed an alternative definition of BP_O based on the minimum burst pressure from the design and manufacturing process to allow for increased safety margins. H2MOF and HATCI both stated the requirement was impractical and unnecessary, with HATCI stressing that BP_O is primarily a design parameter and market strategy issue, often considered confidential. Agility and TesTneT also opposed the requirement, with Agility calling it impracticable and TesTneT suggesting that compliance testing should focus on meeting minimum standards rather than a manufacturer-specified value.

Other commenters, including NGS and Newhouse, requested aligning with GTR No. 13, with Newhouse noting that BP_O information can be found through part numbers if needed. FORVIA expressed strong opposition to including BP_O on labels, citing concerns over confidentiality and potential misinterpretation by consumers and requested alignment with GTR No. 13. Several commenters, including Auto Innovators and Luxfer Gas Cylinders, reiterated concerns that labeling BP_O would create confusion and add unnecessary burdens without any clear safety benefit, recommending harmonization with GTR No. 13 instead.

Agency Response

After consideration of the comments, NHTSA will not require BP_O to be listed on the container label. NHTSA agrees this requirement could cause confusion for consumers regarding slight differences in BP_O that may exist between vehicles. Such differences will have no impact on safety or performance. NHTSA also acknowledges that listing BP_O on the container label could create confusion about the highest rated pressure for a given vehicle. Since BP_O will typically be a multiple of NWP, but have the same pressure units, it could be dangerous for a user to mistake BP_O for NWP.

Nevertheless, NHTSA still needs to know the value of BP_O to conduct compliance testing on a given vehicle. Instead of requiring BP_O on the container label, NHTSA will obtain BP_O directly from the vehicle manufacturer. The method for obtaining BP_O from the manufacturer will match that for obtaining the primary constituent of the container, discussed below.

Some comments appear to reflect a misunderstanding of the role of BP_O within the proposed regulation. The BP_O is a manufacturer-specified parameter that represents the median burst pressure for a batch of containers. Manufacturers are free to incorporate additional safety factors into their designs if they wish. The use of BP_O in the requirements does not restrict this ability. As discussed in the NPRM, the use of BP_O during the residual strength burst test ensures that containers at the end of their service life would still be safe even if they were to remain in service.[16] Specifically, the burst pressure after testing must be at least 80% of the container's BP_O. This

[16] *See* 89 FR 27518 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

requirement controls the degradation rate of the container over time, preventing a high degradation rate that could lead to dangerous bursts if the container were to remains in use beyond its intended life. This standard is comparable to safety standards for other vehicle components like seatbelt webbing.

Additionally, the concerns raised about the ambiguity of the BP_O definition are misplaced, as the regulation does not provide a prescriptive definition but rather relies on the manufacturer's expertise in determining BP_O. There is no requirement to calculate a mean burst pressure by bursting every tank in a batch. Manufacturers may use standard industry practices based on their design, materials, manufacturing processes, and testing to determine BP_O.

7. Tests for Baseline Metrics

a. Required Number of Containers Tested

Background

GTR No. 13 requires three new containers to be tested during the baseline initial burst test and the baseline pressure cycle test. As NHTSA explained in the proposal, this requirement originates from the type-approval certification process commonly found in other nations and that NHTSA did not believe that three new containers needed to be tested under the U.S. self-certification system where NHTSA buys and tests vehicles and equipment at the point of sale. Therefore, NHTSA proposed basing the results of testing of any container for the baseline initial pressure cycle test. NHTSA sought comment on this decision.

Comments Received

FORVIA and TesTneT agreed with the proposal, stating that only one container needs to be pressure cycled to demonstrate compliance with the cycle life requirements. TesTneT likened this approach to batch testing, where only one container is required to be tested, rather than three.

DTNA expressed concern that testing only one container for baseline metrics might not provide sufficient information on the burst behavior of all containers in vehicles equipped with multiple containers. DTNA acknowledged that NHTSA purchases vehicles and equipment from the public market to monitor FMVSS compliance, but proposed that for vehicles with multiple containers, at least two should be subjected to the baseline initial pressure cycle test.

Luxfer Gas Cylinders commented that testing any one container is reasonable, noting that all cylinders must pass the minimum required cycle tests and that testing three containers does not represent a significant statistical sample.

Nikola disagreed with the proposal, suggesting that NHTSA obtain containers directly from tank manufacturers, similar to how testing is conducted under FMVSS No. 304 compliance.

H2MOF supported NHTSA's proposal to test one container for the baseline initial pressure cycle test and recommended allowing a retest if there is an assignable cause of any non-compliance.

Agency Response

NHTSA is maintaining its decision that it is not required to test three containers for the baseline initial burst test, as specified by GTR No. 13. Under the U.S. self-certification system, NHTSA purchases vehicles and equipment for testing randomly at the point of sale, and the selected container must meet all applicable safety requirements. This approach ensures that manufacturers are incentivized to ensure all vehicles consistently comply with safety standards, knowing that any one of their containers could be tested. Removing the requirement to test three containers, the test burden is potentially reduced without compromising safety, and allowing NHTSA to potentially test more containers with the same operating budget. Manufacturers must still ensure that each vehicle meets the standard.

Additionally, concerns about variability among containers are addressed through the random selection process, which provides an effective representation of real-world conditions. While some commenters raised concerns about vehicles with multiple containers, NHTSA has the flexibility to conduct repeat tests, as well as additional tests on any of the various container types if needed. This allows NHTSA to respond to specific cases where there may be a safety concern without mandating the testing of three containers in every instance, which maintains an efficient means of ensuring safety.

b. Baseline Initial Burst Pressure Test

(1) Need for the Baseline Initial Burst Test

Background

Consistent with GTR No. 13, NHTSA proposed the baseline initial burst pressure test in addition to the test for performance durability, which includes a 1000 hour high-temperature (85 °C) static pressure test designed to evaluate the container's resistance to stress rupture, in combination with other lifetime stress factors. Given that the high-temperature static pressure test evaluates stress rupture risk, and the test for performance durability represents an overall worst-case lifetime of multiple stress factors, NHTSA sought comment on whether the baseline initial burst pressure test even needs to be included in the standard's requirements.

Comments Received

Nikola commented that the baseline initial burst pressure test is necessary to ensure that the container meets its initial strength integrity requirements, which can then be compared to the final burst pressure. Agility expressed concern that the high-temperature static pressure test does not sufficiently evaluate reliability against stress rupture, stating that testing one million cylinders would be required to demonstrate the same reliability. EMA recommended that the baseline initial burst pressure test is unnecessary, proposing the removal of S5.1.1.1 from the standard. H2MOF stated that the residual burst pressure after the performance durability test is a better indicator of design fitness than an initial burst pressure test. Auto Innovators suggested aligning with GTR No. 13, which uses the initial baseline burst pressure for comparison with residual values.

TesTneT clarified that the high-temperature static pressure test, originally called the ''accelerated stress rupture test,'' was developed to assess combined effects on the container but not the individual stress rupture characteristics of fiber strands. TesTneT stated that the baseline initial burst pressure test is necessary for container design and manufacturing control. Newhouse commented that both tests should be conducted, as they assess different factors. FORVIA recommended including the baseline initial burst pressure test for harmonization with GTR No. 13, while also questioning whether NHTSA must perform all tests during field surveillance or if it has discretion in test selection. Auto Innovators reiterated its support for harmonizing with GTR No. 13.

Agency Response

NHTSA is maintaining the proposed baseline initial burst pressure test. Several commenters provided sufficient explanation of why the baseline initial pressure test is different from the test for performance durability. On the other

hand, the commenters proposing the removal of the baseline initial burst pressure test did not provide sufficient justification why the baseline initial burst pressure test is not needed. The initial burst pressure test evaluates the container's start-of-life integrity, whereas the test for performance durability examines different aspects of material performance and stresses, such as resistance to physical damage, chemical exposure, and extreme environmental temperatures, and the container's subsequent end-of-life integrity. Therefore, both testing requirements should be included in the standard, as proposed. NHTSA notes, however, that the results of the baseline initial burst pressure test are not referenced in subsequent tests as a comparison or ''baseline.'' Instead, subsequent tests reference the BP_O value discussed above. Regarding field surveillance, NHTSA may conduct any of the tests in the FMVSS as part of field surveillance.

(2) Burst Pressure Within ±10 Percent of BP_O

Background

As proposed, the baseline initial burst pressure test would have verified that the initial burst pressure is within 10 percent of the manufacturer specified BP_O. The requirement that the container tested must have a burst pressure within ±10 percent of BP_O was based on the need to control variability in container production. If a manufacturing process produces containers with highly variable initial burst pressures, there is a possibility of a container with a dangerously low burst pressure. NHTSA sought comment on the safety need for specifying a limit on burst pressure variability in a batch and whether the 10 percent limit is appropriate. Commenters were asked to provide supporting data if they believed another limit was appropriate.

Comments Received

Commenters provided mixed opinions regarding the proposal for a ±10 percent limit on burst pressure variability, with some supporting the limit and others suggesting it is unnecessary or impractical. Nikola commented that the ±10 percent limit is achievable and accepted by manufacturers. Agility stated that limiting maximum burst pressure does not necessarily improve safety and suggested that variability in carbon fiber strength would take up most of the proposed limit, making it impractical. Agility also recommended omitting the requirement, stating that the existing minimum burst requirement already addresses safety concerns. HATCI and Auto Innovators both noted that burst pressure variability could be managed through a manufacturer's quality management system, with Auto Innovators supporting alignment with GTR No. 13 and affirming the appropriateness of the ±10 percent limit. Luxfer Gas Cylinders stated that specifying a limit is unnecessary, as manufacturers already ensure no cylinder bursts below the minimum level, typically by setting burst pressures significantly higher than required. TesTneT also supported the ±10 percent limit, noting that burst testing in accordance with GTR No. 13 had not revealed any issues with the limit.

In contrast, Quantum suggested that the 10 percent requirement is unrealistic due to the influence of factors such as carbon fiber performance, recommending a more lenient limit of 20 percent. NGS and H2MOF commented that managing batch variation should be left to the manufacturer as long as the minimum burst pressure is met. Newhouse questioned the practicality of the ±10 percent limit, noting that variability is inherent in the production process and that meeting the minimum burst pressure is a more meaningful safety measure. MEMA and FORVIA both supported maintaining alignment with GTR No. 13, with FORVIA emphasizing that the 10 percent variability allowance accounts for reasonable manufacturing differences while maintaining safety margins. FORVIA also discouraged adding new batch-related requirements, suggesting that automotive production often relies on other control methods, such as sampling in continuous production.

Agency Response

NHTSA is removing the requirement that the burst pressure of the container be within 10 percent of the BP_O. FMVSS are designed to set minimum safety performance standards for vehicles, rather than control variability in manufacturing processes. This approach ensures that every vehicle meets a baseline level of safety, regardless of specific manufacturing methods or variability in production. The responsibility for managing variability and ensuring consistent quality within manufacturing processes falls to the manufacturers themselves. They must ensure that their production processes consistently produce vehicles that meet or exceed the FMVSS requirements.

When NHTSA tests a vehicle component to ensure it meets the FMVSS, the component is expected to meet or exceed the specified performance criteria every time it is tested, regardless of variability in the manufacturing process. NHTSA's approach to testing typically involves randomly selecting a single test article for evaluation. If this single component fails to meet the standard, it indicates that the entire batch, or potentially the entire production process, may be flawed.

Per the requirements of the Safety Act, manufacturers are required to ensure that every unit produced meets the FMVSS requirements. This requirement compels manufacturers to control the variability within their production processes. If a manufacturer allows too much variability, there is a risk that the vehicle may not meet the standards, which could result in non-compliance. The prospect of non-compliance drives manufacturers to maintain high levels of consistency and quality control, ensuring that every component or vehicle produced is likely to pass NHTSA's testing, no matter which one is chosen for evaluation. This method of testing essentially requires control of variability indirectly, as manufacturers must ensure that all of their products, not just a select few, comply with FMVSS requirements.

(3) BP_{min} of 200% NWP

Background

For the reasons discussed in the NPRM, NHTSA believes that the minimum burst pressure, BP_{min}, of 200 percent NWP, as set forth in GTR No. 13 Phase 2, meets the need for safety.[17] The proposed BP_{min} of 200 percent NWP facilitates hydrogen vehicle development without unnecessary overdesign of components. NHTSA sought comment on the proposed BP_{min} of 200 percent NWP instead of the 225 percent NWP specified in GTR No. 13 Phase 1.

Comments Received

Several commenters supported NHTSA's proposal to set the BP_{min} at 200 percent of NWP as aligned with GTR No. 13 Phase 2. Luxfer Gas Cylinders commented that the 200 percent of NWP for BP_{min} is ''acceptable.'' Auto Innovators expressed support for both the harmonization with GTR No. 13 and the

[17] *See* 89 FR 27511 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed*. This section's discussion applies to containers that do not contain glass fiber composite as a primary constituent. Containers with glass fiber composite as a primary constituent are discussed in the following section.

BP_{min} of 200 percent, noting that it reflects the consensus of the Informal Working Group from GTR No. 13 Phase 2. Nikola also agreed with the proposed 200 percent BP_{min}.

Agility commented that while 200 percent NWP may be adequate for high-strength carbon fiber, it may not be sufficient for other materials or thin-walled cylinders. Agility suggested requiring 225 percent for NWP values of 35 MPa or lower, as permitted by GTR No. 13. HATCI expressed support for both the proposed BP_{min} and the harmonization with GTR No. 13.

Glickenhaus disagreed with reducing the burst pressure for carbon fiber containers from 225 percent to 200 percent NWP, stating that the proposed 200 percent is too low and could create safety risks, particularly when considering variability in actual burst pressures. Glickenhaus provided an example involving a theoretical container with an NWP of 100 bar. Based on the example where a container with a baseline initial burst pressure of 200 percent NWP had an end-of-life burst pressure of only 160 percent NWP, it recommended retaining a 225 percent BP_{min}.

H2MOF supported the proposal, stating that a BP_{min} of 200 percent would avoid unnecessary overdesign. TesTneT also supported the 200 percent NWP BP_{min}, stating it is safe as proposed. NGS agreed with the 200 percent BP_{min} for carbon fiber but requested that other fibers be allowed if sufficient data proves their durability.

Newhouse commented that 200 percent NWP should be adequate for carbon fiber reinforced containers, but it suggested establishing a minimum NWP of 350 bar for this standard. For containers with lower NWP, Newhouse recommended retaining a BP_{min} of 225 percent due to concerns about reduced damage tolerance and safety. Newhouse further noted that stress rupture is not adequately addressed by specifying a burst ratio and recommended using stress ratios to ensure safety for different container types, especially Type 2 and Type 3 containers.

FORVIA expressed agreement with the 200 percent BP_{min}, stating that GTR No. 13 Phase 2 has demonstrated that this value is sufficient based on performance data.

Agency Response

NHTSA is maintaining the proposed BP_{min} of 200 percent NWP for containers that do not contain glass-fiber as the primary constituent. The counterexample given by a commenter in which a container with a BP_O of 200 percent NWP underwent the test for performance durability and finished with an end-of-life burst pressure of 160 percent NWP is not valid. The residual pressure test at the end of the test for performance durability requires a four-minute hold period at 180 percent of NWP. Therefore, a container with an end-of-life burst pressure of 160 percent would fail to meet the performance requirements of the standard and thereby be prohibited from entering service. There is no option to meet some but not all the requirements of the test for performance durability.

NHTSA is not currently considering requirements related to strain gauges to further address stress rupture, nor is it considering prohibitions on metal liners as that would likely be design restrictive. Regarding the concerns about the durability of thin-walled containers, the durability of all containers is rigorously evaluated with the test for performance durability. The baseline initial burst pressure test is not intended to address container durability throughout its lifetime.

Regarding allowing the use of other fiber types, NHTSA is not restricting designs to any particular fiber type nor excluding any particular fiber type. Manufacturers are free to design products using any material they choose. The requirements are designed to apply to containers regardless of material type. The only material-specific consideration for containers is for those containers that have glass fiber composite as a primary constituent, as discussed in the next section.

Lastly, burst ratios such as BP_{min} are a well-established safety metrics that ensure containers' structural integrity, even if differences exist between burst ratio and stress ratio for some container types. The proposed requirement for BP_{min} of at least 200 percent NWP along with the 1,000 hour high temperature pressure hold test in the sequential test for performance durability are in accordance with the requirements in GTR No. 13 Phase 2 and likely sufficient to mitigate the risks associated with stress rupture in most containers. Further research would be needed to fully understand the relationship between burst ratios, stress ratios, and risk of stress rupture. For now, this final rule adopts the proposed requirement for an initial baseline burst pressure of at least 200 percent NWP.

(4) Primary Constituent

Background

NHTSA sought comment on how NHTSA could determine if a container has glass fiber as a primary constituent and on appropriate criteria to determine the primary constituent of a container.

In the case of containers constructed of both glass and carbon fibers, NHTSA proposed to apply the requirements according to the primary constituent of the container as specified by the manufacturer. NHTSA proposed that the manufacturer shall specify upon request, in writing, and within five business days, the primary constituent of the container. NHTSA proposed that if the manufacturer fails to specify upon request, in writing, and within five business days, the primary constituent of a container, the burst pressure of the container must not be less than 350 percent of NWP.

Comments Received

Luxfer Gas Cylinders commented that a higher minimum burst pressure is typically required for containers with glass-fiber composites and suggested that NHTSA request information from manufacturers regarding the container's composite overwrap and stress analysis to assess the load share of glass fiber in hybrid designs. Nikola had no objections to the 350 percent NWP requirement and stated that NHTSA could either ask the manufacturer for details or cut a container to determine its composition. Agility expressed concern over the definition of ''primary constituent'' and suggested that other materials might also be inappropriate at 200 percent NWP burst. It recommended that manufacturers be asked to provide the load share of glass fiber, which could then be used to adjust the minimum burst pressure.

HATCI supported confirming the primary constituent with manufacturers but opposed the proposed five-day response time, recommending that NHTSA use its existing information request authority without specifying a timeline in the regulation. Luxfer Gas Cylinders added that the five-day period was too short, suggesting a revision to at least 14 business days due to potential delays in identifying the appropriate contact at the container manufacturer. EMA requested a ten-day response period and recommended that the required burst pressure be based on the material specified by the manufacturer rather than defaulting to 350 percent NWP. Glickenhaus suggested that the primary container composition be included in labeling requirements to ensure transparency throughout the container's lifecycle, eliminating the need for inquiries to manufacturers. It also proposed that container manufacturers be required to register with NHTSA, similar to other safety-critical component

manufacturers, and submit relevant data such as burst pressures and NWP ratings.

TesTneT downplayed concerns about glass-fiber-reinforced containers in hydrogen service, noting that such designs are rare and impractical for hydrogen applications. It also pointed out the lack of a test method for determining the primary constituent, suggesting that asking the manufacturer is the only feasible approach. NGS supported the requirement for manufacturers to provide primary constituent details but argued that the response time should be extended to 30 days. Newhouse highlighted the complexity of determining the primary constituent in hybrid designs, noting that analysis is required to assess load-sharing between fibers, and simply specifying a burst ratio does not ensure safety. Newhouse provided an alternative approach which provides specific guidelines for hybrid constructions based on fiber load sharing.

MEMA questioned the implementation and enforcement of the response time requirements, suggesting that the information could be provided as part of the self-certification process without the need for a specified deadline. FORVIA disagreed with changing requirements based on potential delays in mailing and proposed that NHTSA conduct field surveillance testing. If a burst test raises suspicions of glass fiber being a primary constituent, further investigation could be conducted. Auto Innovators expressed support for harmonization with GTR No. 13 and agreed with the 350 percent NWP burst pressure requirement for glass-fiber-reinforced containers. H2MOF also supported the higher burst pressure requirement, citing its success in CNG containers over the past two decades. It suggested that the test agency could verify the container's composition after conducting a burst test.

Agency Response

NHTSA is maintaining the requirement that container with glass fiber composite as a primary constituent shall have a BP_{min} of 350 percent of NWP. However, commenters did not provide a specific method for determining the primary constituent of a container. Since NHTSA has no way of determining the load sharing properties of a container's individual fibers, nor a way to determine whether that load sharing is fundamental to the strength of the container, whether or not glass fiber composite is the container's primary constituent must be determined by and specified by the manufacturer.

NHTSA will not require the primary constituent to be listed on the label. Similar to BP_O, listing the primary constituent on the container label could potentially confuse consumers. Additionally, NHTSA does not need to know the specifics of the container's primary constituent other than whether the primary constituent is glass fiber composite. Therefore, NHTSA will require that the manufacturer specify upon request, and in writing, whether the primary constituent of the container is glass fiber composite or not. Based on the comments, however, the timeline for responding to the request has been increased to 15 business days instead of five business days.[18] NHTSA is removing the option that if the manufacturer fails to respond to the request, then the container minimum burst pressure must not be less than 350 percent of NWP. This option is not appropriate for containers other than those with glass fiber composite as a primary constituent, and therefore, the only option is for the manufacturer to specify whether the container's primary constituent is glass fiber composite. FMVSS No. 308 S5.1.1.1 has been updated to reflect this change. S6.2.2.2(e), which contained a similar five business day response timeline, has also been updated to 15 business days.

Furthermore, NHTSA will not obtain a copy of the stress analysis for the container to determine the load sharing from glass fiber in a mixed fiber overwrap. The stress analysis for the container is outside the scope of the proposed regulation. NHTSA will simply obtain the primary constituent from the manufacturer, and then conduct the tests as specified depending on whether the container includes glass fiber composite as a primary constituent.

(5) Pressurization Rates Above 0.35 MPa/sec

Background

GTR No. 13 states that if the pressurization rate exceeds 0.35 MPa/s at pressures higher than 150 percent NWP, then either the container must be placed in series between the pressure source and the pressure measurement device, or the time at the pressure above a target burst pressure must exceed 5 seconds. The first option of placing the container in series between the pressure source and the pressure sensor ensures that the container will experience the pressure before the sensor, so there is no chance that the pressure sensor could read a pressure level that is not being experienced by the container. However, NHTSA did not propose the second option that the time at the pressure above the target burst pressure exceeds 5 seconds because it is unclear and difficult to enforce. It is not clear what pressure the ''target burst pressure'' is referring to since during the test, pressure will be increasing continuously.

Comments Received

Nikola stated that it do not want any changes to the procedure outlined in GTR No. 13. Luxfer Gas Cylinders commented that while the procedure is effective for cycle tests, it may not be feasible for burst testing due to the risk of damaging the pressure measurement device when placed after the container. It suggested either placing the container in series between the pressure source and the measurement device or including a five-second hold at the minimum burst pressure to ensure the container experiences the correct pressure. TesTneT agreed with NHTSA's approach of situating the container between the pressure source and the sensor but noted that this setup is not always practical or necessary. It mentioned that it has performed many burst tests with the sensor positioned before the container and have not encountered any issues, as the slow pressurization rate effectively eliminates pressure drop concerns. It also stated that holding the pressure for five seconds at the target burst pressure is clear and enforceable.

Glickenhaus supported NHTSA's decision not to adopt the second option from GTR No. 13, agreeing that the sensor should be placed in series between the pressure source and the container to maintain clear and objective testing. H2MOF recommended including the second method, noting that various industry standards specify a five-second hold at the target burst pressure. Newhouse commented that the five-second hold allows time for the pressure to equalize inside the container, ensuring accurate readings in cases where flow restrictions may be present. FORVIA stated that the ''target burst pressure'' should be understood as the minimum burst pressure. It suggested keeping the pressurization rate below 0.35 MPa/s at pressures exceeding 150 percent NWP or placing the container in series between the pressure source and the sensor, maintaining the wording of GTR No. 13.

Auto Innovators stated that is not practical for all designs to have

[18] The increase from five days to 15 days is intended to give manufacturers additional time to respond to NHTSA's request.

containers placed in series between pressure source and pressure measurement device. It requested an alternative method be provided. It also stated that the pressure pulsations are small to moderate compared to the absolute pressure level.

Agency Response

Consistent with GTR No. 13, NHTSA proposed that ''If the rate exceeds 0.35 MPa per second at pressures higher than 1.50 times NWP, then the container is placed in series between the pressure source and the pressure measurement device.'' GTR No. 13 also provides the alternative option that ''the time at the pressure above a target burst pressure exceeds five seconds.'' As discussed in the NPRM, NHTSA did not select this latter option because it is unclear.[19] A five-second hold period may be feasible for manufacturers that are ''targeting'' a particular burst pressure. In such a case, manufacturers can simply pressurize the container to the ''target'' pressure and hold for five seconds. NHTSA, however, will need to determine an unknown burst pressure for the container. Since there is no ''target'' burst pressure stated in the test procedure, the pressure inside the container is increased continuously until the container bursts. It is not possible to hold for five seconds at each and every pressure level that occurs during a burst test. The commenters did not provide any explanation regarding how, with continuously increasing pressure, any single specific pressure could be considered to have been held for five seconds. Instead, NHTSA has selected to use only the option to put the container in series between the pressure source and the measurement device. This way the container can be pressurized continuously until it bursts, and the container's burst pressure can be determined without prior knowledge of a target burst pressure.

Additionally, a configuration where the container is placed in series between the pressure source and the pressure measurement device can be achieved regardless of container design and does not necessitate alternative methods for different container designs. For example, a pressurization setup that includes a T-fitting, through which the container connects to both the pressure source and to a line leading to the pressure measurement device, in which the line leading to the pressure measurement device is equal in length to or longer than the connection from the container to the T-fitting, would meet the requirement for the container to be placed in series between the pressure source and the pressure measurement device. This configuration ensures that the container experiences all pressure increases as or before the sensor records them, accurately reflecting the container's pressurization level. Furthermore, the maximum allowable pressurization rate of 1.4 MPa/s for pressures exceeding 150 NWP provides adequate time for the pressure measurement device to capture accurate pressure readings during pressurization without premature or unrepresentative measurements.

c. Number of Cycles for the Baseline Initial Pressure Cycle Test for Containers on Light and Heavy Vehicles

Background

NHTSA proposed 7,500 as the number of cycles in the baseline initial pressure cycle test for which the container does not leak nor burst for light vehicles. To ensure the container leaks before bursting after reaching the maximum service life, the container is pressure cycled beyond the 7,500 cycles (representing maximum service life) until either a container leak occurs without burst or the container does not leak nor burst for up to a maximum of 22,000 hydraulic pressure cycles. In accordance with GTR No. 13 Phase 2, NHTSA proposed that heavy vehicle containers to neither leak nor burst for 11,000 hydraulic pressure cycles, and also to leak without burst (or neither leak nor burst) beyond the 11,000 hydraulic pressure cycles up to a maximum of 22,000 pressure cycles. As discussed in the NPRM, these number of cycles are based on a service life for light and heavy vehicles of 25 years.[20] This service life, number of hydraulic pressure cycles representing the maximum service life for which the container is required to not leak nor burst, and the number of pressure cycles beyond that representing maximum service life of the container for which the container is required to leak without burst or not leak nor burst at all are summarized in Table 1 for light and heavy vehicles.

TABLE 1—SERVICE LIFE AND NUMBER OF CYCLES IN THE BASELINE HYDRAULIC PRESSURE CYCLE TEST FOR LIGHT AND HEAVY VEHICLES

Vehicle type	Service life (years)	Number of cycles representing maximum service life for which the container does not leak nor burst	Numbe of cycles for which the container leaks without burst, or does not leak nor burst
Light	25	7,500	7,501–22,000
Heavy	25	11,000	11,001–22,000

NHTSA sought comment on the proposed number of cycles in Table 1. NHTSA also sought any additional data available related to vehicle life, lifetime miles travelled, and number of lifetime fuel cycles.

Comments Received

Several commenters provided feedback on the proposed number of pressure cycles in Table 1 of the NPRM. Nikola expressed agreement with the approach outlined, while Luxfer Gas Cylinders also stated that the cycle values were appropriate. Auto Innovators supported the approach and suggested that it would be more straightforward to define the number of cycles beyond the maximum service life as double the number of cycles for which the container does not leak nor burst. It stated that specifying 15,000 cycles for light vehicles and 22,000 cycles for heavy vehicles would be sufficient.

H2MOF, however, recommended a significantly lower cycle count, suggesting that 1,500 cycles as recommended by the USDOE would be more appropriate. It calculated that at

[19] *See* 89 FR 27511 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

[20] *See* 89 FR 27513 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

300 miles per fill, this would result in 450,000 miles of service. TesTneT commented that while light vehicles may experience fewer fill cycles than heavy vehicles, factors such as partial fill cycles should be considered. It stated that the industry is not particularly concerned with fatigue cracking, as no fuel cylinder in CNG or hydrogen service has experienced this issue. Additionally, it noted that there is little cost or weight savings in reducing the cycle numbers and suggested aligning with GTR No. 13 cycle numbers.

FORVIA commented that the proposed numbers were conservative but reasonable. It indicated that these cycle numbers would cover all vehicle service life expectations and that containers could handle these cycles without issue. Therefore, it supported keeping the table as it is.

Agency Response

NHTSA is maintaining the number of cycles of the baseline initial pressure cycle test as proposed in the NPRM and listed in Table-1 above. NHTSA is not lowering the number of cycles for which the light vehicle container leaks without burst, or does not leak nor burst, to 15,000. Because the potential harm from a potential burst would be catastrophic, the number 22,000 was selected to both exceed extreme on-road vehicle lifetime range and promote global harmonization with GTR No. 13, as requested by commenters, and therefore there is no need to lower this number of cycles. As discussed in the NPRM, 22,000 cycles simulate over 6 million miles of driving, which is well beyond extreme vehicle lifetimes. The use of 22,000 cycles ensures that containers leak before bursting in all extreme cases.[21]

The comment regarding a 1,500-cycle recommendation from USDOE appears to be referring to technical performance targets for CHSS published by USDOE.[22] However, performance targets are not the same as safety standards. Performance targets are goals for how a system performs under optimal conditions, whereas safety standards are designed to protect users by minimizing risks and preventing harm in hazardous or sub-optimal conditions. Therefore, NHTSA is not lowering the number of cycles for the baseline initial pressure cycle test to 1,500.

d. Details of the Baseline Initial Cycle Test for Containers on Light and Heavy Vehicles

(1) Leak Before Burst and Sustaining a Visible Leak for 3 Minutes

Background

A burst may be preceded by an instantaneous moment of leakage, especially if observed in slow motion. Therefore, NHTSA proposed a minimum time of 3 minutes to sustain a visible leak before the test can end successfully due to ''leak before burst.'' NHTSA sought comment on this additional requirement.

Comments Received

Luxfer Gas Cylinders commented that NHTSA's proposed wording regarding the number of hydraulic pressure cycles is unclear. It noted that the phrasing ''neither leak nor burst'' contradicts itself by allowing leakage after 11,000 cycles but also stating neither leakage nor bursting should occur. It suggested the wording should be revised to state: ''The cylinder shall be allowed to leak, but not burst, beyond the 11,000 cycles up to a maximum of 22,000 pressure cycles.'' Luxfer also expressed concerns about the 3-minute sustained leak requirement, stating that most pressure equipment is designed to shut off when detecting pressure loss, making it difficult to hold a leak under pressure for three minutes. It proposed alternative wording to state that containers should fail by leakage but not rupture.

H2MOF raised concerns about the proposed 3-minute hold requirement for a visible leak, stating that if the pressure vessel leaks, the pump may not be able to maintain pressure, potentially causing the test to abort.

Nikola disagreed with NHTSA's proposal, commenting that leak-before-burst is not currently a requirement and that the term implies the container should leak and never burst at the end of its life.

FORVIA also disagreed with the 3-minute sustained leak requirement and recommended keeping the test procedure harmonized with GTR No. 13. It questioned the justification for the 3-minute requirement and noted that the behavior described, where a burst is preceded by leakage, is extremely improbable. It suggested that pressure should be allowed to drop below a certain level instead of imposing a time-based requirement, as this behavior is unknown in its experience.

TesTneT commented that the 3-minute sustained leak requirement changes the test from a leak-before-burst test to a stress rupture test. Based on its 35 years of experience performing leak-before-burst testing, it stated it has never encountered an issue distinguishing between a leak and a burst. TesTneT also referred to NHTSA's mention of observing leaks in slow motion and suggested that it is unnecessary to observe the location of failure during testing. It recommended maintaining the current wording in GTR No. 13 without any changes.

Agency Response

The requirements regarding the number of cycles for which a container shall not leak nor burst, and thereafter shall not burst are clarified in the proposed FMVSS No. 308 S5.1.1.2. The proposed S5.1.1.2 clearly specifies the number of cycles for which a container shall not leak nor burst and thereafter the number of cycles for which the container shall not burst. The number of cycles specified is dependent on the GVWR of the vehicle under test.

Based on the comments, however, NHTSA is removing the statement about sustaining a visible leak for three minutes before the test can end successfully due to ''leak before burst.'' Instead, the final rule simply states that if a leak occurs while conducting the test as specified in S5.1.1.2(a)(2) or S5.1.1.2(b)(2), the test is stopped and not considered a failure. Test labs will not observe the baseline initial pressure cycling test in slow motion and therefore it will be clear to the test lab whether the test has resulted in leakage or in a burst.

NHTSA also made a clerical correction to S6.2.2.2(e) to remove the word ''container,'' such that S6.2.2.2(e) reads ''The manufacturer may specify a hydraulic cycling profile within the specifications of S6.2.2.2(c).''

(2) Effect of the Cycling Profile

Background

NHTSA proposed a maximum hydraulic pressure cycle rate of five to ten cycles/minute for the baseline initial pressure cycle test. This rate was selected to allow for efficient compliance testing. Actual fueling cycles for hydrogen vehicles occur more slowly. Therefore, the container manufacturer may specify a hydraulic pressure cycle profile that will prevent premature failure of the container due to test conditions outside of the container design envelope. NHTSA sought comment on cycling profiles and whether the pressure cycling profile

[21] *See* 89 FR 27512 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

[22] *See https://www.energy.gov/eere/fuelcells/doe-technical-targets-onboard-hydrogen-storage-light-duty-vehicles.*

will significantly affect the test result. NHTSA sought comment on more specifics of what manufacturers should be allowed to specify regarding an appropriate pressure cycling profile for testing their system.

Comments Received

Luxfer Gas Cylinders stated that the maximum cycle rate of 10 cycles per minute specified in GTR No. 13 is rarely approached in testing, noting that Luxfer uses 4 cycles per minute for larger containers. Auto Innovators commented that cycle rates and profiles do affect container performance, and manufacturers should be allowed to specify these parameters, as unrealistic testing conditions could lead to failures not representative of actual service. It suggested that NHTSA consider aligning with GTR No. 13 Phase 2, which specifies a maximum of 10 cycles per minute. It also stated that the pressure cycling profile has not been seen to significantly affect test results and that manufacturers generally cycle as quickly as is safe and practical.

H2MOF agreed with NHTSA that the cycling profile can impact test results depending on materials and design margins, emphasizing the importance of the number of cycles and pressure limits. It supported allowing manufacturers to specify pressurization and depressurization rates, as well as hold times.

TesTneT, drawing on over 35 years of experience, disagreed with the idea that cycling profiles affect test results, stating that no evidence supports this concern and criticizing the Powertech report referenced by NHTSA. It also noted that GTR No. 13 allows manufacturers to specify any cycle profile as long as it stays within the 10 cycles per minute limit.

Nikola commented that the defueling or unloading phase of the pressure cycle can impact container life, supporting the idea that manufacturers should be allowed to specify an appropriate profile. HATCI recommended that NHTSA fully harmonize with the GTR No. 13 Phase 2 requirement where the container is cycled less than or equal to 10 cycles per minute.

Agency Response

NHTSA is maintaining the maximum hydraulic pressure cycle rate of 10 cycles/minute for the baseline initial pressure cycle test, consistent with GTR No. 13. However, NHTSA will remove the lower cycling limit of 5 cycles per minute. As a result, the cycling rate may be any rate up to 10 cycles per minute. This change will accommodate larger containers which may take longer to cycle.

While some commenters stated that the cycling profile is inconsequential, others stated the profile can have an effect for some container designs. NHTSA acknowledges that the cycling profile may affect the test result for some containers. As a result, NHTSA will maintain the specification that manufacturers may specify a pressure cycling profile for testing their system. The manufacturer's specifications will need to be within the above cycling rate range and the other conditions specified in FMVSS No. 308 S6.2.2.2(c). At NHTSA's option, NHTSA will cycle the container within 10 percent of the manufacturer's specified cycling profile.

8. Test for Performance Durability

Background

The test for performance durability addresses impact (drop during installation and/or road wear), static high pressure from long-term parking, over-pressurization from fueling and fueling station malfunction and environmental exposures (chemicals and temperature/humidity). These stresses are compounded in a series is because a container may experience all of these stresses during its service life, and the safety need for a hydrogen system remains an issue for the vehicle's entire service life.

Comments Received

Luxfer Gas Cylinders commented that the verification tests for performance durability, on-road performance, and service-terminating performance in fire can be expensive, with costs exceeding $500,000, and potentially reaching $1,000,000 for larger containers. It asked whether NHTSA was aware of the high cost associated with conducting the proposed test program.

Quantum stated that completing the entire hydraulic and pneumatic test sequences with the on-tank-valves (OTV) installed would significantly increase the time required for testing. It explained that the small orifice size of OTVs restricts hydrogen or hydraulic fluid flow, thus extending the duration of each test sequence. Additionally, Quantum noted that other components of the CHSS, such as the TPRD, check valve, and shut-off valve, are tested separately from the container for cycle life. Since these valves are designed for gas use rather than continuous liquid flow, Quantum recommended removing the requirement for the OTV to be installed during testing.

Agency Response

NHTSA is aware of the test burden of the proposed tests. FMVSS establish minimum safety requirements and the FMVSS test procedures establish how the agency would verify compliance. However, manufacturers are not required to conduct the exact test in the FMVSS to certify their vehicles. The Safety Act requires manufacturers to certify that their vehicles meet all applicable FMVSS, and specifies that manufacturers may not certify compliance if, in exercising reasonable care, the manufacturer has reason to know the certificate is false or misleading. Manufacturers may use different types of tests or even simulations to certify their vehicles if they exercise reasonable care in doing so. In other words, manufacturers must ensure that their vehicles will meet the requirements of FMVSS No. 308 when NHTSA tests the vehicles in accordance with the test procedures specified in the standard, but manufacturers may use different test procedures and evaluation methods to do so.

Regarding Quantum's comment regarding testing with OTVs, the NPRM clearly specifies that only the container is subject to the requirements of the test for performance durability. The ''container,'' as defined the regulation, does not include closure devices. On the other hand, the test for expected on-road performance is conducted using hydrogen gas, and with the entire CHSS. The test for expected on-road performance therefore includes closure devices as part of the CHSS.

a. Proof Pressure Test

Background

GTR No. 13 states that a container that has undergone a proof pressure test in manufacture is exempt from this test. However, NHTSA may not know whether a container has undergone the proof pressure test. As a result, NHTSA proposed that all containers will be subjected to the proof pressure test as part of the test for performance durability. In the event that a proof pressure test is conducted during manufacture and as part of the tests for performance durability, the container would experience two proof pressure tests. NHTSA sought comment on conducting the proof pressure test on all containers.

Comments Received

Nikola opposed NHTSA's proposal to add the proof pressure test, stating that all onboard vehicle containers already undergo 100 percent proof pressure tests by manufacturers. Luxfer Gas Cylinders

supported the decision to require all containers to undergo the proof pressure test as part of the test for performance durability. Auto Innovators disagreed, arguing that this would add unnecessary burden without additional safety benefits, as proof pressure testing is already required before service. It requested harmonization with GTR No. 13 Phase 2, which exempts containers that have already undergone proof testing during manufacturing.

Air Products suggested reviewing the proposed 30- to 35-second hold time, as it is significantly shorter than the 10-minute hold period specified in other industry standards. DTNA supported NHTSA's proposal for consistency, stating that all containers should undergo the proof pressure test regardless of prior testing during manufacturing. H2MOF opposed duplicating the test, stating that the additional high-stress cycle would negatively impact container performance during durability testing, as containers are already factory proof tested according to industry standards. HATCI also opposed the requirement, recommending the adoption of GTR No. 13 Phase 2, which exempts containers that have undergone proof pressure testing in manufacture.

TesTneT commented that proof pressure testing is conducted on all designs during production, not merely to confirm the container's resistance to over-pressurization, but to ensure consistency in manufacturing through measurements of elastic and permanent expansion. It suggested that if a design is damaged by a proof pressure test, it would become apparent during pressure cycle testing, thus rendering additional proof pressure testing unnecessary.

MEMA disagreed with the assumption that it is unknown whether a container has undergone proof testing during manufacturing, stating that some manufacturers conduct this test as part of the fabrication process, which is required under GTR No. 13. MEMA suggested adding language to FMVSS No. 308 allowing an exemption for containers that have already undergone proof pressure testing.

FORVIA acknowledged concerns about dual testing but suggested that NHTSA incorporate language from GTR No. 13 Phase 2, which allows for exemptions for duplicative proof tests, ensuring that all containers comply with FMVSS requirements. It further argued that if a second test is deemed not to significantly stress the container, the first test should also be considered adequate, as repeated pressurizations are unlikely to make a significant difference.

Agency Response

Based on the comments received, NHTSA is removing the proof pressure test. Commenters emphasized that 100 percent of all containers already undergo a proof pressure test during manufacturing, as part of standard production practices, and that requiring an additional proof pressure test would be redundant and burdensome without offering any additional safety benefits. Several commenters also raised concerns that subjecting a container to multiple proof pressure tests could introduce unnecessary stress and possibly affect the container's performance in subsequent tests.

After considering these comments, NHTSA agrees that a second proof pressure test would not provide additional safety benefits and could possibly impose undue stress on the container. As a result, the proof pressure test has been removed from the test for performance durability and the test for expected on-road performance, discussed below.

b. Drop Test

(1) Damage That Prevents Further Testing

Background

It is possible that the container could experience damage from the drop test that prevents continuing with the remainder of the tests for performance durability. This damage would prevent NHTSA from completing the evaluation of a container. To address this possibility, NHTSA proposed that if any damage to the container following the drop test prevents further testing of the container, the container is considered to have failed the tests for performance durability and no further testing is conducted.

Comments Received

HATCI commented that the inability to conduct subsequent tests after damage from the drop test should not automatically result in a failed test for performance durability. It suggested that additional containers should be used for further testing in such cases. As an example, it noted that deformation of an aluminum nozzle opening or valve connection after a drop test could prevent further testing, but this deformation does not necessarily indicate a lack of durability.

MEMA agreed with the single drop event specified in FMVSS No. 308 S5.1.2.2 but raised concerns about the potential for confusion regarding the damage criteria. It suggested that NHTSA clarify the wording to specify ''irrecoverable damage'' or ''damage that cannot be readily repaired'' to account for conditions where minor repairs, such as fixing damaged threads on a shut-off valve, could allow testing to continue.

Agency Response

NHTSA is maintaining the test requirements as proposed. Damage that prevents the continuation of testing under S6.2.3.4 must be considered a failure of the test for performance durability because the required test sequence cannot be completed in its entirety. NHTSA will not repair containers that are damaged during the drop test.

(2) Including Container Attachments for the Drop Test

Background

The drop test is a test in which container attachments may improve performance by protecting the container when it impacts the ground. Consistent with GTR No. 13, the drop test is conducted on the container with any associated container attachments. NHTSA sought comment on including container attachments for the drop test.

Comments Received

EMA stated that its members lack experience with dropping containers with attachments and are unsure of what qualifies as a ''container attachment'' for heavy vehicles, which often use multiple hydrogen containers. EMA commented that including attachments could make it difficult to ensure consistent impact locations during the test and recommended aligning FMVSS No. 308 with UN ECE R134, dropping the container without attachments unless the manufacturer opts to include impact-mitigating attachments. It suggested requiring the manufacturer to specify whether container attachments should be included for the test.

H2MOF supported conducting the drop test with container attachments, as it reflects real-life scenarios. Auto Innovators opposed including attachments unless they are permanently fixed to the container, arguing that removable attachments should be excluded to maintain flexibility and focus on container robustness. It noted that this approach aligns with GTR No. 13's intent to demonstrate container durability before installation.

Nikola commented that attachments should be included only if they are present during shipping; if added during vehicle assembly, they should be excluded. Luxfer Gas Cylinders opposed dropping containers with attachments,

stating that the attachments are more likely to break than the container itself, and including them would complicate the test by introducing additional variables. It also noted that conducting the test with valves and PRDs attached would be impractical. TesTneT commented that if attachments are part of the container when it leaves production, they should remain for the drop test, as the test addresses potential handling damage before installation. FORVIA supported including container attachments in the drop test, referencing that their inclusion was a key factor in the development of GTR No. 13.

Agency Response

''Container attachments'' means non-pressure bearing parts attached to the container that provide additional support and/or protection to the container and that may be removed only with the use of tools for the specific purpose of maintenance or inspection. Container attachments do not refer to the structures that physically attach the container(s) to the vehicle. NHTSA will not rely on the manufacturer to specify container attachment configurations as this adds unnecessary complexity. NHTSA will simply purchase vehicles or replacement containers at the point of sale and conduct the drop test with any included, pre-installed container attachment that meet the definition for container attachments. Given that manufacturers are required to ensure that the vehicle is compliant at the time it is delivered to a dealer or distributor, manufacturers should take reasonable care to ensure they are not damaging or installing damaged containers into vehicles. If a container is sold at the point of sale without pre-installed container attachments, it will be tested as such.

(3) Center of Gravity

Background

In the case of a non-cylindrical or asymmetric container, the horizontal and vertical axes may not be clear. The proposed rule provided that in such cases, to conduct the drop test, the container will be oriented using its center of gravity and the center of any of its shut-off valve interface locations. The two points will be aligned horizontally (*i.e.,* perpendicular to gravity), vertically (*i.e.,* parallel to gravity) or at a 45° angle relative to vertical. The center of gravity of an asymmetric container may not be easily identifiable, so NHTSA sought comment on the appropriateness of using the center of gravity as a reference point for this compliance test and how to properly determine the center of gravity for a highly asymmetric container.

Comments Received

Auto Innovators supported NHTSA's proposal to align with GTR No. 13, stating that for asymmetric containers, orientation is typically determined when mounted in a vehicle. It added that technical information on the center of gravity could be provided to NHTSA if needed, noting that identifying the center of gravity, even for asymmetric shapes, is not particularly difficult. It advocated for maintaining the same specifications as GTR No. 13 Phase 2, which it found to be adequate.

DTNA agreed that using the center of gravity as a reference for the drop test was appropriate, as it ensures reproducibility in test results. It emphasized that determining the center of gravity accurately is critical for valid test outcomes. DTNA recommended that manufacturers provide this data to NHTSA prior to testing, allowing the agency to verify the information and request clarification if necessary. It highlighted that the accuracy of this reference point is essential, especially given the NPRM's proposal that failure of the drop test would result in failing the entire performance durability testing process.

H2MOF proposed that the center of gravity for a highly asymmetric container be determined using the container's geometric CAD file. Nikola suggested maintaining the current center of gravity definition as outlined in GTR No. 13.

TesTneT supported using the center of gravity as a reference, noting that it is a physical characteristic shared by all container designs, including asymmetric ones. It added that orientation for such containers could be determined when installed on a vehicle, and the center of gravity could be established in consultation with the manufacturer.

FORVIA stated that keeping the test procedure harmonized with GTR No. 13 was appropriate. It noted that identifying the center of gravity experimentally is not overly difficult, and it believed that fully asymmetric containers are unlikely to be prevalent in the market. Instead, it anticipated new rectangular designs with centers of gravity near their geometric centers, providing a good basis for testing.

Agency Response

The center of gravity is not defined in GTR No. 13, nor is a method provided for determine the center of gravity for an asymmetric container. NHTSA will not have access to CAD files for the container. Therefore, in the case of an asymmetric container, NHTSA will obtain the center of gravity from the manufacturer, similar to how it obtains the primary constituent and BP_O. The manufacturer shall specify, in writing, and within 15 business days, the center of gravity of the container. In the drop test, t container will be oriented using its center of gravity and the center of any of its shut-off valve interface locations. These two points will be aligned horizontally (*i.e.,* perpendicular to gravity), vertically (*i.e.,* parallel to gravity) or at a 45° angle relative to vertical, as specified.

c. Surface Damage Test

Background

NHTSA proposed the surface damage test based on GTR No. 13 Phase 2. The surface damage test applies cuts and impacts to the surface of the container. The surface damage test consists of two linear cuts and five pendulum impacts.

Comments Received

MEMA commented on the surface damage test proposed by NHTSA, stating that there were differences between the proposed requirements and those in GTR No. 13. It stated that in Section 6.2.3.3(a), for non-metallic containers, NHTSA's proposal includes two longitudinal saw cuts, which is consistent with GTR No. 13. However, it stated that NHTSA proposed different lengths and depths for the cuts without explaining why the differences are necessary or how they might improve test results.

MEMA further stated that NHTSA's proposal specifies the first cut as being 0.75 millimeters to 1.25 millimeters deep and 200 millimeters to 205 millimeters long, while the second cut, only required for containers affixed to the vehicle by compressing its composite surface (*i.e.,* clamped), would be 1.25 millimeters to 1.75 millimeters deep and 25 millimeters to 28 millimeters long. MEMA stated that GTR No. 13 requires two cuts regardless of how the container is affixed, with the first cut being at least 1.25 millimeters deep and 25 millimeters long toward the valve end, and the second cut being at least 0.75 millimeters deep and 200 millimeters long toward the opposite end.

MEMA stated that its members believe that the GTR No. 13 requirements provide a better minimum threshold and requested that NHTSA harmonize FMVSS No. 308 with GTR No. 13 on this matter. It also expressed concern that additional surface damage test requirements, as part of the already lengthy pressure cycling test, would

increase the complexity, duration, and cost of the process without delivering more representative or improved results. MEMA proposed that FMVSS No. 308 S6.2.3.3. be revised to align with GTR No. 13.

Agency Response

The commenter appears to be referencing the original version of GTR No. 13. GTR No. 13 has undergone a comprehensive Phase 2 revision that was adopted at the 190th Session of WP.29 on June 21, 2023.[23] Phase 2 accomplished several goals, including strengthening test procedures for containers with pressures below 70 MPa. The U.S. voted in favor of adopting Phase 2 and the changes made to GTR No. 13 by Phase 2 are reflected in NHTSA's proposal for FMVSS Nos. 307 and 308 and in this final rule. GTR No. 13 Phase 2 states in section 6.2.3.3(a): ''Surface flaw generation: A saw cut at least 0.75 mm deep and 200 mm long is made on the surface specified above. If the container is to be affixed to the vehicle by compressing its composite surface, then a second cut at least 1.25 mm deep and 25 mm long is applied at the end of the container which is opposite to the location of the first cut.'' Regarding the difference in lengths of the proposed FMVSS No. 308 S6.2.3.3(a), these differences are simply due to tolerances added to FMVSS No. 308, as discussed below.

(1) Including Container Attachments

Background

The surface damage test is a test in which container attachments may improve performance by shielding the container from the impacts. For containers with container attachments, GTR No. 13 specifies that if the container surface is accessible, then the test is conducted on the container surface. Determining whether the container surface is accessible is subjective because ''accessible'' is not defined in the GTR and could have many potential meanings. Therefore, NHTSA did not propose a specification involving the accessibility of the container surface. Instead, NHTSA proposed that if the container attachments can be removed using a process specified by the manufacturer, they will be removed and not included for the surface damage test nor for the remaining portions of the test for performance durability. Container attachments that cannot be removed are included for the test. NHTSA sought comment on including container attachments for the surface damage test.

Comments Received

HATCI expressed agreement with NHTSA's proposal to remove container attachments, when possible, and to exclude them from the surface damage test. Auto Innovators recommended harmonizing with GTR No. 13, supporting the removal of attachments if specified by the manufacturer, and including non-removable attachments, as doing so ensures the test is conducted on the container's pressure-bearing chamber. H2MOF agreed that non-removable container attachments should be included in the test.

Luxfer Gas Cylinders commented that containers can be used in various vehicle systems with different attachments, making it impractical to test each type of attachment. It supported testing containers without attachments if they can be removed, adding that the drop test and the four-minute hold at 180 percent NWP are the primary design drivers, and it is unnecessary to include attachments in any tests. TesTneT stated that pendulum impacts do not affect the integrity of composite containers and were originally intended to test protective coatings. It recommended including attachments in the test if these attachments are designed to protect the container surface from road conditions. FORVIA requested keeping non-removable attachments in the surface damage test, noting that these attachments were introduced in GTR No. 13 due to the surface damage test.

Agency Response

NHTSA is maintaining the surface damage test as proposed. If the container attachments can be removed using a process specified by the manufacturer, they will be removed and not included for the surface damage test nor for the remaining portions of the test for performance durability. Testing the container without its container attachments is representative of a situation in which installation personnel remove the container attachments and fail to re-install them before the container enters service. Additionally, since the goal of a surface damage test is to test the surface, it makes sense to remove the container attachments that are capable of being removed. While NHTSA has chosen to keep container attachments on for other tests (*e.g.* the drop test, if the container attachment is pre-installed and meets the definition of container attachment), the surface damage test is different enough to warrant a deviation from that practice. Container attachments that cannot be removed are included for the test.

If different vehicles require different configurations of container attachments, each configuration would be subject the requirements separately. If some of the configurations have removable container attachments, those container attachments would be removed. If some configurations have non-removable container attachments, those container attachments would remain in place during the surface damage test.

(2) Exempting All-Metal Containers

Background

GTR No. 13 exempts all-metal containers from the linear cuts. NHTSA's proposal included this exemption, but NHTSA sought comment on whether another objective and practicable procedure exists for evaluating surface abrasions that could apply to all containers, such as, for example, the application of a defined cutting force to the container surface.

Comments Received

TesTneT commented that its experience with CNG cylinders has shown that steel cylinders are resistant to abrasion damage of the magnitude proposed for composite containers. It noted that developing a performance test to simulate defect dimensions as outlined in GTR No. 13 would be complicated, involving variables such as the shape, angle, and force of impact. Since surface abrasions do not cause failure in thinner-walled CNG cylinders, it suggested such abrasions would not pose a problem for hydrogen containers. Nikola and H2MOF both agreed with the exemption for all-metal containers from the linear cuts.

Auto Innovators supported the proposed exemption for metal containers and stated that requiring a test for a defined cutting force would add unnecessary regulatory burden. It emphasized that container manufacturers should provide sufficient technical information for compliance purposes. Verne, Inc. recommended extending the exemption to all-metal container attachments as well, noting that metal is resistant to scratches and cuts, and flaw cut depths may exceed the wall thickness of metal attachments.

Luxfer Gas Cylinders raised the concern that containers could experience cuts during service, such as from poorly fitted brackets. It suggested that metal containers with walls thin enough to be penetrated by cuts would be unsuitable for high-pressure vehicle

[23] A copy of GTR No. 13 as updated by the Phase 2 amendments is available at *https://unece.org/transport/documents/2023/07/standards/un-global-technical-regulation-no-13-amendment-1.*

fuel systems and recommended a more clearly defined test instead of a blanket exemption. FORVIA requested that the test procedure remain harmonized with GTR No. 13, noting that GTR No. 13 sets minimum requirements. It asked for clear justification if flaws in metallic containers are considered a concern and suggested discussing this issue in GTR No. 13 phase 3.

Agency Response

NHTSA is maintaining the exemption from the linear cuts for all-metal containers. The commenters did not provide sufficient information regarding how to conduct an alternative test with a defined cutting force applied to the metal container surface. Moreover, as stated by the commenters, metal containers are resistant to abrasions so this form of surface damage is not expected to be a significant safety concern. NHTSA is not extending the exemption to all-metal container attachments, however. Doing so would add complexity to the testing process where some container attachments would be treated differently from others. Furthermore, container attachments may be in place to protect the containers from abrasions and other surface damage, so the container attachments themselves should be able to tolerate surface damage.

The global community also considered this issue in developing GTR 13 and found that an exemption for-all metal containers was appropriate based on challenges with an adequate test procedure. Accordingly, both harmonization and practical challenges favor exempting all-metal containers from the linear cuts at this time. However, NHTSA has robust enforcement authority to address defects that pose an unreasonable risk to safety, including in all-metal containers. NHTSA will continue to monitor the state of the industry and will revise the standard in a future rulemaking as necessary.

(3) Applying Impacts on the Opposite Side vs. a Different Chamber

Background

In accordance with GTR No. 13, NHTSA specified the pendulum impacts ''on the side opposite from the saw cuts.'' For containers with multiple permanently interconnected chambers, GTR No. 13 specifies applying the pendulum impacts to a different chamber to that where the saw cuts were made. However, the agency did not propose this distinction for pendulum impact location for containers with multiple permanently interconnected chambers because NHTSA was concerned that it may be less stringent than when impacts are to the same chamber where the cuts were applied. NHTSA sought comment on whether applying the impacts to the opposite side of the same chamber that received the saw cuts may be more stringent than applying the impacts to a separate chamber, and whether including the specification as written in GTR No. 13 would reduce stringency for containers with multiple permanently interconnected chambers relative to containers with a single chamber.

Comments Received

H2MOF supported the approach in GTR No. 13, stating that the likelihood of both saw cuts and pendulum impacts affecting the same chamber is extremely low. HATCI supported NHTSA's proposal to harmonize with the GTR No. 13 surface damage test but recommended also adopting the GTR No. 13 requirement to apply the pendulum impact to a different chamber when multiple chambers are present. While acknowledging NHTSA's concerns, HATCI recommended harmonization with GTR No. 13 Phase 2 specifications.

Auto Innovators supported adopting the GTR No. 13 requirements and commented that applying impacts to the same chamber does not make the test more stringent than performing the impacts on separate chambers. TesTneT stated that pendulum impacts are designed to puncture protective coatings or resin gel coats but do not affect the structural integrity of the composite reinforcement. It argued that there is no reason to deviate from GTR No. 13 since stringency is not an issue.

MEMA members also supported the procedure outlined in GTR No. 13 and did not see the need for modifications. MEMA encouraged NHTSA to fully align with GTR No. 13 for the pendulum impact portion of the surface damage test. FORVIA echoed the recommendation to align with GTR No. 13 Phase 2, stating that different specifications based on chamber type could introduce confusion in testing. It added that there is no evidence suggesting changes in the surface cut and pendulum impact locations would impact safety and recommended following the industry standard until further research is conducted. FORVIA also commented that combining surface flaws with pendulum impacts and chemical exposure in testing is unnecessary since such damage combinations are highly improbable during service life.

Agency Response

Based on the comments received, in the case of a container with multiple permanently interconnected chambers, NHTSA will specify the impacts on the surface of a different chamber. NHTSA is convinced that applying the impacts to a different chamber is equivalently stringent to applying the impacts on the opposite side of a single chamber. NHTSA agrees that the pendulum impacts were not intended to be compounded in close proximity with the surface cuts as would occur if both types of damage were applied to a single small chamber of a multi-chamber container. FMVSS No. 308 S6.2.3.3(b) has been updated to reflect this change.

d. Chemical Exposure and Ambient Pressure Cycling Test

Background

The chemical exposure test is a test in which container attachments may improve performance by shielding the container from the chemical exposures. The proposed rule provided that container attachments will be included in the chemical exposure test unless they were removed prior to the surface damage test. NHTSA sought comment on including container attachments for the chemical exposure test.

Comments Received

Auto Innovators supported harmonizing these requirements with GTR No. 13, commenting that if attachments can be removed, they should be removed before testing, but if they cannot be removed, they should be included in the test. Auto Innovators added that if chemicals can reach the surface of removable attachments, then the surface should also be exposed to chemicals. EMA recommended modifying FMVSS No. 308, S6.2.3.4 to state that each of the five areas preconditioned by pendulum impact should be exposed to a different solution. H2MOF agreed that container attachments may be present during the chemical exposure test, as they are present during regular service. TesTneT commented that any attachments included in a vehicle installation should also be included in the chemical exposure test, as these attachments might protect the container surface from road conditions. FORVIA stated that non-removable container attachments should be allowed in the chemical exposure test, noting that the test contributed to the introduction of container attachments in GTR No. 13.

Agency Response

NHTSA is maintaining the inclusion of container attachments in the chemical exposure test unless they were removed prior to the surface damage test, as discussed above. NHTSA is not including 'EMA's proposed edit specifying that a different solution is applied to each preconditioned area. There is no need to specify that a different solution is applied to each area. This language is consistent with GTR No. 13, which specifies that each of the five areas ''is exposed to one of five solutions.''

e. High Temperature Static Pressure Test

Background

Consistent with GTR No. 13, the high temperature static pressure test involves holding the container for 1000 hours at 85 °C and 125 percent NWP.

Comments Received

Auto Innovators stated that it supports NHTSA's proposal to harmonize these requirements with GTR No. 13.

Agency Response

NHTSA is maintaining the high temperature static pressure test as proposed.

f. Extreme Temperature Pressure Cycling Test

Background

Consistent with GTR No. 13, the extreme temperature pressure cycling test involves pressure cycling at extreme temperatures and simulates operation (fueling and defueling) in extreme temperature conditions. The test for performance durability uses the same number of cycles as required by the baseline initial cycle test before leakage. This is a total of 7,500 cycles for light vehicles or 11,000 cycles for heavy vehicles. The extreme temperature pressure cycling test consists of 40 percent of these total cycles, of which half (20 percent of the total) are conducted at −40 °C and the other half are conducted at 85 °C.

Comments Received

Quantum Fuel Systems, LLC commented on an ambiguity in GTR No. 13 related to the number of cycles required for the extreme cold and hot tests. It stated that clarification is needed to determine whether the total number of cycles for the extreme temperature pressure cycling test should be 22,000 or 11,000. Quantum also proposed edits to Table 6 of GTR No. 13 to address this ambiguity. Auto Innovators expressed support for NHTSA's proposal to harmonize these requirements with GTR No. 13.

Agency Response

NHTSA is maintaining the extreme temperature pressure cycling test as proposed. The proposed requirement clearly specifies that ''the container is pressure cycled in accordance with S6.2.3.6 for 40 percent of the number of cycles specified in S5.1.1.2(a)(1) or S5.1.1.2(b)(1) as applicable.'' FMVSS No. 308 S5.1.1.2(a)(1) and S5.1.1.2(b)(1) clearly list 7,500 and 11,000 cycles, respectively. The number of cycles used for the extreme temperature pressure cycling test is not based on 22,000 cycles.

g. Residual Pressure Test

Background

Consistent with GTR No. 13, the residual pressure test requires pressurizing the container to 180 percent NWP and holding this pressure for 4 minutes.

Comments Received

Auto Innovators expressed support for NHTSA's proposal to harmonize the residual pressure test requirements with GTR No. 13. Agility commented that the residual pressure test requirement should remain at 180 percent NWP, regardless of BP_O. It added that manufacturers would still have incentives to limit performance degradation due to its effects on cost and repeatability.

Agency Response

NHTSA is maintaining the residual pressure test as proposed. The requirement of 180 percent NWP with a four-minute hold period is independent of BP_O. The residual pressure test does not address degradation rate. Degradation rate is addressed by the residual strength burst test, discussed in the next section.

h. Residual Strength Burst Test

Background

Consistent with GTR No. 13, the residual strength burst test involves subjecting the end-of-life container to a burst test identical to the baseline initial burst pressure test. The burst pressure at the end of the durability test is required to be at least 80 percent of the BP_O specified on the container label. This requirement effectively controls the burst pressure degradation rate throughout an extreme service life.

Comments Received

Auto Innovators expressed support for NHTSA's proposal to harmonize these requirements with GTR No. 13. Luxfer Gas Cylinders commented on the likelihood of a rapid rate of degradation in end-of-life burst pressure, stating that there is a ''vanishingly small likelihood that this would occur.'' It noted that no manufacturer would produce containers with a BP_O double the specified minimum requirement and questioned what mechanism would cause such degradation, suggesting that only severe damage could lead to it, in which case the container would be removed from service.

Agency Response

NHTSA is maintaining the residual strength burst test as proposed. As the commenter states, it is unlikely that a container would have such high degradation as to fail to maintain at least 80 percent of BP_O at its end-of-life burst pressure. However, the residual strength burst test is straightforward to pass for containers that do not experience severe burst strength degradation in service. Therefore, including this requirement does not significantly challenge container design or create an unnecessary burden on manufacturers. Instead, it simply prevents the possibility of a poor-performing container from posing a serious risk to safety due to severe burst strength degradation while in service.

9. Test for Expected On-Road Performance

Background

Consistent with GTR No. 13, NHTSA proposed the test for expected on-road performance. The proposed test is closely consistent with the industry standard SAE J2579_201806, ''Standard for Fuel Systems in Fuel Cell and Other Hydrogen Vehicles.'' [24]

Comments Received

Luxfer Gas Cylinders commented that the proposed test is time-consuming and expensive to conduct. It stated that for large 800 liter containers, there is only one test lab that can conduct the test. It stated that the cost of testing exceeds $500,000. It questioned if NHTSA proposing to evaluate containers using the proposed test procedures.

Agency Response

NHTSA is aware of the burden of the proposed test. FMVSS establish minimum safety requirements and the FMVSS test procedures establish how the agency would verify compliance. However, manufacturers are not

[24] SAE J2579_201806. Standard for Fuel Systems in Fuel Cell and Other Hydrogen Vehicles. *https://www.sae.org/standards/content/j2579_201806/.*

required to conduct the exact test in the FMVSS to certify their vehicles. The Safety Act requires manufacturers to certify that their vehicles meet all applicable FMVSS, and specifies that manufacturers may not certify compliance if, in exercising reasonable care, the manufacturer has reason to know the certificate is false or misleading. A manufacturer may use different types of tests or even simulations to certify its vehicles if the manufacturer exercises reasonable care in doing so. In other words, manufacturers must ensure that their vehicles will meet the requirements of FMVSS No. 308 when NHTSA tests the vehicles in accordance with the test procedures specified in the standard, but manufacturers may use different test procedures and evaluation methods to do so. Additionally, as hydrogen vehicles become more common, the number of test labs performing this test will likely increase, and the costs associated with testing will likely come down as a result.

a. Proof Pressure Test

Background

Consistent with GTR No. 13, NHTSA proposed a hydrogen-gas proof pressure test at the start of the test for expected on-road performance.

Comments Received

Auto Innovators expressed support for NHTSA's proposal to harmonize the proof pressure test with GTR No. 13. Agility questioned the purpose of performing the proof test with hydrogen instead of using a hydraulic testing method, commenting that the proposed approach seems unnecessarily high-risk and costly.

Agency Response

For the reasons discussed above for the test for performance durability, NHTSA is removing proof pressure testing from FMVSS No. 308. Since 100 percent of all containers already undergo the proof pressure test during manufacture, including this test would be redundant and unnecessary.

b. Ambient and Extreme Temperature Gas Pressure Cycling Test

Background

NHTSA proposed an ambient and extreme temperature gas pressure cycling test that is closely consistent with GTR No. 13.

Comments Received

Auto Innovators expressed support for NHTSA's proposal to harmonize the ambient and extreme temperature gas pressure cycling test with GTR No. 13, stating that tests should be conducted with temperature and pressure control devices in place, or that equivalent measures should be used to strictly adhere to the parameters. HATCI requested that NHTSA either harmonize with GTR No. 13 Phase 2 requirements or ensure strict adherence to proposed pressure and temperature ranges during testing. HATCI noted that container pressure should not exceed 100 percent state of charge (SOC) and that the minimum pressure should be 2 MPa. Based on internal testing, HATCI commented that temperatures outside the specified operational range could lead to o-ring failures, resulting in leakage. It added that during low-temperature pneumatic tests, internal temperatures can drop below −40 °C, sometimes reaching −45 °C, which does not reflect real environmental conditions and is not considered in container design. HATCI also recommended that NHTSA test CHSS within the manufacturer's design limits or within a temperature range of −40 °C to 85 °C, with manufacturers responsible for providing design temperature data upon NHTSA's request.

Agency Response

NHTSA is maintaining the ambient and extreme temperature gas pressure cycling test as proposed. The ambient and extreme temperature gas pressure cycling test does not subject the container to external temperature conditions below −30 °C. Additionally, the ambient and extreme temperature gas pressure cycling test does not consider the internal temperature of the container; only the ambient temperature surrounding the container is controlled, along with the fuel delivery temperature and the initial system equilibration temperature. Neither GTR No. 13 nor by the commenters provide a method for monitoring the internal temperature of the container during cycling. Instead, the container must be able to withstand the internal temperatures that result from the pressure cycling series as specified. As discussed in the NPRM, the pressurization rates specified in Table 5 to S6.2.4.1(c) of FMVSS No. 308 are based on real-world refueling rates, and the temperatures specified during the test are also based on real-world conditions, so this test for expected on-road performance is representative of conditions that can occur in-service.[25] The other differences noted by HATCI are related to test tolerances, which are discussed below.

c. Extreme Temperature Static Gas Pressure Leak/Permeation Test

Background

NHTSA proposed the extreme temperature static gas pressure leak/permeation test consistent with GTR No. 13, except for the removal of the localize leak requirement in the proposed standard. The localized leak limit was removed because it is not objectively enforceable due to the subjective estimation of bubble sizes. NHTSA sought comment on not including the localize leak requirement during the extreme temperature static gas pressure leak/permeation test and specifically requested that if commenters believed it should be included, that they explain (1) how they believe it could be made more objective and (2) how specifically it would add to the standard's ability to meet the safety need.

Comments Received

Commenters provided diverse feedback on the proposed removal of the localized leak requirement from the extreme temperature static gas pressure leak/permeation test.

Nikola suggested that while the bubble requirement could be removed, the single-point leak rate should not be eliminated, and a mass spectrometer could be used by testing facilities instead. It also noted that numerous hydrogen performance test facilities that can evaluate localized leaks.

Luxfer Gas Cylinders stated that permeation rate measurements are well-established, typically involving the CHSS in an airtight container with surrounding gas content measured accurately. Luxfer supported the decision to remove the localized leak requirement.

Auto Innovators agreed with the decision not to include the localized leak test. Similarly, DTNA commented that the localized leak test was unnecessary because the full system permeation test evaluates the overall system. However, if a localized leak test were necessary, DTNA suggested replacing the bubble test with a concentration-based hydrogen leak limit of 0.5 percent, derived from standards applied to CNG and propane vehicles.

TesTneT described its method of using a gas chromatograph or mass spectrometer in an enclosed, temperature-controlled chamber for accurate permeation measurement. It also use a mass spectrometer to quantify leakage after locating potential leak sites

[25] *See* 89 FR 27520 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

with a soapy solution. TesTneT raised concerns about hydrogen permeation risks in enclosed spaces, pointing out that hydrogen can leak out over time, making it difficult to accumulate in dangerous amounts.

Newhouse commented that NHTSA's proposed permeation rate of 46 mL/L/h at 55 °C is unreasonably low and noted several issues, such as considering worst-case scenarios and ventilation assumptions. Newhouse suggested allowing a higher limit of 100 percent of the lower flammability limit (LFL), or 4 percent hydrogen in air, and questioned the use of 55 °C as a peak temperature, stating that a lower average would be more representative. Newhouse also recommended increasing the allowable permeation rate to 184 mL/L/h at 55 °C and noted that the probability of failure remains low, even with more conventional ventilation rates in garage spaces.

FORVIA acknowledged that different methods can accurately measure leakage and permeation and suggested that guidance on measurement could be provided outside the FMVSS text. It was open to considering localized leak requirements but noted that the submersion method, though simple, may require more accurate measurements near the limits. It indicated that omitting this test for field surveillance would be acceptable, as production containers typically exhibit far less leakage. H2MOF proposed exempting all-metal containers from the static gas leak/permeation test and suggested that procedures from industry standards be used for guidance.

Agency Response

NHTSA is maintaining the extreme temperature static gas pressure leak/permeation test as proposed, without the localized leak limit. The commenters did not provide any explanation for the safety need of the localized leak limit. Commenters did not provide any evidence that omitting the localized leakage requirement is less stringent when there is also an overall permeation limit applied to the CHSS as a whole.

Furthermore, commenters did not provide sufficient explanation of how, if included, the localized leakage limit could be made more objective. Some commenters suggested using analytical chemistry equipment such as mass spectrometers. However, these types of instruments are highly complex, and additional research would be needed by NHTSA before they could be used to objectively quantify a leak. Even if the agency determined that mass spectrometers were viable for detecting localized leaks, the agency would still need to consider the safety need being addressed by the requirement.

NHTSA is not changing the overall permeation rate of 46 mL/L/h based on the comments. This permeation limit is found in GTR No. 13 and is widely accepted by the industry as an appropriate permeation limit. Well-developed rationale for this limit is provided in GTR No. 13 and in the NPRM.[26] In particular, the conservative 25 percent LFL limit accounts for concentration non-homogeneities that may be present, and the choice of 55 °C is a worst-case temperature condition, not one that is expected to occur commonly. Permeation is higher at higher temperatures, so NHTSA considered this worst-case condition when evaluating the permeation limit. This permeation limit is also applied in the industry standard SAE J2579_201806. The commenters did not establish sufficient rationale for NHTSA to deviate from the established 46 mL/L/h.

NHTSA is not exempting CHSS with all-metal containers from the extreme temperature static gas pressure leak/permeation test. All-metal containers must demonstrate the same level of performance and safety as other containers. NHTSA is not replacing the proposed test with either of the standards recommended by H2MOF. The commenter did not establish any justification for why doing so would improve safety, nor did it provide any detailed information regarding the alternative standards.

d. Residual Pressure Test & Residual Strength Burst Test

Background

The residual pressure test and residual strength burst test are conducted in the same manner and for the same reasons discussed above for the test for performance durability.

Comments Received

Auto Innovators stated support for NHTSA's proposal to harmonize these requirements with GTR No. 13.

Agency Response

NHTSA is maintaining the residual pressure test and residual strength burst test as proposed.

10. Test for Service Terminating Performance in Fire

Background

NHTSA proposed a fire test based closely on the GTR No. 13 Phase 2 fire test. The updates to the fire test by the IWG of GTR No. 13 Phase 2 focused on improving the repeatability and reproducibility across test laboratories. Two significant improvements to the fire test are (1) the use of a pre-test checkout procedure and (2) basic burner specifications. The pre-test checkout requires conducting a preliminary fire exposure on a standardized steel container to verify that specified fire temperatures can be achieved for the localized and engulfing fire segments of the test prior to conducting the fire test on a CHSS. During this pre-test checkout, the fuel flow is adjusted to achieve fire temperatures within the specified limits as measured on the surface of the pre-test steel container. The use of a pre-test steel container instead of an actual CHSS improves the accuracy and repeatability of the test because it avoids possible container material degradation that could affect the temperature measurements.

Comments Received

Luxfer Gas Cylinders commented that the recent changes introduced in GTR No. 13 regarding the fire test are ''excessive'' and do not enhance test performance. Luxfer stated that the pre-test using a steel container is only relevant when the steel container matches the size of the composite container being tested. For larger containers, such as those used in heavy vehicles, Luxfer stated that the pre-test becomes unnecessary. Luxfer and H2MOF both suggested that NHTSA consider adopting the Bonfire test from NGV 2 2019, ''Compressed natural gas vehicle fuel containers.'' [27] Additionally, Luxfer expressed concerns about the increased costs of the new GTR No. 13 fire test. It questioned whether NHTSA intends to apply this test to containers that have been withdrawn from service.

Agility commented that the fire source and pre-test procedures in GTR No. 13 do not accurately represent vehicle fire scenarios, particularly for heavy applications. It highlighted that the fire source width is set at 500 mm regardless of the container's diameter and that the temperature requirements focus solely on the area beneath and directly on the container surface. Agility further pointed out the lack of

[26] *See* 89 FR 27522 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

[27] *See https://webstore.ansi.org/standards/csa/csaansingv2019.*

requirements for measuring temperatures around the container, which is where remotely mounted PRDs are typically located.

Agency Response

NHTSA acknowledges the comments regarding the proposed fire test based on GTR No. 13 Phase 2 but does not find them persuasive enough to warrant any significant changes to the proposed test procedures. Specifically, the concern that the pre-test checkout using a steel cylinder is only relevant if it matches the size of the composite container is not valid. The pre-test checkout procedure is designed to ensure the consistency of fire temperature measurements, which can be achieved regardless of the difference in size between the pre-test container and the actual CHSS. The objective of the pre-test checkout is to verify the fire conditions produce the specified temperatures, which improves the accuracy and repeatability of the test across different laboratories.

Regarding the commenters' suggestions to adopt the fire test in NGV 2 2019, NHTSA is aware of ANSI NGV 2 2019, but the GTR No. 13 fire test remains more representative of real-world conditions. The proposed fire test procedure based on GTR No. 13 includes both localized and engulfing fire stages, which are designed based on actual vehicle fire data, as discussed in the NPRM.[28] The proposed fire test procedure is the most realistic fire test available that is representative of a range of possible real-world vehicle fires. The NGV 2 fire test does not provide the same level of comprehensiveness as the standard. The NGV 2 fire test does not include any pre-test procedures to improve repeatability and reproducibility, nor does it include a localized fire exposure. The fire test procedure, on the other hand, provides a rigorous, repeatable test that accounts for both localized and engulfing fire conditions, addressing various fire exposure scenarios. Due to the large volumes of hydrogen stored on hydrogen fueled vehicles, NHTSA maintains that the proposed fire test procedure is needed to ensure vehicles are designed with a high level of performance in fire conditions. NHTSA further notes that the pre-test checkout includes temperature specifications for the bottom, sides, and top of the pre-test container.

Regarding the concern about increased costs, vehicle manufacturers are already designing their vehicles to meet or exceed the requirements of the proposed fire test based on GTR No. 13, so NHTSA does not expect significant increased costs from implementing the proposed fire test. Regarding applying the requirements to containers that have been withdrawn from service, NHTSA purchases new vehicles at the point of sale for compliance testing. NHTSA does not conduct compliance testing on used vehicles or equipment.

a. Burner Specification

Background

To further improve test reproducibility, a burner configuration is defined with localized and engulfing fire zones. These specifications allow the fire test to be performed without a burner development program. NHTSA explained in the NPRM that it believes that the use of a standardized burner configuration is a practical way of conducting fire testing and should reduce variability in test results through commonality in hardware.[29] Flexibility is provided to adjust the length of the engulfing fire zone to match the CHSS length, up to a maximum of 1.65 m. The width of the burner, however, is fixed at 500 mm for all fire tests, regardless of the width or diameter of the CHSS container to be tested, so that each CHSS is evaluated with the same fire condition regardless of size. The length of the localized fire zone is also fixed to 250 mm for all fire tests. NHTSA sought comment on a specification for the burner rail tubing shape and size, which can affect the spacing between the nozzle tips.

Comments Received

MEMA expressed concerns that the burner specifications in FMVSS No. 308 S6.2.5.3 are more rigid than those in GTR No. 13, which specifies a larger burner assembly, allowing for the testing of larger hydrogen storage containers. MEMA suggested that the proposed limitations could create challenges for testing and qualifying hydrogen pressure vessels for the U.S. market, requesting that NHTSA to align more closely with GTR No. 13. MEMA also recommended revising the language in FMVSS No. 308 S6.2.5.2(c)(2) regarding nozzle orientation to avoid potential confusion and align with GTR No. 13, which targets the lowest elevation of the CHSS.

Auto Innovators recommended harmonizing with GTR No. 13, stating that industry standards already establish 1.65 meters as the length of the engulfing fire zone. Auto Innovators recommended maintaining the basic burner design from GTR No. 13. TesTneT commented that rails measuring 50 mm square, spaced at 100 mm, provide optimal nozzle tip spacing. It stated that the square rail is crucial for proper burner tip installation, and any deviation in rail size could reduce burner temperatures.

FORVIA emphasized the importance of maintaining equivalence with GTR No. 13, urging NHTSA to keep the burner configuration consistent with phase 2 of GTR No. 13. It cautioned that any changes to the burner specification could lead to ''serious dis-harmonization'' and result in the need for double testing for products sold across different regions.

Agency Response

In both GTR No. 13 and the proposed FMVSS No. 308, the burner width is between 450 millimeters and 550 millimeters in width. The additional length mentioned by TesTneT of 100 mm is intended to be a tolerance. Tolerances are discussed below. However, to ensure the maximum possible burner size consistent with GTR No. 13, FMVSS No. 308 S6.2.5.2(b) has been updated to allow the engulfing burner to extend up to a maximum of 1.75 meters.

NHTSA has determined there is no need to specify square burner rails. While this shape may be the most convenient shape for the burner rails, and test labs may prefer square rails, it may be possible to construct a burner using non-square rails. If such a burner were to meet all burner specifications and satisfy the prescribed temperature requirements, it would be considered an acceptable burner. Sufficient burner specifications, as well as the pre-test checkout procedure ensure the repeatability and reproducibility of the burner.

GTR No. 13 specifies that ''[t]he pre-test cylinder used for the pre-test checkout shall be mounted at a height of 100 ± 5 mm above the burner and located over the burner such that nozzles from the two centrally-located manifolds are pointing toward the bottom centre'' of the pre-test container. NHTSA similarly proposed mounting the pre-test container ''such that the nozzles from the two center rails are pointing toward the bottom center of the pre-test container.'' NHTSA is

[28] *See* 89 FR 27523 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

[29] *See* 89 FR 27527 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

maintaining this language in the final rule. This specification is sufficiently objective to ensure repeatability and reproducibility of the test. Furthermore, a specification regarding ''elevation'' may be ambiguous, and has not been included. For the CHSS fire test, the CHSS will be positioned for the localized fire test by orienting the CHSS such that the distance from the center of the localized fire exposure to the TPRD(s) and TPRD sense point(s) is at or near maximum. NHTSA is maintaining this orientation in the final rule.

b. Additional Pre-Test Procedurs for Irregularly Shaped Containers

Background

GTR No. 13 specifies additional pre-test checkout procedures intended for irregularly shaped CHSS which are expected to impede air flow through the burner. These procedures involve constructing a pre-test plate having similar dimensions to the CHSS to be tested. A second pre-test check out is conducted using the pre-test plate and using the burner monitor thermocouples. If the burner monitor thermocouple temperatures do not satisfy the specified minimum temperatures, then the pre-test plate is raised by 50 mm, and a third pre-test checkout is conducted. GTR No. 13 specifies that this process is repeated until burner monitor thermocouple temperatures satisfy the required minimum temperatures. NHTSA considered this additional pre-test process and determined that it is unnecessary. The goal of the pre-test checkout is a repeatable and reproducible fire exposure among different testing facilities. NHTSA has determined there is no need for design-specific modification to the fire test procedure. Furthermore, the additional pre-test procedures add considerable complexity to the test procedure, and as a result could undermine the repeatability and reproducibility of the fire test. Therefore, NHTSA did not propose these additional pre-test procedures. NHTSA sought comment on this decision.

Comments Received

Auto Innovators generally agreed with NHTSA's decision to streamline pre-test procedures but suggested that clarification is needed to ensure that a repeat test is only required if the pre-test does not meet the specified requirements. It emphasized that incorrect pre-test temperatures could result in over or under testing of the CHSS, potentially leading to a false pass or failure.

FORVIA disagreed with NHTSA's decision, advocating for the retention of the existing pre-test procedures for irregularly shaped CHSS as specified in GTR No. 13. It stated that consistency across global markets is crucial to minimize discrepancies and ensure manufacturers follow uniform guidelines. FORVIA acknowledged that the additional pre-test procedures might add time but noted that they would likely reduce the need for retesting and avoid introducing variables that could compromise repeatability. It emphasized that GTR No. 13 procedures had been validated through significant work, including round robin testing, and stated that deviating from these standards could undermine the enforceability of failed tests.

HATCI also stated that the additional pre-test procedures for irregularly shaped CHSS are necessary, stating that a lack of uniform temperature distribution could negatively affect TRPD activation. It stressed the importance of ensuring proper testing for all CHSS designs and suggested that the repeatability and reproducibility of the test could be reassessed as more irregular containers are introduced. TesTneT, on the other hand, agreed with NHTSA's decision, stating that additional pre-test procedures are unnecessary.

Agency Response

NHTSA is not including additional pretest procedures for irregularly shaped containers. NHTSA conducted fire testing of large, irregularly shaped CHSS according to the proposed test procedure. The test was highly successful, with the CHSS TPRD activating within one minute of the ignition of the localize burner. The results of this testing are summarized in the test report ''GTR No. 13 Fire and Closures Tests.'' [30] These results indicate that additional design-specific procedures are not required and irregularly shaped CHSS can successfully complete the test for service terminating performance in fire. The use of the pre-test container is simply to verify the burner and is not intended to precisely match the size of the CHSS.

c. Pre-Test Container Length Compared to CHSS

Background

NHTSA conducted CHSS fire testing to verify the feasibility of the test for service termination performance in fire as proposed. In some cases during testing, temperatures measured at the burner monitor thermocouples did not satisfy the required minimum value for the burner monitor temperature during the engulfing fire stage (T_{minENG}).[31] NHTSA's testing indicated that the airflow during the pre-test may be different from that of the CHSS if the pre-test container length is substantially different from that of the CHSS to be tested. The difference in air flow between the two tests could cause differences in fire input to the CHSS compared to the pre-test container. Therefore, NHTSA recommended that for CHSS of length between 600 mm and 1650 mm, the difference in the length of the pre-test container and the CHSS be no more than 200 mm. NHTSA sought comment on whether this recommendation should be a specification for the pre-test container.

Comments Received

Several commenters disagreed with NHTSA's recommendation to specify a length difference between the pre-test container and the CHSS being tested. Nikola stated disagreement with the proposal, explaining that the pre-test is conducted according to GTR No. 13 and that additional specifications on length differences are unnecessary. TesTneT also commented that the pre-test container should align with GTR No. 13 and argued that since the burner system is uniform, there is no need to correlate the pre-test container's length with that of the CHSS. TesTneT added that observations regarding the influence of CHSS length on pre-test results were incorrect. Auto Innovators similarly disagreed, stating that the pre-test container's role is to verify the burner and is not directly related to the CHSS size.

FORVIA expressed opposition as well, recommending that NHTSA keep the test procedure equivalent to GTR No. 13. It emphasized that adding length specifications would increase both time and costs for pre-testing, while the existing GTR No. 13 requirements are sufficient to ensure reproducible conditions. FORVIA noted that the GTR No. 13 fire test procedure had been validated through extensive testing and

[30] See the report titled ''GTR No. 13 Fire and Closures Tests'' which can be found at: *https://downloads.regulations.gov/NHTSA-2024-0006-0002/attachment_4.pdf*. This report will also be submitted to the National Transportation Library. *https://rosap.ntl.bts.gov/*.

[31] T_{minENG} is calculated by subtracting 50 °C from the minimum of the 60-second rolling average of the average burner monitor temperature in the engulfing fire zone of the pre-test checkout.

provided significant improvements over previous testing methods for CNG and hydrogen containers.

Agency Response

NHTSA is not including any requirements regarding the difference in length for the pre-test container and the CHSS. The recommendation that for CHSS of length between 600 mm and 1650 mm, the difference in the length of the pre-test container and the CHSS be no more than 200 mm, will remain a recommendation for future test labs. Following this recommendation will not be required as part of the testing, and not adhering to the recommendation will not invalidate test results.

d. Pretest Checkout Frequency

Background

The pre-test checkout is performed at least once before the commissioning of a new test site. Additionally, if the burner and test setup is modified to accommodate a test of different CHSS configurations than originally defined or serviced, then repeat of the pre-test checkout is needed prior to performing CHSS fire tests. NHTSA sought comment on the frequency of conducting this pre-test checkout for ensuring repeatability of the fire test on CHSS.

Comments Received

Several commenters responded to NHTSA's inquiry about the frequency of the pre-test checkout for CHSS fire testing, with most agreeing that additional requirements were unnecessary if no modifications were made to the burner or test setup.

Auto Innovators agreed that a repeat of the pre-test checkout is necessary if the burner or test setup is modified but recommended that the pre-test be performed at the manufacturer's discretion if no modifications have occurred. HATCI similarly commented that the pre-test checkout should be performed at the manufacturer's discretion. Nikola stated that the frequency of the pre-test should be determined by the testing agency, in accordance with ISO 17025, ''General requirements for the competence of testing and calibration laboratories,'' accreditation requirements.

TesTneT referred to GTR No. 13, noting that the pre-test only needs to be conducted once to verify the burner setup, unless modifications are made. It emphasized that multiple pre-tests are unnecessary if the test stand remains unchanged between tests. FORVIA disagreed with adding additional requirements, requesting harmonization with GTR No. 13 and stating that the pre-test checkout before commissioning and following modifications is sufficient. It suggested that any additional pre-test checkouts should be at the discretion of the test site operator, but recommended not adding further requirements to FMVSS.

Agency Response

NHTSA reiterates that the pre-test checkout will be performed at least once before the commissioning of a new test site and when the burner or test setup is modified to accommodate different CHSS configurations. NHTSA believes this approach ensures the consistency and reliability of testing procedures. No changes are being made to the proposed requirements based on the comments.

e. Thermocouple Positioning

Background

NHTSA proposed positioning the three burner monitor thermocouples 25 mm below the pre-test container. Since these thermocouples are intended to monitor the burner, an alternative would be to position these thermocouples relative to the burner itself. NHTSA sought comment on whether it is preferable to position the burner monitor thermocouples relative to the pre-test container or relative to the burner.

Comments Received

Commenters generally supported harmonizing the positioning of the burner monitor thermocouples with GTR No. 13 and opposed NHTSA's proposal to position the thermocouples relative to the burner.

HATCI commented that environmental factors, such as wind and temperature, could influence test results, recommending alignment with GTR No. 13, where thermocouples are positioned relative to the pre-test container. Auto Innovators also recommended positioning the thermocouples relative to the pre-test container to ensure that temperatures measured on the container are representative, and for aiding harmonization with GTR No. 13. It further referenced discussions during GTR No. 13 Phase 2, highlighting concerns about potential thermocouple failure due to material expansion from the test article and noted that GTR No. 13 offers solutions, including backup thermocouples.

Nikola stated that the purpose of the test is to measure the heat flux to the container and emphasized the importance of adhering to GTR No. 13, as the industry standard is to measure heat from the container being tested. TesTneT added that the thermocouples are positioned relative to both the pre-test container and the burner, placed 25 mm below the container and 75 mm above the burner tips, and stated there is no preferable alternative position. DTNA stated that the distance of the CHSS to the burner is the key factor that drives the characterization of the test. DTNA stated that it supports the effort in the NPRM to establish repeatable and objective test scenarios. FORVIA disagreed with introducing alternative measurements and stressed the importance of maintaining equivalency with GTR No. 13 to avoid unnecessary confusion. It suggested that any clearer requirements should be introduced in GTR No. 13 Phase 3.

Agency Response

NHTSA will maintain the burner monitor thermocouples 25 mm below the pre-test container, as specified in GTR No. 13. NHTSA acknowledges TesTneT's 'point that, due to the prescribed height of the pre-test container above the burner, specifying a point's distance below the pre-test container also specifies that point's distance above the burner.

f. Temperature Variation Greater Than 50 °C and the Associated Calculations

Background

The minimum value for the burner monitor temperature during the localized fire stage (T_{minLOC}) is calculated by subtracting 50 °C from the minimum of the 60-second rolling average of the burner monitor temperature in the localized fire zone of the pre-test checkout. The minimum value for the burner monitor temperature during the engulfing fire stage (T_{minENG}) is calculated by subtracting 50 °C from the minimum of the 60-second rolling average of the average burner monitor temperature in the engulfing fire zone of the pre-test checkout.

NHTSA sought comment on the possibility of allowing for a wider variation than 50 °C below the pre-test temperatures. Furthermore, as currently specified, the minimum temperatures T_{minLOC} and T_{minENG} would be time-dependent variables because they are based on a time-dependent rolling average. Having T_{minLOC} and T_{minENG} being time-dependent is complex and would make the testing difficult to monitor. NHTSA sought comment on a simpler calculation for T_{minLOC} and T_{minENG} that will result in constant values for T_{minLOC} and T_{minENG}. NHTSA proposed that T_{minLOC} be calculated by subtracting 50 °C from the minimum value of the 60-second rolling average of

the burner monitor temperature in the localized fire zone of the pre-test checkout. Similarly, NHTSA proposed that T_{minENG} be calculated by subtracting 50 °C from minimum value of the 60-second rolling average of the average of the three burner monitor temperatures during the engulfing fire stage of the pre-test checkout. NHTSA sought comment on whether these revised calculations for T_{minLOC} and T_{minENG} should be required.

Comments Received

Most commenters opposed NHTSA's proposal to allow a wider temperature variation or change the calculation method for T_{minLOC} and T_{minENG}, instead requesting harmonization with GTR No. 13.

HATCI and Auto Innovators both recommended maintaining the 50 °C variation requirement from GTR No. 13, stating that wider temperature variations could affect test results and impact CHSS design. Auto Innovators also requested that NHTSA align with GTR No. 13 in terms of calculations for T_{minLOC} and T_{minENG}, particularly with respect to their time-dependent nature.

TesTneT commented that the requirements in GTR No. 13 are clear. It stated that there is no need to modify the calculations or allow for wider temperature variations. It further stated that the revised calculations proposed by NHTSA are unnecessary, referencing section 6.2.5.4.5.4 of GTR No. 13, which establishes the minimum values for T_{minLOC} and T_{minENG}.

FORVIA also disagreed with the proposed changes, urging NHTSA to maintain the test procedure equivalent to GTR No. 13 for simplicity. It suggested discussing any potential simplifications during the development of GTR No. 13 Phase 3 rather than changing the existing method.

Agency Response

NHTSA will maintain calculations for T_{minLOC} and T_{minENG} that are aligned with those specified in GTR No. 13, and as proposed in FMVSS No. 308 S6.2.5.3(h). NHTSA will not adopt wider temperature variations or simplified calculations for T_{minLOC} and T_{minENG} relative to GTR No. 13. The calculation method in the final rule specifies a 50 °C variation from the 60-second rolling average of the burner monitor thermocouple(s) during the respective stage of the pre-test checkout. NHTSA notes that this method results in time-dependency of T_{minLOC} and T_{minENG}. Test labs should plot T_{minLOC} and T_{minENG} over time to observe the time-dependency of these variables.

g. Vehicle-Specific Shielding

Background

The test for service terminating performance in fire evaluates the CHSS. It is possible that vehicle manufacturers may add additional fire protection features as part of overall vehicle design, and GTR No. 13 includes the option of conducting CHSS fire testing with vehicle shields, panels, wraps, structural elements, and other features as specified by the manufacturer. However, adding vehicle-level protection features is not practical for testing. Furthermore, NHTSA explained in the NPRM that it believes that it is important for safety that the CHSS itself can withstand fire and safely vent in the event its shielding is compromised.[32] For example, if a crash damages the shielding, and the shielding was an integral part of the CHSS's ability to withstand fire, then the CHSS should be able to vent properly before it explodes. As a result, vehicle-level protection measures are not evaluated by the test for service terminating performance in fire. However, if a CHSS includes container attachments, these attachments are included in the fire test. NHTSA sought comment on excluding vehicle-specific shielding and on including container attachments as part of the fire test, particularly in the case of container attachments which can be removed using a process specified by the manufacturer.

Comments Received

Agility commented that there is insufficient justification to deviate from GTR No. 13 in this area, stating that damaged vehicle shielding could compromise PRDs as well. It stated that vehicle-level protection is appropriate for addressing localized fire risks and stated that vehicle-specific shielding should not be excluded as it is part of the container's fire protection. TesTneT stated concerns that a crash could also compromise a CHSS's ability to vent properly in a fire, suggesting that the test's length, duration, and intensity are somewhat arbitrary. It stated that surviving the test without attachments does not necessarily guarantee survival in a real-world vehicle fire, which could vary significantly.

MEMA commented that NHTSA already acknowledges the importance of protective attachments in other tests, such as surface damage and chemical corrosion tests. MEMA requested that NHTSA allow vehicle-specific shields where applicable.

FORVIA strongly opposed excluding vehicle-specific shielding and container attachments from CHSS fire testing. It stated that including shields in the test provides a more accurate representation of real-world vehicle fire scenarios. FORVIA stated that if shields are excluded, manufacturers may resort to more complex and costly protection methods, reducing the practicality of these systems. It requested that shields remain part of fire testing to fully assess all safety features. FORVIA requested that shields be specified by manufacturers, and also stated that it is important to include container attachments in the fire test. Nikola stated support for the provisions in GTR No. 13 and stated that allowing container attachments in the test is appropriate and both options should be permitted.

Agency Response

NHTSA has considered the comments submitted regarding the inclusion of vehicle-specific shielding and container attachments in the test for service terminating performance in fire. While several commenters advocated for allowing vehicle-specific shielding to be part of the fire test, NHTSA maintains its position to exclude vehicle-specific shielding from the CHSS fire test.

It is important that the CHSS itself can withstand fire exposure and properly vent in the event of a failure, regardless of any additional vehicle-level protection. This approach is based on the possibility that vehicle shielding or other protective elements could be compromised in real-world scenarios, such as during a crash. If the vehicle shielding is damaged or removed, the CHSS must still be able to perform its critical safety function without relying on external protection. Including vehicle-specific shielding in the test would not adequately evaluate the inherent fire resistance and safety performance of the CHSS.

In addition, vehicle-specific shielding introduces unnecessary complexity into the testing process which could affect repeatability and reproducibility of the results. Testing that focuses on the CHSS itself provides a consistent, uniform assessment that is critical to safety.

Some commenters expressed concerns that the exclusion of vehicle-level protection measures may not fully represent real-world fire scenarios. NHTSA recognizes these concerns but emphasizes that the primary goal of the fire test is to ensure the resilience of the CHSS as an independent system. In the

[32] *See* 89 FR 27524 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

event of a crash or severe incident that compromises the vehicle's shielding, it is essential that the CHSS be capable of withstanding fire exposure and safely venting without the added protection of vehicle-level components.

Furthermore, the proposed fire test procedure, based on GTR No. 13, is specifically designed to replicate realistic fire scenarios that vehicles may encounter. As detailed in the NPRM, the test includes both localized and engulfing fire stages, which reflect actual vehicle fire data.[33] This data-driven approach ensures that the test conditions are neither arbitrary nor excessive, but instead provide a realistic assessment of the CHSS's performance during a fire.

Regarding container attachments, NHTSA clarifies that if the CHSS includes container attachments, they may be part of the fire test. Container attachments, as defined, are considered part of the CHSS itself.

h. Worst-Case Orientation

Background

GTR No. 13 specifies that the CHSS is rotated relative to the localized burner to minimize the ability for TPRDs to sense the fire and respond. GTR No. 13 specifies establishing a worst-case based on the specific CHSS design. However, NHTSA is concerned that establishing a worst-case based on a specific design is subjective. NHTSA instead proposed that the CHSS be positioned for the localized fire by orienting the CHSS relative to the localized burner such that the distance from the center of the localized fire exposure to the TPRD(s) and TPRD sense point(s) is at or near maximum. This positioning provides a challenging condition where the TPRD(s) may not sense the localized fire. NHTSA sought comment on the proposed orientation of the CHSS relative to the localized burner.

Comments Received

TesTneT referenced section 6.2.5.5.2 of GTR No. 13, stating that it already provides clear instructions on how to identify a worst-case condition. It commented that while NHTSA proposed some challenging orientations, these may not necessarily represent the worst-case scenario, and there is no need to deviate from the guidance in GTR No. 13. On the other hand, Nikola agreed with NHTSA's proposed orientation of the CHSS relative to the burner.

Auto Innovators agreed with NHTSA on the need to address the subjectivity in defining a ''worst-case'' orientation but stated that this issue is already addressed in GTR No. 13, which offers clear instructions for identifying such conditions. It stated that while NHTSA's proposal may represent a challenging condition, it may not always be considered the worst-case scenario.

Agency Response

NHTSA is maintaining the CHSS positioning specifications as proposed. NHTSA believes that its test procedure aligns well with the requirements of GTR No. 13 and will provide the level of safety intended by GTR No. 13's ''worst-case'' orientation. Further, NHTSA believes that the final standard will simplify determining the orientation for compliance testing.

NHTSA disagrees with the commenters that GTR No. 13 provides clear instruction on how a worst-case condition is identified. GTR No. 13 paragraph 6.2.5.5.2 states ''the CHSS test article shall be rotated relative to the localized burner to minimize the ability to [*sic*] TPRDs to sense the fire and respond. Shields, panels, wraps, structural elements and other features added to the container shall be considered when establishing the worst-case orientation relative to the localized fire as parts and features intended to protect sections of the container but can (inadvertently) leave other potions or joints/seams vulnerable to attack and/or hinder the ability of TPRDs to respond. For CHSS where the manufacturer has opted to include vehicle-specific features (as defined in paragraph 6.2.5.1.), the CHSS test article is oriented relative to the localized burner to provide the worst-case fire exposure identified for the specific vehicle.'' This specification requires the subjective judgement of the test lab and is therefore not objectively enforceable.

i. Jet Flame Measurement

Background

Jet flames occurring anywhere other than a TPRD outlet, such as the container walls or joints, cannot exceed 0.5 meters in length. NHTSA sought comment on how to accurately measure jet flames.

Comments Received

Nikola stated that because most jet fires exceed 0.5 meters, the presence of jet fire would result in a flame exceeding the length limit and be a clear test failure. However, it suggested that, if needed, the test facility can measure the jet flame length using video capture. Auto Innovators recommended using camera systems or similar imaging devices, such as infrared, to identify the length of jet flames. TesTneT commented that fire tests at its facility are monitored using several video cameras, and the flame length can be measured by comparing it to the known diameter of the container as seen in the videos. FORVIA also stated that jet flames are visible in practice, and the length can be measured by placing an object with a known length near the TPRD outlet and comparing the jet flame length to this object in video or pictures taken during the test.

Agency Response

NHTSA will maintain the jet flame requirement as proposed. Jet flames occurring anywhere other than a TPRD outlet, such as the container walls or joints, may not exceed 0.5 meters in length. This 0.5 meter limit aligns with GTR 13, as requested by many commenters, and seeks to minimize the safety risk because this is both the threshold at which a jet flame is clearly distinguishable from other flames present during testing and the point where the risk of spread to the surroundings increases significantly.

NHTSA appreciates the comments regarding the measurement of jet flames using video capture, reference objects of known length, and thermal imaging technologies to accurately measure jet flame length during testing. NHTSA agrees that these methods offer practical ways to assess flame length in a manner that is consistent with real-time observations during testing.

At this time, however, NHTSA will not prescribe a specific measurement methodology in the regulatory text. Instead, the method of measurement will be left to the discretion of the testing facility. Test laboratories are encouraged to use suitable techniques for ensuring compliance with the 0.5-meter jet flame requirement.

j. Heat Release Rate (HRR/A)

Background

In addition to temperature requirements, GTR No. 13 also specifies required heat release rates per unit area (HRR/A) during the localized and engulfing fire stages. NHTSA considered the specification for HRR/A and determined that it could result in over-specification of the test parameters, potentially making it very difficult to conduct the test. In addition, NHTSA believes that the detailed temperature specifications for the pre-test container during the pre-test checkout are

[33] *See* 89 FR 27523 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

sufficient to ensure repeatability and reproducibility of the test. Therefore, NHTSA did not propose specifications for HRR/A. NHTSA sought comment on that decision.

Comments Received

Auto Innovators disagreed with NHTSA's decision, recommending that HRR/A specifications be maintained to ensure test repeatability and reproducibility. It pointed out that the HRR/A specifications in GTR No. 13 were introduced to address inconsistencies observed in round-robin testing between labs. It argued that without HRR/A specifications, the amount of heat energy delivered during testing could vary, potentially leading to inconsistent test results. HATCI also disagreed, stating that the absence of HRR/A specifications could cause variability in the energy delivered during testing, affecting the outcome. It recommended that NHTSA adopt the HRR/A specifications in GTR No. 13 to avoid this issue.

Nikola supported maintaining the GTR No. 13 specification for HRR/A, noting that the test has already been validated and used by several test labs globally. TesTneT also disagreed with NHTSA's decision, stating that HRR/A is important to the fire test because temperature measurements alone cannot always be relied upon. It explained that during testing, events like hydrogen venting or coatings dripping onto thermocouples can disturb temperature readings, and HRR/A provides a way to ensure that fire conditions remain consistent despite such disturbances. In contrast, H2MOF agreed with NHTSA's approach not to specify HRR/A.

Agency Response

NHTSA is not including specifications for HRR/A. Such a specification could result in over-specification of the test parameters, potentially making it very difficult to conduct the test. In addition, NHTSA believes that the detailed temperature specifications for the pre-test container during the pre-test checkout are sufficient to ensure repeatability and reproducibility of the test.

Failure to satisfy a temperature specification will result in an invalid test. Simply adding an additional specification related to HRR/A will not resolve a failure to meet the temperature specifications. If the specified temperatures are not met, the test will be invalid regardless of whether an HRR/A specification is present and satisfied.

k. Wind Speed and Shielding

Background

When testing is conducted outdoors, wind shielding is required to prevent wind from interfering with the flame temperatures. To ensure that wind shields do not obstruct the drafting of air to burner, which could cause variations in test results, the wind shields need to be at least 0.5 m away from the CHSS being tested. Additionally, for consistency, the wind shielding used for the pre-test checkout must be the same as that for the CHSS fire test. NHTSA sought comment on whether specifications for wind shielding should be provided in the regulatory text of the standard, and if so, what the specifications should be. As an additional approach to addressing wind interference with flame temperatures, NHTSA sought comment on limiting wind speed during testing to an average wind velocity during testing to 2.24 meters/second, as in FMVSS No. 304.[34]

Comments Received

DTNA supported including wind shielding specifications in the regulatory text, stating that wind is critical to the spread of fire and that clear wind velocity limits would ensure reproducibility of test results. Glickenhaus agreed with NHTSA's proposal to limit wind speed to 2.24 meters per second, while HATCI recommended adding language to ensure wind does not affect flame direction or temperatures. HATCI also sought clarity on where wind speed measurements should be taken, recommending they occur between the wind shield and the test specimen, with the wind speed at the measuring point being near 0 meters per second.

In contrast, Nikola commented that maintaining the correct temperature profile is sufficient and aligned with GTR No. 13, making wind speed specifications irrelevant. TesTneT argued that specifying wind speed is unnecessary, as the requirement to meet temperature specifications already accounts for wind interference. It added that wind gusts could momentarily exceed the limit, potentially invalidating the test, even if temperature conditions were maintained. TesTneT also noted that its use of a large diameter pipe for testing eliminates wind effects without needing a wind speed specification.

MEMA stated a wind speed limit would be impractical, and that the fire itself could create an updraft, complicating efforts to limit wind speed. MEMA expressed concern that this requirement would cause deviations between GTR No. 13 and FMVSS No. 308, and requested that NHTSA eliminate the wind speed limit, instead recommending that wind speed only be measured and recorded, consistent with GTR No. 13. FORVIA also opposed the wind speed limit, stating it introduces unnecessary complexities and technical challenges, such as determining where and how to measure wind speed. It noted that wind can be unpredictable and suggested that industry practices, which involve conducting tests under calm conditions and recording wind speed, are sufficient to address this issue. FORVIA stated that the pre-test checkout already addresses draft effects from both external wind and the fire itself, making wind speed limits unnecessary.

Agency Response

NHTSA is not including additional specification for wind or wind speed. FMVSS No. 308 requires that wind shielding be used for outdoor fire test sites. It also requires that the separation between the pre-test container and the walls of the wind shields be at least 0.5 meters. This standard requires test facilities to provide sufficient protection against wind to prevent an impact on test results.

NHTSA is not including a requirement that air temperature, wind speed, and/or wind direction be measured and recorded if testing conducted outdoors. If these parameters are not used to conduct the test or determine the test result, then there is no reason to require them to be recorded. Manufacturers and test labs may wish to retain this information for their own purposes, but collecting this information is not a specific requirement of the test for service terminating performance in fire. As some commenters noted, the burner monitor temperature specifications already account for wind interference. If the temperature requirements are met during testing, this result indicates that wind is not interfering with the test to such a degree that would significantly affect the results.

11. Tests for Performance Durability of Closure Devices

Background

The tests for performance durability of closure devices in GTR No. 13 are closely consistent with the industry standards CSA/ANSI HPRD 1–2021, ''Thermally activated pressure relief

[34] FMVSS No. 304, ''Compressed natural gas fuel container integrity,'' *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-V/part-571/subpart-B/section-571.304.*

devices for compressed hydrogen vehicle fuel containers,'' [35] and CSA/ANSI HGV 3.1–2022, ''Fuel System Components for Compressed Hydrogen Gas Powered Vehicles.'' [36] The GTR No. 13 tests for performance durability of closure devices carry a significant test burden. To evaluate a single TPRD design, 13 TPRD units are required for a total of 29 individual tests (some units undergo multiple tests in a sequence). Similarly, to evaluate a single shut-off valve or check valve, 8 units are required for a total of 17 individual tests. While NHTSA proposed these requirements to be consistent with GTR No. 13, NHTSA sought comment on whether testing of this extent is necessary to meet the need for safety, or whether it is still possible to meet the need for safety with a less burdensome test approach or with a subset of the test for performance durability of closure devices. NHTSA requested that if commenters believe another approach or subset of tests is appropriate and meets the need for safety, that they provide specific detail on (1) the alternate approach or subset of tests and (2) how it meets the need for safety adequately.

Furthermore, FMVSS represent minimum performance requirements for safety. FMVSS does not address issues such as component reliability or best practices. These considerations are left to industry standards. NHTSA sought comment on whether a reduced subset of the tests for performance durability of closure devices could ensure safety with a lower overall test burden. In such a subset, only those tests directly linked to critical safety risks would be included.

Comments Received

Auto Innovators expressed support for maintaining consistency with GTR No. 13 for the tests for performance and durability of closure devices. Luxfer Gas Cylinders commented that obtaining 13 TPRDs for testing would not be difficult and stated that the associated costs and time were not burdensome when compared to container testing. Nikola also supported adherence to GTR No. 13.

WFS commented that the tests in GTR No. 13, Phase 2, are already aligned with industry standards such as CSA/ANSI HPRD 1 and CSA/ANSI HGV 3.1, and that these GTR No. 13 tests were chosen by the IWG of GTR No. 13 Phase 2 as the minimum required to ensure safety. WFS also suggested that FMVSS could potentially include a provision allowing closure devices compliant with relevant industry standards to be considered compliant with FMVSS requirements, except for occasional spot checks by NHTSA. FORVIA commented that while the proposed testing numbers are necessary for initial component validation and type certification due to their safety relevance, these numbers may not be needed for field surveillance testing. FORVIA suggested limiting the sample number to one per test and allowing NHTSA to focus selectively on specific tests at its discretion.

Agency Response

Based on the comments, NHTSA is maintaining the proposed test requirements. The commenters indicated the tests are not overly burdensome and the number of tests has already been minimized to cover essential safety aspects. NHTSA received no alternative proposals or specific data showing how a reduced subset of the tests would adequately meet safety needs. Since commenters did not provide any evidence for removing tests, NHTSA will maintain the original testing scope as proposed to ensure safety and maintain consistency with GTR No. 13. Additionally, there is no option to certify compliance with any FMVSS requirement by simply stating compliance with a set of industry standards. Manufacturers must certify direct compliance with the applicable FMVSS.

a. Hydrogen Impurities and Testing With Inert Gas

Background

NHTSA proposes that testing be conducted at an ambient temperature of 5°C to 35°C, unless otherwise specified. In addition, GTR No. 13 specifies that all tests be performed using either:

- Hydrogen gas compliant with SAE J2719_202003, ''Hydrogen Fuel Quality for Fuel Cell Vehicles,'' or
- Hydrogen gas with a hydrogen purity of at least 99.97 percent, less than or equal to 5 parts per million of water, and less or equal to 1 part per million particulate, or
- A non-reactive gas instead of hydrogen.

The standard J2719_202003 specifies maximum concentrations of individual contaminants such as methane and oxygen. Limiting these individual contaminants is critical for fuel cell operation; however, these contaminants are unlikely to affect the results of the tests for performance durability of closure devices.

As a result, FMVSS No. 308 will only require hydrogen with a purity of at least 99.97 percent, less than or equal to 5 parts per million of water, and less than or equal to 1 part per million particulate. NHTSA sought comment on any other impurities that could affect the results of the tests for performance durability of closure devices.

Using a non-reactive gas for testing would have the benefit of reducing the test lab safety risk related to handling pressurized hydrogen. However, it is not clear if replacing hydrogen with a non-reactive gas reduces stringency and therefore may not adequately address the safety need. As a result, this option has not been proposed in FMVSS No. 308. NHTSA sought comment on whether testing with a non-reactive gas instead of hydrogen reduces test stringency.

Comments Received

Auto Innovators stated the levels of impurities are important and that other impurities are addressed and limited in SAE J2719. Nikola agreed that no other impurities would impact the closure device tests. WFS stated that hydrogen with a purity of 99.97 percent and the specified water and particulate limits would be adequate, as additional impurity limits in SAE J2719 are relevant only to fuel cell performance.

On the subject of testing with inert gas, comments were mixed. Agility noted that test stringency could vary depending on the specific test, citing a bonfire test as an example where replacing hydrogen could be less stringent. Conversely, Agility commented that using inert gases would not affect the stringency of TPRD flow rate measurements. Auto Innovators suggested that testing with hydrogen, helium, or a non-reactive gas mixture containing detectable helium, in line with GTR No. 13, would be acceptable as long as the test conditions, such as pressure levels and cycle numbers, remained unchanged. HATCI expressed similar support, stating that using a non-reactive gas under consistent conditions should not reduce stringency.

Nikola commented that helium is an appropriate replacement for hydrogen in tests, as it does not compromise test stringency and facilitates testing procedures. WFS recommended aligning FMVSS with GTR No. 13, which lists acceptable gases such as hydrogen, helium, and non-reactive gas mixtures containing detectable helium or hydrogen. WFS noted that nitrogen would be suitable for tests involving pressure stress, while helium would be appropriate for leak tests. WFS stated

[35] *See https://webstore.ansi.org/standards/csa/csaansihprd2021.*

[36] *See https://webstore.ansi.org/standards/csa/csaansihgv2015r2019.*

that these test gas options are consistent with various industry standards.

FORVIA expressed concerns about potential material compatibility issues with impurities not specified in the proposed requirements. It recommended consulting manufacturers if there are questions about compatibility. Additionally, FORVIA commented that while hydrogen tests can help assess resistance to hydrogen embrittlement and fatigue, the use of alternative gases like dry nitrogen should be suitable.

Agency Response

NHTSA agrees with commenters that using an inert gas will not reduce the stringency of the tests for performance stability of closure devices. Therefore, in the final rule, NHTSA has added the option of using inert gas for conducting the tests for performance durability of closure devices. NHTSA notes there is no bonfire testing included in the tests for performance durability of the closure devices, nor any similar tests where the flammability of hydrogen would play a significant role in the outcome of the test.

NHTSA does not expect that impurities below 0.03 percent will have any meaningful impact on the test results. Therefore, NHTSA is maintaining the specification for hydrogen at 99.97 percent purity, less than or equal to 5 parts per million of water, and less than or equal to 1 part per million particulate. As noted in the NPRM, while fuel cells are highly susceptible to impurities, the test for performance durability of closure devices does not involve operating or testing fuel cells, and therefore, strictly controlling the specifics of the impurities below 0.03 percent is of little importance.

b. TPRD

Background

GTR No. 13 does not consider the possibility of the TPRD activating during the pressure cycling test, temperature cycling test, salt corrosion test, vehicle environment test, stress corrosion cracking test, drop and vibration test, or leak test. The temperatures applied during these tests are not characteristic of fire and therefore should not cause the TPRD to activate. TPRD activation in the absence of temperatures characteristic of a fire indicates that the TPRD is not functioning as intended and presents a safety risk due to the hazards associated with TPRD discharge. As a result, NHTSA proposed that if the TPRD activates at any point during the pressure cycling test, temperature cycling test, salt corrosion test, vehicle environment test, stress corrosion cracking test, drop and vibration test, or leak test, that TPRD will be considered to have failed the test. NHTSA sought comment on this requirement.

Comments Received

Auto Innovators stated that it agrees with the agency proposal to integrate the TPRD failure assessment as when evaluating other aspects of performance. Nikola stated that this requirement aligns with GTR No. 13, which mandates that the TPRD meet the criteria of each subsequent test. Therefore, Nikola stated, if a TPRD fails, the entire test is considered failed. Agility and Luxfer Gas Cylinders both stated that unintended activation could pose a safety risk, indicating support for the proposal.

WFS, however, recommended leaving the test requirements as they are currently written in GTR No. 13, noting that pressure cycling is a unique test that involves pressure fluctuations which could directly cause TPRD failure. WFS stated that in other tests like corrosion, it is difficult to detect TPRD activation until a subsequent leak test, which serves as the main criterion to confirm failure. FORVIA disagreed with the proposal, arguing that the concept of ''activation'' is not a clear requirement and may be difficult to measure. FORVIA suggested that all tests, except for the stress corrosion cracking test, already use a leak test as the appropriate pass/fail criterion. For the stress corrosion cracking test, FORVIA noted that a separate pass/fail criterion is necessary, as exposure to ammonia solution does not necessarily cause TPRD activation or leakage.

Agency Response

NHTSA is maintaining the requirement that the TPRD not activate during the pressure cycling test, temperature cycling test, salt corrosion test, vehicle environment test, stress corrosion cracking test, drop and vibration test, or leak test. The TPRD should not activate outside of fire-related conditions. Activation during tests that do not simulate fire indicates malfunction and poses a safety risk. While some commenters suggest relying solely on the leak test, this approach does not fully address the hazards of unintended TPRD discharge. Unintended activation is a critical failure mode that warrants a direct requirement. Thus, the requirement to treat TPRD activation as a test failure is necessary to ensure safety.

A separate test to detect TPRD activation is not necessary. A TPRD activation event will be evident to the test lab during the existing tests. TPRD activation is a significant event that will be clear through visual observation or other monitoring methods already in place during the tests.

(1) Pressure Cycling Test

Background

The NPRM proposed that one TPRD unit undergo 15,000 internal pressure cycles with hydrogen gas. While the proposed 15,000 pressure cycles for the TPRD is consistent with GTR No. 13, NHTSA noted that this number of cycles is higher than the maximum 11,000 pressure cycles applied to containers. NHTSA sought comment on the need for 15,000 pressure cycles for TPRDs.

Comments Received

Commenters generally supported NHTSA's proposal to require 15,000 pressure cycles for TPRDs, aligning with GTR No. 13. Auto Innovators recommended that NHTSA maintain consistency with GTR No. 13 and stated that the 15,000-cycle requirement is harmonized with other industry standards. Agility also supported the proposal, stating that 15,000 cycles are consistent with industry standards.

Nikola commented that GTR No. 13 and the industry have agreed on this higher standard for TPRDs as a safety measure. WFS noted that during the development of GTR No. 13 Phase 2, Task Force 3 (TF3) recognized the need for a higher cycle count for primary closure components compared to containers. WFS stated that TF3 decided to harmonize TPRD cycle requirements with industry standards, establishing 15,000 cycles to provide a slightly higher safety margin. WFS pointed out that TF3 applied the same approach to check valve pressure cycle requirements.

FORVIA expressed support for the proposed 15,000 pressure cycles, noting that the recently updated UN ECE R134 also mandates 15,000 cycles, aligning with GTR No. 13 Phase 2 and the NHTSA proposal. FORVIA suggested maintaining this standard as a safety margin and considering any revisions during Phase 3 of GTR No. 13.

Agency Response

Consistent with GTR No. 13, and based on the comments received, NHTSA is maintaining 15,000 pressure cycles for TPRDs. NHTSA emphasizes that maintaining the 15,000 pressure cycle requirement for TPRDs is consistent with both GTR No. 13 and other relevant standards such as HPRD–

1.[37] As noted by multiple commenters, TPRDs are critical safety components, and subjecting them to a slightly higher cycle count compared to containers provides an added safety margin, which is appropriate given their role in preventing catastrophic failures.

(2) Accelerated Life Test

Background

NHTSA proposed the accelerated life test consistent with GTR No. 13. This test verifies that a TPRD will activate at its intended activation temperature, but also will not activate prematurely due to a long-duration exposure to elevated temperature that is below its activation temperature.

Comments Received

Auto Innovators recommended NHTSA remain consistent with the requirements of GTR No. 13.

Agency Response

NHTSA is maintaining the accelerated life test as proposed.

(3)Temperature Cycling Test

Background

NHTSA proposed the temperature cycling test consistent with GTR No. 13. This test verifies that a TPRD can withstand extreme temperatures while in service.

Comments Received

Auto Innovators recommended NHTSA remain consistent with the requirements of GTR No. 13.

Agency Response

NHTSA is maintaining the temperature cycling test as proposed.

(4) Salt Corrosion Resistance Test

Background

NHTSA sought comment on the clarity and objectivity of the salt corrosion resistance test procedure. NHTSA asked that if commenters had suggestions on how to change the salt corrosion resistance test procedure, that they explain how their suggested changes improve the clarity and objectivity, and how they continue to meet the need for safety represented by this test.

Comments Received

Auto Innovators and Nikola both recommended maintaining alignment with GTR No. 13. WFS also advised against changes, stating that the procedure aligns with existing industry standards in North America. WFS acknowledged that the 100-day test duration is more extensive compared to previous tests, such as a 144-hour salt spray test, but noted that this longer test reflects best practices adopted by U.S. automakers and integrated into industry standards for primary closure devices.

FORVIA cautioned against adding additional criteria such as staining or pitting resistance, stating that these are cosmetic issues that are almost inevitable in aggressive salt corrosion conditions. It stated that GTR No. 13 specifies criteria like cracking, softening, and swelling, and that a requirement that TPRDs must not show signs of physical degradation would adequately addresses concerns about pitting and corrosion levels that could impact the device's function. FORVIA stated that the salt corrosion resistance test is a sufficient minimum baseline.

Agency Response

Based on the comments received, NHTSA is maintaining the salt corrosion test as proposed. In GTR No. 13 and in the proposed standard, after the salt corrosion exposure, the TPRD units are subjected to the leak test, benchtop activation test, and flow rate test. Neither GTR No. 13 nor the standard container requirements related to cracking, softening, swelling, or physical degradation. NHTSA is not including such requirements in the standard for the salt corrosion test. Subjecting the TPRD to the leak test, benchtop activation test, and flow rate test is sufficient to evaluate the performance of the TPRD after the salt corrosion test exposure.

(5) Vehicle Environment Test

Background

The vehicle environment test exposes the TPRD to the following fluids for 24 hours each: 19 percent sulfuric acid, 10 percent ethanol, and 50 percent methanol. GTR No. 13 does not specify the method of exposure to these chemical solutions. NHTSA sought comment on the exposure method. GTR No. 13 further specifies that ''cosmetic changes such as pitting or staining are not considered failures.'' NHTSA sought comment on including this specification and noted that pitting can be an aggressive form of corrosion which can ultimately lead to component failure due to cracking at the pitting site.

Comments Received

Auto Innovators and HATCI both recommended that NHTSA align with GTR No. 13's criteria, which state that cosmetic changes are not considered failures. HATCI pointed out that the TPRD undergoes further performance evaluations, such as leak and flow rate tests, after the vehicle environment test. It stated that these subsequent tests would detect any significant degradation in performance caused by corrosion, ensuring safety.

Luxfer Gas Cylinders commented that the 24-hour exposure is not aggressive enough to cause pitting and suggested removing references to cosmetic changes. Nikola added that pitting and cracking issues are associated with the use of brass, which is not commonly used for TPRDs, and stated that manufacturers already adhere to these requirements since they are harmonized with industry standards. WFS suggested that while the language in GTR No. 13 is sufficient, NHTSA could consider specifying an exposure method, as outlined in HPRD 1. WFS explained that this standard provides two methods—periodic spraying or full immersion—and recommended adopting this language if more detail is needed. However, WFS agreed that the current approach, which leaves the exposure method to the test lab, is also acceptable.

FORVIA stated that the existing language provides sufficient guidance for conducting the test. FORVIA reiterated that cosmetic changes, like minor pitting, should not result in failure unless they indicate more significant corrosion issues. FORVIA also suggested discussing any potential test modifications in the future during GTR No. 13 Phase 3 development.

Agency Response

Consistent with GTR No. 13, NHTSA will include the statement that ''cosmetic changes such as pitting or staining are not considered failures'' in S5.1.5.1(e). Cosmetic changes such as pitting or staining that do not affect the performance of the component do not present a safety concern and are therefore not considered failures. NHTSA notes that, after the vehicle environment test, TPRDs must undergo the leak test, benchtop activation test, and flow rate test, as discussed below. These subsequent tests are sufficient to ensure the vehicle environment test has not degraded the performance of the TPRD.

NHTSA agrees that either of the exposure methods described by WFS would be valid. There could also be other valid exposure methods. Therefore, NHTSA will not specify exposure by either immersion or by misting, and instead the test facility may determine an appropriate exposure method for the component.

[37] *See, https://webstore.ansi.org/standards/csa/csaansihprd2021.*

(6) Stress Corrosion Cracking Test

Background

The stress corrosion cracking test exposes the TPRD for ten days to a moist ammonia air mixture maintained in a glass chamber. Under GTR No. 13, the moist ammonia-air mixture is achieved using an ammonia-water mixture with specific gravity of 0.94. Specific gravity is affected by temperature and, therefore, is an inconvenient metric for concentration specification because concentrations will need to be adjusted for different temperatures. NHTSA sought comment on a more direct metric for ammonia concentration specification, such as 20 weight percent ammonium hydroxide in water.

In GTR No. 13, the only requirement to pass the stress corrosion cracking test is that the components must not exhibit cracking or delaminating due to this test. NHTSA sought comment on this performance requirement and on whether there are alternative requirements for this test beyond basic visual inspection, such as subjecting the TPRD to the leak test.

Comments Received

Luxfer Gas Cylinders commented that using a more direct metric for ammonia concentration, such as 20 weight percent ammonium hydroxide in water, ''would be an improvement.'' It stated that this test is usually seen as a material test rather than a component test. Luxfer also stated that industry cylinder standards require stress corrosion testing specific to the material, which involves sectioning and microscopic visual inspection. It suggested that FMVSS No. 308 adopt the stress corrosion cracking test specified in ISO 11119, ''Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners,'' or ISO 11515, ''Gas cylinders—Refillable composite reinforced tubes of water capacity between 450 L and 3000 L—Design, construction and testing.'' Luxfer stated that a leak test is not an effective method to detect stress corrosion.

Auto Innovators stated that material requirements for hydrogen applications are well established in industry standards. It recommended NHTSA refer to GTR No. 13 Phase 2, which outlines material evaluation and stress corrosion cracking tests for aluminum alloys. It stated that if these standards cannot be adopted as performance requirements, alternative measures should be considered.

HATCI recommended harmonizing with GTR No. 13 Phase 2, in which the stress corrosion cracking test is confirmed through visual inspection. They cautioned that adding a leak test could lead to failures due to affected o-rings rather than actual TPRD issues. HATCI also noted that under GTR No. 13, the test only applies to TPRDs containing copper alloys and requested clarity on whether NHTSA intends to follow this approach.

WFS suggested no changes to the test procedure in GTR No. 13, emphasizing that it is already harmonized with other standards such as HPRD 1:21 and ISO 19882, ''Gaseous hydrogen—Thermally-activated pressure relief devices for compressed hydrogen vehicle fuel containers.'' They commented that third-party laboratories are capable of adjusting the moist ammonia concentration and that visual examination is the appropriate pass criteria.

Regarding the proposed concentration metric of 20 weight percent ammonium hydroxide, FORVIA disagreed with adding additional measurement criteria, noting that these tests are performed in temperature-controlled laboratories with established procedures. They recommended making any new measurement criteria optional and compatible with the specific gravity method. FORVIA also stated that a leak test may not be appropriate and supported visual inspection as sufficient for identifying cracking or delamination, advocating for consistency with GTR No. 13.

Agency Response

Regarding the performance requirement for the stress corrosion cracking test, NHTSA has decided to retain the visual inspection criterion as the only pass/fail measure. Visual inspection for cracking or delamination is the appropriate criteria for determining the results of the test. NHTSA considered the possibility of additional testing beyond visual inspection, such as leak tests, but concurs with the commenters that a leak test may not be the best test to evaluate for stress corrosion. Therefore, introducing a leak test would not effectively indicate whether stress corrosion cracking has occurred, and NHTSA has decided against requiring this additional test.

NHTSA is not adopting the stress corrosion cracking test in ISO 11119 or ISO 11515. NHTSA is implementing a stress corrosion cracking test aligned with GTR No. 13, as proposed in the NPRM.[38] This test is sufficient to address the risk of stress corrosion cracking in TPRDs used in hydrogen vehicles. NHTSA is also not including the humid gas stress corrosion cracking testing for aluminum alloys from Part I of GTR No. 13. This test is not a requirement in GTR No. 13 and was not proposed in the NPRM. Therefore, this test is outside the scope of this final rule.

Lastly, NHTSA has decided to specify an ammonia concentration between 19 weight percent and 21 weight percent ammonium hydroxide solution in water as the standard concentration for this test. This decision is based on successful testing conducted by NHTSA, which used 16.7 wt% ammonium hydroxide in water to evaluate closure devices.[39] NHTSA believes specifying between 19 weight percent and 21 weight percent ammonium hydroxide in water provides a more practical metric for ammonia concentration specification than specific gravity, while still mirroring the effect of an ammonia-water mixtures with a specific gravity of 0.94. This specification using weight percent also addresses the ambiguity regarding the variability of specific gravity due to temperature fluctuations. This concentration of between 19 and 21 weight percent falls with the range of commercially available pre-mixed ammonium hydroxide solutions.

(7) Drop and Vibration Test

Background

NHTSA proposed the drop and vibration test consistent with GTR No. 13. TPRDs are first dropped in any one of six different orientations. The units are vibrated for 30 minutes along each of the three orthogonal axes. The units are vibrated at a resonant frequency which is determined by using an acceleration of 1.5 g and sweeping through a sinusoidal frequency range of 10 to 500 Hz with a sweep time of 10 minutes. According to GTR No. 13, the resonance frequency is identified by a ''pronounced'' increase in vibration amplitude. However, if the resonance frequency is not found, the test is conducted at 40 Hz. NHTSA was concerned that specifying a pronounced

[38] *See* 89 FR 27531 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

[39] See the report titled ''GTR No. 13 Fire and Closures Tests'' which can be found at: *https://downloads.regulations.gov/NHTSA-2024-0006-0002/attachment_4.pdf.* This report will also be submitted to the National Transportation Library. *https://rosap.ntl.bts.gov/.*

increase in vibration amplitude could be partially subjective. NHTSA sought comment on more objective criteria for establishing resonance, such as a frequency where the amplitude of the response of the test article is at least twice the input energy as measured by response accelerometers. Furthermore, the acceleration level was not defined in GTR No. 13 for the resonant dwells. NHTSA sought comment on an appropriate acceleration level for the resonant dwells.

Comments Received

Nikola stated that GTR No. 13 already has a defined resonance frequency and that the current test procedure is sufficient. WFS recommended maintaining the drop and vibration test as harmonized with GTR No. 13, noting that it is also consistent with HPRD 1:21 and ISO 19882. WFS explained that the phrase ''pronounced increase'' was added to GTR No. 13 for clarity and stated that a test laboratory with vibration testing capabilities should be able to detect resonance, as most shaker table software can automatically identify it. WFS stated there was no need for additional criteria to establish resonance. Regarding the acceleration level for resonant dwells or the 40 Hz default, WFS indicated that it should remain at 1.5 g, which is the same level as used in the sine sweep portion of the test.

FORVIA also supported keeping the test procedure harmonized with GTR No. 13, stating that while the measurement method is left open in the regulation, the definition of a pronounced increase is sufficiently precise. FORVIA commented that the test setup must be sensitive enough to identify the highest resonance, which is typically not an issue in practice. FORVIA expressed confusion over the justification for NHTSA's proposal to define resonance as a frequency where the amplitude response is at least twice the input energy, preferring to adhere to the existing GTR No. 13 criteria.

Agency Response

NHTSA is maintaining the proposed requirement consistent with GTR No. 13. If a resonant frequency cannot be identified, the test is conducted at 40 Hz, which is sufficiently objective. As the commenters note, test facilities will be able to detect and identify the resonant frequency, and therefore NHTSA will allow test facilities to determine the appropriate resonant frequency, or otherwise they may use 40 Hz.

(8) Leak Test

Background

NHTSA proposed the leak test consistent with GTR No. 13. The leak test evaluates the TPRD's ability to contain hydrogen at each of the following temperatures and pressures:

- Ambient temperature: 5°C to 35°C, test at 2 MPa and 125 percent NWP
- High temperature: 85°C, test at 2 MPa and 125 percent NWP
- Low temperature: −40°C, test at 2 MPa and 100 percent NWP

NHTSA sought comment on the need to perform the leak test at 2 MPa in addition to the higher pressures.

The leak evaluation involves observing the pressurized unit for hydrogen bubbles while the unit is immersed in the temperature-controlled fluid. If hydrogen bubbles are observed, the leak rate is measured by any method available to the test lab. The total leak rate must be less than 10 NmL/h, which represents an extremely low leak rate. NHTSA sought comment on the leak rate requirement of 10 NmL/hour, noting that this leak rate is much lower than the minimum hydrogen flow rate of 3.6 NmL/min necessary for initiating a flame.[40] NHTSA sought comment on objective methods for measuring the leak rate.

Comments Received

Agility commented that performing the leak test at higher pressures is sufficient and that testing at 2 MPa is unnecessary, as leak rates typically decrease with lower pressures. Nikola stated the opposite, suggesting that a container is more likely to leak at low pressure and low temperatures due to decreased rigidity. HATCI agreed with Agility, indicating that testing at the higher pressure is adequate and additional testing at 2 MPa does not add to safety assurance. However, Auto Innovators supported harmonizing with GTR No. 13, stating it is important to evaluate seal performance under both low- and high-pressure conditions as well as low temperatures.

DTNA recommended revising the proposed leak rate of 10 NmL/h, stating that it is significantly lower than the minimum hydrogen flow rate necessary to initiate a flame and suggesting a limit of 3.6 NmL/min instead. It stated that this higher limit would reduce the risk of flame initiation and account for testing variability. Agility, on the other hand, supported the 10 NmL/h leak rate, stating that it is consistent with HPRD 1 and GTR No. 13, and suggested using pressure measurements over time with trace gases as one method to determine leakage. Nikola acknowledged that although 10 NmL/h is a low rate, the impact could be amplified when considering multiple devices. It suggested using bubble tests to confirm the presence of leaks and employing mass spectrometers or gasometers to quantify the rate if bubbles are detected.

FORVIA stated disagreement that 10NmL/min is a high leak rate, given the potential for multiple leakage points. It noted that this rate would be detectable through submersion and bubble tests but recommended maintaining consistency with GTR No. 13 for both TPRDs and valves. FORVIA supported the inclusion of the low-pressure leak test, stating that poor gasket designs can leak at low pressure but may become leak-tight at higher pressures.

WFS also advocated for consistency with GTR No. 13, stating that the test accounts for both empty and full container conditions. It noted that while the high-pressure condition is typically the most severe, low pressure can be a challenging scenario in some cases. WFS supported the 10 NmL/h requirement as it aligns with HPRD 1:21 and ISO 19882 and suggested leaving the choice of measurement methods to the testing laboratories, which have various available techniques for detecting leakage at these levels.

MEMA agreed with omitting visual evaluations of bubble formation, as proposed by NHTSA, acknowledging the agency's aim to avoid subjective assessments. MEMA also supported the proposed maximum leak rate of 10 NmL/h.

Agency Response

NHTSA is maintaining the leak test as proposed. The commenters established reasons for conducting the leak test at low pressure in addition to high pressure, including gaskets leaking at low pressure levels and decreasing container rigidity at low pressures and temperatures. Regarding the leakage limit of 10 NmL/h, NHTSA notes that there may be more than one TPRD on a vehicle. Therefore, the leakage from any single TPRD must be very low and the proposed leakage rate of 10 NmL/h is a reasonable limit. Based on the comments, NHTSA will leave the leakage rate quantification method to the discretion of the test lab. As stated by the commenters, possible methods for quantification include capturing bubbles or measurement with sensitive hydrogen or helium leak detectors.

[40] SAE Technical report 2008–01–0726. Flame Quenching Limits of Hydrogen Leaks. The paper finds that the lowest possible flammable flow is about 0.005 mg/s (3.6 NmL/min).

(9) Benchtop Activation Test

Background

Three new TRPD units are tested to establish a baseline activation time, which is the average of the activation time of the three new TPRDs. TPRD units used in the pressure cycling test, accelerated life test, temperature cycling test, salt corrosion resistance test, vehicle environment test, and drop and vibration test are also tested in the benchtop activation test and these TPRDs must activate within 2 minutes of the average activation time established from the tests with the new units.

GTR No. 13 does not provide any information on how to proceed when a TPRD does not activate at all during the benchtop activation test. A TPRD that does not activate when inserted into the oven or chimney is not functioning as intended and therefore presents a safety risk. As a result, NHTSA proposed that if a TPRD does not activate within 120 minutes from the time of insertion into the oven or chimney, the TPRD is considered to have failed the test. The time limit of 120 minutes is selected based on the maximum possible duration of the CHSS fire test. NHTSA sought comment on this requirement.

Comments Received

Agility supported the proposed 120-minute time limit for TPRD activation, describing the rationale as reasonable. Auto Innovators also agreed with NHTSA's proposal regarding the failure assessment for TPRDs that do not activate within the specified period. However, Nikola expressed concern, stating that 120 minutes is too long and dangerous, and that the activation window should be limited to 2 minutes beyond the baseline established by the new units.

FORVIA agreed that a TPRD must function as intended and activate within a specified time and temperature range. It stated that a failure to activate within 120 minutes should be recognizable using sound engineering judgment. FORVIA suggested that the lack of an explicit time limit in GTR No. 13 might be intentional and recommended clear articulation of any additional failure criteria if introduced. It argued that such a long activation time is unnecessary, as a TPRD taking this long to activate under 600 °C conditions would not pass the performance-based fire test.

WFS disagreed with the 120-minute time limit, recommending that the benchtop activation test remain consistent with GTR No. 13. It noted that this test is harmonized with HPRD 1:21 and ISO 19882 and differs from the CHSS fire test. WFS argued that 120 minutes is excessively long for a chimney test, where activation usually occurs within 5 minutes, and suggested a 10-minute limit as more appropriate. It also stated that qualified test labs can determine suitable cut-off times and safely vent gas in case of TPRD failure.

Agency Response

Applying engineering judgment to determine whether a sample has passed or failed the benchtop activation test is likely to be subjective. In addition, a test lab determining an appropriate ''cut-off time'' during the benchtop activation test may also be subjective. Therefore, NHTSA is maintaining the maximum time limit of 120 minutes from insertion into the oven or chimney for the TPRD to activate. Any TPRD that does not activate within 120 minutes from insertion into the oven or chimney during the benchtop activation test, including any of the TPRDs used to establish the baseline activation time, will be considered to have failed the test.

The time limit of 120 minutes is not intended to set the activation performance timeframe. Instead, it is simply the maximum amount of time the test lab must wait without an activation before declaring the TPRD to have failed the test. This standard does not create a dangerous situation because TPRDs will likely activate much faster than 120 minutes, and the CHSS fire test evaluates the performance of the overall system in a fire scenario. The CHSS fire test also has a time limit of 120 minutes for complete CHSS venting to below 1 MPa.

(10) Flow Rate Test

Background

The flow rate test evaluates the TPRD for flow capacity of a TPRD. Flow rate through the TPRD is measured with the inlet pressurized to 2 MPa and the outlet unpressurized. The lowest measured flow rate must be no less than 90 percent of a baseline flow rate established as the measured flow rate of a new TPRD. The number of significant figures used in the measurement of flow rate can impact the test result. For example, a test flow rate of 1.7 flow units compared against a baseline flow rate of 2.0 flow units does not meet the requirement. However, in this case, if flow rate were measured using only one significant figure, the two flow rates would be identical (2 flow units). As a result, NHTSA proposed requiring that the flow rate be measured in units of kilograms per minute with a precision of at least 2 significant digits. NHTSA sought comment on this proposed requirement.

Comments Received

Auto Innovators and HATCI expressed support for NHTSA's proposal regarding the use of flow rate measurement in units of kilograms per minute with a precision of at least two significant digits. Nikola also agreed with the proposal to use two significant digits. However, Agility opposed using mass flow rate units, emphasizing that the properties of different gases must be considered in such an approach. It stated that the use of percentage difference as specified in GTR No. 13 is clear and not open to interpretation.

WFS recommended no changes to the existing procedure in GTR No. 13, noting that the test is harmonized with HPRD 1:21 and ISO 19882. It argued that specifying units as kilograms per minute is unnecessary since most flow tests for hydrogen components are conducted in grams per second. It explained that the key aspect of the test is the comparison of one TPRD flow rate to another, making the specific units less critical. WFS also cautioned that requiring two significant digits might suggest a level of precision not achievable with current equipment, due to minor flow fluctuations during testing. It added that a flow rate measured in grams per second with one significant digit can be more precise than a rate in kilograms per hour with two significant digits. FORVIA provided a neutral stance but noted that GTR No. 13, HPRD 1, and ISO 19882 also use ±2 percent.

Agency Response

NHTSA is maintaining the specification for units of kilograms per minute with at least two significant digits. NHTSA conducted testing in which these units were used successfully by the test lab to evaluate TPRD flowrates.[41] The test lab used a Coriolis meter to directly measure the mass flow rate through each TPRD in units of kg/min. NHTSA also notes that units are interchangeable, so other test labs may use units such as g/s and simply convert the results to kg/min using the appropriate conversion factors, while preserving the significant digits in the measurement.

[41] See the report titled ''GTR No. 13 Fire and Closures Tests'' which can be found at: *https://downloads.regulations.gov/NHTSA-2024-0006-0002/attachment_4.pdf.* This report will also be submitted to the National Transportation Library. *https://rosap.ntl.bts.gov/.*

(11) Atmospheric Exposure Test

Background

GTR No. 13 includes an atmospheric exposure test to ensure that non-metallic components that are exposed to the atmosphere and provide a fuel-containing seal have sufficient resistance to oxygen. This test requires that the component not crack nor show visible evidence of deterioration upon exposure to pressurized oxygen for 96 hours at 70 °C. However, NHTSA is concerned that this test is not objectively enforceable because the requirement involves a subjective determination of evidence of deterioration. Furthermore, the test would require NHTSA to determine which components are non-metallic, exposed to the atmosphere, and provide a fuel-containing seal. As a result, this test was not included in the proposed FMVSS No. 308. NHTSA sought comment on not including the atmospheric exposure test.

Comments Received

Agility stated that the atmospheric exposure test is appropriate for non-metallic materials, but noted that most hydrogen components are metallic and would not require such a test. It added that this test could be relevant for electrical components with plastic connectors. Auto Innovators and HATCI supported NHTSA's proposal to exclude the atmospheric exposure test, agreeing with the agency's reasoning. Glickenhaus also agreed with the decision, stating that the requirement for ''no visible deterioration'' is not objectively measurable and should be omitted.

WFS commented that the atmospheric exposure test is used in various industry standards and noted that in third-party laboratories, determining cracks in rubber materials during testing has been clear for those incompatible with oxygen exposure. WFS indicated that even if the test is removed from FMVSS No. 308, manufacturers may still conduct the test in line with the requirements of industry standards. FORVIA stated that while it believes the test is feasible and visual inspection could serve as a pass/fail criterion, it expressed no objections if NHTSA decides to remove the test.

Agency Response

NHTSA is not including the atmospheric exposure test in FMVSS No. 308. The test criteria are not objectively enforceable, and the commenters did not provide any alternative criteria for conducting the test with improved objectivity. The commenters also did not provide any specific methodology for NHTSA to determine which components are non-metallic and provide a fuel-containing seal within the closure device of interest.

c. Check Valves and Shut-Off Valves

(1) Hydrostatic Strength Test

Background

The hydrostatic strength test is conducted to ensure the valves can withstand extreme pressure of up to 250 percent NWP. Additionally, the test also ensures that the burst pressure of the valves exposed to various environmental conditions during prior testing is not degraded beyond 80 percent of a new unexposed valve's burst pressure.

In the event of a significant leak, it may become impossible for the test laboratory to increase pressure on the valve. This condition occurs when any increase in applied pressure is offset by leakage flow, thereby negating the pressure increase. If it occurs, it is not possible to complete testing. To address this issue, NHTSA proposed that valves shall not leak during the hydrostatic strength test, and that a leak would constitute a test failure. NHTSA sought comment on the requirement that valves not leak during the hydrostatic strength test.

Comments Received

Auto Innovators agreed with NHTSA's proposal to require that valves not leak during this test. WFS also supported NHTSA's proposal, commenting that leakage during a hydrostatic strength test would signify a rupture of the pressure-containing boundary and thus constitute a failure. It pointed out that this detail is implied in HGV 3.1–2022 and further clarified in ISO 19887, ''Gaseous Hydrogen—Fuel system components for hydrogen-fuelled vehicles,'' which states: ''The components shall be examined to verify that leakage or rupture has not occurred.'' WFS added that adopting this language could help with clarity and harmonization if NHTSA deems it necessary.

In contrast, FORVIA disagreed with the proposal, stating that leak tightness above 125 percent NWP is not required and that such a requirement would not correspond to actual service conditions. It suggested that in the event of a leak during hydrostatic testing, there should be no test result, and the test should be repeated. FORVIA also commented that the leak test should sufficiently address this potential failure mode.

Agency Response

While NHTSA proposed the requirement that the valve not leak during the hydrostatic strength test, this requirement is not intended to test specifically for leakage above 125 percent NWP. Unlike the leak test, the valve will not be submerged in a fluid and observed for bubbles from leakage during the hydrostatic strength test. Instead, this requirement is intended to avoid a situation where a test lab cannot complete testing due to significant leakage from the valve that prevents continued pressurization to the required pressures. Even if such a test were considered ''no result'' and repeated, the same leak could occur with subsequent test samples. Therefore, there needs to be a requirement that the valve not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c) during the hydrostatic strength test. Accordingly, NHTSA is revising this part of the requirement to state the valve ''shall not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c).''

Regarding adding the language proposed by WFS, NHTSA is revising the language as stated above. This is the most clear and concise way to state the requirement.

(2) Leak Test

Background

NHTSA proposed the leak test consistent with GTR No. 13, and similar to the leak test discussed above for TPRDs. NHTSA sought comment on objective methods for measuring the leak rate.

Comments Received

Nikola stated that the specified leak rate of 10 NmL/h, while applicable to a single point, could accumulate quickly when considering multiple leak points throughout the CHSS. WFS commented that the leak test is harmonized with industry standards and can be measured using various methods, including bubble capture or sensitive hydrogen or helium leak detectors capable of measuring levels lower than visible bubbles. It stated there is no need for NHTSA to specify a particular measurement method, as it can be determined by the testing facility based on available equipment.

FORVIA disagreed with the proposed leak rate of 10 NmL/h, stating that it is relatively high, especially if multiple leakage points in the vehicle are at this level. It suggested that the leak rate can be identified using submersion and bubble tests, but noted that more

accurate testing methods, such as global accumulation tests, are available.

Agency Response

NHTSA is maintaining the leak test as proposed. NHTSA notes that there may be more than one closure device on a vehicle. Therefore, the leakage from any single closure device must be very low and the proposed leakage rate of 10 NmL/h is a reasonable limit. Based on the comments, NHTSA will leave the leakage rate quantification method to the test lab. As stated by the commenters, possible methods for quantification include capturing bubbles or measurement with sensitive hydrogen or helium leak detectors.

(3) Extreme Temperature Pressure Cycling Test

Background

The extreme temperature pressure cycling test simulates extreme temperature conditions that may lead to gas release failures when combined with pressure cycling. The total number of operational cycles is 15,000 for the check valve, consistent with the 15,000 cycles used for the TPRD above. The total number of operational cycles is 50,000 for the shut-off valve. The higher 50,000 cycles for the shut-off valve reflects the multiple pressure pulses the shut-off valve experiences as it opens and closes repeatedly during service. In contrast, the check valve only experiences a pressure pulse during fueling. NHTSA sought comment on the number of pressure cycles for check valves and shut-off valves.

Pressure cycling is conducted at different environmental temperatures and pressures:

- Ambient: Between 5.0°C and 35.0°C, 100 percent NWP
- High: 85°C, 125 percent NWP
- Low: −40 °C, 80 percent NWP

After cycling, each valve is subjected to 24 hours of ''chatter flow'' to simulate the chatter condition described above. Chatter flow means the application of a flow rate of gas through the valve that results in chatter as described above. NHTSA was concerned, however, that the application of chatter flow could be partially subjective. NHTSA sought comment on the following aspects of the chatter flow test:

- Appropriate methodology or a procedure for inducing chatter flow.
- Appropriate instrumentation and criteria to measure and quantify chatter flow such as a decibel meter and minimum sound pressure level.
- How to proceed in cases where no chatter occurs.
- The specific safety risks that are addressed by the chatter flow test.
- The possibility of not including the chatter flow test.

In the case of shut-off valves, GTR No. 13 specifies that the chatter flow test is required only in the case of a shut-off valve which functions as a check valve during fueling and that the flow rate used to induce chatter should be within the normal operating conditions of the valve. However, NHTSA has no way of determining whether a shut-off valve is functioning as a check valve during fueling or the normal operating conditions of the valve. As a result, NHTSA proposed that the chatter flow test will apply to all shut-off valves and will not specify flow rate limitations for the chatter flow test. NHTSA sought comment on this decision.

Comments Received

Auto Innovators recommended aligning the number of pressure cycles with GTR No. 13. FORVIA expressed support for the proposed minimum values, confirming that 15,000 cycles for check valves and 50,000 cycles for shut-off valves are consistent with GTR No. 13. Similarly, Nikola commented that safety devices should adhere to higher standards, in alignment with GTR No. 13. Agility suggested using 50,000 cycles for both check valves and shut-off valves.

Regarding the chatter flow test, HATCI requested that NHTSA exclude this requirement if a CHSS component prevents chatter within the shut-off valve, suggesting that manufacturers could provide documentation to demonstrate this. WFS stated that the test is harmonized with industry standards and stated it is sufficiently defined. It commented that GTR No. 13 already describes an appropriate methodology for inducing chatter flow by specifying a gas flow rate through the valve at the level that causes the most chatter. WFS stated that additional instrumentation, such as decibel meters, is unnecessary since chatter is detectable by ear. WFS also stated that if no chatter occurs during the flow test, GTR No. 13 specifies that the 24-hour chatter test is not necessary. Regarding the specific safety risks that are addressed by the chatter flow test, WFS stated that chatter could lead to premature wear and failure of the valve's check functionality. WFS recommended keeping the procedure as written in GTR No. 13, noting that if a shut-off valve lacks check valve functionality, the test should not be required since chatter only occurs during unidirectional flow through a check valve.

Agency Response

NHTSA is maintaining the number of pressure cycles as proposed. For the reasons discussed in the NPRM, and confirmed by the commenters, 15,000 pressure cycles for check-valves and 50,000 pressure cycles for shut-off valves are the industry standard for minimum safety of these components.[42]

NHTSA is maintaining the chatter flow test as proposed. NHTSA will leave it to test labs to determine the flowrate that cases the most valve flutter. As the commenters note, this determination could be accomplished by listening for audible sound changes. In the case of valves that do not experience chatter, or vehicles with components that prevent chatter, the chatter flow test should not adversely impact the test results because these valves will not experience chatter. Therefore, a specific exemption is not required for shut-off valves that do not experience chatter or for vehicles that have components to prevent chatter flow.

As stated above, NHTSA has no way of determining whether a shut-off valve is functioning as a check valve during fueling or the normal operating conditions of the valve; therefore NHTSA is maintaining the test as proposed. This determination is not expected to adversely impact test results because, as stated by the commenters, chatter only occurs during unidirectional flow through a check valve. Therefore, if a shut-off valve is not functioning as a check valve, it will not experience unidirectional flow nor chatter.

(4) Salt Corrosion Resistance Test

Background

NHTSA proposed a salt corrosion resistance test for check valves and shut-off valves equivalent to the salt corrosion resistance test for TPRDs discussed above.

Comments Received

Auto Innovators recommended that NHTSA maintain consistency with GTR No. 13. Nikola agreed with the proposal, noting that it is harmonized with industry standards.

Agency Response

Based on the comments received, NHTSA is maintaining the salt corrosion test as proposed.

[42] *See* 89 FR 27530, 27533 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

(5) Vehicle Environment Test

Background

NHTSA proposed a vehicle environment test for check valves and shut-off valves equivalent to the vehicle environment test for TPRDs discussed above.

Comments Received

Auto Innovators recommended that NHTSA remain consistent with GTR No. 13. Nikola stated that the tests from GTR No. 13 are aligned with industry standards and would be conducted by manufacturers regardless.

Agency Response

Based on the comments received, NHTSA is maintaining the vehicle environment test as proposed.

(6) Atmospheric Exposure Test

Background

For the reasons discussed above to the TPRD atmospheric exposure test, NHTSA did not propose the atmospheric test for check valves and shut-off valves.

Comments Received

Auto Innovators and HATCI both expressed support for NHTSA's proposal to not include the atmospheric exposure test for check valves and shut-off valves. WFS suggested leaving the requirement in the FMVSS, consistent with its feedback on the atmospheric exposure test for TPRDs. However, it noted that if NHTSA chooses to remove the test, manufacturers will still perform it in accordance with HGV 3.1. FORVIA commented that the test is feasible, and a visible inspection could serve as a pass/fail criterion, but indicated that it would find it acceptable if NHTSA decided to eliminate this test.

Agency Response

NHTSA is not including the atmospheric exposure test for check valves and shut-off valves for the same reasons discussed above for TPRDs.

(7) Electrical Tests

Background

The electrical tests apply to the shut-off valve only. The electrical tests evaluate the shut-off valve for:

- Leakage, unintentional valve opening, fire, and/or melting after exposure to an abnormal voltage.
- Failure of the electrical insulation between the power conductor and casing when the valve is exposed to a high voltage.

The exposure to abnormal voltage is conducted by applying twice the valve's rated voltage or 60 V, whichever is less to the valve for at least one minute. After the test, the valve is subject to the leak test and leak requirements. The test for electrical insulation is conducted by applying 1000 V between the power conductor and the component casing for at least two seconds. The isolation resistance between the valve and the casing must be 240 kΩ or more.

Some valves may have requirements specified by their manufacturers for peak and hold pulse width modulation duty cycle. NHTSA sought comment on whether and how to adjust the proposed test procedure to account for a manufacturer's specified peak and hold pulse width modulation (PWM) duty cycle requirements.

Comments Received

Commenters provided various perspectives on potential adjustments to the proposed test procedure to account for a manufacturer's specified peak and hold PWM duty cycle requirements. Auto Innovators stated that more information is needed to understand NHTSA's intent, emphasizing that ''operation of the valve has no bearing on insulation resistance'' and that the insulation resistance should be verified between a single conductor and the component casing, regardless of the modulation type. HATCI similarly stated that the PWM or peak specification is not relevant to the electrical tests, arguing that these tests are meant to check compliance under abnormal conditions, such as atypical voltages. Agility suggested that any inclusion of PWM requirements would go beyond the requirements of GTR No. 13 and would require further investigation, adding that it did not recommend including such requirements. WFS commented that the test should be consistent with GTR No. 13 and noted that peak and hold modulation is only applicable when testing to open a valve and keep it open, which is not the purpose of this insulation resistance test. WFS stated that the coil is not actually energized during this test, as it is similar to a Hipot test where one lead is attached to the coil and the other to the body to confirm insulation.

FORVIA stated that NHTSA appears to be proposing new test procedures for valves, specifically related to PWM duty cycle requirements, and acknowledged concerns about additional certification tests to address specific manufacturer-set operational requirements. It stated that these operational conditions would already be thoroughly evaluated during the manufacturer's Design Validation (DV) and Production Validation (PV) phases, where the valve's performance is tested against specified requirements. FORVIA concluded that the existing DV and PV processes adequately address concerns about PWM duty cycles and stated that additional test scenarios are unnecessary. It also recommended maintaining equivalence with GTR No. 13 and noted that the test is independent of peak/hold or modulation of the voltage, as it validates the component's ''electrical robustness.''

Agency Response

NHTSA is maintaining the electrical tests as proposed. As supported by the commenters, NHTSA has determined that procedures to account for pulse width modulation specifications are not necessary. The electrical tests expose the valve to abnormal voltages and evaluate its insulation resistance. The results of these tests will not be affected by PWM variations during testing.

(8) Vibration Test

Background

The vibration test evaluates a valve's resistance to vibration. The valve is pressurized to 100 percent NWP and exposed to vibration for 30 minutes along each of the three orthogonal axes (vertical, lateral, and longitudinal). After vibration, the valve shall comply with the leak test and the hydrostatic strength test to verify it retains its basic ability to contain hydrogen and resist burst due to over-pressurization. GTR No. 13 also contains a requirement that ''each sample shall not show visible exterior damage that indicates that the performance of the part is compromised.'' Showing signs of damage is a subjective measure and lacks the objectivity needed per the Motor Vehicle Safety Act. Therefore, this language was removed.

Comments Received

Auto Innovators expressed agreement with NHTSA's assessment, stating that the lack of an objective measure for evaluating vibrations justified the removal of the language. Nikola also indicated its agreement with this decision.

Agency Response

NHTSA is maintaining the vibration test as proposed, which does not include the requirement regarding visible exterior damage indicating that the performance of the part is compromised.

(9) Stress Corrosion Cracking Test

Background

NHTSA proposed conducting the stress corrosion cracking test in the

same manner and for the same reasons discussed above for TPRDs.

Comments Received

Auto Innovators agreed with NHTSA's proposal.

Agency Response

NHTSA will maintain an equivalent stress corrosion cracking test for check-valves and shut-off valves as the stress corrosion cracking test for TPRDs, discussed above.

12. Labeling Requirements

Background

NHTSA proposed that the container label(s) include the following information:

- Manufacturer, serial number, and date of manufacture.
- The statement ''Compressed Hydrogen Only.''
- The container's NWP in MPa and pounds per square inch (psi).
- Date when the system should be removed from service.
- BP_O in MPa and psi.

Comments Received

Nikola recommended adding a DOT/FMVSS compliance statement to the label. MEMA agreed with NHTSA's proposal to list information such as the manufacturer's name and contact details, serial number, NWP, fuel type, and the container's service removal date. However, MEMA objected to including an inspection schedule on the label. It also pointed out that such a requirement is not part of GTR No. 13 and requested NHTSA reconsider its inclusion. Glickenhaus noted a lack of sufficient information to specify a performance standard for label attachment that would prevent localized degradation or stress.

Agency Response

As discussed above, NHTSA will not require BP_O to be listed on the container label. NHTSA is maintaining the other labeling requirements as proposed. These labeling and inspection requirements are consistent with the established labeling requirements for CNG fuel containers in FMVSS No. 304.[43] Having this information on the container label will help operators properly maintain their vehicles through regular safety inspections.

Additionally, since FMVSS No. 308 is a vehicle-level standard, the DOT/FMVSS compliance statement should be located on the vehicle itself, not directly on the container. Lastly, while concerns were raised about label attachment durability, label attachment methods are expected to be developed based on best practices, and this issue does not affect the requirement to specify information on the container label.

C. FMVSS No. 307, ''Fuel System Integrity of Hydrogen Vehicles''

Background

FMVSS No. 307 sets requirements for the vehicle fuel system to mitigate hazards associated with hydrogen leakage and discharge from the fuel system, as well as requirements to ensure hydrogen leakage, hydrogen concentration in enclosed spaces of the vehicle, and hydrogen container displacement are within safe limits post-crash. The fuel system integrity requirements for normal vehicle operations would apply to all hydrogen-fueled vehicles, while the post-crash fuel system integrity requirements only apply to light vehicles and compressed hydrogen-fueled school buses regardless of GVWR. NHTSA sought comment on the application of FMVSS No. 307 to all vehicles, including heavy vehicles (vehicles with a GVWR greater than 4,536 kg (10,000 pounds). As proposed, portions of FMVSS No. 307 would apply to all hydrogen vehicles regardless of GVWR. However, not all vehicles would be subject to crash testing under FMVSS No. 307. As described below, passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of less than or equal to 4,536 kg would be subject to barrier crash testing, as would school buses with a GVWR greater than 4,536 kg. Heavy vehicles other than school buses with a GVWR greater than 4,536 kg would not be subject to crash testing under the proposed standard.

Comments Received

Agility commented that FMVSS No. 307 should not apply to all vehicles, citing significant differences between light and heavy vehicles that warrant separate consideration. It stated that while some requirements could be the same, fuel system-specific configurations and integration into the vehicle body should be addressed separately, given the differences in vehicle accelerations and impacts based on GVWR. Luxfer Gas Cylinders supported the application of FMVSS No. 307 to all vehicles. Auto Innovators stated that while the safety and integrity of hydrogen vehicles are priorities regardless of size, it does not support the inclusion of heavy vehicles under FMVSS No. 307 at this time. Auto Innovators cited the design implications for heavy vehicles, which have not been previously subject to such requirements, and called for further research to justify this inclusion. It recommended that if NHTSA considers including heavy vehicles, a comprehensive regulatory impact analysis should be conducted, and a new rulemaking proposal issued as either a separate rulemaking notice or a supplemental notice of proposed rulemaking. Auto Innovators also stated the need for additional research to determine if alternative test procedures are required to evaluate heavy vehicle performance and understand the potential impact on vehicle design. Nikola stated ''leave it to the OEM to decide.''

Agency Response

NHTSA is maintaining the application of FMVSS No. 307 as proposed, consistent with GTR No. 13, which applies to both light and heavy vehicles.[44] While Auto Innovators cited need for more research to support application of FMVSS No. 307 to heavy vehicles, Hyundai Motor Group noted that heavy commercial vehicles and buses will be important types of hydrogen powered vehicles. Indeed, NHTSA and industry expect heavy vehicles to comprise a significant portion of the hydrogen fleet. In 2023, about 33 percent of hydrogen-powered vehicles were commercial vehicles and this percentage is expected to grow in the coming years.[45] Because hydrogen fuel poses risks regardless of a vehicle's GVWR, safety need compels that the requirements for normal vehicle operation apply to heavy vehicles just as they apply to light vehicles so long as the standard is able to be practicable and objective. The performance tests under normal vehicle operations adopted in the final rule are aligned with GTR No. 13 and have already been implemented for hydrogen powered vehicles (regardless of GVWR) in other

[43] FMVSS No. 304, ''Compressed natural gas fuel container integrity.'' *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-V/part-571/subpart-B/section-571.304.*

[44] The scope of GTR No. 13 states that ''[t]his regulation applies to all hydrogen-fueled vehicles of Categories 1 and 2 with a maximum design speed exceeding 25 km/h.'' ''Category 1 vehicle'' means a power-driven vehicle with four or more wheels designed and constructed primarily for the carriage of (a) person(s). ''Category 2 vehicle'' means a power-driven vehicle with four or more wheels designed and constructed primarily for the carriage of goods. *See* TRANS–WP29–1045e, Annex 2, *https://unece.org/DAM/trans/doc/2005/wp29/TRANS-WP29-1045e.pdf.*

[45] *See* Global Market Insights: Hydrogen Vehicle Market size, *https://www.gminsights.com/industry-analysis/hydrogen-vehicle-market#:~:text=Hydrogen%20Vehicle%20Market%20size%20was,expenses%20associated%20with%20hydrogen%20vehicles.*

countries.[46] These tests are simple and can be performed similarly for light and heavy vehicles. Therefore, the same minimum safety requirements must be applied to all vehicles that use compressed hydrogen as a fuel source. Specifically, heavy vehicles must meet the same requirements as light vehicles for fueling receptacles, hydrogen discharge systems, protection against flammable conditions, fuel system leakage, and tell-tale warnings provided to the driver. This approach also harmonizes with commenters' requests for harmonization with GTR No 13.[47]

Furthermore, NHTSA will not leave it to vehicle manufacturers to decide whether to apply FMVSS No. 307 to their vehicles. Allowing manufacturers to decide whether to apply FMVSS No. 307 to their vehicles would not be consistent with the application of other FMVSS.

As discussed below, NHTSA agrees more research would be beneficial before the crash test requirements of FMVSS No. 307 are applied to all heavy vehicles. Hyundai suggested post-crash requirements similar to that proposed for heavy school buses. EMA suggested use of component level tests, while Nikola stated it is developing its own crash test requirements based on the FMVSS No. 214 side impact moving barrier crash test. This final rule only requires heavy vehicles to comply with the fuel system integrity requirements under normal vehicle operations. As discussed below, NHTSA is considering conducting research on post-crash requirements for heavy vehicles and will consider the commenters' suggestions on this matter.

1. Enclosed or Semi-Enclosed Spaces Definition

Background

GTR No. 13 defines ''enclosed or semi-enclosed spaces' as ''the special volumes within the vehicle (or the vehicle outline across openings) that are external to the hydrogen system (storage system, fuel cell system, internal combustion engine (ICE) and fuel flow management system) and its housings (if any) where hydrogen may accumulate (and thereby pose a hazard).'' NHTSA proposed a similar definition of ''enclosed or semi-enclosed spaces means the volumes external to the hydrogen fuel system such as the passenger compartment, luggage compartment, and space under the hood.'' NHTSA also proposed defining that ''hydrogen fuel system means the fueling receptacle, CHSS, fuel cell system or internal combustion engine, fuel lines, and exhaust systems.''

Comments Received

EMA raised concerns about the proposed definition of ''enclosed or semi-enclosed spaces,'' calling it ambiguous and a departure from NHTSA's intent to harmonize with GTR No. 13. It commented that NHTSA's use of ''such as'' implies a non-exhaustive list, potentially encompassing unintended areas outside the vehicle's hydrogen system. It cited various references in the NPRM where NHTSA repeatedly linked ''enclosed or semi-enclosed spaces'' to volumes that allow hydrogen accumulation. EMA highlighted specific alleged problems with the proposed definition's broadness, such as in the fueling receptacle requirements of S5.1.1, arguing the term's literal interpretation would limit receptacle mounting to components within the hydrogen system, leading to potentially unsafe situations. Similarly, in section S5.1.3.1(c) on pressure relief systems, EMA argued that directing hydrogen discharge solely towards the hydrogen system is unsafe. It noted that the proposed term appears nine times outside the definition in FMVSS No. 307, with several instances relating to hydrogen detection. EMA suggested revising the definition to align with GTR No. 13 or adding a specification that such spaces are where hydrogen can accumulate and pose a hazard.

FORVIA also expressed the need for clearer criteria, recommending NHTSA define ''semi-enclosed spaces'' by specifying volumes and enclosed sides to avoid testing ambiguities. Meanwhile, Auto Innovators opposed the inclusion of ''space under the hood'' in the definition, stating it diverged from GTR No. 13.

Agency Response

NHTSA agrees with the commenters that the proposed definition of ''enclosed or semi-enclosed spaces'' is vague and ambiguous. To avoid ambiguity, NHTSA has revised the definition of enclosed or semi-enclosed spaces to mean ''the passenger compartment, luggage compartment, and space under the hood.'' This definition no longer contains the words ''such as,'' so it no longer implies the inclusion of ambiguous additional volumes beyond those listed in the definition.

The ''space under the hood'' is included in the definition of enclosed or semi-enclosed spaces because there is a risk of hydrogen accumulation under the hood just as there is a risk of hydrogen accumulation in the passenger compartment and/or in the luggage compartment. If hydrogen were to accumulate heavily in the space under the hood, it could result in a fire if an ignition source were present. By including the ''space under the hood'' in the definition of enclosed or semi-enclosed spaces, the requirements of FMVSS No. 307 S5.1.3(b) apply, thereby preventing accumulation of hydrogen to unsafe levels under the hood.

Furthermore, NHTSA believes that including ''space under the hood'' in the enclosed and semi-enclose spaces is consistent with GTR No. 13. GTR No. 13 defines enclosed or semi-enclosed spaces as ''the special volumes within the vehicle (or the vehicle outline across openings) that are external to the hydrogen system (storage system, fuel cell system, internal combustion engine (ICE) and fuel flow management system) and its housings (if any) where hydrogen may accumulate (and thereby pose a hazard).'' Space under the hood can be considered a special volume within the vehicle, external to the hydrogen system and its housings, where hydrogen may accumulate.

2. Fuel System Integrity During Normal Vehicle Operations

a. Fueling Receptacles

Background

The first proposed requirement for the fueling receptacle was to prevent reverse flow to the atmosphere. The second proposed requirement was for a label with the statement, ''Compressed Hydrogen Only'' as well as the statement ''Service pressure _____ MPa (_____ psig).'' The label must also contain the statement, ''See instructions on fuel container(s) for inspection and service life.'' The third proposed requirement was for positive locking that prevents the disconnection of the fueling hose during fueling. The fourth proposed requirement was for protection against ingress of dirt and water to protect the fueling receptacle from contamination that could lead to degradation of the fuel system over time. The fifth proposed requirement was to prevent the receptacle from being mounted in a location that would be highly susceptible to crash deformations in order to prevent degradation in the

[46] *See* ECE R.134, ''Uniform provisions concerning the approval of motor vehicles and their components with regard to the safety-related performance of hydrogen fuelled vehicles,'' *https://unece.org/transport/documents/2024/10/standards/addendum-133-regulation-no-134-revision-1.*

[47] Hyundai and Nikola are already producing vehicles that comply with GTR No. 13 fuel system integrity requirements. As of October 2024, Nikola has sold 235 fuel cell electric Class 8 heavy-duty trucks in the United States. About 70 Hyundai Class 8 XCIENT fuel cell trucks have already been sold in the United States.

event of a crash. NHTSA also proposed that the receptacle be prevented from being mounted in the enclosed or semi-enclosed spaces of the vehicle because these areas can accumulate hydrogen.

NHTSA proposed that the assessment for all five receptacle requirements would be by visual inspection. NHTSA sought comment on the proposed requirements for the fueling receptacle and on the objectivity of assessment by visual inspection.

Comments Received

Luxfer Gas Cylinders questioned how NHTSA intends to conduct visual inspections of the fueling receptacle and inquired about the number of receptacles that would be tested annually. It also questioned how positive locking would be assessed for the variety of vehicle designs in service. Luxfer further commented on the requirement that the fueling receptacle should not be mounted in impact energy-absorbing areas, stating that since receptacles are typically mounted on a vehicle's outer surface for accessibility, any such surface is inherently vulnerable in a crash, making this requirement appear unnecessary.

Auto Innovators noted that there is no reference test provided for the requirement to prevent reverse flow to the atmosphere and recommended using the GTR No. 13 leak test for check valves and shut-off valves. It also requested clarification on the label location. Air Products recommended adding a disconnect switch to fueling receptacles for medium and heavy vehicles to prevent starting or drive-away, as used in light vehicles. It stated that GTR No. 13 Phase 2 standardizes references to fueling receptacle profiles to ensure vehicles are fueled only with appropriate pressure classes and prevent cross-fueling with other compressed gas dispensing stations. Air products cited standards ISO 17268, ''Gaseous hydrogen land vehicle refuelling connection devices,'' and SAE J2600, ''Compressed Hydrogen Surface Vehicle Fueling Connection Devices,'' in this context.

HATCI expressed concerns about the lack of space for the proposed labeling requirements and recommended omitting additional lines of text compared to GTR No. 13. It supported the requirement to prevent ingress of water and oil, agreeing that this could affect the closure device tests. Nikola and Agility both stated that visual inspection is an acceptable means of assessment. FORVIA disagreed with the proposed requirements and requested that NHTSA align them exactly with GTR No. 13.

Agency Response

Regarding the requirement for the fueling receptacle to not be mounted in locations ''highly susceptible to crash deformations,'' the proposed requirements do not use the term ''highly susceptible.'' Instead, NHTSA proposed that ''[t]he fueling receptacle shall not be mounted to or within the impact energy-absorbing elements of the vehicle.'' However, in response to concerns raised, NHTSA has reconsidered the necessity of this requirement.

The commenters correctly note that it is generally expected for the fueling receptacle to be mounted on the exterior of the vehicle to facilitate fuel filling, which inherently exposes it to potential damage in the event of a crash. NHTSA agrees that this reality limits the effectiveness and practicality of restricting the mounting location based on energy-absorbing elements of the vehicle. Given that any surface-mounted device, by its nature, could be subject to damage in a collision, maintaining the proposed restriction would not significantly enhance vehicle safety and could introduce unnecessary design constraints.

Therefore, after careful review, NHTSA has decided to remove the requirement that fueling receptacles shall not be mounted in the energy-absorbing elements of the vehicle. This decision aligns with the practical considerations raised by commenters and reflects the understanding that modern vehicle design incorporates various safety mechanisms, such as reinforced mounting systems and advanced materials, that can adequately protect external components like fueling receptacles from damage without the need for this specific regulation. NHTSA believes that removing this requirement will not compromise safety objectives while allowing for greater flexibility in vehicle design.

NHTSA is maintaining the other fueling receptacle requirements as proposed. NHTSA will conduct visual inspection by observation of the fueling receptacle, its location within the vehicle, and through basic operation of the vehicle such as attaching a fueling nozzle to the receptacle to test for positive locking. NHTSA has discretion regarding how many vehicles it inspects per year.

NHTSA notes that the referenced GTR No. 13 leak test outlines the check valve and shut-off valve leak test. While a fueling receptacle may contain a check valve, the test procedure is not written to accommodate fueling receptacles. In addition, testing of CHSS check valves is already covered under FMVSS No. 308 S5.1.5.2, and it would be redundant to apply the same test to the receptacle. As a result, NHTSA is maintaining visual inspection as the evaluation method for the requirements of FMVSS No 307 S5.1.1.

NHTSA is not requiring a disconnect switch to prevent vehicle starting and drive away on light duty vehicles. However, vehicle manufacturers are free to include this technology in their designs.

NHTSA is also not including requirements for the fueling receptacle profile or setting requirements for different ''Pressure Classes.'' Such specification would be design restrictive.

There is no exact location specified for the location of the fueling receptacle label. The presence of this label will be verified by visual inspection. Manufacturers may consider this inspection method when determining where to locate the label. The additional statement ''See instructions on fuel container(s) for inspection and service life'' is consistent with FMVSS No. 303.[48] This statement is important for the purpose of helping operators properly maintain their vehicles through regular safety inspections.

Lastly, NHTSA notes that the fueling receptacle design is not standardized by GTR No. 13. The preamble to GTR No. 13 simply references industry standards where examples of fueling receptacles can be found. This language in GTR No. 13does not constitute a requirement or a standardization of the fueling receptacle. NHTSA believes fueling receptacle designs may still be evolving. Therefore, while there may be safety benefits to standardizing fueling receptable designs, to do so at this time would be premature.

b. Over-Pressure Protection for Low-Pressure Systems

Background

NHTSA proposed GTR No. 13's requirement of over-pressure protection for low-pressure systems. Accordingly, the agency proposed requiring countermeasures to prevent failure of downstream components in the event a pressure regulator fails to properly reduce the fuel pressure from the much higher pressure in the CHSS. The activation pressure of the overpressure protection device shall be lower than or equal to the maximum allowable working pressure for the appropriate

[48] FMVSS No. 303, ''Fuel system integrity of compressed natural gas vehicles,'' *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-V/part-571/subpart-B/section-571.303.*

section of the hydrogen system as determined by the manufacturer. NHTSA sought comment on the requirement for an overpressure protection device in the fuel system and how to test the performance of such a device.

Comments Received

Auto Innovators recommended that NHTSA align with GTR No. 13 and avoid requiring an additional test. It stated that the main areas of GTR No. 13 cover CHSS, high-pressure closures, PRD, fuel lines, electrical safety, and performance and other subsystem requirements in the vehicle. It commented that the proposed overpressure protection falls under the ''Hydrogen Delivery'' system of a hydrogen fuel cell vehicle, which it stated should be outside the scope of this regulation. Auto Innovators noted that while low-pressure systems are not covered by GTR No. 13, it clearly defines overpressure protection for these systems as ensuring that ''the hydrogen system downstream of a pressure regulator shall be protected against overpressure due to the possible failure of the pressure regulator,'' which each manufacturer will verify. Thus, it stated that there is no need to add this requirement to FMVSS No. 307.

HATCI supported NHTSA's proposal to harmonize with GTR No. 13 and agreed that an overpressure protection device should be included in the system. However, it stated that evaluating every overpressure protection device in a system would need to end with regulator failure and compromise the whole system. It suggested that if such evaluation is necessary, the device's operation could be verified at the component level by applying a reverse pressure. Agility found the requirement acceptable and proposed testing the component on a bench by measuring its activation pressure. It also noted the possibility of testing it on the vehicle by deliberately exposing a PRD to its activation pressure, though it cautioned that this exposure could pose risks to vehicle safety.

Nikola commented that no additional test is needed since this component falls outside the scope of the regulation. FORVIA agreed with keeping alignment to GTR No. 13 Phase 2 and recommended using visual inspection as the test procedure. It argued that conducting an actual test on the vehicle would be difficult due to vehicle-dependent factors.

Agency Response

Based on the comments received, NHTSA is removing the requirement for an overpressure protection device in the fuel system. There is no test available to evaluate the performance of the over-pressure protection device, and therefore the proposed requirement that ''the activation pressure of the over-pressure protection device be lower than or equal to the maximum allowable working pressure for the respective downstream section of the hydrogen system'' is unenforceable. Simply requiring a device to be present with no test to evaluate its performance does not improve safety, and therefore, the requirement for an over-pressure protection device has been removed.

c. Hydrogen Discharge Systems

(1) TPRD Discharge Direction

Background

Consistent with GTR No. 13, NHTSA proposed that the TPRD vent line be protected from ingress of dirt or water to prevent contamination that could degrade or compromise the TPRD. NHTSA proposed several requirements related to the TPRD vent discharge direction, requiring that the TPRD discharge must not be directed towards nor impinge upon:

1. Any enclosed or semi-enclosed spaces where hydrogen could unintentionally accumulate, such as the trunk, passenger compartment, or engine compartment.
2. The vehicle wheel housing.
3. Hydrogen containers.
4. Rechargeable electrical energy storage system (REESS).
5. Any emergency exit(s) or service door(s).

In addition to these requirements, NHTSA proposed an additional requirement to protect potential occupants attempting to exit the vehicle or first responders approaching the vehicle. This requirement stated that hydrogen vented through the TPRD(s) be directed upwards within 20° of vertical relative to the level surface or downwards within 45° of vertical relative to the level surface. NHTSA sought comment on this additional requirement for TPRD discharge direction, and on the proposed discharge angles.

Comments Received

Air Products commented that venting downward could be acceptable for light vehicles but recommended any downward TPRD vent flow should be diffused to minimize a jet fire scenario. It also proposed specific considerations for heavy vehicles, suggesting that venting should be oriented away from cargo and vertically positioned outside the CHSS enclosure and vehicle. It stated the importance of designing vent stacks to withstand back pressure, thrust forces, and vehicle accidents.

Air Products also stated that venting high-pressure hydrogen in confined areas increases the likelihood of deflagration or detonation. It described the possibility of flame impingement at the TPRD outlet potentially leading to a cascading effect and larger hydrogen releases. It proposed modifications to include ''enclosed or semi-enclosed spaces including portions of the CHSS'' as a location the discharge shall not impinge upon.

Agility stated that the proposed requirement for a discharge angle within 20 degrees of vertical does not align with existing standards. It suggested using the wording from GTR No. 13 and commented that while venting within 45 degrees of vertical from the top could be acceptable, venting from the bottom at any angle other than vertical could lead to horizontal gas/flame plumes, posing risks to passengers and first responders. Agility also noted that these requirements could become irrelevant in vehicle rollovers.

Nikola and FORVIA both expressed concerns over the prescriptiveness of specifying venting angles. Nikola stated that discussions among experts concluded that manufacturers should be given the responsibility to determine safe venting designs. It cited GTR No. 13, which only specifies prohibited venting directions rather than mandating specific angles. FORVIA similarly stated that the topic is highly vehicle-specific and should be addressed on a case-by-case basis. FORVIA noted that the phrase ''not be directed towards'' could be interpreted subjectively, leading to compliance challenges. FORVIA agreed with the requirements other than the venting direction angles, but recommended aligning the wording exactly with GTR No. 13.

Luxfer Gas Cylinders viewed the proposed requirements as an improvement but indicated uncertainty about manufacturers' ability to comply. Auto Innovators did not support the proposed requirements in S5.1.3.1(b), citing extensive discussions within GTR No. 13 Phase 2, which highlighted structural differences among vehicles, especially heavy vehicles, that complicate establishing a ''one-size-fits-all'' requirement. It stated that prescribing discharge directions could limit design flexibility without improving safety. It also recommended deleting the proposed S5.1.3.1(c)(5) and

(6), because these requirements are inconsistent with GTR No. 13 and because the intent is not clear.

Agency Response

NHTSA acknowledges commenters' stated concerns that setting specific discharge angles was extensively discussed during GTR No. 13 Phase 2, and that the Informal Working Group ultimately chose not to include such specific requirements due to the complexities involved, especially given that vehicles—especially larger vehicles—have heterogenous designs and that a specific approach that works for some vehicles may not work for other vehicles. NHTSA also acknowledges that in certain situations, such as vehicle rollovers, angle requirements could become less relevant. After reviewing the comments and considering the real-world scenarios presented, NHTSA has decided to remove the proposed discharge angle requirements until more information is available to determine whether a generalized discharge angle is reasonable and beneficial. NHTSA will, however, retain the other TPRD discharge direction requirements as proposed. NHTSA notes that the requirements specify that ''[t]he hydrogen gas discharge from TPRD(s) of the CHSS shall not impinge upon'' as opposed to ''shall not be directed towards.''

NHTSA is not adding any additional requirements based on cargo locations within the vehicle or vent stack design at this time. Similar to the above discussion, cargo-specific TPRD directional venting requirements may be overly prescriptive, and until more data is available, it could potentially be unworkable given the variety of vehicle designs and cargo configurations or be a suboptimal safety solution. Furthermore, requirements for vent stack design, such as ensuring mechanical support for thrust forces, are design considerations that NHTSA does not intend to regulate and are outside the scope of the proposed standards.

Additionally, there is no need to specify additional portions of the CHSS to avoid venting onto, because the requirements list the container, which is the main component of the CHSS. Not directing TPRD discharge towards the container will effectively avoid the CHSS as well, so an additional specification regarding the CHSS would be redundant.

Lastly, NHTSA is retaining the specifications regarding ''emergency exit(s) as identified in FMVSS No. 217'' and ''service door(s).'' As stated in the NPRM, the purpose of these requirements is to prevent safety hazards due to hydrogen discharge from the TPRD that could inhibit the ability of passengers to safely exit the vehicle.[49]

(2) Possible Test To Evaluate TPRD Discharge Direction

Background

NHTSA proposed that the discharge direction from TPRDs and other pressure relief devices be evaluated through visual inspection. NHTSA sought comment on whether there is a more appropriate test.

Comments Received

Nikola recommended relying on a visual inspection for evaluating TPRD discharge direction. In contrast, HATCI suggested that NHTSA adopt a detailed emission measurement method, which would use the end of the valve angle relative to horizontal, instead of solely depending on visual inspection.

Agency Response

NHTSA will maintain visual inspection as the evaluation for TPRD discharge direction. It will be clear from the orientation of the TPRD and/or the TPRD vent lines where the TPRD discharge is being directed. While the suggestion to use valve angle measurements to verify compliance is plausible, the commenters did not provide a specific procedure for conducting an objective valve angle measurement. If a more comprehensive and detailed testing procedure is identified in the future, the agency may consider incorporating it in the future.

d. Vehicle Exhaust Systems

Background

NHTSA proposed the vehicle exhaust requirements outlined in GTR No. 13. NHTSA proposed that the test procedure be conducted after the vehicle has been set to the ''on'' or ''run'' position for at least five minutes prior to testing. A hydrogen measuring device is placed in the center line of the exhaust within 100 mm from the external discharge point. The fuel system would undergo a shutdown, start-up, and idle operation to stimulate normal operating conditions. The measurement device used should have a response time of less than 0.3 seconds to ensure an accurate three second moving average calculation. Response times higher than 0.3 seconds could result in inaccurate data collection because the sensor may not have time to register the true concentration levels before recording each data point.

The time period of three seconds for the rolling average ensures that the space around the vehicle remains non-hazardous in the case of an idling vehicle in a closed garage. This time period is conservatively determined by assuming that a standard size vehicle purges the equivalent of a 250 kW (340 HP) fuel cell system.[50] The time is then calculated for a nominal space occupied by a standard passenger vehicle (4.6 meters $\times$ 2.6 meters $\times$ 2.6 meters) to build up to 25 percent of the LFL, or one percent by volume in air. The time limit for this rolling-average situation is determined to be three seconds.[51]

Comments Received

Luxfer Gas Cylinders questioned how NHTSA intends to ensure compliance with these requirements. Auto Innovators expressed support for harmonizing the exhaust requirements with GTR No. 13 but suggested revising the terminology from ''on'' or ''run'' position to align with the GTR standard, which specifies that ''the propulsion system of the test vehicle is started, warmed up to its normal operating temperature, and left operating for the test duration.'' Nikola stated agreement with adopting the requirements in GTR No. 13.

Agency Response

NHTSA will ensure compliance with the requirements of FMVSS No. 307 S5.1.2.2, *Vehicle exhaust system,* by testing vehicles in accordance with FMVSS No. 307 S6.5, *Test for the vehicle exhaust system.* Additionally, for the reasons discussed below in section IV.C.2.f., Protection against flammable conditions, NHTSA has revised the requirement that ''the vehicle shall be set to the 'on' or 'run' position for at least 5 minutes prior to testing, and left operating for the test duration.'' The new requirement will specify that ''the vehicle propulsion system shall be operated for at least five minutes prior to testing and shall continue to operate throughout the test.'' This change ensures the safe operation of fuel cell vehicles during testing while still meeting the intended objectives of the proposed test protocol.

[49] *See* 89 FR 27536 (Apr. 17, 2024), *available at https://www.federalregister.gov/documents/2024/04/17/2024-07116/federal-motor-vehicle-safety-standards-fuel-system-integrity-of-hydrogen-vehicles-compressed.*

[50] In comparison, the power system output of a Toyota Mirai is 182 HP.

[51] SAE 2578_201408. Recommended Practice for General Fuel Cell Vehicle Safety. Appendix C3. *https://www.sae.org/standards/content/j2578_201408/.*

e. Fuel System Leakage

Background

GTR No. 13 includes fuel system leakage requirements specifying no leakage from the fuel lines. A flammable or explosive condition can arise if hydrogen leaks from the fuel lines and accumulates. However, the safety risk of a leak applies to the entire fuel system, not only to the fuel lines. As a result, NHTSA proposed that the fuel system leakage requirement for no leakage apply to the entire hydrogen fuel system downstream of the shut-off valve, which includes the fuel lines and the fuel cell system. NHTSA further proposed to define fuel lines to include all piping, tubing, joints, and any components such as flow controllers, valves, heat exchangers, and pressure regulators. From a safety standpoint, there is no difference between a leak coming from fuel line piping, and a leak coming from a valve, pressure regulator, or the fuel cell system itself. Consistent with GTR No. 13, NHTSA proposed a strict no leakage standard. NHTSA sought comment on whether there is a safe level of hydrogen that may leak, and if so, what would be an objective leakage limit and how to accurately quantify hydrogen leakage from the fuel system.

NHTSA proposed to test this requirement using either a gas leak detector or leak detecting liquid (bubble test). NHTSA sought comment if one of these tests is preferrable. NHTSA also proposed that the test be conducted with the fuel system at NWP after having been in the ''on'' or ''run'' position for at least five minutes. NHTSA sought comment on whether alternative conditions would better simulate realistic scenarios when downstream lines are more likely to leak.

Comments Received

Luxfer Gas Cylinders commented that either a gas leak detector or a bubble test is acceptable, noting the long-standing effectiveness of the bubble test and expressing support for the proposed five-minute warm-up period. Ballard Power Systems stated that achieving a strict no leakage standard is likely impractical due to the extensive use of elastomeric seals and non-metallic materials in fuel cell vehicles. It stated that fuel cell stacks typically have a leakage rate around 200 mL/min hydrogen at the beginning of life, and that standards such as HGV 3.1 permit a maximum leak rate of 10 Ncc/h. It recommended establishing a leakage requirement that ensures flammable releases are negligible, suggesting that gas mixtures with hydrogen concentrations below the lower flammability limit do not pose combustion risks. Ballard proposed mitigation techniques like enclosing components prone to leaks and using ventilation and hydrogen detection to manage non-flammable releases.

Auto Innovators disagreed with a strict no leakage requirement, stating that leakage can be detected at very low levels well below hazardous thresholds using sensitive equipment. It advocated for aligning the allowable leakage rate with the single-point leakage definition in GTR No. 13. It also supported NHTSA's proposal for the five-minute warm-up but suggested adopting GTR No. 13's terminology and test conditions. Air Products recommended conducting the leak check at 1.25 times NWP to align with industry standards.

HATCI supported harmonizing with GTR No. 13 and advised adopting criteria that focus on leak detection at accessible fuel line sections, especially at joints, as specified in GTR No. 13 section 6.1.5. HATCI also proposed adopting a 3 percent hydrogen concentration limit as a flammability condition and suggested clarifying regulatory text regarding the vehicle's ''on'' or ''run'' position during testing. Agility noted that complete leak-free connections are impossible and referenced SAE J1267, which states that ''absolute leak tightness is an absolute impossibility.'' It recommended specifying maximum allowable leak rates consistent with existing standards, emphasizing that both bubble solutions and electronic leak detection are feasible methods.

Nikola proposed adopting GTR No. 13's leak rate requirement of 0.005 mg/s and supported the bubble test as a reliable method to check for joint leaks, suggesting that more advanced instrumentation be required only if a bubble test indicates leakage. Hyzon expressed concerns about the subjectivity of bubble testing and recommended that NHTSA use additional accurate testing methods, including detection devices that meet industry standards. NFA commented that a safe level of hydrogen leak should reference standards like SAE technical paper 2008–01–0726, ''Flame Quenching Limits of Hydrogen Leaks,'' and SAE J2579, which limit leak rates to prevent hazardous concentrations. It questioned why FMVSS No. 308 would apply a different standard to the CHSS compared with the standard that applies to the rest of the fuel system. NFA emphasized the practicality of bubble tests for detecting localized leaks and noted that metallic ferrule style tube fittings can be validated to be bubble-tight.

FORVIA suggested revising the wording of the proposal to specify ''no detectable leakage'' based on a test method or minimum measurement sensitivity. DTNA argued that a zero percent leak rate is not feasible due to hydrogen's chemical properties and current measurement technology limitations. It proposed a leak rate below 3.6 NmL/min, which it stated is the lowest flow necessary for flame initiation.

Agency Response

NHTSA has determined that a demonstratable ''no leakage'' standard as evaluated by a bubble test is consistent with GTR No. 13, which specifies that ''the hydrogen fueling line downstream of the main shut-off valve(s) shall not leak.'' GTR No. 13 does not provide any leakage limit in either section 5.2.1.5 or 6.1.5. Thus, NHTSA's application of a demonstratable no-leakage requirement as evaluated by a bubble test aligns with GTR No. 13.

NHTSA acknowledges the concerns regarding the practicality of achieving a true no-leakage standard, noting that very low levels of hydrogen leakage may occur due to the tiny size of hydrogen molecules and the materials and sealing technologies used in hydrogen fuel systems. However, NHTSA emphasizes that any detectable hydrogen leakage poses potential safety risks. Even minimal levels of hydrogen leakage present the possibility of gas accumulation in enclosed spaces, which could create hazardous conditions. Multiple individual points of leakage could produce an additive effect where the cumulative leakage rate becomes significant.

In response to suggestions that NHTSA define specific test methods for leak detection, the proposed regulation already includes objective test procedures for verifying compliance with the no-leakage requirement in FMVSS No. 307 S6.6. As such, suggestions to include additional specificity in test methods are redundant, as the regulation already addresses this concern. Furthermore, NHTSA is not including in S6.6 the statement ''primarily at joints'' that is found in GTR No. 13. This language is unnecessary, as NHTSA will be able to evaluate joints as well as other portions of the fuel system for leakage regardless of whether this language is included or not. Additionally, it is not possible to define a fuel system leakage limit based on a concentration of hydrogen in the surrounding air, as some commenters

suggested. Doing so would require several assumptions to be made regarding factors such as the volume of air in which the hydrogen may accumulate, the location of leakage points relative to the air volume, number of leakage points, and the possibility of air-exchange rates.

To address concerns about the high sensitivity of leak detection equipment, NHTSA has decided to remove the option of using an electronic leak detector and will instead require the use of the bubble test method exclusively. As some commenters noted, the bubble test has been effectively used for decades and provides a practical, reliable means of visually detecting leaks. This method, which is less sensitive than advanced electronic leak detectors, is based on simple visual observation as to the expansion and/or propagation of bubbles and is not dependent on the subjective opinions of individuals. It addresses the need for an objective evaluation of leakage while acknowledging the concerns about detecting insignificant background levels of hydrogen that do not present a direct hazard. The bubble test will allow for a practical assessment of compliance with the no-leakage requirement without the possibility of test equipment detecting harmless levels of hydrogen. If no leakage is detectable using the bubble test specified in S6.6, then the vehicle will be deemed to have acceptable performance. To further clarify this standard, FMVSS No. 307 S5.1.4 has been revised to read: ''When tested in accordance with S6.6, the hydrogen fuel system downstream of the shut-off valve(s) shall not exhibit observable leakage.'' Adding the words ''exhibit observable leakage'' clarifies that leaks which do not result in observable bubble expansion during the S6.6 test procedure are not considered failures.

Additionally, for the reasons discussed below in section IV.C.2.f., *Protection against flammable conditions,* NHTSA has revised the requirement that ''the vehicle shall be set to the 'on' or 'run' position for at least 5 minutes prior to testing, and left operating for the test duration.'' If the vehicle is not a fuel cell vehicle, it shall be warmed up and kept idling. If the test vehicle has a system to stop idling automatically, measures shall be taken to prevent the engine from stopping.'' The new requirement will specify that ''the vehicle propulsion system shall be operated for at least five minutes prior to testing and shall continue to operate throughout the test.'' This change ensures the safe operation of fuel cell vehicles during testing while still meeting the intended objectives of the proposed test protocol.

f. Protection Against Flammable Conditions

Background

NHTSA proposed requiring a visual warning within 10 seconds in the event that the hydrogen concentration in an enclosed or semi-enclosed space exceeds 3.0 percent (75 percent of the LFL). Additionally, consistent with GTR No. 13, NHTSA proposed requiring the shut-off valve to close within 10 seconds if at any point the concentration in an enclosed or semi-enclosed space exceeds 4.0 percent (the LFL).

GTR No. 13 provides two options for evaluating this requirement. The first option is to use a remote-controlled release of hydrogen to simulate a leak, along with laboratory-installed hydrogen concentration detectors in the enclosed or semi-enclosed spaces. The laboratory-installed hydrogen concentration detectors are used to verify that the required warning and shut-off valve closure occur at the appropriate hydrogen concentrations in the enclosed or semi-enclosed spaces. GTR No. 13 allows for the remote-controlled release of hydrogen to be drawn from the vehicle's own CHSS. Therefore, by using this option, it is possible for a vehicle to meet the requirements without a built-in hydrogen concentration detector. This objective is accomplished by the vehicle monitoring hydrogen outflow from its CHSS. The vehicle can then trigger the required warning and shut-off valve closure if significant hydrogen outflow from the CHSS is detected that is not accounted for by fuel cell hydrogen consumption.

The second option for evaluating the requirement is to use an induction hose and a cover to apply hydrogen test gas directly to the vehicle's built-in hydrogen concentration detector(s) within the enclosed or semi-enclosed spaces. Test gas with a hydrogen concentration of 3.0 to 4.0 percent is used to verify the warning, and test gas with a hydrogen concentration of 4.0 to 6.0 percent is used to verify the closure of the shut-off valve. The warning and shut-off valve closure must occur within 10 seconds of applying the respective test gas to the detector. The warning is verified by visual inspection, and the shut-off valve closure can be verified by monitoring the electric power to the shut-off valve or by the sound of the shut-off valve activation.

This second option indirectly requires the presence of at least one hydrogen concentration detector in the enclosed or semi-enclosed spaces that can detect the hydrogen test gas and trigger the warning and shut-off valve closure at appropriate hydrogen concentration levels. NHTSA proposed this second option as the only test method in FMVSS No. 307, which would thereby require each vehicle to have at least one built-in hydrogen concentration detector. NHTSA sought comment on requiring built-in hydrogen concentration detectors and on the reliability of the required warning and shut-off valve closure for vehicles that do not have built-in hydrogen concentration detectors.

In addition to the above requirement regarding a warning and shut-off valve closure, GTR No. 13 includes a requirement that any failure downstream of the main hydrogen shut off valve shall not result in any level of hydrogen concentration in the passenger compartment. This requirement is evaluated by applying a remote-controlled release of hydrogen simulating a leak in the fuel system, along with laboratory-installed hydrogen concertation detectors in the passenger compartment. After remote release of hydrogen, GTR No. 13 requires that the hydrogen concentration in the passenger compartment not exceed 1.0 percent. The number, location, and flow capacity of the release points for the remote-controlled release of hydrogen are determined by the vehicle manufacturer.

NHTSA instead proposed that the remote-controlled release of hydrogen shall not result in a hydrogen concentration exceeding 3.0 percent in the enclosed or semi-enclosed spaces of the vehicle (including the passenger compartment). NHTSA sought comment on this requirement and on specific test procedures for initiating a remote-controlled release of hydrogen in a vehicle.

To evaluate this requirement, NHTSA proposed that a hydrogen concentration detector be installed in any enclosed or semi-enclosed space where hydrogen may accumulate from the simulated hydrogen release. After the remote-controlled release of hydrogen, the hydrogen concentration would be measured continuously using the laboratory-installed hydrogen concertation detector. The test would be completed five minutes after initiating the simulated leak or when the hydrogen concentration does not change for three minutes, whichever is longer. Five minutes was selected as the minimum time for monitoring the hydrogen concentration because five

minutes is generally considered a sufficient time frame for vehicle occupants to evacuate in the event of an emergency.

Comments Received

Agility commented that using built-in hydrogen detectors is feasible and analogous to requirements for liquified natural gas (LNG) vehicle systems. It emphasized the need for electronic detection due to hydrogen's odorless nature, comparing it to the established reliability of natural gas sensors. Agility also stated that any remote release of hydrogen should not be built into every vehicle directly, citing potential safety risks and increased costs. Instead, it recommended using separate testing equipment operated by qualified personnel.

Luxfer Gas Cylinders expressed concern that requiring detectors and warnings for all enclosed and semi-enclosed spaces might be excessively difficult due to the number of such spaces in both light and heavy vehicles. Air Products suggested incorporating passive or mechanical ventilation into the CHSS to help dissipate leaks before they accumulate to hazardous levels, in addition to other safety measures.

Glickenhaus raised safety concerns regarding the idling of fuel cell electric vehicles during tests, commenting that forcing fuel cell vehicles to idle could be dangerous or even impossible depending on the fuel cell's minimum output and battery capacity. Glickenhaus stated that while hydrogen internal combustion vehicles might idle safely, fuel cell vehicles could face significant risks of overcharging or electrical failure.

HATCI sought clarity on specific test requirements. It questioned the definition of the air component in the mixed hydrogen gases for testing and expressed concerns over the difficulty of obtaining the specified mixtures based on geographical availability. Additionally, HATCI supported the flexibility in defining release points downstream of the shut-off valve, as proposed by NHTSA, allowing manufacturers to determine these parameters.

Nikola recommended not adding an additional 10-second requirement for visual warnings beyond what is specified in GTR No. 13. It also preferred allowing OEMs to decide how to meet safety requirements rather than requiring built-in hydrogen detectors. It requested that NHTSA maintain the lower leakage concentration limit of one percent inside the passenger compartment to align with GTR No. 13. FORVIA disagreed with deviations from GTR No. 13, requesting that NHTSA keep the requirements fully aligned and avoid requiring hydrogen detectors in enclosed spaces, suggesting that ventilation might suffice as a safety measure.

Agency Response

After careful consideration of the comments received, NHTSA has decided to maintain the proposed requirements, with the exception of revisions related to the idling requirements, discussed below, and the revision to the definition of enclosed and semi-enclosed spaces, discussed above.

Regarding the use of built-in hydrogen detectors, some commenters supported their use, drawing parallels to systems required in LNG vehicles due to the lack of odorant in the fuel, which makes electronic detection necessary. NHTSA has determined that built-in hydrogen detectors are critical for safety. Hydrogen's odorless and highly flammable properties necessitate on-board hydrogen detection capability to mitigate risks. The proposed test method verifies that hydrogen detectors can activate a warning and shut-off valve closure within the prescribed time frame and concentration thresholds, thereby ensuring that vehicles can detect and respond to hydrogen leaks promptly. There will not be an excessive number of spaces that will require hydrogen detectors because, as discussed above, the definition of ''enclosed and semi-enclosed spaces'' has been revised to be very specific, including only the passenger compartment, luggage compartment, and space under the hood.

With respect to concerns about remote-controlled hydrogen release for testing purposes, some commenters stated that incorporating this feature into every vehicle could introduce safety risks or unnecessary costs. This is not a correct interpretation of the proposal. FMVSS No. 307 S6.4.2(b) states that ''[p]rior to the test, the vehicle is prepared to simulate remotely controllable hydrogen releases from the fuel system or from an external fuel supply.'' This language indicates the use of separate, specialized test equipment that is only applied to the test vehicle(s) rather than integrating the capability into all vehicles.

Regarding the hydrogen concentration limit in the passenger compartment, some commenters advocated for maintaining the 1.0 percent limit specified in GTR No. 13, citing it as more conservative. However, NHTSA proposed a 3.0 percent limit in the enclosed and semi-enclosed spaces (not just the passenger compartment). The 3.0 percent limit aligns with the lower flammability limit (LFL) of hydrogen, and providing a more balanced requirement across all the enclosed and semi-enclosed spaces and ensures that hydrogen concentrations remain below hazardous levels. NHTSA has therefore chosen to maintain this requirement as proposed. Note that the definition for enclosed and semi-enclosed spaces has been revised to eliminate ambiguity, as discussed above in section IV.C.1.

Regarding the comment that the components of the air in the mixed gas were not defined in S6.4.1(b), this concern is unfounded. The proposed regulatory text specifies the required hydrogen concentrations in the test gas mixtures: ''The first test gas has any hydrogen concentration between 3.0 and 4.0 percent by volume in air to verify function of the warning, and the second test gas has any hydrogen concentration between 4.0 and 6.0 percent by volume in air to verify function of the shut-down.'' NHTSA can clarify that ''air'' refers to the natural atmospheric air composition, which is globally consistent across the surface of the Earth. Atmospheric air is primarily composed of approximately 78% nitrogen, 21% oxygen, and trace amounts of other gases such as argon and carbon dioxide. This standard atmospheric composition is well understood and used in numerous industrial and scientific applications. Therefore, the air component in the hydrogen-air mixture is inherently defined and does not require additional specification or definition within the regulatory text.

Regarding the time of 10 seconds to activate the warning or the shut-off valve closure, GTR No 13 does not contain a time limit for activation. The test can continue indefinitely if the warning has not come on or the shut-off valve has not closed. NHTSA cannot have a test that may continue indefinitely; therefore, the agency is maintain the proposed 10-second time limit to activate the warning and close the shut-off valve after the respective mixtures of hydrogen gas are applied.

Lastly, concerns were raised about the idling requirements for fuel cell vehicles during testing. One commenter emphasized that forcing fuel cell vehicles to idle for extended periods could pose significant safety risks, including the potential for battery overcharging or fuel cell malfunction. NHTSA recognizes these concerns and has revised the regulatory language. The new requirement will specify that ''the vehicle propulsion system shall be operated for at least five minutes prior

to testing and shall continue to operate throughout the test.'' This change ensures the safe operation of fuel cell vehicles during testing while still meeting the intended objectives of the proposed test protocol.

(1) Wind Control During Testing

Background

The proposed test procedures in this section would be conducted without the influence of any wind. NHTSA sought comment on providing more specific wind protection requirements and sought comment on limiting the maximum wind velocity during testing to 2.24 meters/second, as in FMVSS No. 304.[52]

Comments Received

Nikola commented that including wind influence in testing would not be feasible unless tests were conducted indoors, which would introduce additional complexities. It supported using the same wind velocity requirement as FMVSS No. 304. Auto Innovators agreed with NHTSA on the need to establish more specific wind protection requirements.

Agency Response

After careful consideration, NHTSA has determined that it will not impose specific limits on wind velocity or require wind shielding measures as part of the testing protocol. While some commenters suggested adopting a wind velocity limit similar to that in FMVSS No. 304, NHTSA has decided against incorporating explicit wind control specifications. Establishing objective wind control requirements, such as specifications for shielding or velocity limits, present logistical challenges. Furthermore, requiring all tests to be conducted indoors to completely eliminate wind effects could introduce additional safety and operational difficulties, further complicating the testing process. These challenges make prescriptive wind control requirements impractical across different test environments.

Therefore, while NHTSA is maintaining the requirement that ''the test shall be conducted without influence of wind,'' the agency will allow individual test facilities the discretion to manage wind conditions according to their capabilities and procedures. This approach offers necessary flexibility, enabling laboratories to conduct tests under conditions suited to their operational constraints, while still ensuring the accuracy and reliability of test results.

g. Warning for Elevated Hydrogen Concentration

Background

NHTSA proposed requiring a telltale warning when hydrogen concentration exceeds 3.0 percent in the enclosed or semi-enclosed spaces of the vehicle. NHTSA also proposed the visual warning be red in color and remain illuminated while the vehicle is in operation with hydrogen concentration levels exceeding 3.0 percent in enclosed or semi-enclosed spaces of the vehicle. The visual warning must be in clear view of the driver. For a vehicle with an Automated Driving System (ADS) and without manually operated driving controls, the visual warning must be in clear view of all the front seat occupants. NHTSA sought comment on whether the warning should be in clear view of all occupants, including occupants in rear seating positions, in vehicles equipped with an ADS. NHTSA also sought comment on whether an auditory warning should be required when hydrogen concentration exceeds 3.0 percent in the enclosed or semi-enclosed spaces of the vehicle.

NHTSA also proposed that a telltale be activated if the hydrogen warning system malfunctions, such as in the case of a circuit disconnection, short circuit, sensor fault, or other system failure. NHTSA proposed that when the telltale activates for these circumstances, it illuminate as yellow to distinguish a malfunction of the warning system from that of excess hydrogen concentration.

Comments Received

Nikola expressed agreement with the proposal. Auto Innovators highlighted the need to align with the requirements in FMVSS No. 101, ''Controls and displays,'' for vehicles equipped with ADS and recommended maintaining current placement requirements for visual warnings. It noted that defining ''clear view'' lacks objectivity and stated that auditory warnings should not be required in ADS-equipped vehicles until further research is conducted. It stated that ''near-term flexibility'' may be needed to prevent consumer confusion. Auto Innovators supported the proposed activation criteria and color scheme, noting consistency with GTR No. 13.

DTNA suggested adding an audible warning to supplement the visual warning, particularly for heavy vehicles and school buses with complex seating arrangements where occupants might not have clear visibility of the visual indicator. It stated that an audible warning would be essential for crew cabs, trucks with sleeper berths, and school buses, where a visual warning alone would not suffice to communicate risk effectively. Similarly, Glickenhaus supported the addition of an auditory warning and favored the placement of visual warnings in clear view of all seating positions in ADS-equipped vehicles.

HATCI supported harmonization with GTR No. 13 and recommended determining visual warning requirements based on a vehicle's automation level. It stated that visual warnings should be in the driver's view for vehicles at SAE Levels 0 to 3 but more broadly visible for vehicles at SAE Levels 4 or 5. However, HATCI advised against requiring auditory warnings, citing concerns about potential confusion due to the numerous existing auditory alerts.

NFA supported the inclusion of a visual telltale in red for high hydrogen concentration levels, in line with FMVSS No. 307, and agreed with the requirement for a yellow malfunction warning. NFA also provided context for its current hydrogen detection system, which includes warnings at 20 percent and 50 percent of the LFL, indicating that its system already meets the proposed standard. Regarding ADS-equipped vehicles, NFA agreed with NHTSA's proposal as written, noting that transit buses are likely to retain an attendant or driver in the front seating position due to the additional duties they perform. NFA recommended that NHTSA consider how to address the requirements in scenarios where no front seat passengers are present.

Agency Response

After careful consideration, NHTSA is maintaining the proposal as originally outlined. With respect to the inclusion of an auditory warning, NHTSA agrees that further research is necessary to assess the most appropriate auditory alerting mechanisms for hydrogen-fueled vehicles. While some commenters advocated for the inclusion of an auditory warning, NHTSA has determined that additional research is needed to evaluate the use of auditory alerts. For example, the possibility of voice alerts may need to be considered. Voice alerts may offer a clearer communication of the hazard without contributing to confusion. Additionally, NHTSA is cognizant that the proliferation of crash avoidance and driving automation systems has resulted in an increased number of telltales and auditory alerts, many of which are

[52] FMVSS No. 304, ''Compressed natural gas fuel container integrity.'' *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-V/part-571/subpart-B/section-571.304.*

voluntarily added by manufacturers. As such, NHTSA will not require auditory warnings at this time. The absence of a requirement for an auditory warning does not preclude manufacturers from voluntarily including such warnings based on their vehicle-specific configurations.

Regarding visual warning placement, NHTSA will not adopt specific requirements based on SAE automation levels at this time. The scope of this final rule is not contingent on a particular vehicle type. NHTSA's focus remains on ensuring that the visual warning is in clear view of the driver or, for ADS-equipped vehicles without manual controls, in view of the front-seat occupants. This approach provides manufacturers with flexibility while maintaining safety for occupants in these advanced vehicles. This approach is also consistent with past updates to the crashworthiness FMVSS to account for ADS-equipped vehicles.[53] The suggestion to include rear-seat occupants in ADS-equipped vehicles is not being implemented at this time, as NHTSA believes that further consideration is needed to determine the most effective and appropriate hydrogen warning systems for rear-seat occupants.

Finally, regarding the distinction between malfunction and hydrogen concentration warnings, NHTSA will retain the proposed color scheme, with yellow indicating a system malfunction and red indicating an elevated hydrogen concentration. This color differentiation is essential to ensure that drivers and occupants can quickly distinguish between a system malfunction and an immediate hydrogen-related hazard.

3. Post-Crash Fuel System Integrity

Background

Consistent with GTR No. 13, NHTSA proposed that the post-crash requirements for vehicles that use hydrogen fuel for propulsion power only apply to passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR less than or equal to 4,536 kg (10,000 pounds) and to all school buses. NHTSA did not propose that the post-crash requirements apply to all heavy vehicles with a GVWR greater than 4,536 kg (10,000 pounds). NHTSA sought comment on whether heavy vehicles should be subject to these proposed post-crash requirements and, if so, what crash tests should NHTSA conduct on heavier vehicles.

NHTSA proposed to use the crash tests equivalent to those applied to conventionally fueled vehicles in accordance with FMVSS No. 301. For light vehicles with a GVWR under 4,536 kg, these crash tests include an 80 kilometers per hour (km/h) (~50 miles per hour (mph)) impact of a rigid barrier into the rear of the vehicle, a 48 km/h (~30 mph) frontal crash test into a rigid barrier, and a 53 km/h (~33 mph) impact of a moving deformable barrier into the side of the vehicle. For school buses with a GVWR greater than or equal to 4,536 kg, the crash test is a moving contoured barrier impact at 48 km/h. NHTSA sought comment on whether there are alternative crash tests that should be used for the forthcoming proposed regulations.

NHTSA proposed that there be no fire during the test, and that vehicles meet three additional post-crash requirements described by GTR No. 13. The first proposed requirement is the volumetric flow of hydrogen gas leakage from the CHSS must not exceed an average of 118 normal liters per minute (NL/min) from the time of vehicle impact through a time interval Δt of at least 60-minutes after impact. The volumetric leak rate of hydrogen post-crash is determined as a function of the pressure in the container before and after the crash test. The interval Δt is at least 60 minutes after impact and the pressure drop measurement should be at least 5 percent of the pressure sensor's full range. Helium may be used in place of hydrogen during crash-testing with an allowable leakage limit for helium of 88.5 NL/min.

The second requirement is a hydrogen concentration limit set to four percent by volume (for helium, this corresponds to a concentration of three percent by volume) in enclosed or semi-enclosed spaces. This requirement is satisfied if the CHSS shut-off valve(s) are confirmed to be closed within five seconds of the crash and there is no hydrogen leakage from the CHSS.

For the purpose of measuring the hydrogen concentration, GTR No. 13 specifies that data from the sensors shall be collected at least every five seconds and continue for a period of 60 minutes. GTR No. 13 also discusses filtering of the data to provide smoothing of the data, but is unclear about the exact data filtration method to be used. NHTSA proposed using a three-data-point rolling average for filtering the data steam. Since a data point will be collected at least every five seconds, this rolling average will be, at most, a 15-second rolling average. NHTSA sought comment on this proposed data filtration method.

The third proposed requirement is that the container(s) remain attached to the vehicle by at least one component anchorage, bracket, or any structure that transfers loads from the device to the vehicle structure. This requirement is evaluated by visual inspection of the container attachment points. NHTSA will evaluate the presence of vehicle fire by visual inspection for the duration of the test, which includes the time needed to determine fuel leakage from the CHSS.

In addition to these requirements, NHTSA sought comment on the safety need for a heavy vehicle sled test. NHTSA sought input and comment with supporting data on implementing a possible alternative heavy vehicle impact test for the CHSS. NHTSA sought comment on the possibility of including a moving contoured barrier impact test on heavy vehicles (other than school buses) in accordance with S6.5 of FMVSS No. 301.

Comments Received

Auto Innovators supported NHTSA's decision to limit the scope of FMVSS No. 307 to light vehicles with a GVWR under 10,000 pounds and school buses. It requested that NHTSA conduct a regulatory impact analysis before including heavy vehicles. Auto Innovators noted that heavy vehicles have varied designs and are produced in low volumes, making full-scale crash testing complex and potentially cost-prohibitive. It recommended that if NHTSA considers including heavy vehicles, it should issue a new rulemaking proposal through either a separate rulemaking notice or supplemental notice of proposed rulemaking. Regarding the proposed crash tests, Auto Innovators agreed with using existing crash tests for vehicles under 10,000 pounds GVWR, stating that existing crash tests are representative of commonly occurring crashes in the field and should be suitable for assessing the post-crash fuel system integrity of hydrogen vehicles. Auto Innovators opposed adding alternative crash tests for hydrogen vehicles without supporting data. Auto Innovators also stated that it agrees with NHTSA's proposed data filtration method.

Hyundai concurred with NHTSA's initial decision to apply the post-crash requirements for heavy vehicles only to school buses but highlighted the potential significance of heavy commercial vehicles for hydrogen applications. It stated that post-crash fuel system integrity should be a

[53] *See* 87 FR 18560 (Mar. 30, 2022), *available at https://www.federalregister.gov/documents/2022/03/30/2022-05426/occupant-protection-for-vehicles-with-automated-driving-systems.*

consideration for these vehicles. It stated that the moving deformable barrier test for heavy school buses could be adapted to include other heavy vehicles. However, if the adaptation would delay the rulemaking, Hyundai suggested that NHTSA consider a follow-on rulemaking to address heavy vehicle standards once those procedures have been developed.

Agility agreed with NHTSA's decision to keep the post-crash requirements separate for heavy vehicles, stating that these vehicles differ significantly from light vehicles and require careful consideration and research before establishing specific crash testing requirements. It suggested benchmarking existing standards for light vehicles as a starting point and adapting similar procedures with appropriate performance criteria for heavy vehicle applications. Agility proposed focusing on fuel system-specific tests, such as a sled test, to account for the complexity of heavy vehicle configurations, stating that such tests could yield consistent results independent of the vehicle's body type or chassis. It also noted that current practices under FMVSS Nos. 303 and 304 have been adequate for heavy CNG vehicles and that a sled test could serve as a viable alternative to full vehicle crash tests, potentially simplifying the process. Agility also supported the use of a 15-second rolling average for data filtration.

DTNA supported NHTSA's decision to exclude heavy vehicles, other than school buses, from the proposed post-crash requirements, citing the lack of existing comparable crash tests and the high costs of conducting full-scale tests for heavy vehicle configurations. DTNA recommended a partial vehicle impact test using a moving deformable barrier (MDB), which allows for evaluating crash protection components like shields and panels without the need for full-vehicle tests. It suggested that vehicle simulations could also be used to assess these components. DTNA supported retaining the moving contoured barrier test for school buses over 10,000 pounds GVWR, as it aligns with current FMVSS No. 301 standards. It proposed a simulation similar to the Federal Motor Carrier Safety Administration's 30-foot drop test requirements outlined in 49 CFR 393.67(e)(1) but advised against conducting a 30-foot drop test solely on the container, stating that this test would not reflect real-world conditions since hydrogen containers often have additional protective components.

EMA supported component-level testing for heavy vehicles, noting that full-scale crash tests would be impractical due to the custom designs and low production volumes of these vehicles. It stated that international standards such as GTR No. 20, ''Electric Vehicle Safety,'' and UN ECE R100, ''Uniform provisions concerning the approval of vehicles with regard to specific requirements for the electric power train,'' rely on mechanical shock tests at the component level. EMA agreed with the inclusion of crash tests for hydrogen-fueled school buses, as these tests align with FMVSS No. 301 and provide consistent safety standards with liquid-fueled buses. EMA stated that heavy school buses have relatively few model offering and vehicle configurations.

Nikola supported applying side impact tests when the CHSS falls within the MDB impact zone defined by FMVSS No. 214, ''Side impact protection,'' and suggested allowing manufacturers to determine the specific impact zones based on vehicle design. Nikola completed frontal, side, and rear impact tests for its own designs and proposed that each manufacturer should be responsible for identifying the relevant strike zones on its vehicles. Nikola also stated that the proposed post-crash CHSS retention and leakage requirements seemed reasonable, but it did not see a need for a sled test.

Hyzon agreed with NHTSA's decision not to introduce new post-crash requirements for hydrogen-powered heavy vehicles (HPHV) in FMVSS No. 307, aligning the standard with GTR No. 13 Phase 2. It stated that NHTSA has not set crash test requirements for any other heavy vehicles, and there is no justification for unique post-crash requirements specifically for HPHVs. Hyzon suggested that further research be conducted before considering additional standards. Hyzon suggested waiting for more data from GTR No. 13 Phase 3 before deciding on any new crash tests.

Glickenhaus expressed safety concerns about crash testing vehicles with hydrogen onboard, stating that the proposed regulations do not reference procedures and processes to make that crash test safe. It pointed out that while NHTSA typically includes safety protocols in its standards, such as substituting Stoddard solvent for gasoline during FMVSS No. 301 testing, the proposed regulations under FMVSS Nos. 307 and 308 would allow crashes with hydrogen or helium. It requested that if manufacturers are expected to choose between testing with hydrogen or helium, this expectation should be explicitly stated in the regulation. Glickenhaus stated that two testing laboratories have expressed reluctance to perform crash tests with hydrogen due to safety concerns, preferring helium or other inert gases. It argued that if these experienced labs are not comfortable testing with hydrogen, it is unlikely that manufacturers could safely conduct these tests on their own. Additionally, Glickenhaus recommended using thermal imaging cameras for fire detection, as hydrogen fires are clear and colorless, making them difficult to identify through visual inspection alone.

NFA commented on the need for mechanical shock testing for heavy vehicles but noted a lack of comprehensive data to conclusively assess the relevance of a sled test. It stated that both NFA and its CHSS manufacturers adhere to the mechanical shock requirements in NGV 6.1, ''Compressed natural gas (CNG) fuel storage and delivery systems for road vehicles,'' which requires 8g inertia loading in all three primary axes without failure, and referenced UN ECE R134, which specifies lower inertia loading requirements of 6.6g longitudinally and 5g transversely. NFA commented that harmonizing regulations across North America and Europe would provide consistency. It recommended continuing testing at the CHSS component level, including the mounting system, to ensure tests reflect real-world installations and establish a baseline performance standard applicable to all vehicle types, regardless of available crash data. It also suggested that NHTSA allow calculation or simulation methods, like Finite Element Analysis, to demonstrate compliance to reduce prototyping and testing costs for OEMs. NFA noted the infrequency of crashes involving its vehicles and the limited full-vehicle testing required by current regulations, adding that it currently position CHSS in less vulnerable areas, such as roof-mounted or protected luggage compartments. However, it stated that if sufficient data becomes available to support a performance requirement, testing should be standardized at the CHSS component or assembly level instead of full-vehicle testing.

HATCI stated that it supports the Agency's harmonization with GTR No. 13 for post-crash fuel system integrity.

Agency Response

After consideration of the comments received, NHTSA has decided to maintain the scope of the post-crash requirements as initially proposed for vehicles that use hydrogen fuel for propulsion power, limiting the applicability to passenger cars, multipurpose passenger vehicles,

trucks, and buses with a GVWR of less than or equal to 4,536 kg (10,000 pounds), as well as all school buses. NHTSA will not extend the post-crash requirements to include all heavy vehicles with a GVWR greater than 4,536 kg at this time.

NHTSA agrees with the commenters that limiting the post-crash requirements to light vehicles with a GVWR of 10,000 pounds or less and to all school buses regardless of GVWR is appropriate at this time, as it helps minimize the testing burden and addresses the practical limitations of conducting full-scale vehicle tests on heavier vehicles. NHTSA agrees that more research is needed before considering the inclusion of heavy vehicles other than school buses in the post-crash requirements, given the complexity of these vehicles and the absence of existing crash tests for heavy vehicles. NHTSA is considering future research to address the comments that component-level testing, rather than full vehicle crash testing, may be appropriate for heavy vehicle fuel systems at this time and that benchmarking against existing light vehicle crash testing procedures is a reasonable starting point for future heavy vehicle applications.

Furthermore, NHTSA is not implementing a moving contoured barrier impact test for heavy vehicles at this time due to the complexity associated with developing an objective test applicable to various heavy vehicle designs. Further research is needed to determine appropriate testing methods for tests involving heavy vehicles, and current data is insufficient to justify the inclusion of such tests.

Regarding the use of helium as an alternative to hydrogen for crash testing, NHTSA proposed this option in the regulatory text to provide flexibility for manufacturers. NHTSA will maintain the proposal that the test gas for compliance testing may be either hydrogen or helium, with the choice of test gas being at the manufacturer's option. Hydrogen and helium gas have similar leak characteristics, so it is expected that a vehicle that meets the performance requirements when tested with one gas will also meet the performance requirements when tested with the other.

NHTSA is not currently specifying the use of thermal imaging cameras as a means to detect post-crash fire. However, test labs are encouraged to use available technology such as thermal cameras or other heat detection equipment when evaluating for the presence of post-crash fire.

D. Tolerances

Background

The concept of test parameter tolerances refers to the allowable variations in the conditions or parameters under which a test is conducted, without impacting the validity or reliability of the test results. In regulatory testing, it is often impractical or impossible to maintain exact, fixed values for all parameters throughout the testing process. Therefore, tolerances are established to allow for slight deviations that are considered acceptable within a specified range. These tolerances ensure that even though the exact conditions may not be strictly identical in each test, the outcomes will remain consistent and comparable, as long as they fall within the defined tolerance limits. NHTSA proposed test parameter tolerances that are generally consistent with the suggested tolerances specified in the GTR No. 13. By adopting these established tolerances, NHTSA ensures that test conditions remain controlled and reliable while allowing for practical flexibility in testing environments.

Comments Received

TesTneT stated that in its 35 years of experience with hydraulic pressure cycle testing, it has not faced issues meeting a low-pressure tolerance of 1 MPa. Nikola stated that the proposed low-pressure range for container pressure cycling was ''adequate.'' However, Luxfer Gas Cylinders commented that the proposed lower limits of 1 MPa to 2 MPa for pressure cycling tests are ''too low and too tight.'' Luxfer stated that few containers would likely reach 1 or 2 MPa during actual service, making the test conditions unrealistic. It also noted challenges in maintaining these limits due to industrial testing equipment constraints and recommended revising the range to align with NGV 2, where cycling occurs between no greater than 10 percent of the service pressure and 125 percent of the service pressure.

Auto Innovators expressed concern over NHTSA's application of GTR No. 13 tolerances. It noted that GTR No. 13 specifies target values and allowable tolerances (±α), but the NPRM proposed a range between (X-α) and (X+α) without defining a target. Auto Innovators argued that this proposal could compel manufacturers to set equipment at either extreme of the range, potentially testing at various points in between, which it argued deviates from the test's purpose. Auto Innovators cited the low-pressure cycling test, where NHTSA proposed a range of ''between 1 MPa and 2 MPa.'' It stated that this approach could lead to impractical testing conditions and recommended NHTSA align with GTR No. 13. It also provided a table listing parameters in GTR No. 13 that use minimum (≥) and maximum (≤) values.

H2MOF proposed setting the lower bound of the pressure cycle at no more than 10 percent of the upper cycle, with an absolute maximum of 3 MPa, in line with the standard ISO 11515. H2MOF stated that the upper bound in ISO 11515 is defined as the maximum developed pressure at 65 °C, or approximately 117 percent of NWP. HATCI generally supported harmonizing with GTR No. 13. FORVIA stated that indicators for conditions like 85 degrees Celsius should use ''greater than or equal to'' and for −40 degrees Celsius, ''less than or equal to.'' It also requested maintaining the low-pressure range of 1 MPa to 2 MPa to ensure a margin above ambient pressure.

Agency Response

The use of open-ended tolerances, such as ''greater than or equal to'' (≥) and ''less than or equal to'' (≤) symbols, does not provide the necessary clarity for conducting robust and consistent tests. The use of ''≥'' or ''≤'' without specific upper or lower limits could result in impractical testing conditions, potentially leading to tests at unreasonably high or low values that are irrelevant to real-world performance or safety objectives. Without a defined range, the test could extend to extreme values of temperature or pressure, for example, making the test results unrealistic and inconsistent. A specific range with both upper and lower bounds is essential to ensure the tests reflect conditions relevant to vehicle safety, while also providing a controlled and repeatable environment for assessment.

Furthermore, tolerance ranges allow for slight variation in test parameters during testing while maintaining the validity of the results. Testing at any point within the proposed range will not affect the overall outcome, nor will fluctuations within the range impact the results. This concept allows for flexibility within the defined range that does not materially affect the test results because the allowed variation is small enough to be considered insignificant in relation to the overall test objectives.

NHTSA maintains that the test parameter tolerances proposed in the NPRM are generally consistent with GTR No. 13. When GTR No. 13 provides an open-ended range, such as ''≤ 2 MPa,'' the GTR No. 13 suggested tolerance is not listed with ''±'' because

it is not intended to be applied to both sides of range endpoint. Instead, the tolerance is only intended to be applied to the open end of the range. Hence NHTSA's proposal of between 1 MPa and 2 MPa, based on the GTR No. 13 suggested tolerance of 1 MPa.

GTR No. 13 paragraph 245 provides another example, citing GTR No. 13 paragraph 6.2.3.5., where the static hold pressure is specified as ≥125 per cent NWP. In this case, there is a minimum value of the range, but no maximum. GTR No. 13 paragraph 245 states that in this case, ''the tolerance of 5 percent NWP in the table could be applied, which results in a maximum of 130 percent NWP.''

Hence, for the low-pressure range during hydraulic cycling, NHTSA proposed a tolerance of between 1 MPa and 2 MPa, based on the GTR No. 13 suggested tolerance of 1 MPa. Regarding Luxfer Gas Cylinders' comment that the proposed lower limits of 1 MPa to 2 MPa for pressure cycling tests are ''too low and too tight,'' NHTSA notes that the test tolerances proposed in the NPRM are supported by TestNet's comment that in its 35 years of experience with hydraulic pressure cycle testing, it has not faced issues meeting a low-pressure of 1 MPa.

The argument that tolerances would force manufacturers or test labs to test at extreme ends of the range, such as the lowest or highest allowable point and at all points within the range, is inaccurate. NHTSA believes all of the proposed test procedures are robust enough to accommodate minor fluctuations in parameters without affecting the outcome of the test or repeatability of the results. The entire range is designed to ensure consistent and valid test results, regardless of where within the range the test is performed, or whether there are fluctuations within the range during testing. The parameters, as proposed, provide the necessary testing flexibility without sacrificing the repeatability and reproducibility of the testing procedure. Moreover, the use of a specified range prevents the need for excessive precision, which could make testing more difficult and unnecessarily increase the burden on test laboratories.

E. General Comments

Background

NHTSA received several general comments about the proposed standard, reflecting broad perspectives on the overall proposal. These comments did not address specific technical or procedural issues but instead addressed general aspects of the proposed standards.

Comments Received

An anonymous commenter stated that the establishment of new standards for hydrogen fuel systems was an ''excellent next step'' given the increasing prevalence of hydrogen-powered vehicles. It stated that it was important to consider the risks associated with pressurized hydrogen containers, which differ from non-pressurized gasoline or diesel containers, and noted that hydrogen is highly flammable, particularly in a compressed state. The commenter suggested that implementing a safety standard could reduce risks of death and injury related to the integrity of these containers.

Consumer Reports supported the proposed creation of FMVSS Nos. 307 and 308, stating that while hydrogen fuel cell vehicle sales have been limited, manufacturers are making advancements in this technology. It described the standards as necessary for both fuel system integrity and the compressed hydrogen storage system.

Auto Innovators echoed this support but also recommended that NHTSA revise its proposal to better align with GTR No. 13. It highlighted potential challenges due to differences in certification testing, especially when tests are conducted in series, which could lead to increased costs. Ford similarly supported the proposed standards and highlighted its experience in hydrogen technology research. Ford endorsed Auto Innovators' call for close alignment with GTR No. 13 and stated that GTR No. 13 guides its North American product development. Hyundai expressed support for the proposed adoption of FMVSS Nos. 307 and 308 and agreed with NHTSA's statement that the standards address an emerging safety need. Hyundai acknowledged the rationale behind deviations from GTR No. 13 but suggested exploring additional ways to harmonize with the global regulation, and referred to Auto Innovators' comments for specific recommendations.

Glickenhaus commented that the Department of Transportation (DOT) already has extensive regulations prescribing testing and certification requirements for compressed hydrogen storage containers used for transporting hydrogen on public roads under the Hazardous Materials Regulations (HMR) in 49 CFR Subchapter C. It specifically referenced 49 CFR 172, which lists hazardous materials that include compressed hydrogen and hydrogen fuel cell vehicles, and stated that DOT's requirements for cryogenic and compressed hydrogen storage containers, including their manufacturing, testing, and certification, are outlined in 49 CFR part 173. Glickenhaus stated that it does not appear that any of these requirements are referenced or incorporated into the container requirements for FMVSS No. 308. It suggested that if the pressure vessel or components making up a CHSS have already undergone DOT hazardous material transportation certification, it could potentially reduce additional testing requirements specific to using those containers for fuel storage in hydrogen fuel cell vehicles. Glickenhaus expressed concern that the lack of harmony between DOT's HMR standards for compressed hydrogen containers and FMVSS No. 308's requirements could result in a scenario where a container certified for transporting hydrogen over roads, ships, and airways in the United States might not be legal for use in vehicles on those same roads. Alternatively, it stated, if a container were certified under FMVSS No. 308 but not under DOT's hazardous materials transport standards, any towing company might inadvertently violate hazardous material transportation regulations by transporting a hydrogen fuel cell vehicle and its stored hydrogen. It stated that it does not want this responsibility to fall to towing companies. They stated that they do not want NHTSA to create a regulation that would make it a violation of other DOT requirements to tow or transport a hydrogen fuel cell vehicle.

TTP commented that the proposal is not consistent with existing FMVSS Nos. 303 and 304, and that the intent is unclear regarding establishing standards specifically for fuel systems or for the vehicle as a whole. They expressed uncertainty about how the proposed standards, if required by new FMVSS, would be enforced and noted that testing and verification by NHTSA would be costly and impractical. TTP questioned if the intent was to approach enforcement differently from the current methodology under FMVSS Nos. 303 and 304. They recommended that NHTSA harmonize with existing methodologies and allow industry standards to control certification and compliance wherever possible to maintain consistency. TTP also stated there are significant differences between the production processes for light and heavy vehicle applications and that enforcement of the proposals would not be practical for both. They stated that

light vehicle OEMs build a complete vehicle, which simplifies homologation due to consistent configurations, whereas the heavy market involves a mix of suppliers and intermediate manufacturers, making enforcement of vehicle-specific requirements impractical. TTP further commented that the proposal does not align with existing industry standards for container requirements, such as HGV 2, ''Compressed Hydrogen Gas Vehicle Fuel Containers,'' and NGV 2, and stated that some proposed requirements may compromise safety or prevent the use of containers with good safety records. They stated the proposal is not consistent with industry standards for component-level fuel system requirements specified in HPRD 1 and HGV 3.1, and they requested harmonization with these standards. Additionally, TTP requested clarification on whether the intent of the proposed FMVSS Nos. 307 and 308 would differ from FMVSS Nos. 303 and 304.

Agency Response

Some commenters raised concerns regarding potential misalignment between FMVSS No. 308 and the DOT hazardous materials regulations for compressed hydrogen storage systems. The regulation of the transportation of hydrogen over roads as cargo within tanker trucks in the United States is governed by the PHMSA through 49 CFR Subchapter C- Hazardous Materials Regulations (HMR).[54] PHMSA standards focus on the safe transportation of hazardous materials like hydrogen across all modes of transport, including trucks, and prioritizes minimizing risks during transport and handling of hydrogen, including potential leaks or spills. On the other hand, FMVSS Nos. 307 and 308 focus on the fuel system integrity of motor vehicles that use compressed hydrogen as a fuel source to propel the vehicle with the purpose of reducing deaths and injuries occurring from fires that result from hydrogen fuel leakage during vehicle operation and after motor vehicle crashes and from explosions resulting from the bursting of pressurized hydrogen containers.

FMVSS No. 308 addresses vehicle-specific safety needs with a focus on vehicle occupant safety that go beyond the PHMSA regulations for the transportation of hazardous materials. While PHMSA regulations govern hydrogen storage containers during transportation and are designed to mitigate safety risks during transport and handling of hydrogen, FMVSS No. 308 is specifically designed to ensure safety in the context of real-world driving, fueling, and crash conditions. Hydrogen storage systems in vehicles used for vehicle propulsion must meet performance standards that address risks unique to vehicle operation, including repeated fueling in different fueling conditions, dynamic driving environments, and potential accidents. Therefore, while DOT regulations and FMVSS No. 308 serve related functions, the standards are distinct and necessary for their respective purposes.

Several commenters also questioned the practicality and intent of the proposed FMVSS Nos. 307 and 308, particularly in relation to existing standards like FMVSS Nos. 303 and 304, which apply to CNG systems. NHTSA believes that hydrogen vehicles present distinct safety challenges that require specific regulatory measures. The unique properties of compressed hydrogen, such as its higher storage pressures and greater flammability, necessitate separate performance requirements to mitigate the associated risks. Hydrogen fuel systems have characteristics that differ significantly from CNG systems, and as a result, the proposed standards reflect the distinct differences presented by hydrogen. While FMVSS Nos. 303 and 304 remain effective for CNG, they are not sufficient to address the safety risks unique to hydrogen fueled vehicles.

Some commenters expressed concerns about the potential lack of harmonization between FMVSS Nos. 307 and 308 and GTR No. 13. As discussed above, NHTSA acknowledges these concerns but emphasizes that the proposed standards have been tailored specifically to address the safety needs of hydrogen vehicles in the context of the FMVSS. While GTR No. 13 is the primary basis for the proposed FMVSS Nos. 307 and 308, exact alignment with GTR No. 13 is not possible in FMVSS, for the reasons discussed above in section IV.A.

Similarly, some commenters suggested that existing industry standards for component-level fuel system requirements should be used as the primary basis for FMVSS Nos. 307 and 308. NHTSA acknowledges the value of the standards HGV 2, HGV 3.1, and HPRD 1, and notes that they were considered during the development of GTR No. 13. However, FMVSS are intended to establish minimum vehicle-level safety performance standards, and it is not necessary nor practical to adopt the entirety of industry standards into the FMVSS. While industry standards play an important role in ensuring the safety of individual components, FMVSS Nos. 307 and 308 set baseline requirements for hydrogen fuel systems to ensure that they function safely as part of the overall vehicle system. NHTSA's focus was in aligning the proposed FMVSS Nos. 307 and 308 with GTR No. 23 to enable global harmonization of regulations for hydrogen powered vehicles.

FMVSS establish minimum safety requirements and the FMVSS test procedures provide notice to establish how the agency would verify compliance. However, this does not mean that manufacturers must conduct the exact test in the FMVSS to certify their vehicles. The Motor Vehicle Safety Act[55] requires manufacturers to certify that their vehicles meet all applicable FMVSS, and specifies that manufacturers may not certify compliance if, in exercising reasonable care, the manufacturer has reason to know the certificate is false or misleading. A manufacturer may use component-level tests to certify its vehicles if it exercises reasonable care in doing so. Manufacturers must ensure that their vehicles will meet the requirements of FMVSS Nos. 307 and 308 when NHTSA tests the vehicles in accordance with the test procedures specified in the standards, but manufacturers may use different test procedures to do so.

In response to concerns about the enforceability of the proposed standards, particularly for heavy vehicles with complex production processes, NHTSA believes that the proposed FMVSS Nos. 307 and 308 standards are practical and enforceable across vehicle types. Although the heavy vehicle market involves a diverse supply chain with multiple intermediate manufacturers, the performance-based nature of these standards allows for flexibility in design. The regulations do not prescribe specific design solutions but instead set performance criteria, which manufacturers can meet using various engineering approaches. This adaptability ensures that both light and heavy vehicles can comply with the safety requirements without imposing impractical regulatory burdens. NHTSA is confident that these standards will not result in undue complexity or unnecessary cost in terms of enforcement.

[54] *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-C.*

[55] 49 U.S.C. Ch. 301: Motor Vehicle Safety, *https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title49-chapter301&edition=prelim.*

F. Lead Time

Background

In the NPRM, NHTSA proposed two key dates regarding the implementation of FMVSS Nos. 307 and 308. First, the effective date was proposed as 180 days after the publication of the final rule in the **Federal Register**. This is the date when the final rule would officially go into effect. Second, NHTSA proposed a compliance date for manufacturers to fully adhere to the new requirements. The compliance date was initially stated as September 1, two years after the publication of the final rule. However, in the ''Lead Time'' section, a different compliance date was proposed as September 1 in the year following the rule's publication. This was a clerical error, as both compliance dates should have stated ''the first September 1 that is two years after the publication of the final rule.''

Comments Received

Nikola stated they agree with the rule taking effect the following September. EMA commented that heavy vehicle manufacturers would need at least five years from the final rule's publication to comply, stating that GTR No. 13 Phase 2 had only been recently approved and the revision broadened its scope to include heavy vehicles. EMA cited the need for manufacturers to evaluate the new requirements, conduct validation testing, and potentially redesign components. Similarly, Auto Innovators raised concerns about the proposed compliance period, suggesting that an additional five years beyond the one-year compliance date would be necessary. They noted a lack of harmonization with GTR No. 13, which they stated would require significant design, hardware, and software adjustments for manufacturers.

Several commenters, including Auto Innovators, HATCI, and Glickenhaus, also pointed out conflicting compliance dates within the NPRM. Auto Innovators and HATCI pointed out inconsistencies between the **DATES** section, which stated the compliance date as two years after publication, and the Lead Time section, which stated it as one year. Both organizations requested additional lead time due to a lack of harmonization with GTR No. 13 and the substantial vehicle design changes they stated will be required. HATCI requested a compliance date of five years from the first September 1 after the final rule's publication, and cited potential impacts on pre-production vehicles due to a lack of harmonization which will prevent manufacturers from utilizing existing hardware and software.

Glickenhaus requested a three-year extension for low volume manufacturers to avoid disruption to current pilot projects. Hyundai also recommended a five-year compliance period after the September 1 following the rule's publication, stating that this is justified by the significant number of changes from GTR No. 13 in FMVSS Nos. 307 and 308, the inclusion of substantive new requirements, and the time required for design changes, validation and certification. Hyundai also noted that these proposed requirements are generally consistent with current industry practices, so there is no immediate safety necessity warranting a shorter lead time.

Agency Response

NHTSA acknowledges the comments regarding the proposed lead time and the concerns raised about the inconsistency between the compliance dates mentioned in the NPRM. NHTSA acknowledges that the ''Lead Time'' section was not updated correctly to reflect the intended proposed compliance timeline. To clarify this issue, first, NHTSA confirms that the effective date remains as proposed: 180 days after the publication of the final rule in the **Federal Register**.

Second, in response to commenters' requests for additional lead time for the compliance date, particularly from heavy vehicle manufacturers and others citing the need for additional time, NHTSA has revised the compliance date in the final rule. The final rule will adopt a compliance date that will be September 1, 2028, more than 3 years after the publication of the final rule. This extension provides additional time for manufacturers to ensure compliance without causing significant disruption.

However, NHTSA emphasizes that the requirements proposed under FMVSS Nos. 307 and 308 are closely aligned with GTR No. 13 and current industry practices. Many manufacturers have already implemented safety systems and testing procedures that meet the requirements of the final rule, and thus an extended lead time beyond the three-year period is not necessary. NHTSA is not aware of any peculiarities of the U.S. market that would necessitate lead times double or triple the lead times in other markets.[56]

[56] NHTSA knows from its involvement in UN ECE that the lead times in other markets are sometimes substantially shorter than those often requested by manufacturers in the United States. As an example, Europe's General Safety Regulation was adopted in late 2019 and required that manufacturers equip vehicles with certain vehicle safety features by July 2022. See *https://www.tuvsud.com/en-us/resource-centre/stories/revision-of-the-eu-general-safety-regulation.* This period of less than 3 years is less than the timelines often requested by American industry, who often seek much longer lead times.

V. Other Changes to the Regulatory Text

A clerical correction was made to the S3 *Application* section of FMVSS No. 308 to add the words ''to propel the vehicle.'' These words were included in S3 *Application* of FMVSS No. 307, but were inadvertently omitted from FMVSS No. 308 S3. This edit is editorial in nature to improve the clarity of the section, and does not intend to change the application of the standard.

A clerical correction was made to S6.2.2.2(e), deleting the word ''container'' from ''container manufacture may specify.'' The inclusion of the word ''container'' before manufacturer was erroneous since the standard is being applied as a vehicle-level standard, as discussed above. The section will now simply state that the ''manufacturer may specify.''

A clerical correction was made to the definition of ''hydrogen fuel system'' to replace the word ''mean'' with ''means'' for grammatical accuracy.

S5.2.2 was updated to include the words ''The vehicle shall meet at least'' to clarify that the vehicle must meet at least one of the requirements listed in S5.2.2 (a) though (c).

S6.1 was updated to include the words ''individual test'' before vehicle to clarify that the statement is referring to a specific individual test vehicle, not a line or model of vehicle.

S6.4.2(c) was updated to replace the word ''volumes'' with ''spaces.'' The section is referring to enclosed or semi-enclosed spaces, which are defined in the standard, whereas enclosed or semi-enclosed volumes are not defined.

NHTSA replaced all instances of the word ''manufacturer'' with ''vehicle manufacturer'' to clarify that the vehicle manufacturer is responsible for all aspects of the two standards.

VI. Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

We have considered the potential impact of this final rule under Executive Order 12866, Executive Order 13563, and DOT Order 2100.6A. This final rule is nonsignificant under E.O. 12866 and was not reviewed by the Office of Management and Budget. It is also not considered ''of special note to the Department'' under DOT Order

2100.6A, Rulemaking and Guidance Procedures.

Today, there are only two publicly available vehicle models that may be affected by the final rule, which collectively equal less than 5,000 vehicles sold per model year. Most manufacturers and vehicle lines currently in production would be unaffected by this rule. Of those vehicles that would be covered by today's standards, we expect the compliance cost to be minimal. As discussed earlier, the few manufacturers that already offer hydrogen vehicles in the marketplace already take safety precautions to attempt to emulate the safety of conventional and battery electric vehicles, and adhere to the industry guidelines that informed the creation of GTR No. 13. Because the final rule is intended to coalesce industry practice and future designs through harmonized regulations, we do not expect that the rule would pose a significant cost to current manufacturers, or for manufacturers that may be planning to enter the market.

Given NHTSA is establishing these standards during the early development of hydrogen vehicles, there is no baseline to compare today's rule against. While we anticipate the regulations will promote safer hydrogen vehicles, we cannot quantify this benefit with any degree of certainty, especially given that we cannot forecast what the industry would look like in the absence of our proposed standard. Furthermore, most of the safety benefits that will accrue to this rule will only be realized when hydrogen vehicles become more prevalent. The net present value of these future costs and benefits is minimal.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)(1)). No regulatory flexibility analysis is required if the head of an agency certifies the proposed or final rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposed or final rule will not have a significant economic impact on a substantial number of small entities.

I certify that these standards will not have a significant impact on a substantial number of small entities. This action creates FMVSS Nos. 307 and 308 to establish minimum safety requirements for the CHSS and fuel system integrity of hydrogen vehicles. FMVSS Nos. 307 and 308 are vehicle standards. We anticipate any burdens of the standard will fall onto manufacturers of hydrogen vehicles. NHTSA is unaware of any small entities that currently manufacture or are planning to manufacture hydrogen vehicles. Furthermore, NHTSA is adopting standards similar to those already in place across industry. Thus, we anticipate the impacts of this final rule on all manufacturers to be minimal regardless of manufacturer size.

Executive Order 13132

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The Agency has concluded that this action would not have ''federalism implications'' because it would not have ''substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government,'' as specified in section 1 of the Executive order. This final rule would apply to motor vehicle manufacturers. Further, no State has adopted requirements regulating the CHSS or fuel integrity of hydrogen powered vehicles. Thus, Executive Order 13132 is not implicated and consultation with State and local officials is not required.

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law. 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

NHTSA rules can also preempt State law if complying with the FMVSS would render the motor vehicle manufacturers liable under State tort law. Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*i.e.,* the language and structure of the regulatory text) and objectives of this rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend this NPRM to preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers rule. Establishment of a higher standard by means of State tort law will not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity

and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Executive Order 13609 (Promoting International Regulatory Cooperation)

Executive Order 13609, ''Promoting International Regulatory Cooperation,'' promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

The final rule adopts the technical requirements of GTR No.13, a technical standard for hydrogen vehicles adopted by the United Nations Economic Commission for Europe (UN ECE) World Forum for Harmonization of Vehicle Regulations (WP.29). As a Contracting Party that voted in favor of GTR No. 13, NHTSA was obligated to initiate rulemaking to incorporate safety requirements and options specified in GTR, which the agency satisfied when it published its notice of proposed rulemaking NHTSA is not required to finalize the text of the GTR.

While the final rule does contain some differences from GTR No. 13 to reflect U.S. law, they are consistent with the regulatory process envisioned and encouraged from the outset of GTR No. 13. NHTSA will continue to participate with the international community on GTR No. 13 and evaluate further amendments on their merits as they are adopted by WP.29.

NHTSA has analyzed this final rule under the policies and agency responsibilities of Executive Order 13609 and has determined this rule would have no effect on international regulatory cooperation.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 et. seq.), as amended. In accordance with 49 C.F.R § 1.81, 42 U.S.C. 4336, and DOT NEPA Order 5610.1C, NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4) (planning and administrative activities, such as promulgation of rules, that do not involve or lead directly to construction).

This rulemaking establishes two new FMVSS, FMVSS No. 307, ''Fuel system integrity of hydrogen vehicles,'' which specifies requirements for the integrity of the fuel system in hydrogen vehicles during normal vehicle operations and after crashes, and FMVSS No. 308, ''Compressed hydrogen storage system integrity,'' which specifies requirements for the compressed hydrogen storage system to ensure the safe storage of hydrogen onboard vehicles. This rulemaking is not anticipated to result in any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

NHTSA expects the changes to new and existing vehicles to be minimal, and mitigating the hazards associated with fires that result from hydrogen fuel leakage during vehicle operation and after motor vehicle crashes and from explosions resulting from the burst of pressurized hydrogen containers would result in a public health and safety benefit. For these reasons, the agency has determined that implementation of this action will not have any adverse impact on the quality of the human environment.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Information Collection Request (ICR) for a revision of a previously approved collection described below will be forwarded to OMB for review and comment. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB. In this final rule, we are finalizing a revision and reinstatement to a previously approved OMB collection, OMB Clearance No. 2127–0512, Consolidated Labeling Requirements for Motor Vehicles (except the VIN).[57]

Title: Consolidated Labeling Requirements for Motor Vehicles (except the VIN).

OMB Control Number: OMB Control No. 2127–0512.

Type of Request: Revision of a previously approved collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from the date of approval.

Summary of the Collection of Information: FMVSS No. 307 specifies requirements for the integrity of motor vehicle fuel systems using compressed hydrogen as a fuel source. Each hydrogen vehicle must have a permanent label which lists the fuel type, service pressure, and a statement directing vehicle users/operators to instructions for inspection and service life of the fuel container. FMVSS No. 308 specifies requirements for the integrity of compressed hydrogen storage systems (CHSS). Each hydrogen container must have a permanent label containing manufacturer contact information, the container serial number, manufacturing date, date of removal from service, and applicable BP_O burst pressure. If the proposed requirements are made final, we will submit a request for OMB clearance of the proposed collection of information and seek clearance prior to the effective date of the final rule.

Description of the likely respondents: Vehicle manufacturers.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: $8,616.

It is estimated that vehicle manufacturers will provide labels on 10 different hydrogen vehicle models. Since manufacturers have provided CNG vehicles with similar required labels for many years, it is estimated that manufacturers will have a generalized label template which only requires minor adjustments for hydrogen and population with the required information. There is an annual 1.0 hour burden for manufacturers to have a Mechanical Drafter put the correct information into a label template to create a model specific label. The annual burden for this label creation is 10 hours (10 hydrogen vehicle model labels * 1 hour per model label) and $478 (10 hydrogen vehicle model labels * 1 hour per model label * $33.62 labor rate per hour ÷ 70.3% of labor rate as total wage compensation). Manufacturers will also bear a cost burden of $1,884 (2,850 hydrogen vehicles * $0.73 per label) for the required labels to be attached to the hydrogen vehicles. The combined total annual burden to vehicle manufacturers from the requirements to have the specified label text on hydrogen vehicles is 10 hours and $2,362. These hour and cost burdens represent a new

[57] In compliance with the requirements of the PRA, NHTSA is separately publishing a notice to request comment on NHTSA's reinstatement with modification of the previously approved information collection request.

addition to this information collection request.

It is estimated that vehicle manufacturers will provide labels on 10 different hydrogen container models. Since manufacturers have provided CNG containers with similar labels for many years, it is estimated that manufacturers will have a generalized label template which requires only minor adjustments for hydrogen and then population with their current contact information, the container serial number, manufacturing date, and date of removal from service. There is an annual 1.0 hour burden for manufacturers to have a Mechanical Drafter put the correct information into a label template to create a model specific label. The annual burden for this label creation is 10 hours (10 hydrogen container model labels * 1.0 hours per model label) and $478 (10 hydrogen container models labels * 1.0 hours per model label * $33.62 labor rate per hour ÷ 70.3% of labor rate as total wage compensation). Manufacturers will also bear a cost burden of $5,776 (7,910 hydrogen containers * $0.730 per label) for the required labels to be attached to the hydrogen containers. The combined total annual burden to vehicle manufacturers from the requirements to have the specified label text on hydrogen containers is 10 hours and $6,254. These hour and cost burdens represent a new addition to this information collection request.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104) Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

Today's final rule establishes standards that are consistent with voluntary standards cited above such as SAEJ2579_201806, HPRD–1 2021, and HGV 3.1 2022.

This final rule adopting key aspects of GTR No. 13 is consistent with the goals of the NTTAA. This final rule adopts much of a global consensus standard. However this final rule includes some minor deviations from GTR No. 13. As discussed above, FMVSS must maintain objectivity, clarity, and practicability, ensuring that every requirement is measurable and enforceable, with unambiguous test procedures. These adjustments ensure FMVSS remain clear, objective, and enforceable. For example, NHTSA is removing subjective requirements such as the TPRD atmospheric exposure test and the and localized leak requirement from the ambient and extreme gas permeation test. NHTSA is also requiring the testing of only one component for some tests instead of multiple components (as specified in GTR No. 13 for assessing variability in response), and eliminating duplicative requirements like the proof pressure tests. NHTSA has also removed unnecessary requirements for burst pressure variability, and removed a requirement for an overpressure protection device that had no corresponding performance test. NHTSA also selected a more balanced requirement for the hydrogen concentration limit in the enclosed and semi-enclosed spaces, rather than applying the GTR's zero limit to only the passenger compartment.

The GTR was developed by a global regulatory body and is designed to increase global harmonization of differing vehicle standards. The GTR leverages the expertise of governments in developing safety requirements for hydrogen fueled vehicles. NHTSA's consideration of GTR No. 13 accords with the principles of NTTAA as NHTSA's consideration of an established, proven regulation has reduced the need for NHTSA to expend significant agency resources on the same safety need addressed by GTR No. 13.

Incorporation by Reference

Under regulations issued by the Office of the Federal Register (1 CFR 51.5(a)), an agency, as part of a proposed rule that includes material incorporated by reference, must summarize material that is proposed to be incorporated by reference and discuss the ways the material is reasonably available to interested parties or how the agency worked to make materials available to interested parties. At the final rule stage, regulations require that the agency seek formal approval, summarize the material that it incorporates by reference in the preamble of the final rule, discuss the ways that the materials are reasonably available to interested parties, and provide other specific information to the Office of the Federal Register.

NHTSA is incorporating by reference two documents into the Code of Federal Regulations. First, NHTSA is incorporating by reference ASTM D1193–06 (Reapproved 2018), *Standard Specification for Reagent Water.* ASTM D1193–06 is an industry standard that defines the requirements for the purity of water used in laboratories, ensuring that experiments and tests are not compromised by water impurities. NHTSA will use a water supply conforming to Type IV requirements of ASTM D1193–06 in testing the compliance of closure devices with the salt corrosion resistance test in 571.308 S6.2.6.1.4.

NHTSA is also incorporating by reference ISO 6270–2:2017, *Paints and Varnishes—Determination of Resistance to Humidity—Part 2: Condensation (In-Cabinet Exposure with Heated Water Reservoir).* ISO 6270–2:2017 specifies methods for assessing the resistance of materials to humidity by focusing on how materials behave when exposed to high humidity. ISO 6270–2:2017 provides detailed procedures and materials for conducting tests where humidity is the primary variable. NHTSA will use the apparatus described within ISO 6270–2:2017 in testing the compliance of closure devices with the salt corrosion resistance test in 571.308 S6.2.6.1.4.

All standards incorporated by reference in this rule are available for review at NHTSA's headquarters in Washington, DC, and for purchase from the organizations promulgating the standards. The ASTM standard is also available for review at ASTM's online reading room.[58]

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects

[58] *https://www.astm.org/READINGLIBRARY/.*

of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2022 results in $177 million (111.416/75.324 = 1.48). This rule will not result in a cost of $177 million or more to State, local, or tribal governments, in the aggregate, or the private sector. Thus, this rule is not subject to the requirements of sections 202 of the UMRA.

Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any proposed or final rule that: (1) Is determined to be ''economically significant,'' as defined in E.O. 12866, and (2) concerns an environmental health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If a rule meets both criteria, the agency must evaluate the environmental health or safety effects of the rule on children and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211 as this rule is not economically significant and should not have an adverse effect on the supply of, distribution of, or use of energy for the same reasons explained in our discussion of Executive Orders 12866 and 13563.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.5 by:
■ a. Redesignating paragraphs (d)(20) through (33) as paragraphs (d)(21) through (34), respectively;
■ b. Adding new paragraph (d)(20);
■ d. Redesignating paragraphs (i)(1) through (4) as paragraphs (i)(2) through (5), respectively; and
■ e. Adding new paragraph (i)(1).

The additions read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(d) * * *

(20) ASTM D1193–06 (Reapproved 2018), *Standard Specification for Reagent Water,* approved March 15, 2018, into § 571.308.

* * * * *

(i) * * *

(1) ISO 6270–2:2017(E), *Paints and Varnishes—Determination of Resistance to Humidity—Part 2: Condensation (In-Cabinet Exposure with Heated Water Reservoir),* Second edition, November 2017, into § 571.308.

* * * * *

■ 3. Section 571.307 is added to read as follows:

§ 571.307 Standard No. 307; Fuel system integrity of hydrogen vehicles

S1. *Scope.* This standard specifies requirements for the integrity of motor vehicle hydrogen fuel systems.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from hydrogen fuel leakage during vehicle operation and after motor vehicle crashes.

S3. *Application.* This standard applies to each motor vehicle manufactured on or after September 1, 2028, that uses compressed hydrogen gas as a fuel source to propel the vehicle.

S4. *Definitions.*

Check valve means a valve that prevents reverse flow.

Closure devices mean the check valve(s), shut-off valve(s), and thermally-activated pressure relief device(s) that control the flow of hydrogen into and/or out of a CHSS.

Container means a pressure-bearing component of a compressed hydrogen storage system that stores a continuous volume of hydrogen fuel in a single chamber or in multiple permanently interconnected chambers.

Container attachments mean non-pressure bearing parts attached to the container that provide additional support and/or protection to the container and that may be removed only with the use of tools for the specific purpose of maintenance and/or inspection.

Compressed hydrogen storage system (CHSS) means a system that stores compressed hydrogen fuel for a hydrogen-fueled vehicle, composed of a container, container attachments (if any), and all closure devices required to isolate the stored hydrogen from the remainder of the fuel system and the environment.

Enclosed or semi-enclosed spaces means the passenger compartment, luggage compartment, and space under the hood.

Fuel cell system means a system containing the fuel cell stack(s), air processing system, fuel flow control system, exhaust system, thermal management system, and water management system.

Fueling receptacle means the equipment to which a fueling station nozzle attaches to the vehicle and through which fuel is transferred to the vehicle.

Fuel lines means all piping, tubing, joints, and any components such as flow controllers, valves, heat exchangers, and pressure regulators.

Hydrogen concentration means the percentage of the hydrogen molecules within the mixture of hydrogen and air (equivalent to the partial volume of hydrogen gas).

Hydrogen fuel system means the fueling receptacle, CHSS, fuel cell system or internal combustion engine, fuel lines, and exhaust systems.

Luggage compartment means the space in the vehicle for luggage, cargo, and/or goods accommodation, bounded by a roof, hood, floor, side walls being separated from the passenger compartment by the front bulkhead or the rear bulkhead.

Maximum allowable working pressure (MAWP) means the highest gauge pressure to which a component or system is permitted to operate under normal operating conditions.

Nominal working pressure (NWP) means the settled pressure of compressed gas in a container or CHSS fully fueled to 100 percent state of charge and at a uniform temperature of 15 °C.

Normal milliliter means a quantity of gas that occupies one milliliter of volume when its temperature is 0 °C and its pressure is 1 atmosphere.

Passenger compartment means the space for occupant accommodation that is bounded by the roof, floor, side walls, doors, outside glazing, front bulkhead, and rear bulkhead or rear gate.

Pressure relief device (PRD) means a device that, when activated under specified performance conditions, is used to release hydrogen from a pressurized system and thereby prevent failure of the system.

Rechargeable electrical energy storage system (REESS) means the rechargeable energy storage system that provides electric energy for electrical propulsion.

Service door means a door that allows for the entry and exit of vehicle occupants under normal operating conditions.

Shut-off valve means a valve between the container and the remainder of the hydrogen fuel system that must default to the ''closed'' position when unpowered.

State of charge (SOC) means the density ratio of hydrogen in the CHSS between the actual CHSS condition and that at NWP with the CHSS equilibrated to 15 °C, as expressed as a percentage using equation 1 to this section, where ρ is the density of hydrogen (g/L) at pressure (P) in MegaPascals (MPa) and temperature (T) in Celsius (°C) as listed in table 1 to S4 or linearly interpolated therein:

Equation 1 to § 571.307 S4

$$SOC(\%) = \frac{\rho(P,T)}{\rho(NWP, 15°C)} x100$$

TABLE 1 TO § 571.307 S4

Temperature (°C)	Pressure (MPa)												
	1	10	20	30	35	40	50	60	65	70	75	80	87.5
−40	1.0	9.7	18.1	25.4	28.6	31.7	37.2	42.1	44.3	46.4	48.4	50.3	53.0
−30	1.0	9.4	17.5	24.5	27.7	30.6	36.0	40.8	43.0	45.1	47.1	49.0	51.7
−20	1.0	9.0	16.8	23.7	26.8	29.7	35.0	39.7	41.9	43.9	45.9	47.8	50.4
−10	0.9	8.7	16.2	22.9	25.9	28.7	33.9	38.6	40.7	42.8	44.7	46.6	49.2
0	0.9	8.4	15.7	22.2	25.1	27.9	33.0	37.6	39.7	41.7	43.6	45.5	48.1
10	0.9	8.1	15.2	21.5	24.4	27.1	32.1	36.6	38.7	40.7	42.6	44.4	47.0
15	0.8	7.9	14.9	21.2	24.0	26.7	31.7	36.1	38.2	40.2	42.1	43.9	46.5
20	0.8	7.8	14.7	20.8	23.7	26.3	31.2	35.7	37.7	39.7	41.6	43.4	46.0
30	0.8	7.6	14.3	20.3	23.0	25.6	30.4	34.8	36.8	38.8	40.6	42.4	45.0
40	0.8	7.3	13.9	19.7	22.4	24.9	29.7	34.0	36.0	37.9	39.7	41.5	44.0
50	0.7	7.1	13.5	19.2	21.8	24.3	28.9	33.2	35.2	37.1	38.9	40.6	43.1
60	0.7	6.9	13.1	18.7	21.2	23.7	28.3	32.4	34.4	36.3	38.1	39.8	42.3
70	0.7	6.7	12.7	18.2	20.7	23.1	27.6	31.7	33.6	35.5	37.3	39.0	41.4
80	0.7	6.5	12.4	17.7	20.2	22.6	27.0	31.0	32.9	34.7	36.5	38.2	40.6
85	0.7	6.4	12.2	17.5	20.0	22.3	26.7	30.7	32.6	34.4	36.1	37.8	40.2

Thermally-activated pressure relief device (TPRD) means a non-reclosing PRD that is activated by temperature to open and release hydrogen gas.

S5. *Hydrogen fuel system.*

S5.1. *Fuel system integrity during normal vehicle operations.*

S5.1.1. *Fueling receptacle requirements.* (a) A compressed hydrogen fueling receptacle shall prevent reverse flow to the atmosphere.

(b) A label shall be affixed close to the fueling receptacle showing the following information:

(1) The statement, ''Compressed hydrogen gas only.''

(2) The statement, ''Service pressure _____MPa (_____psig).''

(3) The statement, ''See instructions on fuel container(s) for inspection and service life.''

(c) The fueling receptacle shall ensure positive locking of the fueling nozzle.

(d) The fueling receptacle shall be protected from the ingress of dirt and water.

(e) The fueling receptacle shall not be installed in enclosed or semi-enclosed spaces.

S5.1.2. *Hydrogen discharge systems.*

S5.1.2.1. *Pressure relief systems.* (a) If present, the outlet of the vent line for hydrogen gas discharge from the TPRD(s) of the CHSS shall be protected from ingress of dirt and water.

(b) The hydrogen gas discharge from TPRD(s) of the CHSS shall not impinge upon:

(1) Enclosed or semi-enclosed spaces;

(2) Any vehicle wheel housing;

(3) Container(s);

(4) REESS(s);

(5) Any emergency exit(s) as identified in § 571.217 (FMVSS No. 217); nor

(6) Any service door(s).

S5.1.2.2. *Vehicle exhaust system.* When tested in accordance with S6.5 of this standard, the hydrogen concentration at the vehicle exhaust system's point of discharge shall not:

(a) Exceed an average of 4.0 percent by volume during any moving three-second time interval; nor

(b) Exceed 8.0 percent by volume at any time.

S5.1.3. *Protection against flammable conditions.* (a) When tested in accordance with S6.4.1 of this standard, a warning in accordance with S5.1.6 shall be provided within 10 seconds of the application of the first test gas.

When tested in accordance with S6.4.1, the main shut-off valve shall close within 10 seconds of the application of the second test gas.

(b) When tested in accordance with S6.4.2 of this standard, the hydrogen concentration in the enclosed or semi-enclosed spaces shall be less than 3.0 percent.

S5.1.4. *Fuel system leakage.* When tested in accordance with S6.6 of this standard, the hydrogen fuel system downstream of the shut-off valve(s) shall not exhibit observable leakage.

S5.1.5 *Tell-tale warning.* A warning shall be given to the driver, or to all front seat occupants for vehicles without a driver's designated seating position, by a visual signal or display text with the following properties:

(a) Visible to the driver while seated in the driver's designated seating position or visible to all front seat occupants of vehicles without a driver's designated seating position;

(b) Yellow in color if the warning system malfunctions;

(c) Red in color if hydrogen concentration in enclosed or semi-enclosed spaces exceeds 3.0 percent by volume;

(d) When illuminated, shall be visible to the driver (or to all front seat occupants in vehicles without a driver's designated seating position) under both daylight and nighttime driving conditions; and

(e) Remains illuminated when hydrogen concentration in any of the vehicle's enclosed or semi-enclosed spaces exceeds 3.0 percent by volume or when the warning system malfunctions, and the ignition locking system is in the ''On'' (''Run'') position or the propulsion system is activated.

S5.2. *Post-crash fuel system integrity.* Each vehicle with a gross vehicle weight rating (GVWR) of 4,536 kg or less to which this standard applies must meet the requirements in S5.2.1 through S5.2.4 when tested according to S6 under the conditions of S7. Each school bus with a GVWR greater than 4,536 kg to which this standard applies must meet the requirements in S5.2.1 through S5.2.4 when tested according to S6 under the conditions of S7 of this standard.

S5.2.1. *Fuel leakage limit.* If hydrogen gas is used for testing, the volumetric flow of hydrogen gas leakage shall not exceed an average of 118 normal liters per minute for the time interval, Δt, as determined in accordance with S6.2.1 of this standard. If helium is used for testing, the volumetric flow of helium leakage shall not exceed an average of 88.5 normal litres per minute for the time interval, Δt, as determined in accordance with S6.2.2 of this standard.

S5.2.2. *Concentration limit in enclosed spaces.* The vehicle shall meet at least one of the requirements in S5.2.2(a), (b), or (c).

(a) Hydrogen gas leakage shall not result in a hydrogen concentration in the air greater than 4.0 percent by volume in enclosed or semi-enclosed spaces for 60 minutes after impact when tested in accordance with S6.3 of this standard.

(b) Helium gas leakage shall not result in a helium concentration in the air greater than 3.0 percent by volume in enclosed or semi-enclosed spaces for 60 minutes after impact when tested in accordance with S6.3 of this standard.

(c) The shut-off valve of the CHSS shall close within 5 seconds of the crash.

S5.2.3. *Container displacement.* The container(s) shall remain attached to the vehicle by at least one component anchorage, bracket, or any structure that transfers loads from the container to the vehicle structure.

S5.2.4. *Fire.* There shall be no fire in or around the vehicle for the duration of the test.

S6. *Test Requirements.*

S6.1. *Vehicle Crash Tests.* A test vehicle with a GVWR less than or equal to 4,536 kg, under the conditions of S7 of this standard, is subject to any one single barrier crash test of S6.1.1, S6.1.2, and S6.1.3. A school bus with a GVWR greater than 4,536 kg, under the conditions of S7, is subject to the contoured barrier crash test of S6.1.4. A particular vehicle need not meet further test requirements after having been subjected and evaluated to a single barrier crash test.

S6.1.1. *Frontal barrier crash.* The test vehicle, with test dummies in accordance with S6.1 of 571.301 of this chapter, traveling longitudinally forward at any speed up to and including 48.0 km/h, impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at an angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle.

S6.1.2. *Rear moving barrier impact.* The test vehicle, with test dummies in accordance with S6.1 of § 571.301, is impacted from the rear by a barrier that conforms to S7.3(b) of § 571.301 and that is moving at any speed up to and including 80.0 km/h.

S6.1.3. *Side moving deformable barrier impact.* The test vehicle, with the appropriate 49 CFR part 572 test dummies specified in § 571.214 (FMVSS No. 214) at positions required for testing by S7.1.1, S7.2.1, or S7.2.2 of Standard 214, is impacted laterally on either side by a moving deformable barrier moving at any speed between 52.0 km/h and 54.0 km/h.

S6.1.4. *Moving contoured barrier crash.* The test vehicle is impacted at any point and at any angle by the moving contoured barrier assembly, specified in S7.5 and S7.6 in § 571.301, traveling longitudinally forward at any speed up to and including 48.0 km/h.

S6.2. *Post-crash CHSS leak test.*

S6.2.1. *Post-crash leak test for CHSS filled with compressed hydrogen.* (a) The hydrogen gas pressure, P_0 (MPa), and temperature, T_0 (°C), shall be measured immediately before the impact. The hydrogen gas pressure P_f (MPa) and temperature, T_f (°C) shall also be measured immediately after a time interval Δt (in minutes) after impact. The time interval, Δt, starting from the time of impact, shall be the greater of S6.2.1(a)(1) or (2):

(1) 60 minutes; or

(2) The time interval calculated with equation 2 to this section, where $R_s = P_s/NWP$, P_s is the pressure range of the pressure sensor (MPa), NWP is the Nominal Working Pressure (MPa), and V_{CHSS} is the volume of the CHSS (L):

Equation 2 to § 571.307 S6.2.1(a)(2)

$$\Delta t = V_{CHSS} \times NWP/1000 \times ((-0.027 \times NWP + 4) \times R_s - 0.21) - 1.7 \times R_s$$

(b) The initial mass of hydrogen M_0 (g) in the CHSS shall be calculated from equations 3 through 5 to this section:

Equation 3 to § 571.307 S6.2.1(b)

$$P_0' = P_0 \times 288/(273 + T_0)$$

Equation 4 to § 571.307 S6.2.1(b)

$$\rho_0' = -0.0027 \times (P_0')^2 + 0.75 \times P_0' + 1.07$$

Equation 5 to § 571.307 S6.2.1(b)

$$M_0 = \rho_0' \times V_{CHSS}$$

(c) The final mass of hydrogen in the CHSS, M_f (in grams), at the end of the time interval, Δt, shall be calculated from equations 6 through 8 to this section, where P_f is the measured final pressure (MPa) at the end of the time interval, and T_f (°C) is the measured final temperature:

Equation 6 to § 571.307 S6.2.1(c)

$$P_f' = P_f \times 288/(273 + T_f)$$

Equation 7 to § 571.307 S6.2.1(c)

$$\rho_f' = -0.0027 \times (P_f')^2 + 0.75 \times P_f' + 1.07$$

Equation 8 to § 571.307 S6.2.1(c)

$$M_f = \rho_f' \times V_{CHSS}$$

(d) The average hydrogen flow rate over the time interval shall be calculated from equation 9 to this section, where V_{H2} is the average volumetric flow rate (normal millilitres per min) over the time interval:

Equation 9 to § 571.307 S6.2.1(d)

$V_{H2} = (M_f - M_0)/\Delta t \times 22.41/2.016 \times (P_{target}/P_0)$

S6.2.2 *Post-crash leak test for CHSS filled with compressed helium.*

(a) The helium pressure, P_0 (MPa), and temperature, T_0 (°C), shall be measured immediately before the impact and again immediately after a time interval starting from the time of impact. The time interval, Δt (min), shall be the greater of the values in S6.2.2(a)(1) or (2):

(1) 60 minutes; or

(2) The time interval calculated with equation 10 to this section, where $R_s = P_s/NWP$, P_s is the pressure range of the pressure sensor (MPa), NWP is the Nominal Working Pressure (MPa), and V_{CHSS} is the volume of the CHSS (L):

Equation 10 to § 571.307 S6.2.2(a)(2)

$\Delta t = V_{CHSS} \times NWP/1000 \times (-0.028 \times NWP + 5.5) \times R_s - 0.3) - 2.6 \times R_s$

(b) The initial mass of helium M_0 (g) in the CHSS shall be calculated from equations 11 through 13 to this section:

Equation 11 to § 571.307 S6.2.2(b)

$P_0' = P_0 \times 288/(273 + T_0)$

Equation 12 to § 571.307 S6.2.2(b)

$\rho_0' = -0.0043 \times (P_0')^2 + 1.53 \times P_0' + 1.49$

Equation 13 to § 571.307 S6.2.2(b)

$M_0 = \rho_0' \times V_{CHSS}$

(c) The final mass of helium M_f (g) in the CHSS at the end of the time interval, Δt (min), shall be calculated from equations 14 through 16 to this section, where P_f is the measured final pressure (MPa) at the end of the time interval, and T_f (°C) is the measured final temperature:

Equation 14 to § 571.307 S6.2.2(c)

$P_f' = P_f \times 288/(273 + T_f)$

Equation 15 to § 571.307 S6.2.2(c)

$\rho_f' = -0.0043 \times (P_f')^2 + 1.53 \times P_f' + 1.49$

Equation 16 to § 571.307 S6.2.2(c)

$M_f = \rho_f' \times V_{CHSS}$

(d) The average helium flow rate over the time interval shall be calculated from equation 17 to this section, where V_{He} is the average volumetric flow rate (normal millilitres per min) of helium over the time interval:

Equation 17 to § 571.307 S6.2.2(d)

$V_{He} = (M_f - M_0)/\Delta t \times 22.41/4.003 \times (P_{target}/P_0)$

S6.3. *Post-crash concentration test for enclosed spaces.* (a) Sensors shall measure either the accumulation of hydrogen or helium gas, as appropriate, or the reduction in oxygen.

(b) Sensors shall have an accuracy of at least 5 percent at 4.0 percent hydrogen or 3.0 percent helium by volume in air, and a full-scale measurement capability of at least 25 percent above these criteria. The sensor shall be capable of a 90 percent response to a full-scale change in concentration within 10 seconds.

(c) Prior to the crash impact, the sensors shall be located in the passenger and luggage compartments of the vehicle as follows:

(1) At any interior point at any distance between 240 mm and 260 mm of the headliner above the driver's seat or near the top center of the passenger compartment.

(2) At any interior point at any distance between 240 mm and 260 mm of the floor in front of the rear (or rear most) seat in the passenger compartment.

(3) At any interior point at any distance between 90 mm and 110 mm below the top of luggage compartment(s).

(d) The sensors shall be securely mounted on the vehicle structure or seats and protected from debris, air bag exhaust gas and projectiles.

(e) The vehicle shall be located either indoors or in an area outdoors protected from direct and indirect wind.

(f) Post-crash data collection in enclosed spaces shall commence from the time of impact. Data from the sensors shall be collected at least every 5 seconds and continue for a period of 60 minutes after the impact.

(g) The data shall be compiled into a three-data-point rolling average prior to evaluating the applicable concentration limit in accordance with S5.2.2(a) or (b) of this standard.

S6.4. *Test procedure for protection against flammable conditions.*

S6.4.1. *Test for hydrogen gas leakage detectors.* (a) The vehicle propulsion system shall be operated for at least five minutes prior to testing and shall continue to operate throughout the test.

(b) Two mixtures of air and hydrogen gas shall be used in the test: The first test gas has any hydrogen concentration between 3.0 and 4.0 percent by volume in air to verify function of the warning, and the second test gas has any hydrogen concentration between 4.0 and 6.0 percent by volume in air to verify function of the shut-down.

(c) The test shall be conducted without influence of wind.

(d) A vehicle hydrogen leakage detector located in the enclosed or semi-enclosed spaces is enclosed with a cover and a test gas induction hose is attached to the hydrogen gas leakage detector.

(e) The hydrogen gas leakage detector is exposed to continuous flow of the first test gas specified in S.6.4.1(b) until the warning turns on.

(f) Then the hydrogen gas leakage detector is exposed to continuous flow of the second test gas specified in S.6.4.1(b) until the main shut-off valve closes to isolate the CHSS. The test is completed when the shut-off valve closes.

S6.4.2. *Test for integrity of enclosed spaces and detection systems.* (a) The test shall be conducted without influence of wind.

(b) Prior to the test, the vehicle is prepared to simulate remotely controllable hydrogen releases from the fuel system or from an external fuel supply. The number, location, and flow capacity of the release points downstream of the shut-off valve are defined by the vehicle manufacturer.

(c) A hydrogen concentration detector shall be installed in any enclosed or semi-enclosed spaces where hydrogen may accumulate from the simulated hydrogen release.

(d) Vehicle doors, windows and other covers are closed.

(e) The vehicle propulsion system shall be operated for at least five minutes and shall continue to operate throughout the remainder of the test.

(f) A leak shall be simulated using the remote controllable function.

(g) The hydrogen concentration is measured continuously until the end of the test.

(h) The test is completed 5 minutes after initiating the simulated leak or when the hydrogen concentration does not change for 3 minutes, whichever is longer.

S6.5. *Test for the vehicle exhaust system.* (a) The vehicle propulsion system shall be operated for at least five minutes prior to testing and shall continue to operate throughout the test, except for times when the propulsion system becomes deactivated by the steps taken during S6.5(c).

(b) The measuring section of the measuring device shall be placed along the centerline of the exhaust gas flow within 100 mm of where the exhaust is released to the atmosphere.

(c) The exhaust hydrogen concentration shall be continuously measured during the following steps:

(1) The fuel cell system shall be shut down.

(2) The fuel cell system shall be immediately restarted.

(3) After one minute, the vehicle shall be set to the ''off'' position and measurement continues until the until the vehicle shutdown is complete.

(d) The measurement device shall have a resolution time of less than 300 milliseconds;

(e) The measurement device shall have a measurement response time ($t_0 - t_{90}$) of less than 2 seconds, where t_0 is the moment of hydrogen concentration switching, and t_{90} is the time when 90 percent of the final indication is reached and shall have a resolution time of less than 300 milliseconds (sampling rate of greater than 3.33 Hz).

S6.6. *Test for fuel system leakage.* The vehicle CHSS shall be filled with hydrogen to any pressure between 90 percent NWP and 100 percent NWP for the duration of the test for fuel system leakage.

(a) The vehicle propulsion system shall be operated for at least five minutes prior to testing and shall continue to operate throughout the test.

(b) Hydrogen leakage shall be evaluated at accessible sections of the hydrogen fuel system downstream of the shut-off valve(s) using a leak detecting liquid. Hydrogen gas leak detection shall be performed immediately after applying the liquid.

S7. *Test conditions.* The requirements of S5.2 shall be met under the following conditions. Where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

(a) Prior to conducting the crash test, instrumentation is installed in the CHSS to perform the required pressure and temperature measurements if the vehicle does not already have instrumentation with the required accuracy.

(b) The CHSS is then purged, if necessary, following vehicle manufacturer directions before filling the CHSS with compressed hydrogen or helium gas, as specified by the vehicle manufacturer.

(c) The target fill pressure P_{target} shall be calculated from equation 18 to this section, where NWP is in MPa, T_o is the ambient temperature in °C to which the CHSS is expected to settle, and P_{target} is the target fill pressure in MPa after the temperature settles:

Equation 18 to § 571.307 S7

$$P_{target} = NWP \times (273 + T_o)/288$$

(d) The container(s) shall be filled to any pressure between 95.0 percent and 100.0 percent of the calculated target fill pressure.

(e) After fueling, the vehicle shall be maintained at rest for any duration between 2.0 and 3.0 hours before conducting a crash test in accordance with S6.1 of this standard.

(f) The CHSS shut-off valve(s) and any other shut-off valves located in the fuel system downstream hydrogen gas piping shall be in normal driving condition immediately prior to the impact.

(g) The parking brake is disengaged and the transmission is in neutral prior to the crash test.

(h) Tires are inflated to manufacturer's specifications.

(i) The vehicle, including test devices and instrumentation, is loaded as follows:

(1) A passenger car, with its fuel system filled as specified in S7(d), is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the necessary test dummies as specified in S6, restrained only by means that are installed in the vehicle for protection at its seating position(s).

(2) A multipurpose passenger vehicle, truck, or bus with a GVWR of 10,000 pounds or less, whose fuel system is filled as specified in S7(d), is loaded to its unloaded vehicle weight, plus the necessary test dummies as specified in S6 of this standard, plus 136.1 kg, or its rated cargo and luggage capacity weight, whichever is less, secured to the vehicle and distributed so that the weight on each axle as measured at the tire-ground interface is in proportion to its gross axle weight rating (GAWR). Each dummy shall be restrained only by means that are installed in the vehicle for protection at its seating position(s).

(3) A school bus with a GVWR greater than 10,000 pounds, whose fuel system is filled as specified in S7(d), is loaded to its unloaded vehicle weight, plus 54.4 kg of unsecured weight at each designated seating position.

■ 4. Section 571.308 is added to read as follows:

§ 571.308 Standard No. 308; Compressed hydrogen storage system integrity

S1. *Scope.* This standard specifies requirements for compressed hydrogen storage systems used in motor vehicles.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from hydrogen fuel leakage during vehicle operation and to reduce deaths and injuries occurring from explosions resulting from the burst of pressurized hydrogen containers.

S3. *Application.* This standard applies to each motor vehicle manufactured on or after September 1, 2028, that is equipped with compressed hydrogen gas as a fuel source to propel the vehicle. The standard does not apply to vehicles that are only equipped with cryo-compressed hydrogen storage systems and/or solid-state hydrogen storage system to propel the vehicle.

S4. *Definitions.*

BP_O means the vehicle manufacturer-supplied median burst pressure for a batch of new containers.

Burst means to break apart or to break open.

Burst pressure means the highest pressure achieved for a container tested in accordance with S6.2.2.1 of this standard.

Check valve means a valve that prevents reverse flow.

Closure devices mean the check valve(s), shut-off valve(s), and thermally-activated pressure relief device(s) that control the flow of hydrogen into and/or out of a CHSS.

Container means a pressure-bearing component of a compressed hydrogen storage system that stores a continuous volume of hydrogen fuel in a single chamber or in multiple permanently interconnected chambers.

Container attachments mean non-pressure bearing parts attached to the container that provide additional support and/or protection to the container and that may be removed only with the use of tools for the specific purpose of maintenance and/or inspection.

Compressed hydrogen storage system (CHSS) means a system that stores compressed hydrogen fuel for a hydrogen-fueled vehicle, composed of a container, container attachments (if any), and all closure devices required to isolate the stored hydrogen from the remainder of the fuel system and the environment.

Cryo-compressed hydrogen storage system means a system that stores hydrogen by compressing it to high pressure while simultaneously cooling it to very low temperatures, allowing for a higher density of hydrogen storage compared to standard compressed hydrogen systems.

Hydrogen fuel system means the fueling receptacle, CHSS, fuel cell system or internal combustion engine, fuel lines, and exhaust systems.

Nominal working pressure (NWP) means the settled pressure of compressed gas in a container or CHSS fully fueled to 100 percent state of charge and at a uniform temperature of 15 °C.

Normal milliliter means a quantity of gas that occupies one milliliter of volume when its temperature is 0 °C and its pressure is 1 atmosphere.

Pressure relief device (PRD) means a device that, when activated under specified performance conditions, is used to release hydrogen from a

pressurized system and thereby prevent failure of the system.

Service life (of a container) means the time frame during which service (usage) is authorized by the vehicle manufacturer.

Shut-off valve means a valve between the container and the remainder of the hydrogen fuel system that must default to the ''closed'' position when unpowered.

Solid-state hydrogen storage system means a system that stores hydrogen at ambient temperatures and low pressures within solid materials that can either physically absorb the hydrogen gas or chemically combine with it.

State of charge (SOC) means the density ratio of hydrogen in the CHSS between the actual CHSS condition and that at NWP with the CHSS equilibrated to 15 °C, as expressed as a percentage using the equation 1 to this section,

where ρ is the density of hydrogen (g/L) at pressure (P) in MegaPascals (MPa) and temperature (T) in Celsius (°C) as listed below in Table 1 or linearly interpolated therein:

Equation 1 to § 571.308 S4

$$SOC(\%) = \frac{\rho(P,T)}{\rho(NWP, 15°C)} x100$$

TABLE 1 TO § 571.308 S4

Temperature (°C)	Pressure (MPa)												
	1	10	20	30	35	40	50	60	65	70	75	80	87.5
−40	1.0	9.7	18.1	25.4	28.6	31.7	37.2	42.1	44.3	46.4	48.4	50.3	53.0
−30	1.0	9.4	17.5	24.5	27.7	30.6	36.0	40.8	43.0	45.1	47.1	49.0	51.7
−20	1.0	9.0	16.8	23.7	26.8	29.7	35.0	39.7	41.9	43.9	45.9	47.8	50.4
−10	0.9	8.7	16.2	22.9	25.9	28.7	33.9	38.6	40.7	42.8	44.7	46.6	49.2
0	0.9	8.4	15.7	22.2	25.1	27.9	33.0	37.6	39.7	41.7	43.6	45.5	48.1
10	0.9	8.1	15.2	21.5	24.4	27.1	32.1	36.6	38.7	40.7	42.6	44.4	47.0
15	0.8	7.9	14.9	21.2	24.0	26.7	31.7	36.1	38.2	40.2	42.1	43.9	46.5
20	0.8	7.8	14.7	20.8	23.7	26.3	31.2	35.7	37.7	39.7	41.6	43.4	46.0
30	0.8	7.6	14.3	20.3	23.0	25.6	30.4	34.8	36.8	38.8	40.6	42.4	45.0
40	0.8	7.3	13.9	19.7	22.4	24.9	29.7	34.0	36.0	37.9	39.7	41.5	44.0
50	0.7	7.1	13.5	19.2	21.8	24.3	28.9	33.2	35.2	37.1	38.9	40.6	43.1
60	0.7	6.9	13.1	18.7	21.2	23.7	28.3	32.4	34.4	36.3	38.1	39.8	42.3
70	0.7	6.7	12.7	18.2	20.7	23.1	27.6	31.7	33.6	35.5	37.3	39.0	41.4
80	0.7	6.5	12.4	17.7	20.2	22.6	27.0	31.0	32.9	34.7	36.5	38.2	40.6
85	0.7	6.4	12.2	17.5	20.0	22.3	26.7	30.7	32.6	34.4	36.1	37.8	40.2

Thermally-activated pressure relief device (TPRD) means a non-reclosing PRD that is activated by temperature to open and release hydrogen gas.

TPRD sense point means instrumentation that detects elevated temperature for the purpose of activating a TPRD.

S5. *Requirements.*

S5.1. *Requirements for the CHSS.* Each vehicle CHSS shall include the following functions: shut-off valve, check valve, and TPRD. Each vehicle CHSS shall have a NWP of 70 MPa or less. Each vehicle container, closure device, and CHSS shall meet the applicable performance test requirements listed in table 2 to this section.

TABLE 2 TO § 571.308 S5.1

Requirement section	Test article
S5.1.1. *Tests for baseline metrics*	Container.
S5.1.2. *Test for performance durability*	Container.
S5.1.3. *Test for expected on-road performance*	CHSS.
S5.1.4. *Test for service terminating performance in fire*	CHSS.
S5.1.5. *Tests for performance durability of closure devices*	Closure devices.

S5.1.1. *Tests for baseline metrics.*

S5.1.1.1. *Baseline initial burst pressure.* The vehicle manufacturer shall immediately and irrevocably specify upon request, in writing and within 15 business days: whether the primary constituent of the container is glass fiber composite. When a new container with its container attachments (if any) is tested in accordance with S6.2.2.1 of this standard, both of the following requirements shall be met:

(a) The burst pressure of the container shall not be less than 2 times NWP.

(b) The burst pressure of the container having glass-fiber composite as a primary constituent shall not be less than 3.5 times NWP.

S5.1.1.2. *Baseline initial pressure cycle test.* When a new container with its container attachments (if any) is hydraulically pressure cycled in accordance with S6.2.2.2 of this standard to any pressure between 125.0 percent NWP and 130.0 percent NWP,

(a) Containers for vehicles with a GVWR of 10,000 pounds or less

(1) Shall not leak nor burst for at least 7,500 cycles, and

(2) Thereafter shall not burst for an additional 14,500 cycles. If a leak occurs while conducting the test as specified in S5.1.1.2(a)(2), the test is stopped and not considered a failure.

(b) Containers for vehicles with a GVWR of over 10,000 pounds

(1) Shall not leak nor burst for at least 11,000 cycles, and

(2) Thereafter shall not burst for an additional 11,000 cycles. If a leak occurs while conducting the test as specified in S5.1.1.2(b)(2), the test is stopped and not considered a failure.

S5.1.2. *Test for performance durability.* A new container shall not leak nor burst when subjected to the sequence of tests in S5.1.2.1 through S5.1.2.6. Immediately following S5.1.2.6, and without depressurizing the container, the container is subjected to a burst test in accordance with S6.2.2.1(c) and (d) of this standard. The burst pressure of the container at the end of the sequence of tests in this

section shall not be less than 0.8 times the BP_O value specified by the vehicle manufacturer. The sequence of tests and the burst pressure test are illustrated in figure 1 to S5.1.2. The vehicle manufacturer shall immediately and irrevocably specify upon request, in writing and within 15 business days: the BP_O of the container.

S5.1.2.1. *Drop test.* The container with its container attachments (if any) is dropped once in accordance with S6.2.3.2 of this standard in any one of the four orientations specified in that section. Any container with damage from the drop test that prevents further testing of the container in accordance with S6.2.3.4 of this standard shall be considered to have failed to meet the test for performance durability requirements. In the case of an asymmetric container, the vehicle manufacturer shall immediately and irrevocably specify upon request, in writing, and within 15 business days: the center of gravity of the container.

S5.1.2.2. *Surface damage test.* The container, except if an all-metal container, is subjected to the surface damage test in accordance with the S6.2.3.3 of this standard. Container attachments designed to be removed shall be removed and container attachments that are not designed to be removed shall remain in place. Container attachments that are removed shall not be reinstalled for the remainder of S5.1.2; container attachments that are not removed shall remain in place for the remainder of S5.1.2.

S5.1.2.3. *Chemical exposure and ambient-temperature pressure cycling test.* The container is exposed to chemicals in accordance with S6.2.3.4 and then hydraulically pressure cycled in accordance with S6.2.3.4 of this standard for 60 percent of the number of cycles as specified in S5.1.1.2(a)(1) or (b)(1) as applicable. For all but the last 10 of these cycles, the cycling pressure shall be any pressure between 125.0 percent NWP and 130.0 percent NWP. For the last 10 cycles, the pressure shall be any pressure between 150.0 percent NWP and 155.0 percent NWP.

S5.1.2.4. *High temperature static pressure test.* The container is pressurized to any pressure between (or equal to) 125 percent NWP and 130 percent NWP and held at that pressure no less than 1,000 and no more than 1,050 hours in accordance with S6.2.3.5 of this standard and with the temperature surrounding the container at any temperature between 85.0 °C and 90.0 °C.

S5.1.2.5. *Extreme temperature pressure cycling test.* The container is pressure cycled in accordance with S6.2.3.6 for 40 percent of the number of cycles specified in S5.1.1.2(a)(1) or (b)(1) as applicable. The pressure for the first half of these cycles equals any pressure between 80.0 percent NWP and 85.0 percent NWP with the temperature surrounding the container equal to any temperature between −45.0 °C and −40.0 °C. The pressure for the next half of these cycles equals any pressure between 125.0 percent NWP and 130.0 percent NWP and the temperature surrounding the container equal to any temperature between 85.0 °C and 90.0 °C and the relative humidity surrounding the container not less than 80 percent.

S5.1.2.6. *Residual pressure test.* The container is hydraulically pressurized in accordance with S6.2.3.1 of this standard to a pressure between 180.0 percent NWP and 185.0 percent NWP and held for any duration between 240 to 245 seconds.

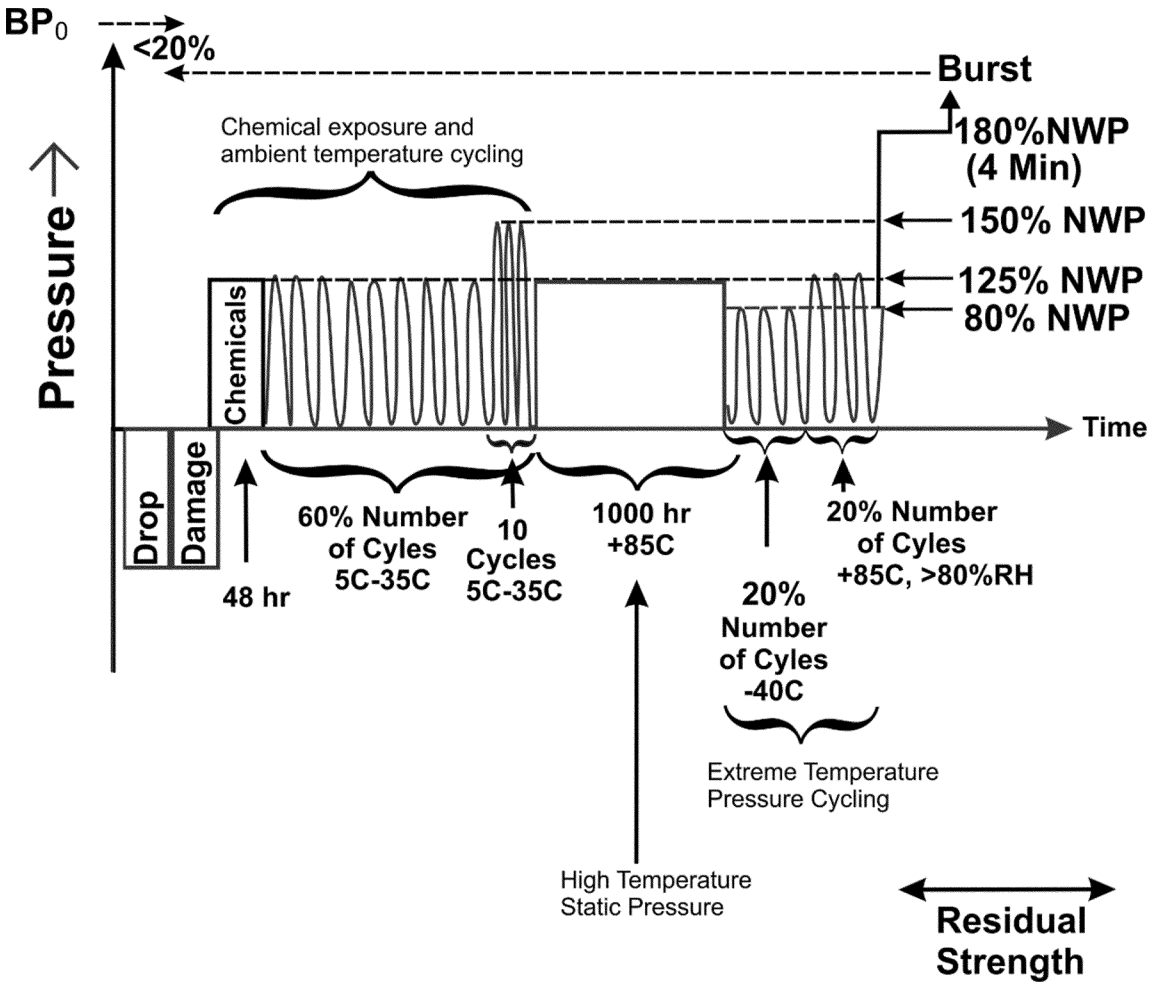

Figure 1 to § 571.308 S5.1.2. Performance Durability Test; (for Illustration Purposes Only)

S5.1.3. *Test for expected on-road performance.* When subjected to the sequence of tests in S5.1.3.1, the CHSS shall meet the permeation and leak requirements specified in S5.1.3.2 and shall not burst. Thereafter, the container of the CHSS shall not burst when subjected to a residual pressure test in accordance with S5.1.3.3. Immediately following the test specified in S5.1.3.3, and without depressurizing the container, the container of the CHSS is subjected to a burst test in accordance with S6.2.2.1(c) and (d) of this standard. The burst pressure of the container at the end of the sequence of tests in this section shall not be less than 0.8 times the BP_O specified by the vehicle manufacturer under S5.1.2.

S5.1.3.1. *Ambient and extreme temperature gas pressure cycling test.* The CHSS is pressure cycled using hydrogen gas for 500 cycles under any temperature and pressure condition for the number of cycles as specified in table 3 to S5.1.3.1, and in accordance with the S6.2.4.1 of this standard test procedure. A static gas pressure leak/permeation test performed in accordance with S5.1.3.2 is conducted after the first 250 pressure cycles and after the remaining 250 pressure cycles.

TABLE 3 TO § 571.308 S5.1.3.1

Number of cycles	*Ambient conditions*	*Initial system equilibration*	*Fuel delivery temperature*	*Cycle initial and final pressure*	*Cycle peak pressure*
5	−30.0 °C to −25.0 °C	−30.0 °C to −25.0 °C	15.0 °C to 25.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
5	−30.0 °C to −25.0 °C	−30.0 °C to −25.0 °C	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
15	−30.0 °C to −25.0 °C	not appliable	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
5	50.0 °C to 55.0 °C, 80% to 100% relative humidity.	50 °C to 55 °C, 80% to 100% relative humidity.	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
20	50.0 °C to 55.0 °C, 80% to 100% relative humidity.	not appliable	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
200	5.0 °C to 35.0 °C	not appliable	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.

TABLE 3 TO § 571.308 S5.1.3.1—Continued

Number of cycles	*Ambient conditions*	*Initial system equilibration*	*Fuel delivery temperature*	*Cycle initial and final pressure*	*Cycle peak pressure*
Extreme temperature static gas pressure leak/permeation test S5.1.3.2.	55.0 °C to 60.0 °C	55.0 °C to 60.0 °C	not appliable	not appliable	100.0% SOC to 105.0% SOC.
25	50.0 °C to 55.0 °C, 80% to 100% relative humidity.	not appliable	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
25	−30.0 °C to −25.0 °C	not appliable	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
200	5.0 °C to 35.0 °C	not appliable	−40.0 °C to −33.0 °C	1.0 MPa to 2.0 MPa	100.0% SOC to 105.0% SOC.
Extreme temperature static gas pressure leak/permeation test S5.1.3.2.	55.0 °C to 60.0 °C	55.0 °C to 60.0 °C	not appliable	not appliable	100.0% SOC to 105.0% SOC.

S5.1.3.2. *Extreme temperature static gas pressure leak/permeation test.* When tested in accordance with S6.2.4.2 of this standard after each group of 250 pneumatic pressure cycles in S5.1.3.1, the CHSS shall not discharge hydrogen more than 46 millilitres per hour (mL/h) for each litre of CHSS water capacity.

S5.1.3.3. *Residual pressure test.* The container of the CHSS is hydraulically pressurized in accordance with S6.2.3.1 to any pressure between 1.800 times NWP and 1.850 times NWP and held at that pressure for any duration between 240 to 245 seconds.

S5.1.4. *Test for service terminating performance in fire.* When the CHSS is exposed to the two-stage localized or engulfing fire test in accordance with S6.2.5 of this standard, the container shall not burst. The pressure inside the CHSS shall fall to 1 MPa or less within the test time limit specified in S6.2.5.3(o) of this standard. Any leakage or venting, other than that through TPRD outlet(s), shall not result in jet flames greater than 0.5 m in length. If venting occurs though the TPRD, the venting shall be continuous.

S5.1.5. *Tests for performance durability of closure devices.* All tests are performed at ambient temperature of 5 °C to 35 °C unless otherwise specified.

S5.1.5.1. *TPRD requirements.* The TPRD shall not activate at any point during the test procedures specified in S6.2.6.1.1, S6.2.6.1.3, S6.2.6.1.4, S6.2.6.1.5, S6.2.6.1.6, S6.2.6.1.7, and S6.2.6.1.8 of this standard.

(a) A TPRD subjected to pressure cycling in accordance with S6.2.6.1.1 of this standard shall be sequentially tested in accordance with S6.2.6.1.8, S6.2.6.1.9, and S6.2.6.1.10 of this standard;

(1) When tested in accordance with S6.2.6.1.8, the TPRD shall not exhibit leakage greater than 10 normal milliliters per minute (NmL/hour).

(2) When tested in accordance with S6.2.6.1.9 of this standard, the TPRD shall activate within no more than 2 minutes of the average activation time of three new TPRDs tested in accordance with S6.2.6.1.9;

(3) When tested in accordance with S6.2.6.1.10 of this standard, the TPRD shall have a flow rate of at least 90 percent of the highest baseline flow rate established in accordance with S6.2.6.1.10;

(b)(1) A TPRD shall activate in less than ten hours when tested at the vehicle manufacturer's specified activation temperature in accordance with S6.2.6.1.2 of this standard;

(2) When tested at the accelerated life temperature in accordance with S6.2.6.1.2 of this standard, a TPRD shall not activate in less than 500 hours and shall not exhibit leakage greater than 10 NmL/hour when tested in accordance with S6.2.6.1.8 of this standard;

(c) A TPRD subjected to temperature cycling testing in accordance with S6.2.6.1.3 of this standard shall be sequentially tested in accordance with S6.2.6.1.8(a)(3), S6.2.6.1.9, and S6.2.6.1.10 of this standard;

(1) When tested in accordance with S6.2.6.1.8(a)(3) of this standard, the TPRD shall not exhibit leakage greater than 10 NmL/hour;

(2) When tested in accordance with S6.2.6.1.9 of this standard, the TPRD shall activate within no more than 2 minutes of the average activation time of three new TPRDs tested in accordance with S6.2.6.1.9;

(3) When tested in accordance with S6.2.6.1.10 of this standard, the TPRD shall have a flow rate of at least 90 percent of the highest baseline flow rate established in accordance with S6.2.6.1.10;

(d) A TPRD subjected to salt corrosion resistance testing in accordance with S6.2.6.1.4 of this standard shall be sequentially tested in accordance with S6.2.6.1.8, S6.2.6.1.9, and S6.2.6.1.10 of this standard;

(1) When tested in accordance with S6.2.6.1.8 of this standard, the TPRD shall not exhibit leakage greater than 10 NmL/hour;

(2) When tested in accordance with S6.2.6.1.9 of this standard, the TPRD shall activate within no more than 2 minutes of the average activation time of three new TPRDs tested in accordance with S6.2.6.1.9;

(3) When tested in accordance with S6.2.6.1.10 of this standard, the TPRD shall have a flow rate of at least 90 percent of the highest baseline flow rate established in accordance with S6.2.6.1.10;

(e) A TPRD subjected to vehicle environment testing in accordance with S6.2.6.1.5 of this standard shall not show signs of cracking, softening, or swelling, and thereafter shall be sequentially tested in accordance with S6.2.6.1.8, S6.2.6.1.9, and S6.2.6.1.10 of this standard. Cosmetic changes such as pitting or staining are not considered failures.

(1) When tested in accordance with S6.2.6.1.8 of this standard, the TPRD shall not exhibit leakage greater than 10 NmL/hour.

(2) When tested in accordance with S6.2.6.1.9 of this standard, the TPRD shall activate within no more than 2 minutes of the average activation time of three new TPRDs tested in accordance with S6.2.6.1.9,

(3) When tested in accordance with S6.2.6.1.10 of this standard, the TPRD shall have a flow rate of at least 90 percent of the highest baseline flow rate established in accordance with S6.2.6.1.10;

(f) A TPRD subjected to stress corrosion cracking testing in accordance with S6.2.6.1.6 of this standard shall not exhibit visible cracking or delaminating;

(g) A TPRD shall be subjected to drop and vibration testing in accordance with

S6.2.6.1.7 of this standard. If the TPRD progresses beyond S6.2.6.1.7(c) to complete testing under S6.2.6.1.7(d), it shall then be sequentially tested in accordance with S6.2.6.1.8, S6.2.6.1.9, and S6.2.6.1.10 of this standard.

(1) When tested in accordance with S6.2.6.1.8 of this standard, the TPRD shall not exhibit leakage greater than 10 NmL/hour.

(2) When tested in accordance with S6.2.6.1.9 of this standard, the TPRD shall activate within no more than 2 minutes of the average activation time of three new TPRDs tested in accordance with S6.2.6.1.9,

(3) When tested in accordance with S6.2.6.1.10 of this standard, the TPRD shall have a flow rate of at least 90 percent of the highest baseline flow rate established in accordance with S6.2.6.1.10;

(h) One new TPRD subjected to leak testing in accordance with S6.2.6.1.8 of this standard shall not exhibit leakage greater than 10 NmL/hour;

(i) Three new TPRDs are subjected to a bench top activation test in accordance with S6.2.6.1.9 of this standard. The maximum difference in the activation time between any two of the three TPRDs shall be 2 minutes or less.

S5.1.5.2. *Check valve and shut-off valve requirements.* This section applies to both check valves and shut-off valves.

(a) A valve subjected to hydrostatic strength testing in accordance with S6.2.6.2.1 of this standard shall not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c) nor burst at less than 250 percent NWP;

(b) A valve subjected to leak testing in accordance with S6.2.6.2.2 of this standard shall not exhibit leakage greater than 10 NmL/hour;

(c)(1) A check valve shall meet the requirements when tested sequentially as follows:

(i) The check valve shall reseat and prevent reverse flow after each cycle when subjected to 13,500 pressure cycles in accordance with S6.2.6.2.3 of this standard to any pressure between 100.0 and 105.0 percent NWP and at any temperature between 5.0 °C and 35.0 °C;

(ii) The same check valve shall reseat and prevent reverse flow after each cycle when subjected to 750 pressure cycles in accordance with S6.2.6.2.3 of this standard to any pressure between 125.0 and 130.0 percent NWP and at any temperature between 85.0 °C and 90.0 °C;

(iii) The same check valve shall reseat and prevent reverse flow after each cycle when subjected to 750 pressure cycles in accordance with S6.2.6.2.3 of this standard to any pressure between 80.0 and 85.0 percent NWP and at any temperature between −45.0 °C and −40.0 °C;

(iv) The same check valve shall be subjected to chatter flow testing in accordance with S6.2.6.2.4 of this standard;

(v) When tested in accordance with S6.2.6.2.2 of this standard, the same check valve shall not exhibit leakage greater than 10 NmL/hour;

(vi) When tested in accordance with S6.2.6.2.1 of this standard, the same check valve shall not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c), nor burst at less than 250 percent NWP, nor burst at less than 80 percent of the burst pressure of the new unit tested in accordance with S5.1.5.2(a) unless the burst pressure of the valve exceeds 400 percent NWP.

(2) A shut-off valve shall meet the requirements when tested sequentially as follows:

(i) The shut-off valve shall be subjected to 45,000 pressure cycles in accordance with S6.2.6.2.3 to any pressure between 100.0 and 105.0 percent NWP and at any temperature between 5.0 °C and 35.0 °C;

(ii) The same shut-off valve shall be subjected to 2,500 pressure cycles in accordance with S6.2.6.2.3 of this standard to any pressure between 125.0 and 130.0 percent NWP and at any temperature between 85.0 °C and 90.0 °C;

(iii) The same shut-off valve shall be subjected to 2,500 pressure cycles in accordance with S6.2.6.2.3 of this standard to any pressure between 80.0 and 85.0 percent NWP and at any temperature between −45.0 °C and −40.0 °C;

(iv) The same shut-off valve shall be subjected to chatter flow testing in accordance with S6.2.6.2.4 of this standard;

(v) When tested in accordance with S6.2.6.2.2 of this standard, the same shut-off valve shall not exhibit leakage greater than 10 NmL/hour;

(vi) When tested in accordance with S6.2.6.2.1 of this standard, the same shut-off valve shall not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c), nor burst at less than 250 percent NWP, nor burst at less than 80 percent of the burst pressure of the new unit tested in accordance with S5.1.5.2(a) unless the burst pressure of the valve exceeds 400 percent NWP.

(d) A valve subjected to salt corrosion resistance testing in accordance with S6.2.6.1.4 of this standard shall be tested sequentially in accordance with S6.2.6.2.2 followed by S6.2.6.2.1 of this standard.

(1) When tested in accordance with S6.2.6.2.2 of this standard, the valve shall not exhibit leakage greater than 10 NmL/hour;

(2) When tested in accordance with S6.2.6.2.1 of this standard, the valve shall not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c), nor burst at less than 250 percent NWP, nor burst at less than 80 percent of the burst pressure of the new unit tested in accordance with S5.1.5.2(a) unless the burst pressure of the valve exceeds 400 percent NWP.

(e) A valve subjected to vehicle environment testing in accordance with S6.2.6.1.5 of this standard shall not show signs of cracking, softening, or swelling and shall be tested sequentially in accordance with S6.2.6.2.2 followed by S6.2.6.2.1 of this standard. Cosmetic changes such as pitting or staining are not considered failures.

(1) When tested in accordance with S6.2.6.2.2 of this standard, the valve shall not exhibit leakage greater than 10 NmL/hour;

(2) When tested in accordance with S6.2.6.2.1 of this standard, the valve shall not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c), nor burst at less than 250 percent NWP, nor burst at less than 80 percent of the burst pressure of the new unit tested in accordance with S5.1.5.2(a) unless the burst pressure of the valve exceeds 400 percent NWP;

(f) A shut-off valve shall have a minimum resistance of 240 kΩ between the power conductor and the valve casing, and shall not exhibit open valve, smoke, fire, melting, or leakage greater than 10 NmL/hour when subjected to electrical testing in accordance with S6.2.6.2.5 followed by leak testing in accordance with S6.2.6.2.2 of this standard;

(g) A valve subjected to vibration testing in accordance with S6.2.6.2.6 of this standard shall be tested sequentially in accordance with S6.2.6.2.2 followed by S6.2.6.2.1 of this standard.

(1) When tested in accordance with S6.2.6.2.2 of this standard, the valve shall not exhibit leakage greater than 10 NmL/hour;

(2) When tested in accordance with S6.2.6.2.1 of this standard, the valve shall not leak to an extent that prevents continued pressurization in accordance with S6.2.6.2.1(c), nor burst at less than 250 percent NWP, nor burst at less than 80 percent of the burst pressure of the new unit tested in accordance with

S5.1.5.2(a) unless the burst pressure of the valve exceeds 400 percent NWP.

(h) A valve shall not exhibit visible cracking or delaminating when subjected to stress corrosion cracking testing in accordance with S6.2.6.1.6 of this standard.

S5.1.6. *Labeling.* Each vehicle container shall be permanently labeled with the information specified in paragraphs S5.1.6(a) through (g). Any label affixed to the container in compliance with this section shall remain in place and be legible for the vehicle manufacturer's recommended service life of the container. The information shall be in English and in letters and numbers that are at least 6.35 millimeters (¼ inch) high.

(a) The statement: ''If there is a question about the proper use, installation, or maintenance of this compressed hydrogen storage system, contact _____,'' inserting the vehicle manufacturer's name, address, and telephone number. The name provided shall be consistent with the vehicle manufacturer's filing in accordance with 49 CFR part 566.

(b) The container serial number.

(c) The statement: ''Manufactured in _____,'' inserting the month and year of manufacture of the container.

(d) The statement ''Nominal Working Pressure _____MPa (_____psig),'' Inserting the nominal working pressure which shall be no greater than 70 MPa.

(e) The statement ''Compressed Hydrogen Gas Only.''

(f) The statement: ''Do Not Use After _____,'' inserting the month and year that mark the end of the vehicle manufacturer's recommended service life for the container.

(g) The statement: ''This container should be visually inspected for damage and deterioration after a motor vehicle accident or fire, and either: (i) at least every 12 months when installed on a vehicle with a GVWR greater than 4,536 kg, or (ii) at least every 36 months or 36,000 miles, whichever comes first, when installed on a vehicle with a GVWR less than or equal to 4,536 kg.''

S6. *Test procedures.*

S6.1. [Reserved]

S6.2. *Test procedures for compressed hydrogen storage.*

S6.2.1. Unless otherwise specified, data sampling for pressure cycling under S6.2 shall be at least 1 Hz.

S6.2.2. *Test procedures for baseline performance metrics.*

S6.2.2.1. *Burst test.* (a) The container is filled with a hydraulic fluid.

(b) The container, the surrounding environment, and the hydraulic fluid are at any temperature between 5.0 °C and 35.0 °C.

(c) The rate of pressurization shall be less than or equal to 1.4 MPa per second for pressures higher than 1.50 times NWP. If the rate exceeds 0.35 MPa per second at pressures higher than 1.50 times NWP, then the container is placed in series between the pressure source and the pressure measurement device.

(d) The container is hydraulically pressurized until burst and the burst pressure of the container is recorded.

S6.2.2.2. *Pressure cycling test.* (a) The container is filled with a hydraulic fluid.

(b) The container surface, or the surface of the container attachments if present, the environment surrounding the container, and the hydraulic fluid are at any temperature between 5.0 °C and 35.0 °C at the start of testing and maintained at the specified temperature for the duration of the testing.

(c) The container is pressure cycled at any pressure between 1.0 MPa and 2.0 MPa up to the pressure specified in the respective section of S5. The cycling rate shall be any rate up to 10 cycles per minute.

(d) The temperature of the hydraulic fluid entering the container is maintained and monitored at any temperature between 5.0 °C and 35.0 °C.

(e) The vehicle manufacturer may specify a hydraulic pressure cycle profile within the specifications of S6.2.2.2(c). Vehicle manufacturers shall submit this profile to NHTSA immediately and irrevocably, upon request, in writing, and within 15 business days; otherwise, NHTSA shall determine the profile. At NHTSA's option, NHTSA shall cycle the container within 10 percent of the vehicle manufacturer's specified cycling profile.

S6.2.3. *Performance durability test.*

S6.2.3.1. *Residual pressure test.* The container is pressurized smoothly and continually with hydraulic fluid or hydrogen gas as specified until the pressure level is reached and held for the specified time.

S6.2.3.2. *Drop impact test.* The container is drop tested without internal pressurization or attached valves. The surface onto which the container is dropped shall be a smooth, horizontal, uniform, dry, concrete pad or other flooring type with equivalent hardness. No attempt shall be made to prevent the container from bouncing or falling over during a drop test, except for the vertical drop test, during which the test article shall be prevented from falling over. The container shall be dropped in any one of the following four orientations described below and illustrated in figure 2 to S6.2.3.2.

(a) From a position within 5° of horizontal with the lowest point of the container at any height between 1.800 meters and 1.820 meters above the surface onto which it is dropped. In the case of a non-axisymmetric container, the largest projection area of the container shall be oriented downward and aligned horizontally;

(b) From a position within 5° of vertical with the center of any shut-off valve interface location upward and with any potential energy of between 488 Joules and 538 Joules. If a drop energy of between 488 Joules and 538 Joules would result in the height of the lower end being more than 1.820 meters above the surface onto which it is dropped, the container shall be dropped from any height with the lower end between 1.800 meters and 1.820 meters above the surface onto which it is dropped. If a drop energy of between 488 Joules and 538 Joules would result in the height of the lower end being less than 0.100 meters above the surface onto which it is dropped, the container shall be dropped from any height with the lower end between 0.100 meters and 0.120 meters above the surface onto which it is dropped. In the case of a non-axisymmetric container, the center of any shut-off valve interface location and the container's center of gravity shall be aligned vertically, with the center of that shut-off valve interface location upward;

(c) From a position within 5° of vertical with the center of any shut-off valve interface location downward with any potential energy of between 488 Joules and 538 Joules. If a potential energy of between 488 Joules and 538 Joules would result in the height of the lower end being more than 1.820 meters above the surface onto which it is dropped, the container shall be dropped from any height with the lower end between 1.800 meters and 1.820 meters above the surface onto which it is dropped. If a drop energy of between 488 Joules and 538 Joules would result in the height of the lower end being less than 0.100 meters above the surface onto which it is dropped, the container shall be dropped from any height with the lower end between 0.100 meters and 0.120 meters above the surface onto which it is dropped. In the case of a non-axisymmetric container, the center of any shut-off valve interface location and the container's center of gravity shall be aligned vertically, with the center of that shut-off valve interface location downward;

(d) From any angle between 40° and 50° from the vertical orientation with the center of any shut-off valve interface location downward, and with the container center of gravity between 1.800 meters and 1.820 meters above the

surface onto which it is dropped. However, if the lowest point of the container is closer to the ground than 0.60 meters, the drop angle shall be changed so that the lowest point of the container is between 0.60 meters and 0.62 meters above the ground and the center of gravity is between 1.800 meters and 1.820 meters above the surface onto which it is dropped. In the case of a non-axisymmetric container, the line passing through the center of any shut-off valve interface location and the container's center of gravity shall be at any angle between 40° and 50° from the vertical orientation. If this specification results in more than one possible container orientation, the drop shall be conducted from the orientation that results in the lowest positioning of the center of the shut-off valve interface location.

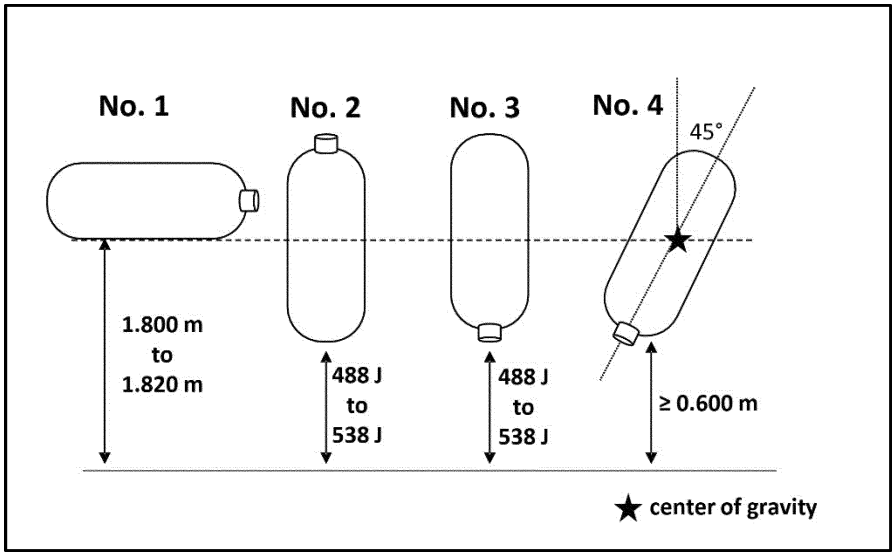

Figure 2 to § 571.308 S6.2.3.2. The Four Drop Orientations; (for Illustration Purposes Only)

S6.2.3.3. *Surface damage test.* The surface damage test consists of surface cut generation and pendulum impacts as described below.

(a) Surface cut generation: Two longitudinal saw cuts are made at any location on the same side of the outer surface of the unpressurized container, as shown in Figure 3, or on the container attachments if present. The first cut is 0.75 millimeters to 1.25 millimeters deep and 200 millimeters to 205 millimeters long; the second cut, which is only required for containers affixed to the vehicle by compressing its composite surface, is 1.25 millimeters to 1.75 millimeters deep and 25 millimeters to 28 millimeters long.

(b) Pendulum impacts: Mark the outer surface of the container, or the container attachments if present, with five separate, non-overlapping circles each having any linear diameter between 100.0 millimeters and 105.0 millimeters, as shown in Figure 3. The marks shall be located on the side opposite from the saw cuts, or located on a different chamber in the case of a container with more than one chamber. Within 30 minutes following preconditioning for any duration from 12 hours to 24 hours in an environmental chamber at any temperature between −45.0 °C and −40.0 °C, impact the center of each of the five areas with a pendulum having a pyramid with equilateral faces and square base, and the tip and edges being rounded to a radius of between 2.0 millimeters and 4.0 millimeters. The center of impact of the pendulum shall coincide with the center of gravity of the pyramid. The energy of the pendulum at the moment of impact with each of the five marked areas on the container is any energy between 30.0 Joules and 35.0 Joules. The container is secured in place during pendulum impacts and is not pressurized above 1 MPa.

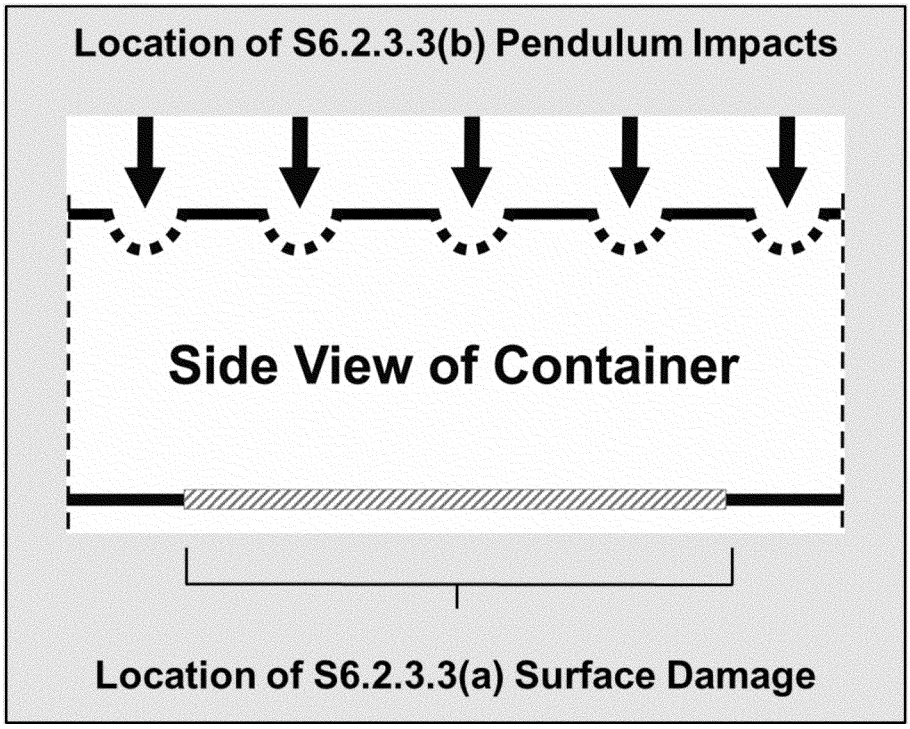

Figure 3 to § 571.308 S6.2.3.3. Locations of Surface Damage for S6.2.3.3(a) and Pendulum Impacts for S6.2.3.3(b); (for Illustration Purposes Only)

S6.2.3.4. *Chemical exposure and ambient temperature pressure cycling test.* (a) Each of the 5 areas preconditioned by pendulum impact in S6.2.3.3(b) is exposed to any one of five solutions:

(1) 19 to 21 percent by volume sulfuric acid in water;

(2) 25 to 27 percent by weight sodium hydroxide in water;

(3) 5 to 7 percent by volume methanol in gasoline;

(4) 28 to 30 percent by weight ammonium nitrate in water; and

(5) 50 to 52 percent by volume methyl alcohol in water.

(b) The container is oriented with the fluid exposure areas on top. A pad of glass wool approximately 0.5 centimeters thick and 100 millimeters in diameter is placed on each of the five preconditioned areas. A sufficient amount of the test fluid is applied to the glass wool to ensure that the pad is wetted across its surface and through its thickness for the duration of the test. A plastic covering shall be applied over the glass wool to prevent evaporation.

(c) The exposure of the container with the glass wool is maintained for at least 48 hours and no more than 60 hours with the container hydraulically pressurized to any pressure between 125.0 percent NWP and 130.0 percent NWP. During exposure, the temperature surrounding the container is maintained at any temperature between 5.0 °C and 35.0 °C.

(d) Hydraulic pressure cycling is performed in accordance with S6.2.2.2 at any pressure within the specified ranges according to S5.1.2.3 for the specified number of cycles. The glass wool pads are removed and the container surface is rinsed with water after the cycles are complete.

S6.2.3.5. *Static pressure test.* The container is hydraulically pressurized to the specified pressure in a temperature-controlled chamber. The temperature of the chamber and the container surface, or the surface of the container attachments if present, are held at the specified temperature for the specified duration.

S6.2.3.6. *Extreme temperature pressure cycling test.* (a) The container is filled with hydraulic fluid for each test;

(b) At the start of each test, the container surface, or the surface of the container attachments if present, the hydraulic fluid, and the environment surrounding the container are at any temperature and relative humidity (if applicable) within the ranges specified in S5.1.2.5 of this standard and maintained for the duration of the testing.

(c) The container is pressure cycled from any pressure between 1.0 MPa and 2.0 MPa up to the specified pressure at a rate not exceeding 10 cycles per minute for the specified number of cycles;

(d) The temperature of the hydraulic fluid entering the container shall be measured as close as possible to the container inlet.

S6.2.4. *Test procedures for expected on-road performance.*

S6.2.4.1. *Ambient and extreme temperature gas pressure cycling test.* (a) In accordance with table 3 to S5.1.3.1 of this standard, the specified ambient conditions of temperature and relative humidity, if applicable, are maintained within the test environment throughout each pressure cycle. When required in accordance with table 3 to S5.1.3.1, the CHSS temperature shall be in the specified initial system equilibration temperature range between pressure cycles.

(b) The CHSS is pressure cycled from any pressure between 1.0 MPa and 2.0 MPa up to any pressure within the specified peak pressure range in accordance with table 3 to this section. The temperature of the hydrogen fuel dispensed to the container is controlled to within the specified temperature range within 30 seconds of fueling initiation. The specified number of pressure cycles are conducted.

(c) The ramp rate for pressurization shall be greater than or equal to the ramp rate given in table 4 to S6.2.4.1(c) according to the CHSS volume, the ambient conditions, and the fuel delivery temperature. If the required ambient temperature is not available in table 4 to this section, the closest ramp rate value or a linearly interpolated

value shall be used. The pressure ramp rate shall be decreased if the gas temperature in the container exceeds 85 °C.

TABLE 4 TO § 571.308 S6.2.4.1(c)

CHSS volume (L)	CHSS pressurization rate (MPa/min)			
	50.0 °C to 55.0 °C ambient conditions −33.0 °C to −40.0 °C fuel delivery temperature	5.0 °C to 35.0 °C ambient conditions −33.0 °C to −40.0 °C fuel delivery temperature	−30.0 °C to −25.0 °C ambient conditions −33.0 °C to −40.0 °C fuel delivery temperature	−30.0 °C to −25.0 °C ambient conditions 15.0 °C to 25.0 °C fuel delivery temperature
50	7.6	19.9	28.5	13.1
100	7.6	19.9	28.5	7.7
174	7.6	19.9	19.9	5.2
250	7.6	19.9	19.9	4.1
300	7.6	16.5	16.5	3.6
400	7.6	12.4	12.4	2.9
500	7.6	9.9	9.9	2.3
600	7.6	8.3	8.3	2.1
700	7.1	7.1	7.1	1.9
1,000	5.0	5.0	5.0	1.4
1,500	3.3	3.3	3.3	1.0
2,000	2.5	2.5	2.5	0.7
2,500	2.0	2.0	2.0	0.5

(d) The de-fueling rate shall be any rate greater than or equal to the intended vehicle's maximum fuel-demand rate. Out of the 500 pressure cycles, any 50 pressure cycles are performed using a de-fueling rate greater than or equal to the maintenance de-fueling rate.

S6.2.4.2. *Gas permeation test.* (a) A CHSS is filled with hydrogen gas to any SOC between 100.0 percent and 105.0 percent and placed in a sealed container. The CHSS is held for any duration between 12 hours and 24 hours at any temperature between 55.0 °C and 60.0 °C prior to the start of the test.

(b) The permeation from the CHSS shall be determined hourly throughout the test.

(c) The test shall continue for 500 hours or until the permeation rate reaches a steady state. Steady state is achieved when at least 3 consecutive leak rates separated by any duration between 12 hours and 48 hours are within 10 percent of the previous rate.

S6.2.5. *Test procedures for service terminating performance in fire.* The fire test consists of two stages: a localized fire stage followed by an engulfing fire stage. The burner configuration for the fire test is specified in S6.2.5.1. The overall test configuration of the fire test is verified using a pre-test checkout in accordance with S6.2.5.2 prior to the fire test of the CHSS. The fire test of the CHSS is conducted in accordance with S6.2.5.3.

S6.2.5.1. *Burner configuration.* (a) The fuel for the burner shall be liquefied petroleum gas (LPG).

(b) The width of the burner shall be between 450 millimeters and 550 millimeters.

(c) The length of the burner used for the localized fire stage shall be between 200 millimeters and 300 millimeters.

(d) The length of the burner used for the engulfing fire stage shall be in accordance with S6.2.5.3(m).

(e) The burner nozzle configuration and installation shall be in accordance with table 5 to S6.2.5.1. The nozzles shall be installed uniformly on six rails.

TABLE 5 TO § 571.308 S6.2.5.1

Item	Description
Nozzle type	Liquefied petroleum gas fuel nozzle with air pre-mix.
LPG orifice in nozzle	0.9 to 1.1 millimeter inner diameter.
Air ports in nozzle	Four (4) holes, 5.8 to 7.0 millimeter inner diameter.
Fuel/Air mixing tube in nozzle	9 to 11 millimeter inner diameter.
Number of rails	6.
Center-to-center spacing of rails	100 to 110 millimeter.
Center-to-center nozzle spacing along the rails	45 to 55 millimeter.

S6.2.5.2. *Pre-test checkout.* (a) The pre-test checkout procedure in this section shall be performed to verify the fire test configuration for the CHSS tested in accordance with S6.2.5.3.

(b) A pre-test container is a 12-inch Schedule 40 Nominal Pipe Size steel pipe with end caps. The cylindrical length of the pre-test container shall be equal to or longer than the overall length of the CHSS to be tested in S6.2.5.3, but no shorter than 0.80 m and no longer than 1.75 m.

(c) The pre-test container shall be mounted over the burner:

(1) At any height between 95 millimeters and 105 millimeters above the burner;

(2) Such that the nozzles from the two center rails are pointing toward the bottom center of the pre-test container; and

(3) Such that the container's position relative to the localized and engulfing zones of the burner is consistent with the positioning of the CHSS over the burner in S6.2.5.3.

(d) For outdoor test sites, wind shielding shall be used. The separation between the pre-test container and the walls of the wind shields shall be at least 0.5 meters.

(e) Temperatures during the pre-test check-out shall be measured at least once per second using 3.2 millimeter diameter or less K-type sheath thermocouples.

(f) The thermocouples shall be located in sets to measure temperatures along the cylindrical section of the pre-test container. These thermocouples are secured by straps or other mechanical attachments within 5 millimeters from the pre-test container surface. One set of thermocouples consists of:

(1) One thermocouple located at the bottom surface exposed to the burner flame,

(2) One thermocouple located mid-height along the left side of the cylindrical surface,

(3) One thermocouple located mid-height along the right side of the cylindrical surface, and

(4) One thermocouple located at the top surface opposite to the burner flame.

(g) One set of thermocouples shall be centrally located at the localized fire zone of the CHSS to be tested as determined in S6.2.5.3. Two additional sets of thermocouples shall be spread out over the remaining length of the engulfing fire zone of the CHSS to be tested that is not part of the localized fire zone of the CHSS to be tested.

(h) Burner monitor thermocouples shall be located between 20 millimeters and 30 millimeters below the bottom surface of the pre-test container in the same three horizontal locations described in S6.2.5.2(g). These thermocouples shall be mechanically supported to prevent movement.

(i) With the localized burner ignited, the LPG flow rate to the burner shall be set such that the 60-second rolling averages of individual temperature readings in the localized fire zone shall be in accordance with the localized stage row in the table below.

(j) With the entire burner ignited, the LPG flow rate to the burner shall be set such that the 60-second rolling averages of individual temperature readings shall be in accordance with the engulfing stage row in table 6 to S6.2.5.2.

TABLE 6 TO § 571.308 S6.2.5.2

Fire stage	Temperature range on bottom of pre-test container	Temperature range on sides of pre-test container	Temperature range on top of pre-test container
Localized	450 °C to 700 °C	less than 750 °C.	less than 300 °C.
Engulfing	Average temperatures of the pre-test container surface measured at the three bottom locations shall be greater than 600 °C.	Not applicable.	Average temperatures of the pre-test container surface measured at the three top locations shall be at least 100 °C, and when greater than 750 °C, shall also be less than the average temperatures of the pre-test container surface measured at the three bottom locations.

S6.2.5.3. *CHSS fire test.* (a) The CHSS to be fire tested shall include TPRD vent lines.

(b) The CHSS to be fire tested shall be mounted at any height between 95 millimeters and 105 millimeters above the burner.

(c) CHSS shall be positioned for the localized fire test by orienting the CHSS such that the distance from the center of the localized fire exposure to the TPRD(s) and TPRD sense point(s) is at or near maximum.

(d) When the container is longer than the localized burner, the localized burner shall not extend beyond either end of the container in the CHSS.

(e) The CHSS shall be filled with compressed hydrogen gas to any SOC between 100.0 percent and 105.0 percent.

(f) For outdoor test sites, the same wind shielding shall be used as was used for S6.2.5.2. The separation between the CHSS and the walls of the wind shields shall be at least 0.5 meters.

(g) Burner monitor temperatures shall be measured below the bottom surface of the CHSS in the same positions as specified in S6.2.5.2(h).

(h) The allowable limits for the burner monitor temperatures during the CHSS fire test shall be established based on the results of the pre-test checkout as follows:

(1) The minimum value for the burner monitor temperature during the localized fire stage ($Tmin_{LOC}$) shall be calculated by subtracting 50 °C from the 60-second rolling average of the burner monitor temperature in the localized fire zone of the pre-test checkout. If the resultant $Tmin_{LOC}$ exceeds 600 °C, $Tmin_{LOC}$ shall be 600 °C.

(2) The minimum value for the burner monitor temperature during the engulfing fire stage ($Tmin_{ENG}$) shall be calculated by subtracting 50 °C from the 60-second rolling average of the average of the three burner monitor temperatures during the engulfing fire stage of the pre-test checkout. If the resultant $Tmin_{ENG}$ exceeds 800 °C, $Tmin_{ENG}$ shall be 800 °C.

(i) The localized fire stage is initiated by starting the fuel flow to the localized burner and igniting the burner.

(j) The 10-second rolling average of the burner monitor temperature in the localized fire zone shall be at least 300 °C within 1 minute of ignition and for the next 2 minutes.

(k) Within 3 minutes of the igniting the burner, using the same LPG flow rate as S6.2.5.2(i), the 60-second rolling average of the localized zone burner monitor temperature shall be greater than $Tmin_{LOC}$ as determined in S6.2.5.3(h)(1).

(l) After 10 minutes from igniting the burner, the engulfing fire stage is initiated.

(m) The engulfing fire zone includes the localized fire zone and extends in one direction towards the nearest TPRD or TPRD sense point along the complete length of the container up to a maximum burner length of 1.65 m.

(n) Within 2 minutes of the initiation of the engulfing fire stage, using the same LPG flow rate as S6.2.5.2(j), the 60-second rolling average of the engulfing burner monitor temperature shall be equal or greater than $Tmin_{ENG}$ as determined in S6.2.5.3(h)(2).

(o) The fire testing continues until the pressure inside the CHSS is less than or equal to 1.0 MPa or until:

(1) A total test time of 60 minutes for CHSS on vehicles with a GVWR of 10,000 pounds or less or;

(2) A total test time of 120 minutes for CHSS on vehicles with a GVWR over 10,000 pounds.

S6.2.6. *Test procedures for performance durability of closure devices.*

S6.2.6.1. *TPRD performance tests.* Unless otherwise specified, testing is performed with either hydrogen gas with a purity of at least 99.97 percent, less than or equal to 5 parts per million of water, and less or equal to 1 part per million particulate, or with an inert gas. All tests are performed at any temperature between 5.0 °C and 35.0 °C unless otherwise specified.

S6.2.6.1.1. *Pressure cycling test.* A TPRD undergoes 15,000 internal pressure cycles at a rate not exceeding 10 cycles per minute. The table below summarizes the pressure cycles. Any condition within the ranges specified in table 7 to this section may be selected for testing.

(a) The first 10 pressure cycles shall be from any low pressure of between 1.0 MPa and 2.0 MPa to any high pressure between 150.0 percent NWP and 155.0 percent NWP. These cycles are conducted at any sample temperature between 85.0 °C to 90.0 °C.

(b) The next 2,240 pressure cycles shall be from any low pressure between 1.0 MPa and 2.0 MPa to any high pressure of between 125.0 percent NWP and 130.0 percent NWP. These cycles are conducted at any sample temperature between 85.0 °C to 90.0 °C.

(c) The next 10,000 pressure cycles shall be from any low pressure of between 1.0 MPa and 2.0 MPa to any high pressure between 125.0 percent NWP and 130.0 percent NWP. These cycles are conducted at a sample temperature between 5.0 °C to 35.0 °C.

(d) The final 2,750 pressure cycles shall be from any low pressure between 1.0 MPa and 2.0 MPa to any high pressure between 80.0 percent NWP and 85.0 percent NWP. These cycles are conducted at any sample temperature between −45.0 °C to −40.0 °C.

TABLE 7 TO § 571.308 S6.2.6.1.1

Number of cycles	Low pressure	High pressure	Sample temperature for cycles
First 10	1.0 MPa to 2.0 MPa	150.0% NWP to 155.0% NWP	85.0 °C to 90.0 °C.
Next 2,240	1.0 MPa to 2.0 MPa	125.0% NWP to 130.0% NWP	85.0 °C to 90.0 °C.
Next 10,000	1.0 MPa to 2.0 MPa	125.0% NWP to 130.0% NWP	5.0 °C to 35.0 °C.
Final 2,750	1.0 MPa to 2.0 MPa	80.0% NWP to 85.0% NWP	−45.0 °C to −40.0 °C.

S6.2.6.1.2. *Accelerated life test.* (a) Two TPRDs undergo testing; one at the vehicle manufacturer's specified activation temperature, and one at an accelerated life temperature, T_L, given in °C using equation 2 to this section, where β = 273.15 °C, T_{ME} is 85 °C, and T_f is the vehicle manufacturer's specified activation temperature in °C.:

Equation 2 to § 571.308 S6.2.6.1.2

$$T_L = \left(\frac{0.502}{\beta + T_f} + \frac{0.498}{\beta + T_{ME}}\right)^{-1} - \beta$$

(b) The TPRDs are placed in an oven or liquid bath maintained within 5.0 °C of the specified temperature per S6.2.6.1.2(a). The TPRD inlets are pressurized with hydrogen to any pressure between 125.0 percent NWP and 130.0 percent NWP and time until activation is measured.

S6.2.6.1.3. *Temperature cycling test.* (a) An unpressurized TPRD is placed in a cold liquid bath maintained at any temperature between −45.0 °C and −40.0 °C. The TPRD shall remain in the cold bath for any duration not less than 2 hours and not more than 24 hours. The TPRD is removed from the cold bath and transferred, within five minutes of removal, to a hot liquid bath maintained at any temperature between 85.0 °C and 90.0 °C. The TPRD shall remain in the hot bath for any duration not less than 2 hours and not more than 24 hours. The TPRD is removed from the hot bath and, within five minutes of removal, transferred back into the cold bath maintained at any temperature between −45.0 °C and −40.0 °C.

(b) Step (a) is repeated until 15 thermal cycles have been achieved.

(c) The TPRD remains in the cold liquid bath for any duration not less than 2 and not more than 24 additional hours, then the internal pressure of the TPRD is cycled with hydrogen gas from any pressure between 1.0 MPa and 2.0 MPa to any pressure between 80.0 percent NWP and 85.0 percent NWP for 100 cycles. During cycling, the TPRD remains in the cold bath and the cold bath is maintained at any temperature between −45.0 °C and −40.0 °C.

S6.2.6.1.4. *Salt corrosion resistance test.* (a) Each closure device is exposed to a combination of cyclic conditions of salt solution, temperatures, and humidity. One test cycle is equal to any duration not less than 22 and not more than 26 hours, and is in accordance with table 8 to S6.2.6.1.4.

TABLE 8 TO § 571.308 S6.2.6.1.4

Accelerated cyclic corrosion conditions
(1 cycle = 22 hours to 26 hours)

Cycle condition	Temperature	Relative humidity	Cycle duration
Ambient stage	22.0 °C to 28.0 °C	35 percent to 55 percent	470 minutes to 490 minutes
Transition 55 min to 60 min			
Humid stage	47.0 °C to 51.0 °C	95 percent to 100 percent	410 minutes to 430 minutes
Transition 170 minutes to 190 minutes			
Dry stage	55.0 °C to 65.0 °C	less than 30 percent	290 minutes to 310 minutes

(b) The apparatus used for this test shall consist of a fog/environmental chamber as defined in ISO 6270–2:2017(E) (incorporated by reference, see § 571.5), with a suitable water supply conforming to Type IV

requirements in ASTM D1193–06 (Reapproved 2018) (incorporated by reference, see § 571.5). The chamber shall include a supply of compressed air and one or more nozzles for fog generation. The nozzle or nozzles used for the generation of the fog shall be directed or baffled to minimize any direct impingement on the closure devices.

(c) During ''wet-bottom'' generated humidity cycles, water droplets shall be visible on the samples.

(d) Steam generated humidity may be used provided the source of water used in generating the steam is free of corrosion inhibitors and visible water droplets are formed on the samples to achieve proper wetness.

(e) The drying stage shall occur in the following environmental conditions: any temperature not less than 60 °C and not greater than 65 °C and relative humidity no more than 30 percent with air circulation.

(f) The impingement force from the salt solution application shall not remove corrosion and/or damage the coatings of the closure devices.

(g) The complex salt solution in percent by mass shall be as specified in S6.2.6.1.4(g)(1) through (5):

(1) Sodium Chloride: not less than 0.08 and not more than 0.10 percent.

(2) Calcium Chloride: not less than 0.095 and not more than 0.105 percent.

(3) Sodium Bicarbonate: not less than 0.07 and not more than 0.08 percent.

(4) Sodium Chloride must be reagent grade or food grade. Calcium Chloride must be reagent grade. Sodium Bicarbonate must be reagent grade. For the purposes of S6.2.6.1.4, water must meet ASTM D1193–06 (Reapproved 2018) Type IV requirements (incorporated by reference, see § 571.5).

(5) Either calcium chloride or sodium bicarbonate material must be dissolved separately in water and added to the solution of the other materials.

(h) The closure devices shall be installed in accordance with the vehicle manufacturer's recommended procedure and exposed to the 100 daily corrosion cycles, with each corrosion cycle in accordance with table 8 to S6.2.6.1.4.

(i) For each salt mist application, the solution shall be sprayed as an atomized mist, using the spray apparatus to mist the components until all areas are thoroughly wet and dripping. Suitable application techniques include using a plastic bottle, or a siphon spray powered by oil-free regulated air to spray the test samples. The quantity of spray applied should be sufficient to visibly rinse away salt accumulation left from previous sprays. Four salt mist applications shall be applied during the ambient stage. The first salt mist application occurs at the beginning of the ambient stage. Each subsequent salt mist application should be applied not less than 90 and not more than 95 minutes after the previous application.

(j) The time from ambient to the wet condition shall be any duration not less than 60 and not more than 65 minutes and the transition time between wet and dry conditions shall be any duration not less than 180 and not more than 190 minutes.

S6.2.6.1.5. *Vehicle environment test.* (a) The inlet and outlet connections of the closure device are connected or capped in accordance with the vehicle manufacturer's installation instructions. All external surfaces of the closure device are exposed to each of the following fluids for any duration between 24 hours and 26 hours. The temperature during exposure shall be any temperature between 5.0 °C and 35.0 °C. A separate test is performed with each of the fluids sequentially on a single closure device.

(1) Sulfuric acid: not less than 19 and not more than 21 percent by volume in water;

(2) Ethanol/gasoline: not less than 10 and not more than 12 percent by volume ethanol and not less than 88 and not more than 90 percent by volume gasoline; and

(3) Windshield washer fluid: not less than 50 and not more than 52 percent by volume methanol in water.

(b) The fluids are replenished as needed to ensure complete exposure for the duration of the test.

(c) After exposure to each fluid, the closure device is wiped off and rinsed with water.

S6.2.6.1.6. *Stress corrosion cracking test.* (a) All components exposed to the atmosphere shall be degreased. For check valves and shut-off valves, the closure device shall be disassembled, all components degreased, and then reassembled.

(b) The closure device is continuously exposed to a moist ammonia air mixture maintained in a glass chamber having a glass cover. The exposure lasts any duration not less than 240 hours and not more than 242 hours. The aqueous ammonia shall have a composition of between 19 weight percent and 21 weight percent ammonium hydroxide in water. Aqueous ammonia shall be located at the bottom of the glass chamber below the sample at any volume not less than 20 mL and not more than 22 mL of aqueous ammonia per liter of chamber volume. The bottom of the sample is positioned any distance not less than 30 and not more than 40 millimeters above the aqueous ammonia and supported in an inert tray.

(c) The moist ammonia-air mixture is maintained at atmospheric pressure and any temperature not less than 35 °C and not more than 40 °C.

S6.2.6.1.7. *Drop and vibration test.* (a) The TPRD is aligned vertically to any one of the six orientations covering the opposing directions of three orthogonal axes: vertical, lateral and longitudinal.

(b) A TPRD is dropped in free fall from any height between 2.00 meters and 2.02 meters onto a smooth concrete surface. The TPRD is allowed to bounce on the concrete surface after the initial impact.

(c) Any sample with damage from the drop that results in the TPRD not being able to be tested in accordance with S6.2.6.1.7(d) shall not proceed to S6.2.6.1.7(d) and shall not be considered a failure of this test.

(d) Each TPRD dropped in S6.2.6.1.7(a) that did not have damage that results in the TPRD not being able to be tested is mounted in a test fixture in accordance with vehicle manufacturer's installation instructions and vibrated for any duration between 30.0 minutes and 35.0 minutes along each of the three orthogonal axes (vertical, lateral and longitudinal) at the most severe resonant frequency for each axis.

(1) The most severe resonant frequency for each axis is determined using any acceleration between 1.50 g and 1.60 g and sweeping through a sinusoidal frequency range from 10 Hz to 500 Hz with any sweep time between 10.0 minutes and 20.0 minutes. The most severe resonant frequency is identified by a pronounced increase in vibration amplitude.

(2) If the resonance frequency is not found, the test shall be conducted at any frequency between 35 Hz and 45 Hz.

S6.2.6.1.8. *Leak test.* Unless otherwise specified, the TPRD shall be thermally conditioned to the ambient temperature condition, then checked for leakage, then conditioned to the high temperature condition, then checked for leakage, then conditioned to low temperature, then checked for leakage.

(a) The TPRD shall be thermally conditioned at test temperatures in each of the test conditions and held for any duration between 1.0 hour and 24.0 hours. The TPRD is pressurized with hydrogen at the inlet. The required test conditions are:

(1) Ambient temperature: condition the TPRD at any temperature between 5.0 °C and 35.0 °C; test in accordance with S6.2.6.1.8(b) at any pressure between 1.5 MPa and 2.5 MPa and then

at any pressure between 125.0 percent NWP and 130.0 percent NWP.

(2) High temperature: condition the TPRD at any temperature between 85.0 °C and 90.0 °C; test in accordance with S6.2.6.1.8(b) at any pressure between 1.5 MPa and 2.5 MPa and then at any pressure between 125.0 percent NWP and 130.0 percent NWP.

(3) Low temperature: condition the TPRD at any temperature between −45.0 °C and −40.0 °C; test in accordance with S6.2.6.1.8(b) at any pressure between 1.5 MPa and 2.5 MPa and then at any pressure between 100.0 percent NWP and 105.0 percent NWP.

(b) Following conditioning at each of the specified test temperature ranges, the TPRD is observed for leakage while immersed in a temperature-controlled liquid at the same specified temperature range for any duration between 1.0 minutes and 2.0 minutes at each of the pressure ranges listed above. If no bubbles are observed for the specified time period, it is not considered a failure. If bubbles are detected, the leak rate is measured.

S6.2.6.1.9. *Bench top activation test.* (a) The test apparatus consists of either a forced air oven or chimney with air flow. The TPRD is not exposed directly to flame. The TPRD is mounted in the test apparatus according to the vehicle manufacturer's installation instructions.

(b) The temperature of the oven or chimney is at any temperature between 600.0 °C and 605.0 °C for any duration between 2 minutes and 62 minutes prior to inserting the TPRD.

(c) Prior to inserting the TPRD, pressurize the TPRD to any pressure between 1.5 MPa and 2.5 MPa.

(d) The pressurized TPRD is inserted into the oven or chimney, the temperature within the oven or chimney is maintained at any temperature between 600.0 °C and 605.0 °C, and the time for the TPRD to activate is recorded. If the TPRD does not activate within 120 minutes from the time of insertion into the oven or chimney, the TPRD shall be considered to have failed the test.

S6.2.6.1.10. *Flow rate test.* (a) At least one new TPRD is tested to establish a baseline flow rate.

(b) After activation in accordance with S6.2.6.1.9, and without cleaning, removal of parts, or reconditioning, the TPRD is subjected to flow testing using hydrogen, air or an inert gas;

(c) Flow rate testing is conducted with any inlet pressure between 1.5 MPa and 2.5 MPa. The outlet is at atmospheric pressure.

(d) Flow rate is measured in units of kilograms per minute with a precision of at least 2 significant digits.

S6.2.6.2. *Check valve and shut-off valve performance tests.* Unless otherwise specified, testing shall be performed with either hydrogen gas with a purity of at least 99.97 percent, less than or equal to 5 parts per million of water, and less than or equal to 1 part per million particulate, or with an inert gas. All tests are performed at any temperature between 5.0 °C and 35.0 °C unless otherwise specified.

S6.2.6.2.1. *Hydrostatic strength test.* (a) The outlet opening is plugged and valve seats or internal blocks are made to assume the open position.

(b) Any hydrostatic pressure between 250.0 percent NWP and 255.0 percent NWP is applied using water to the valve inlet for any duration between 180.0 seconds and 185.0 seconds. The unit is examined to ensure that burst has not occurred.

(c) The hydrostatic pressure is then increased at a rate of less than or equal to 1.4 MPa/sec until component failure. The hydrostatic pressure at failure is recorded.

S6.2.6.2.2. *Leak test.* Each unit shall be thermally conditioned to the ambient temperature condition, then checked for leakage, then conditioned to the high temperature condition, then checked for leakage, then conditioned to low temperature, then checked for leakage.

(a) Each unit shall be pressurized to any pressure between 2.0 MPa and 3.0 MPa and held for any duration between 1.0 hours and 24.0 hours in the specified temperature range before testing. The outlet opening is plugged. The test conditions are:

(1) Ambient temperature: condition the unit at any temperature between 5.0 °C and 35.0 °C; test at any pressure between 1.5 MPa and 2.5 MPa and at any pressure between 125.0 percent NWP and 130.0 percent NWP.

(2) High temperature: condition the unit at any temperature between 85.0 °C and 90.0 °C; test at any pressure between 1.5 MPa and 2.5 MPa and at any pressure between 125.0 percent NWP and 130.0 percent NWP.

(3) Low temperature: condition the unit at any temperature between −45.0 °C and −40.0 °C; test at any pressure between 1.5 MPa and 2.5 MPa and at any pressure between 100.0 percent NWP and 105.0 percent NWP.

(b) While within the specified temperature and pressure range, the unit is observed for leakage while immersed in a temperature-controlled liquid held within the same specified temperature range as the test condition for any duration between 1.0 minutes and 2.0 minutes at each of the test pressures. If no bubbles are observed for the specified time period, the sample passes the leak test. If bubbles are detected, the leak rate is measured.

S6.2.6.2.3. *Extreme temperature pressure cycling test.* (a) The valve unit is connected to a test fixture.

(b) For a check valve, the pressure is applied in six incremental pulses to the check valve inlet with the outlet closed. The pressure is then vented from the check valve inlet. The pressure is lowered on the check valve outlet side to any pressure between 55.0 percent NWP and 60.0 percent NWP prior to the next cycle.

(c) For a shut-off valve, the specified pressure is applied through the inlet port. The shut-off valve is then energized to open the valve and the pressure is reduced to any pressure less than 50 percent of the specified pressure range. The shut-off valve shall then be de-energized to close the valve prior to the next cycle.

S6.2.6.2.4. *Chatter flow test.* The valve is subjected to between 24.0 hours and 26.0 hours of chatter flow at a flow rate that causes the most valve flutter.

S6.2.6.2.5. *Electrical Tests.* This section applies to shut-off valves only.

(a) The solenoid valve is connected to a variable DC voltage source, and the solenoid valve is operated as follows:

(1) Held for any duration between 60.0 and 65.0 minutes at any voltage between 0.50 V and 1.5 times the rated voltage.

(2) The voltage is increased to any voltage between 0.5 V to two times the rated voltage, or between 60.0 V and 60.5 V, whichever is less, and held for any duration between 60.0 seconds and 70.0 seconds.

(b) Any voltage between 1,000.0 V DC and 1,010.0 V DC is applied between the power conductor and the component casing for any duration between 2.0 seconds to 4.0 seconds.

S6.2.6.2.6. *Vibration test.* (a) The valve is pressurized with hydrogen to any pressure between 100.0 percent NWP and 105.0 percent NWP, sealed at both ends, and vibrated for any duration between 30.0 and 35.0 minutes along each of the three orthogonal axes (vertical, lateral and longitudinal) at the most severe resonant frequencies.

(b) The most severe resonant frequencies are determined using any acceleration between 1.50 g and 1.60 g and sweeping through a sinusoidal frequency range from 10 Hz to 500 Hz with any sweep time between 10.0 minutes and 20.0 minutes. The resonance frequency is identified by a pronounced increase in vibration amplitude.

(c) If the resonance frequency is not found, the test shall be conducted at any frequency between 35 Hz and 45 Hz.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.

Adam Raviv,

Chief Counsel.

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Part IV

Department of Homeland Security

Coast Guard

33 CFR Parts 101 and 160
Cybersecurity in the Marine Transportation System; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101 and 160

[Docket No. USCG–2022–0802]

RIN 1625–AC77

Cybersecurity in the Marine Transportation System

AGENCY: Coast Guard, DHS.

ACTION: Final rule; request for comments.

SUMMARY: The Coast Guard is updating its maritime security regulations by establishing minimum cybersecurity requirements for U.S.-flagged vessels, Outer Continental Shelf facilities, and facilities subject to the Maritime Transportation Security Act of 2002 regulations. This final rule addresses current and emerging cybersecurity threats in the marine transportation system by adding minimum cybersecurity requirements to help detect risks and respond to and recover from cybersecurity incidents. These include requirements to develop and maintain a Cybersecurity Plan, designate a Cybersecurity Officer, and take various measures to maintain cybersecurity within the marine transportation system. The Coast Guard is also seeking comments on a potential delay for the implementation periods for U.S.-flagged vessels.

DATES: This final rule is effective July 16, 2025.

Comment period for solicited comments: Comments on a potential 2-to-5-year delay for the implementation periods for U.S.-flagged vessels in Section VII of this preamble must be submitted by March 18, 2025.

ADDRESSES:

Docket: To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type USCG–2022–0802 in the search box, and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

Comment period for solicited additional comments: You may submit comments on the implementation periods for U.S.-flagged vessels discussed in Section VII of this preamble via the electronic Federal Docket Management System. To do so, go to *www.regulations.gov,* type USCG–2022–0802 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this final rule for alternate instructions.

FOR FURTHER INFORMATION CONTACT: For information about this document, email *MTSCyberRule@uscg.mil* or call Commander Brandon Link, Office of Port and Facility Compliance, 202–372–1107; or Commander Christopher Rabalais, Office of Design and Engineering Standards, 202–372–1375.

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I. Abbreviations

ABS American Bureau of Shipping
The Act James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263)
AGCS Allianz Global Corporate and Specialty
AIS Automatic Identification System
AMSCs Area Maritime Security Committees
ANPRM Advance notice of proposed rulemaking
ASP Alternative Security Program
BLS Bureau of Labor Statistics
BSEE Bureau of Safety and Environmental Enforcement
CEA Council of Economic Advisors
CFR Code of Federal Regulations
CGCSO Coast Guard Cyber Strategic Outlook
CG–CVC Coast Guard Office of Commercial Vessel Compliance
CGCYBER U.S. Coast Guard Cyber Command
CG–ENG Coast Guard Office of Design and Engineering Standards
CG–FAC Coast Guard Office of Port and Facility Compliance
CIRC Cyber Incident Reporting Council
CIRCIA Cyber Incident Reporting for Critical Infrastructure Act of 2022
CISA Cybersecurity and Infrastructure Security Agency
CISO Chief Information Security Officer
COTP Captain of the Port
CPG Cybersecurity Performance Goal
CRM Cyber risk management
CSF Cybersecurity Framework
CSO Company Security Officer
CSRC Computer Security Resource Center
CVC–WI Coast Guard's Office of Commercial Vessel Compliance's Work Instruction
CySO Cybersecurity Officer
DC3 Defense Cyber Crimes Center
DCISE Defense Industrial Base Collaborative Information Sharing Environment
DHS Department of Homeland Security
DOC Document of Compliance
DoD Department of Defense
FBI Federal Bureau of Investigation
FEMA Federal Emergency Management Agency
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
FSA Facility Security Assessment
FSO Facility security officer
FSP Facility security plan
GPS Global Positioning System
HMI Human-machine interface
IACS International Association of Classification Societies
ICR Information collection request
IEc Industrial Economics, Incorporated
IMO International Maritime Organization
IP internet protocol
INMARSAT International Maritime Satellite
IRFA Initial Regulatory Flexibility Analysis
ISM International Safety Management
IT Information technology
KEV Known exploited vulnerability
LANTAREA Coast Guard Atlantic Area
MARSEC Maritime Security
MCAAG Maritime Cybersecurity Assessment and Annex Guide
MISLE Marine Information for Safety and Law Enforcement
MMC Merchant Mariner Credential
MODU Mobile offshore drilling unit
MSC Marine Safety Center
MSC–FAL International Maritime Organization's Marine Safety Committee and Facilitation Committee
MTS Marine transportation system
MTSA Maritime Transportation Security Act of 2002
NAICS North American Industry Classification System
NIST National Institute of Standards and Technology
NMSAC National Maritime Security Advisory Committee
NPRM Notice of proposed rulemaking
NRC National Response Center
NVIC Navigation and Vessel Inspection Circular
OCMI Officer in Charge, Marine Inspection
OCS Outer Continental Shelf
OCSLA Outer Continental Shelf Lands Act of 1953
OEWS Occupational Employment and Wage Statistics
OMB Office of Management and Budget

OSV Offshore supply vessel
OT Operational technology
PACS Physical Access Control Systems
PII Personally identifiable information
PRC People's Republic of China
PVA Passenger Vessel Association
QCEW Quarterly Census of Employment and Wages
RA Regulatory analysis
RO Recognized Organization
§ Section
SBA Small Business Administration
SME Subject matter expert
SMS Safety management system
SOLAS the International Convention for Safety of Life at Sea, 1974
TSA Transportation Security Administration
TSI Transportation security incident
UR Unified Requirement
U.S.C. United States Code
VHF Very high frequency
VSA Vessel Security Assessment
VSO Vessel Security Officer
VSP Vessel security plan

II. Executive Summary

The maritime industry faces increasing cybersecurity threats as it increasingly relies on cyber-connected systems. The purpose of this final rule is to safeguard the marine transportation system (MTS) against current and emerging threats associated with cybersecurity by adding minimum cybersecurity requirements to 33 CFR part 101 to help detect, respond to, and recover from cybersecurity risks that may cause transportation security incidents (TSIs). This final rule addresses risks from the increased interconnectivity and digitalization of the MTS and current and emerging cybersecurity threats to maritime security in the MTS with the additional minimum requirements specified below.

First, this final rule requires that owners or operators of U.S.-flagged vessels, facilities, or Outer Continental Shelf (OCS) facilities required to have a security plan under 33 CFR parts 104, 105, and 106 to develop and maintain a Cybersecurity Plan and Cyber Incident Response Plan. The Cybersecurity Plan must include seven account security measures for owners or operators of a U.S.-flagged vessel, facility, or OCS facility: (1) enabling of automatic account lockout after repeated failed log in attempts on all password protected information technology (IT) systems; (2) changing default passwords (or implementing other compensating security controls if unfeasible) before using any IT or operational technology (OT) systems; (3) maintaining a minimum password strength on all IT and OT systems technically capable of password protection; (4) implementing multifactor authentication on password-protected IT and remotely accessible OT systems; (5) applying the principle of least privilege to administrator or otherwise privileged accounts on both IT and OT systems; (6) maintaining separate user credentials on critical IT and OT systems; and (7) removing or revoking user credentials when a user leaves the organization.

The Cybersecurity Plan also must include four device security measure requirements: (1) develop and maintain a list of any hardware, firmware, and software approved by the owner or operator that may be installed on IT or OT systems; (2) ensure that applications running executable code are disabled by default on critical IT and OT systems; (3) maintain an accurate inventory of network-connected systems including those critical IT and OT systems; and (4) develop and document the network map and OT device configuration information. In addition, the Cybersecurity Plan must include two data security measure requirements: (1) ensure that logs are securely captured, stored, and protected and accessible only to privileged users, and (2) deploy effective encryption to maintain confidentiality of sensitive data and integrity of IT and OT traffic when technically feasible. Owners or operators of U.S.-flagged vessels, facilities, or OCS facilities must also prepare and document a Cyber Incident Response Plan that outlines instructions on how to respond to a cyber incident and identifies key roles, responsibilities, and decision-makers amongst personnel.

Owners or operators must also designate a Cybersecurity Officer (CySO) who must ensure that U.S.-flagged vessel, facility, or OCS facility personnel implement the Cybersecurity Plan and the Cyber Incident Response Plan. The CySO must also ensure that the Cybersecurity Plan is up to date and undergoes an annual audit. The CySO must also arrange for cybersecurity inspections, ensure that personnel have adequate cybersecurity training, record and report cybersecurity incidents to the owner or operator, and take steps to mitigate them.

With this final rule, the Coast Guard finalizes the requirements that were proposed in the notice of proposed rulemaking (NPRM), ''Cybersecurity in the Marine Transportation System,'' published on February 22, 2024.[1] We also respond to the public comments that we received to the NPRM and make several clarifications regarding the regulatory framework. The changes we make in this final rule as compared to the NPRM include the following:

Applicability

- Revised the language in § 101.605 to clarify that these cyber regulations apply to the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities required to have security plans under 33 CFR parts 104, 105, and 106.
- Added text to § 101.660 to clarify that Alternative Security Program (ASP) provisions apply to cybersecurity compliance documentation.

Definitions

- Revised the definition of ''backup'' in § 101.615 to remove the phrase ''in a secondary location'' and the implication that backups must be stored ''offsite.''
- Amended the definition of ''hazardous condition'' in § 160.202 by incorporating the term ''cyber incident.''
- Revised the definition of ''cybersecurity officer'' in § 101.615 to clarify that the owner or operator must designate a CySO, but that they also may designate an alternate CySO to assist in the duties and responsibilities at all times, including at times when the CySO may be away from the U.S.-flagged vessel, facility, or OCS facility.

Owner or Operator

- Amended § 101.620(b)(7) to clarify that all entities not subject to 33 CFR 6.16–1 must report all reportable cyber incidents to the National Response Center (NRC) and amended § 101.650(g)(1) to clarify that all entities not subject to 33 CFR 6.16–1 report reportable cyber incidents to the NRC without delay.

Cybersecurity Officer

- Removed the term ''major amendment'' from §§ 101.625(d)(13) (as well as 101.630(e)(2)) to prevent ambiguity about which amendments require resubmission of the Cybersecurity Plan and for consistency with existing requirements in 33 CFR parts 104, 105, and 106.
- Revised § 101.625(d)(10), regarding the CySO's responsibilities in reporting incidents, to refer to reportable cyber incidents, rather than breaches of security, suspicious activity that may result in TSIs. Breaches of security and suspicious activity reporting are already addressed under 33 CFR 101.305, whereas these regulations are meant to address the reporting of reportable cyber incidents as defined in this final rule.

Cybersecurity Plan

- Added references to OCS Facility Security Plans (FSPs) in § 101.630(a) to clarify that OCS FSPs follow the same

[1] 89 FR 13404.

requirements as Vessel Security Plans (VSPs) and FSPs.

- Revised § 101.630(d) to remove the requirement to submit a letter certifying that the Cybersecurity Plan meets the regulatory requirements.
- Revised § 101.630(e)(1)(ii) to clarify that the owner and operator will have at least 60 days to submit its proposed amendments, and to leave the timeframes for curing any deficiencies up to the local Captain of the Port (COTP) identifying them rather than requiring that entities cure any deficiencies within the 60-day period.
- Revised § 101.630(e)(2) to add new paragraph (e)(2)(i) to note that nothing in that section should be construed as limiting the owner or operator of a U.S.-flagged vessel, facility, or OCS facility from the timely implementation of such additional security measures as necessary to address exigent security situations.
- Revised § 101.655 to reflect that the Cybersecurity Plan must also be submitted to the Coast Guard for review and approval within 24 months of the effective date of this final rule, rather than during the second annual audit following the effective date.

Drills and Exercises

- Revised § 101.635(b)(1) to require two cybersecurity drills every 12 months instead of requiring at least one cybersecurity drill every 3 months and added ''as required by 33 CFR 104.230, 105.220, or 106.225,'' where appropriate.

Definitions

- Revised § 101.615 to add a definition for the term ''logs'' and revised § 101.650(c)(1) to refer to the term ''logs'' rather than ''data logs,'' consistent with guidance from the National Institute of Standards and Technology (NIST) and CISA's CPGs.
- Revised § 101.615 to change the definition of Cybersecurity Plan and the reference to Plan submission in § 101.630(a) to clarify that separate submissions are acceptable.
- Revised § 101.615 to change the definition of multifactor authentication from ''a layered approach to securing data and applications where a system requires users to present a combination of two or more credentials to verify their identity for login'' to ''a layered approach to securing data and applications for a system that requires users to present more than one distinct authentication factor for successful authentication. Multifactor authentication can be performed using a multifactor authenticator or by a combination of authenticators that provide different factors. The three authentication factors are (1) something you know, (2) something you have, and (3) something you are.''

Cybersecurity Measures

- Revised § 101.650(a)(1) to remove the reference to OT systems and specified that the requirements in § 101.650(e)(1)(i) and (iv) are for critical IT and OT systems in accordance with the Cybersecurity Performance Goals (CPGs) of the Cybersecurity and Infrastructure Security Agency (CISA).
- Revised § 101.650(b) to clarify that each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the device security measures are in place, addressed in Section 6 of the Cybersecurity Plan, and made available to the Coast Guard upon request.
- Revised § 101.650(c)(2) to specify that effective encryption must be deployed to maintain confidentiality of sensitive data and integrity of IT and OT traffic and to require that only sensitive data be encrypted.
- Revised § 101.650(e)(1) to specify that owners and operators will need to conduct the cyber assessment within 24 months of the effective date of this final rule, which increases the timeframe from the originally required 12 months.
- Revised § 101.650(e)(1)(i) to limit the identification of vulnerabilities to only ''critical'' OT and IT systems rather than all OT and IT systems and revised § 101.650(e)(iv) to remove ''mitigate any unresolved vulnerabilities'' and, instead, require that the owner or operator ensure patching or implementation of documented compensating controls for all known exploited vulnerabilities (KEVs) in critical IT or OT systems, without delay.
- Revised § 101.650(e)(2) in this final rule to clarify that penetration testing must be completed in conjunction with renewing the Cybersecurity Plan and to specify that the CySO must submit a letter verifying that the test was conducted, as well as all vulnerabilities identified from the penetration testing.
- Revised § 101.650(f)(2) to remove the references to ''breaches'' and ''incidents'' and replaced them with ''reportable cyber incidents,'' consistent with the decision to define ''reportable cyber incident'' and use that term in these regulations. The definition of ''reportable cyber incident'' being an incident that leads to, or, if still under investigation, can reasonably lead to substantial loss of confidentiality, integrity, or availability of a covered information system, network, or OT system; (2) disruption or significant adverse impact on the reporting entity's ability to engage in business operations or deliver goods or services including those that have a potential for significant impact on public health or safety or may cause serious injury or death; (3) disclosure or unauthorized access directly or indirectly of non-public personal information of a significant number of individuals; (4) other potential operational disruption to critical infrastructure systems or assets; or (5) incidents that otherwise may lead to a TSI as defined in 33 CFR 101.105.
- Revised § 101.650(f)(2) to remove the references to ''breaches'' and ''incidents'' and replaced them with ''reportable cyber incidents,'' consistent with the decision to define ''reportable cyber incident'' and use that term in these regulations. The definition of ''reportable cyber incident'' being an incident that leads to, or, if still under investigation, can reasonably lead to substantial loss of confidentiality, integrity, or availability of a covered information system, network, or OT system; (2) disruption or significant adverse impact on the reporting entity's ability to engage in business operations or deliver goods or services including those that have a potential for significant impact on public health or safety or may cause serious injury or death; (3) disclosure or unauthorized access directly or indirectly of non-public personal information of a significant number of individuals; (4) other potential operational disruption to critical infrastructure systems or assets; or (5) incidents that otherwise may lead to a TSI as defined in 33 CFR 101.105.

Noncompliance, Waivers, and Equivalents

- Revised § 101.665 to clarify that an owner or operator, after completing the required Cybersecurity Assessment, may seek a waiver or an equivalence determination for the requirements in subpart F consistent with the waiver and equivalence provisions in 33 CFR parts 104, 105, and 106. A Cybersecurity Assessment is necessary so that an owner or operated can identify which requirements are unnecessary. These changes ensure consistency with other regulations for requesting waiver or equivalence.
- Revised § 101.665 to specify that owners or operators must notify the Coast Guard when they must temporarily deviate from the requirements rather than when they are temporarily unable to meet the requirements. This revised text is more consistent with other regulations regarding temporary waiver.

Compliance Dates

Table 1 shows the phased implementation schedule for this final rule. Note that the rule's effective date will be July 16, 2025. In Section VII of this preamble, we are requesting public comment on a potential 2-to-5-year delay for the implementation periods for U.S.-flagged vessels.

Table 1: Timing of This Final Rule's Requirements

Effective Dates	Provisions
Immediately Upon Effective Date of This Final Rule	Entities that have not reported to the Coast Guard pursuant to, or are not subject to, 33 CFR 6.16-1 begin ensuring that all reportable cyber incidents are reported to the National Response Center (NRC). § 101.620(b)(7).
Within 6 Months From the Effective Date of this Final Rule and Annually Thereafter	All personnel must complete the training specified in § 101.650(d)(1)(ii) through (v) that includes recognition and detection of cybersecurity threats and all types of cyber incidents, techniques used to circumvent cybersecurity measures, procedures for reporting a cyber incident to the CySO, and OT-specific cybersecurity training (for all personnel whose duties include using OT). Key personnel must also complete the training specified in § 101.650(d)(2) about their roles and responsibilities during a cyber incident and response procedure and how to maintain current knowledge of changing cybersecurity threats and countermeasures. (Additional training requirements include the following: Training for new personnel not in place at the time of the effective date of this final rule must be completed within 5 days of gaining system access, but no later than within 30 days of hiring, and annually thereafter. Training for personnel on new IT or OT systems not in place at the time of the effective date of this final rule must be completed within 5 days of system access, and annually thereafter.)
Within 24 Months from the Effective Date of This Final Rule	Owners and operators must designate, in writing, the CySO. § 101.620(b)(3) and (c)(1). Owners and operators must conduct the Cybersecurity Assessment within 24 months of the effective date of this final rule and annually thereafter (or sooner than annually if there is a change in ownership). § 101.650(e)(1). Owners and operators must submit the Cybersecurity Plan to the Coast Guard for approval within 24 months of the effective date of this final rule. § 101.655.
After Receiving Approval of the Cybersecurity Plan	Owners and operators must conduct cybersecurity drills at least twice each calendar year. Owners and operators must also conduct cybersecurity exercises at least once each calendar year with no more than 18 months between cybersecurity exercises. § 101.635(b)(1) and (c)(1). All personnel must complete the training specified in § 101.650(d)(1)(i) within 60 days of receiving approval of the Cybersecurity Plan. Each owner or operator must ensure that the cybersecurity portion of their Plan and penetration test results are available to the Coast Guard upon request. § 101.660.

The Coast Guard estimates that this final rule creates costs for industry and Government of approximately $1.2 billion total and $138.7 million annualized, discounted at 2 percent (2022 dollars). This increased estimate

from the NPRM is primarily driven by increases to our estimates of costs related to cybersecurity drills, exercises, and penetration testing. Cost estimates are also increased due to updated affected population data. Benefits of this final rule include reduced risk and mitigation of cyber incidents to protect impacted entities and downstream economic participants, and improved protection of MTS business operations to build consumer trust and promote increased commerce in the U.S. economy. Additional benefits include improved minimum standards of cybersecurity to protect the MTS, which is vital to the U.S. economy and U.S. national security, and to avoid supply chain disruptions.

III. Basis and Purpose

A. Cybersecurity Threats

The purpose of this final rule is to safeguard the MTS against current and emerging threats associated with cybersecurity by adding minimum cybersecurity requirements to 33 CFR part 101 to help detect, respond to, and recover from cybersecurity risks that may cause TSIs. This final rule addresses current and emerging cybersecurity threats to maritime security in the MTS. The maritime industry is undergoing a significant transformation that involves the increased use of cyber-connected systems. While these increasingly interconnected and networked systems improve commercial vessel and port facility operations, they also bring a new set of challenges affecting design, operations, safety, security, training, and the workforce.

Every day, malicious actors (including, but not limited to, individuals, groups, and adversary nations posing a threat) attempt unauthorized access to control system devices or networks using various communication channels. An example of a successful attempt occurred in May 2021, when a Russian-based cybercriminal group, DarkSide, conducted a ransomware attack that forced a major pipeline company to go offline, resulting in a weeklong shutdown of 5,500 miles of petroleum pipelines on the East Coast of the United States. Cybersecurity threats require the maritime community to effectively manage constantly changing risks to create a safe cyber environment.

This final rule creates a regulatory environment for cybersecurity in the maritime domain for U.S.-flagged vessels, facilities, and OCS facilities. Vulnerabilities in the operation of vital systems increase the risk of cyber-attacks. Unmitigated cyber-related risks to the maritime domain can compromise the critical infrastructure that people and companies depend on to fulfill their daily needs and that maintain the effective operation of the MTS.

A 2018 report by the Council of Economic Advisors (CEA) stated that ''[a] firm with weak cybersecurity imposes negative externalities on its customers, employees, and other firms, tied to it through partnerships and supply chain relations. In the presence of externalities, firms would rationally underinvest in cybersecurity relative to the socially optimal level. Therefore, it often falls to regulators to devise a series of penalties and incentives to increase the level of investment to the desired level.'' [2]

In the report, the CEA also emphasized that ''[c]ontinued cooperation between the public and private sectors is the key to effectively managing cybersecurity risks. . . . The government is likewise important in incentivizing cyber protection—for example, by disseminating new cybersecurity standards, sharing best practices, conducting basic research on cybersecurity, protecting critical infrastructures, preparing future employees for the cybersecurity workforce, and enforcing the rule of law in cyberspace.'' [3]

Furthermore, the CEA acknowledged that ''[f]irms and private individuals are often outmatched by sophisticated cyber adversaries. Even large firms with substantial resources committed to cybersecurity may be helpless against attacks by sophisticated nation-states.'' [4] As an example, the CEA stated, ''firms that own critical infrastructure assets, such as parts of the nation's power grid, may generate pervasive negative spillover effects for the wider economy.'' [5]

Lastly, the CEA stated another problem that exists in the marketplace is, ''firms' reluctance to share information on cyber threats and exposures,'' which ''impairs effective cybersecurity.'' [6] The CEA further stated that ''firms remain reluctant to increase their exposure to legal and public affairs risks. The lack of information on cyber-attacks and data breaches suffered by other firms may cause less sophisticated small firms to conclude that cybersecurity risk is not a pressing problem. . . . [T]he lack of data may be stymying the ability of law enforcement and other actors to respond quickly and effectively and may be slowing the development of the cyber insurance market.'' [7]

This final rule applies to the owners and operators of U.S.-flagged vessels required to have a security plan under 33 CFR part 104 (Maritime Security: Vessels), facilities required to have a security plan under 33 CFR part 105 (Maritime Security: Facilities), and OCS facilities required to have a security plan under 33 CFR part 106 (Marine Security: Outer Continental Shelf (OCS) Facilities).

B. Legislation, Regulations, and Policy

In the Maritime Transportation Security Act of 2002 (MTSA),[8] Congress provided a framework for the Secretary of Homeland Security (''Secretary''), acting through the Coast Guard,[9] and maritime industry to identify, assess, and prevent TSIs in the MTS. MTSA vested the Secretary with authorities for broad security assessment, planning, prevention, and response activities to address TSIs, including the authority to require and set standards for FSPs, OCS FSPs, and VSPs, to review and approve such plans, and to conduct inspections and take enforcement actions.[10] The Coast Guard's implementing regulations address a range of considerations to prevent TSIs to the maximum extent practicable [11] and require, among other general and specific measures, security assessments and measures related to radio and telecommunication systems, including computer systems and networks.[12]

The Coast Guard has also issued additional guidance and policies to help regulated entities address potential cyber incidents in FSPs, OCS FSPs, and VSPs,[13] including a cybersecurity risk

[2] Economic Report of the President Together with the Annual Report of the Council of Economic Advisers 323–24 February 2018, *https://www.govinfo.gov/content/pkg/ERP-2018/pdf/ERP-2018.pdf*, accessed August 12, 2024.

[3] Id. at 324–25.

[4] Id. at 326

[5] Id.

[6] Id.

[7] Id.

[8] Pub. L. 107–295, 116 Stat. 2064, November 25, 2002.

[9] The Secretary delegated this authority to the Commandant of the Coast Guard via Department of Homeland Security (DHS) Delegation 00170.1(II)(97)(b), Revision No. 01.4.

[10] *See generally, for example,* 46 U.S.C. 70103.

[11] *See* 46 U.S.C. 70103(c)(1).

[12] *See, for example,* 33 CFR 104.300(d)(11), 104.305(d)(2)(v), 105.300(d)(11), 105.305(c)(1)(v), 106.300(d)(11), 106.305(c)(1)(v) and (d)(2)(v).

[13] One of the Coast Guard's guidance documents is the Navigation and Vessel Inspection Circular (NVIC) 01–20, *Guidelines for Addressing Cyber Risks at Maritime Transportation Security Act Regulated Facilities* (85 FR 16108). This NVIC outlined Coast Guard's view on requirements for FSPs and facility security, including cybersecurity. A similar understanding with regard to VSPs was expressed in the Coast Guard's Office of

Continued

assessment model that was issued in January 2023,[14] and voluntary guidance issued to Area Maritime Security Committees (AMSCs) in July 2023.[15] Congress has repeatedly reaffirmed the MTSA framework, including through amendments passed in 2016,[16] 2018,[17] and 2021.[18] In the 2018 amendments, Congress amended MTSA to specifically require VSPs, FSPs, and OCS FSPs to include provisions for detecting, responding to, and recovering from cybersecurity risks that may cause TSIs.[19] By doing so, Congress explicitly identified cybersecurity risk as an area of specific concern in the maritime domain that deserved focused governmental regulatory effort. These regulations fall squarely within the MTSA authorities that Congress expressly expanded to address cybersecurity risk. The regulatory amendments to 33 CFR part 101 reflect the Coast Guard's view on cybersecurity under MTSA, including, but not limited to, recent amendments to MTSA (such as 46 U.S.C. 70103). The amendments provide more detailed mandatory baseline requirements for U.S.-flagged vessels and facilities subject to MTSA.

In response to the growing national security threat from malicious cyber actions, presidential policy over the last three presidential administrations has advanced cybersecurity in the maritime domain. Executive Order 13636 of February 12, 2013 (Improving Critical Infrastructure Cybersecurity) recognized the Federal Government's role to secure our nation's critical infrastructure by working with the private sector—including owners and operators of U.S.-flagged vessels, facilities, and OCS facilities—to prepare for, prevent, mitigate, and respond to cybersecurity threats.[20]

To defend against malicious cyber-related activities, Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities) recognized malicious cyber-related activities as an ''extraordinary threat to the national security, foreign policy, and economy of the United States,'' warranting a national emergency.[21] The National Emergency with Respect to Significant Malicious Cyber-Enabled Activities was extended on March 26, 2024.[22]

Executive Order 14028 of May 12, 2021 (Improving the Nation's Cybersecurity) also recognized that ''the private sector must adapt to the continuously changing threat environment, ensure its products are built and operate securely, and partner with the Federal Government to foster a more secure cyberspace.'' [23]

On July 28, 2021, the President issued the ''National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems,'' [24] which required the Secretary of Homeland Security to coordinate with the Secretary of Commerce (through the Director of NIST) and other agencies, as appropriate, to develop baseline CPGs. These baseline CPGs will further a common understanding of the baseline security practices that critical infrastructure owners and operators should follow to protect national and economic security, as well as public health and safety. CISA's release of the CPGs in October 2022 was ''intended to help establish a common set of fundamental cybersecurity practices for critical infrastructure, and especially help small- and medium-sized organizations kickstart their cybersecurity efforts.'' [25] The Coast Guard relied on CISA's CPGs as a benchmark for technical requirements in this final rule.

On February 21, 2024, the President signed Executive Order 14116 (Amending Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States), amending 33 CFR part 6 regulations, which are issued pursuant to 46 U.S.C. 70051.[26] In that Order, the President found that ''the security of the United States is endangered by reasons of disturbance in the international relations of the United States that exist as a result of persistent and increasingly sophisticated malicious cyber campaigns against the United States, and that such disturbances continue to endanger such relations.''

The Executive Order expanded the regulatory authorities of the Coast Guard COTP, a designated officer of the Coast Guard, to address, inspect, and search vessels when there is an articulable cybersecurity threat; take possession and control of vessels within the territorial waters of the United States; and prevent access of things (including data, information, network, program, system, or other digital infrastructure) to vessels or waterfront facilities whenever it appears that such actions are necessary to prevent damage or injury, including damage to any data, information, network, program, system, or other digital infrastructure on such vessel, or to any vessel, waterfront facility, or the waters of the United States.[27] Furthermore, the Commandant's authority was extended to prescribe conditions and restrictions relating to waterfront facilities and vessels in port, specifically to ''prevent, detect, assess, and remediate an actual or threatened cyber incident.'' [28] The Commandant exercised this authority in a February 21, 2024 Maritime Security (MARSEC) Directive.[29]

The Executive Order also amended the reporting requirement in 33 CFR part 6 to add CISA and to also require the reporting of actual or threatened cyber incidents. The amended 33 CFR 6.16–1 now requires the reporting of ''evidence of sabotage, subversive activity, or an actual or threatened cyber incident[s] involving or endangering any vessel, harbor, port, or waterfront facility'' to the Federal Bureau of Investigation (FBI), CISA, and the COTP or their respective representatives.[30]

Commercial Vessel Compliance's (CG–CVC) Vessel CRM Work Instruction CVC–WI–027(3), *Vessel Cyber Risk Management Work Instruction,* October 11, 2023, *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/CG-CVC/CVC_MMS/CVC-WI-27(3)b.pdf,* accessed January 6, 2025.

[14] *See* Maritime Cybersecurity Assessment and Annex Guide (MCAAG) (January 2023), *https://dco.uscg.mil/Portals/9/CG-FAC/Documents/Maritime%20Cyber%20Assessment%20%20Annex%20Guide%20(MCAAG)_released%2023JAN2023.pdf,* accessed Aug. 12, 2024. The MCAAG was developed in coordination with the National Maritime Security Advisory Committee (NMSAC), AMSCs, and other maritime stakeholders. The guide serves as a resource for baseline Cybersecurity Assessments and Plan development and helps stakeholders address vulnerabilities that can lead to transportation security incidents.

[15] NVIC 09–02, Change 6.

[16] Pub. L. 114–120, 130 Stat. 27, February 8, 2016.

[17] Pub. L. 115–254, 132 Stat. 3186, October 5, 2018.

[18] Pub. L. 116–283, 134 Stat 4754, January 1, 2021.

[19] *See* Pub. L. 115–254, sec. 1805(d)(2) (codified at 46 U.S.C. 70103(c)(3)(C)).

[20] 78 FR 11739, February 19, 2013.

[21] 80 FR 18077, April 2, 2015. Executive Order 13694 was later amended by Executive Order 13757 (82 FR 1, January 3, 2017), which outlined additional measures the Federal Government must take to address the national emergency identified in Executive Order 13694.

[22] 89 FR 21427, March 27, 2024.

[23] 86 FR 26633, May 17, 2021.

[24] The White House, National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems, July 28, 2021, *https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/national-security-memorandum-on-improving-cybersecurity-for-critical-infrastructure-control-systems/,* accessed on July 24, 2023.

[25] CISA, ''Cross-Sector Cybersecurity Performance Goals,'' *https://www.cisa.gov/cross-sector-cybersecurity-performance-goals*, accessed August 12, 2024.

[26] 89 FR 13971, February 26, 2024.

[27] 33 CFR 6.04–5, 6.04–7, and 6.04–8.

[28] 33 CFR 6.14–1.

[29] Issuance of Maritime Security (MARSEC) Directive 105–4: Cyber Risk Management for Ship-to-Shore Cranes Manufactured by People's Republic of China Companies, 89 FR 13726, Feb. 23, 2024.

[30] 89 FR 13971, 13973, February 26, 2024.

OCS facilities are not required to report under Part 6.

In 2021, the Coast Guard published its Cyber Strategic Outlook (CGCSO) to highlight the importance of managing cybersecurity risks in the MTS.[31] The CGCSO highlighted three lines of effort, or priorities, to improve Coast Guard readiness in cyberspace: (1) Defend and Operate the Coast Guard Enterprise Mission Platform; (2) Protect the MTS; and (3) Operate in and through Cyberspace.[32] As outlined in the CGCSO's second line of effort, ''Protect the MTS,'' the Coast Guard has implemented a risk-based regulatory, compliance, and assessment regime. We have established minimum requirements for Cybersecurity Plans that facilitate the use of international and industry-recognized cybersecurity standards to manage cybersecurity risks by owners and operators of maritime critical infrastructure.[33] Specifically, this final rule promulgates the Coast Guard's baseline cybersecurity regulations for U.S.-flagged vessels and facilities (including OCS facilities) subject to MTSA.

As noted, in January 2023, the Coast Guard released the Maritime Cybersecurity Assessment and Annex Guide (MCAAG). The MCAAG was developed through coordination with the National Maritime Security Advisory Committee (NMSAC), AMSCs, and other maritime stakeholders, consistent with the activities described in section 2(e) of the National Institute of Standards and Technology Act (specifically, 15 U.S.C. 272(e)). The MCAAG provides more detailed recommendations on implementing existing MTSA regulations as they relate to computer systems and networks. For example, the Coast Guard recommended a Cyber Annex Template for stakeholders to address possible cybersecurity vulnerabilities and risks.

This final rule expands and clarifies the information required in security plans to remain consistent with 46 U.S.C. 70103(c)(3), including section 70103(c)(3)(C)(v), which requires FSPs, OCS FSPs, and VSPs to include provisions for detecting, responding to, and recovering from cybersecurity risks that may cause TSIs. Some terms we use in the MCAAG, such as *cybersecurity vulnerability,* may have a set definition in this final rule.

C. Legal Authority

The Coast Guard is promulgating these regulations under 43 U.S.C. 1333(d); 46 U.S.C. 3306, 3703, 70102 through 70104, 70124; and the Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.4.

Section 4 of the Outer Continental Shelf Lands Act of 1953 (OCSLA), classified as amended at 43 U.S.C. 1333(d), authorizes the Secretary to promulgate regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices on the OCS thereto. This authority was delegated to the Coast Guard by DHS Delegation No. 00170.1(II)(90), Revision No. 01.4.

Section 3306 of Title 46 of the United States Code authorizes the Secretary to prescribe necessary regulations for the design, construction, alteration, repair, equipping, manning and operation of vessels, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew. This authority was delegated to the Coast Guard by DHS Delegation No. 00170.1(II)(92)(b), Revision No. 01.4.

Section 3703 of Title 46 of the United States Code authorizes the Secretary to prescribe similar regulations relating to tank vessels that carry liquid bulk dangerous cargoes, including the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of the vessels. This authority was delegated to the Coast Guard by DHS Delegation No. 00170.1(II)(92)(b), Revision No. 01.4.

Sections 70102 through 70104 of Title 46 of the United States Code authorize the Secretary to evaluate for compliance vessel and facility vulnerability assessments, security plans, and response plans, which must address cybersecurity risks. Section 70124 authorizes the Secretary to promulgate regulations to implement Chapter 701, including sections 70102 through 70104, dealing with vulnerability assessments for the security of vessels and facilities (which include OCS facilities); security plans for vessels, facilities, and OCS facilities; and response plans for vessels, facilities, and OCS facilities. These authorities were delegated to the Coast Guard by DHS Delegation No. 00170.1(II)(97)(a) through (c), and (n), Revision No. 01.4.

IV. Background

A. The Current State of Cybersecurity in the MTS

The maritime industry is relying increasingly on digital solutions for operational optimization, cost savings, safety improvements, and more sustainable business. These developments, to a large extent, rely on IT systems and OT systems, which also increases potential cyber vulnerabilities and risks. Cybersecurity risks result from vulnerabilities to vital systems that increase the likelihood of cyber-attacks on U.S.-flagged vessels, facilities, and OCS facilities.

Cyber-attacks on critical infrastructure across multiple sectors have raised awareness of the need to protect the systems and equipment that facilitate operations within the MTS because cyber-attacks have the potential to disable the IT and OT on board U.S.-flagged vessels, facilities, and OCS facilities. Autonomous vessel technology, automated OT, and remotely operated machines provide further opportunities for cyber-attackers. These systems and equipment are prime targets for cyber-attacks stemming from insider threats, criminal organizations, nation state actors, and others.

Also, the MTS has become increasingly susceptible to cyber-attacks due to the growing integration of digital technologies in their operations. These types of cyber-attacks can range from altering a vessel's navigational systems to disrupting its communication with ports, which can lead to delays, accidents, or even potential groundings that can potentially disrupt vessel movements and shut down port operations, such as loading and unloading cargo. This disruption can also negatively affect the MTS by interrupting the transportation and commerce of goods, raw resources, and passengers, as well as potential military operations when needed.

An attack that compromises navigational or operational systems can pose a serious safety risk. It can result in accidents at sea, potential environmental disasters like oil spills,

[31] U.S. Coast Guard, ''Cyber Strategic Outlook,'' August 2021, *https://www.uscg.mil/Portals/0/Images/cyber/2021-Cyber-Strategic-Outlook.pdf,* accessed August 13, 2024.

[32] These lines of effort evolved from the three ''strategic priorities'' introduced in the Coast Guard's Cyber Strategy, June 2015. As cyber threats and vulnerabilities evolve, so will the Coast Guard's posture. *https://www.dco.uscg.mil/Portals/10/Cyber/Docs/CG_Cyber_Strategy.pdf?ver=nejX4g9gQdBG29cX1HwFdA%3D%3D,* accessed August 12, 2024.

[33] The Coast Guard is aware that some entities already follow industry standards related to cybersecurity. The minimum requirements seek to establish a common baseline for all the regulated vessels, facilities, and OCS facilities that is not incompatible with such standards, recognizing that in some instances these minimums may increase a requirement, but in other circumstances may already be satisfied. The owner or operator can indicate within their Cybersecurity Plan that they are following a particular standard and highlight how their compliance with that standard satisfies Coast Guard requirements.

and loss of life. The maritime industry is not immune to ransomware attacks where cybercriminals are targeting critical systems or data. Given the critical nature of marine transportation to global trade, continued efforts are being made to improve cybersecurity measures in the sector.

Maritime stakeholders can better detect, respond to, and recover from cybersecurity risks that may cause TSIs by adopting a range of cyber risk management (CRM) measures, as described in this final rule. It is important that the Coast Guard work with the maritime community to address both safety and security risks to better facilitate operations and to protect MTS entities from creating hazardous conditions within ports and waterways. Updating regulations to include minimum cybersecurity requirements will strengthen the security posture and increase resilience against cybersecurity threats in the MTS.

In 2017, the International Maritime Organization (IMO) took steps to address cybersecurity risks in the shipping industry by publishing the Marine Safety Committee/Facilitation Committee (MSC–FAL) Circular 3, *Guidelines on Maritime Cyber Risk Management,*[34] and MSC Resolution 428(98).[35] The IMO affirmed that an approved Safety Management System (SMS) should involve CRM to manage cybersecurity risks in accordance with the objectives and functional requirements of the International Safety Management (ISM) Code. An SMS is a structured and documented set of procedures enabling company and vessel personnel to effectively implement safety and environmental protection policies that are specific to that company or vessel.

For applicable U.S.-flagged vessels, this final rule establishes a baseline level of protection throughout the MTSA-regulated vessel fleet. Having regulatory oversight over U.S.-flagged vessels, the Coast Guard can ensure these cybersecurity regulations are implemented appropriately by approving Cybersecurity Plans and conducting routine inspections. As discussed in Section VII of this preamble, the Coast Guard requests public comment on a potential 2-to-5-year delay for the implementation periods for U.S.-flagged vessels. (See the **ADDRESSES** portion of this preamble, under *Comment period for solicited additional comments,* for instructions on submitting comments.) This final rule also applies to facilities regulated by 33 CFR part 105 and OCS facilities regulated by 33 CFR part 106.

B. Current MTSA Regulations Related to Cybersecurity

The MTSA-implementing regulations in 33 CFR parts 101, 103, 104, 105, and 106 give the Coast Guard the authority to review and approve security assessments and plans that apply broadly to the various security threats facing the maritime industry. Through the Navigation and Vessel Inspection Circular (NVIC) 01–20 [36] (85 FR 16108, March 20, 2020), the Coast Guard interpreted 33 CFR parts 105 and 106 as requiring owners and operators of facilities and OCS facilities to address cybersecurity in their Facility Security Assessments (FSAs) and OCS FSAs, as well as in their FSPs and OCS FSPs. The NVIC provides non-binding guidance on how regulated entities can address these issues.

This final rule also expands upon the agency's previous actions by establishing minimum performance-based cybersecurity requirements for the MTS within the MTSA regulations. Similar to the existing requirements in 33 CFR parts 104, 105, and 106, the Coast Guard allows owners and operators the flexibility to determine the best way to implement and comply with these new requirements. Following the effective date of this final rule, personnel must complete certain training requirements within approximately 6 months, and owners or operators must sequentially complete a Cybersecurity Assessment and submit the Cybersecurity Plan to the Coast Guard for review and approval within 24 months. The Cybersecurity Plan also includes designating the CySO. These implementation periods allow sufficient time for the owners and operators of applicable U.S.-flagged vessels, facilities, and OCS facilities to comply with the requirements of this final rule.[37]

V. Discussion of Comments and Changes

In response to the NPRM we published on February 22, 2024,[38] we received 99 written submissions to our docket. These written submissions are available in the public docket for this rulemaking, where indicated under the **ADDRESSES** portion of the preamble, or use the direct link *www.regulations.gov/docket/USCG-2022-0802.* The Coast Guard appreciates the comments from the public, as these insights continue to inform Coast Guard actions and programs. Below, we summarize the comments and our responses.

Extension of Comment Period and Public Meetings

The Coast Guard received a number of comments about extending the initial comment period of 60 days for additional time to review the proposed rule and the impacts. The requests asked for additional time ranging from 30 to 90 days, with 30 days being the most common request. After considering these comments, we extended the comment period by 30 days through May 22, 2024.[39] The Coast Guard determined that the extended comment period offered sufficient opportunity for industry stakeholders, and the general public to express their feedback on the NPRM.

One commenter requested that we hold a public hearing during which they could ask us questions and receive further information before submitting a public comment on the NPRM. The Coast Guard did not grant this request. Any public meeting that we held would include a presentation about the contents of the NPRM and an opportunity for members of the public to submit oral comments, but it is unlikely that we would have been able to share information materially different than the information that was already provided in the published NPRM.

One commenter requested that the Coast Guard hold a series of ''industry days'' focused on specific threats to the maritime stakeholders.

This comment was received on May 22, 2024, the day the extended comment period closed, which did not allow time to consider this request or hold a public meeting or series of ''industry days'' before the end of the comment period. Additionally, we had already extended the comment period to allow for more time for industry to submit comments about specific impacts to the maritime industry. We received many comments during that period and have carefully considered them in developing this final rule.

[34] *https://wwwcdn.imo.org/localresources/en/OurWork/Facilitation/Facilitation/MSC-FAL.1-Circ.3-Rev.1%20-%20Guidelines%20On%20Maritime%20Cyber%20Risk%20Management%20(Secretariat).pdf,* accessed August 13, 2024.

[35] See the IMO resolution on CRM: Resolution MSC.428(98), Annex 10, ''Maritime Cyber Risk Management in Safety Management Systems.'' *https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/Resolution%20MSC.428(98).pdf,* accessed August 13, 2024.

[36] See footnote 13.

[37] Existing general requirements to address cyber issues in security plans will continue to apply during this rulemaking.

[38] 89 FR 13404.

[39] 89 FR 24751.

A. General Comments

Several commenters submitted positive comments. Commenters commended us for strengthening cybersecurity and noted that the rule is needed, is very important for the marine transportation system, and is a ''great idea.'' One commenter supported our inclusion of specific proposals regarding device security measures in § 101.650(b). Another commenter supported requirements for vulnerability scanning and penetration testing. One commenter noted that the increasing interconnectivity of ports expands the attack surface and vulnerabilities exploitable by cyber actors.

The Coast Guard agrees with the commenter. We are finalizing this regulation to help mitigate these risks.

Out of Scope Comments

We received several comments that were out of scope for this rulemaking. One commenter expressed concern about the ship-to-shore cranes manufactured in the People's Republic of China (PRC).

Specific language to address PRC-manufactured cranes is outside the scope of this regulation, which establishes general, baseline cybersecurity requirements for regulated entities.

Another commenter asked for a list of crane manufacturers or providers impacted by MARSEC Directive 105–4 related to the PRC-manufactured cranes.

The Coast Guard announced the availability of MARSEC Directive 105–4 on February 23, 2024, which provided actions for owners or operators of ship-to-shore cranes manufactured by the PRC to manage cybersecurity risks (89 FR 13726). This MARSEC Directive was announced at the same time as the NPRM for this final rule, but its requirements are separate. Interested parties should refer to the notice of availability for MARSEC Directive 105–4.[40]

One commenter noted that CPGs specific to the maritime subsector should be prioritized. The commenter also inquired about how feasible it was to incorporate risk-based assessment processes into the MST [Marine Science Technician] ''A'' School curriculum.

The Coast Guard is not currently working on sector-specific CPGs. Entities are welcome to use their preferred references and standards to help inform their required Assessments and Plans. ''A'' school curricula are outside the scope of this regulation.

[40] 89 FR 13726, February 23, 2024.

Formalizing Training

One commenter stated that the Coast Guard needs to consider continuously monitoring OT devices and asked the Coast Guard to formalize training, leverage industry best practices to apply to maritime operations, and implement a ''Bug Bounty'' program like that of the Department of Defense (DoD).[41]

The commenter did not give additional information or a reason why the Coast Guard should formalize the training. While formal training can be beneficial, the Coast Guard will not mandate a specific training format. It is up to the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to assess the necessary level of training based on their unique cyber threats and risks.

This final rule provides minimum baseline standards. Owners and operators are welcome to implement additional cybersecurity measures if they wish, including leveraging industry best practices, continuous monitoring of OT devices, and establishing processes for vulnerability notification such as the ''Bug Bounty'' program. However, these additional measures are not required by this final rule.

Identity Protection and Authentication

Another commenter applauded the inclusion of identity protection and authentication practices, and noted that some current practices, such as ''bring your own device'' and ''work from anywhere'' models, increase the risks of relying on traditional authentication methods and further weaken obsolescent legacy security technologies.

The Coast Guard agrees that the rule's provisions appropriately address current cybersecurity risks.

Automated Technologies

One commenter advised caution regarding ''unchecked reliance'' on automated technologies and processes in the maritime industry. The commenter also noted the lack of Federal regulations for ''smart'' containers. Another commenter recommended that the Coast Guard's cybersecurity regulations should require private stakeholders to collaborate with DHS to ensure national security and protect American dockworkers from cyber-attacks and risks from automated technologies.

These comments fall outside the scope of the regulations, as our intent is not to address specific issues associated with ''smart'' containers in particular. This final rule focuses on cybersecurity threats and risks that may impact OT and IT systems on board vessels and at facilities.

One commenter noted that some ports and ships are becoming ''smart'' with use of artificial intelligence, algorithms, and other IT solutions. The commenter argued that the proposed regulations fell short of addressing the cybersecurity risks of more sophisticated systems by only providing minimum baseline requirements.

These regulations provide minimum baseline requirements that allow each owner or operator to customize the Cybersecurity Plan to the needs of their organization. We expect that organizations with more sophisticated systems, such as those described by the commenter, will use the Cybersecurity Assessment to identify their specific cybersecurity needs, which will then be accounted for in the Plan. The structure of this final rule provides each owner or operator the flexibility to customize their Plan based on their own needs and also to add other requirements they deem appropriate for their organization.

Additional Inspections

One commenter recommended that any vessel that visits an ''adversarial controlled shipyard'' for maintenance or repair should necessitate thorough inspections following the maintenance.

This is outside the scope of this rulemaking. We did not propose any requirements for such inspections and do not have any plans to pursue them at this time.

Rulemaking Process

One commenter suggested that issuing an advance notice of proposed rulemaking (ANPRM) first would have improved the process for crafting these regulations.

The Coast Guard considered an ANPRM, but ultimately decided that it was not necessary for this rulemaking project. We received robust comments on the NPRM that provided useful input on the cybersecurity regulations we proposed and that we have carefully considered in developing this final rule.

Several commenters stated that the Coast Guard did not engage with industry stakeholders before the release of the NPRM.

While we did not engage with industry on the NPRM specifically prior to its release, the Coast Guard regularly engages with MTS industry and other stakeholders on cyber and other risks at Government agency- or industry-hosted conferences and workshops, and other forums. In these engagements, we

[41] A ''Bug Bounty'' program is an initiative that rewards individuals for reporting bugs and vulnerabilities in software.

discuss the Coast Guard's current cyber posture in terms of vessel and facility compliance with MTSA. Cybersecurity presents challenging problems, along with a need to address them promptly to implement critical cybersecurity measures.

Port Security Grant Program

Some commenters requested that the Port Security Grant Program account for, or even give prioritization to, smaller facilities to address cybersecurity concerns.

The Coast Guard will seek to work with the Federal Emergency Management Agency (FEMA) to further highlight cybersecurity through the FEMA-administered Port Security Grant Program. Because we do not manage that program, we cannot make any representation about future prioritization of grant funds. As noted in FEMA's Fiscal Year 2024 Notice of Funding Opportunity for this program, all entities subject to an Area Maritime Transportation Security Plan, as defined by 46 U.S.C. 70103(b), may apply for program funding.[42] Eligible applicants include but are not limited to port authorities, facility operators, and State, local, and territorial government agencies.[43] FEMA identified enhancing cybersecurity as a key priority for Fiscal Year 2024.[44]

Coast Guard Experience With Enforcing Cybersecurity

Some commenters stated that they did not feel that the Coast Guard had the expertise to enforce these regulations or to conduct cybersecurity inspections. They also stated that the nature of personnel rotations among active-duty military meant that members would constantly require training, and the Coast Guard could not retain the expertise necessary to review and approve the Cybersecurity Plans. Some also felt that reviews of the Cybersecurity Plan should be held in a centralized location, due to the COTP not having enough cybersecurity expertise.

The Coast Guard maintains a diverse workforce of military and civilian personnel to balance the need to maintain institutional knowledge while keeping the ability to flexibly assign personnel to a wide range of billets and locations. Whether it is knowledge of commercial vessel safety regulations, hazardous materials regulations, or these new cybersecurity regulations, the Coast Guard will ensure adequately trained personnel will be available to enforce these regulations, including through reviewing Cybersecurity Plans. Although this final rule addresses training requirements for regulated entities and not Coast Guard personnel, the Coast Guard will ensure appropriate, adequate training is available for the personnel conducting associated work and missions. Additionally, the Coast Guard recognizes the comment regarding centralized reviews of the Cybersecurity Plans. The Coast Guard has not yet identified where ownership of initial and subsequent review of Cybersecurity Plans will reside, but will determine that upon assessing the process that optimizes resources and expertise. Whatever the Coast Guard determines, it will not alter the requirements for developing and submitting such Plans.

In addition, the Coast Guard has significant experience with the maritime security of vessels, facilities, and OCS facilities. We have specific cybersecurity units and capabilities dedicated to identifying threats and risks and to protecting the cybersecurity of the United States. We work in partnership with the DoD and other DHS components, specifically CISA and the Transportation Security Administration (TSA). We are confident that, by leveraging this experience and these partnerships, along with additional training, we can enforce the requirements in this final rule.

Some commenters asked if the Coast Guard planned to allow Recognized Organizations (ROs) to assist with reviewing Cybersecurity Plans.

The Coast Guard currently does not plan to allow ROs to assist with reviewing Cybersecurity Plans, but regulated entities may consult with ROs to ensure compliance with this final rule if they choose.

B. Comments Related to the Applicability of This Final Rule

One commenter asked us to clearly define the scope of the Coast Guard's jurisdictional authority to regulate cybersecurity as it applies to marine infrastructure.

As discussed in the legal authority section, the Coast Guard has statutory authority under MTSA, as amended and codified at 46 U.S.C. chapter 701, to regulate cybersecurity in the MTS. As already long-established by the existing regulations in 33 CFR subchapter H, MTSA is applicable to the vessels, facilities, and OCS facilities that are subject to this final rule. The authority to regulate ''cybersecurity risk'' was specifically added to MTSA by the Maritime Security Improvement Act of 2018.[45]

One commenter explained that some ports oversee airports under their jurisdiction and thus, have dual cybersecurity requirements with the Federal Aviation Administration (FAA). The commenter sought clarification that new requirements, including incident reporting requirements, would not apply to systems that are under the port authority's charge but that are unrelated to maritime port activities. The commenter expressed concern that, if the Coast Guard rule were to apply to all systems under a port authority's charge, many ports would have dual reporting requirements for the same incidents—a significant inefficiency.

This final rule is applicable to those facilities currently regulated under existing MTSA regulations. By and large, airport facilities are not regulated under this rule. If a situation arose where a MTSA-regulated entity was potentially subject to conflicting requirements from the Federal Aviation Administration—or any other agency's requirements—the entity should raise the issue of any perceived conflicts with the COTP and that agency's respective point of contact so that each agency is aware of the concern and can evaluate if there are conflicts for compliance. With respect to incident reporting, if there are occurrences where a cybersecurity incident affects systems or equipment falling under multiple regulatory jurisdictions, an owner or operator will have to ensure all reporting requirements are met. And with respect to the rule in general, if appropriate, the Coast Guard, acting through the COTP, may recommend the entity consider a request for equivalence in order to avoid overlapping requirements.

Some commenters stated that the United States should not impose specific requirements for the flag state on its vessels without imposing the same on foreign-flagged vessels. One commenter also suggested that U.S.-flagged vessels should be subject to requirements no greater than those applied to foreign-flagged vessels with a safety management system. The commenter asserted that, once the IMO establishes international requirements, a new NPRM should be issued to implement these requirements for U.S.-flagged vessels. Other commenters said the United States should not impose requirements that deviate from international standards, including those

[42] See FEMA, ''The U.S. Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2024 Port Security Grant Program,'' April 16, 2024, *https://www.fema.gov/print/pdf/node/676012,* accessed October 23, 2024.

[43] Id. at 14.

[44] Id. at 6.

[45] Pub. L. 115–254, Div. J.

that are presently being negotiated at the IMO.

The Coast Guard believes that protecting U.S. national security and the nation's sovereign interests is a paramount concern. As the flag administration, the United States believes that these baseline requirements for U.S.-flagged vessels are important preventive measures. Not only will establishing these requirements help protect the U.S. commercial fleet from cybersecurity threats, but it will also further establish the United States as a leader in this space and offers a model for the necessary actions that other flag administrations should take with respect to the cybersecurity of vessels.

The Coast Guard acknowledges that this final rule adds new requirements on U.S.-flagged vessels. However, the Coast Guard believes that proactive cybersecurity regulations are essential for ensuring the continued safety, security, and resilience of the domestic MTS. Consistent with this approach, the United States is actively engaged in international efforts to address maritime cybersecurity at the IMO. The Coast Guard believes that extending regulations to foreign-flagged vessels at this time while these discussions are ongoing would disrupt the established processes for port state control and possibly jeopardize U.S. national interests. The Coast Guard may consider revising this rule at a later date as the threat environment and international standards develop, including after the IMO speaks to cybersecurity with additional specificity.

Multiple commenters requested clarification on how these regulations apply to existing U.S.-flagged vessels, facilities, and OCS facilities, and stated that it could be difficult for existing vessels to meet some requirements. Specifically, concerns were raised about the inability to implement data encryption, the feasibility of compliance with network segmentation, frequent operator changes, difficulty in identifying personnel to fill a specialized position, and the presence of minimal computer networks and electronic systems. One commenter stated that vessels operating exclusively on inland waters, such as barges and towing vessels, have a minimal cyber footprint and should be excluded from this rulemaking.

This final rule is applicable to U.S.-flagged vessels, facilities, and OCS facilities, and includes both existing U.S.-flagged vessels, facilities, and OCS facilities, as well as any new or future U.S.-flagged vessels, facilities, and OCS facilities. The Coast Guard understands that IT and OT footprints can vary across vessels. As discussed in Section VII of this preamble, for the reasons indicated below, the Coast Guard requests public comment on a potential 2-to-5-year delay for the implementation periods for U.S.-flagged vessels, which may partially address the commenters' concerns about vessels. Conducting the required Cybersecurity Assessment allows for regulated entities to determine and not merely speculate about their specific IT and OT footprint, including potential vulnerabilities. Even vessels with a small IT or OT footprint may still face cybersecurity risks that could impact operations, safety, and security, which must then be addressed. Some such limitations may be addressed in the Cybersecurity Plan. When a regulated entity believes that certain requirements are not applicable or they are unable to comply with specific requirements within this regulation, they may follow the procedures in § 101.665 to request a waiver or equivalency.

While the Coast Guard recognizes that issues such as frequent operator changes may result in additional work for a regulated entity, this final rule is in line with existing requirements applicable to owner or operator changes. The Coast Guard believes that cybersecurity training remains crucial for safeguarding the MTS against evolving cybersecurity threats. Each new operator introduces a potential vulnerability, and, without adequate training, this could compromise both IT and OT systems. To mitigate these risks, it is vital that all operators, regardless of turnover frequency, are equipped with fundamental cybersecurity knowledge and skills. While formal training may be appropriate, the Coast Guard is not mandating a format of training in this final rule. However, the training would have to, at minimum, cover relevant provisions of the Cybersecurity Plan to include recognizing, detecting, and preventing cybersecurity threats, and reporting cyber incidents to the CySO. When a regulated entity believes they are unable to comply with specific requirements within this regulation, they may follow the procedures in § 101.665 to request a waiver or equivalency.

Some commenters suggested that the Coast Guard should create a separate rulemaking for vessels.

The Coast Guard is not considering a separate rulemaking for vessels at this time. This final rule is consistent with the Coast Guard's authority under MTSA as it applies to vessels.

Some commenters asked that this final rule not apply to vessels such as small passenger vessels, towing vessels, and barges, as well as to facilities with minimal or no IT and OT footprint. One commenter stated that the NPRM outlined cybersecurity procedures broadly applicable to many vessels and facilities but failed to consider those with minimal computer networks and systems that would not significantly impact operations, security, or safety if compromised. Another commenter stated that OT systems on vessels are distinct and should be assessed separately from shoreside infrastructure, as cyber incidents typically impact only one vessel at a time due to segmentation. In contrast, shoreside incidents can have wider repercussions. For inland vessels, the primary vulnerabilities are personally identifiable information (PII) and positional data theft. Thus, the commenter recommended a tiered risk system to determine suitable cybersecurity measures for vessels.

The Coast Guard does not agree with changing the applicability of this final rule. Developing a definition or standard for ''little or no IT and OT footprint'' would be challenging, and the Coast Guard did not seek comment on such a definition in this rulemaking. Moreover, the Coast Guard is not aware of a definition for ''little or no IT and OT footprint'' in other regulations or in other recognized standards.

Until an Assessment is completed, it would be difficult to know the full extent of a regulated entity's IT and OT footprint, and even a smaller IT and OT footprint could still allow cybersecurity threats and vulnerabilities and could still result in a cyber incident. It is necessary for all regulated entities under this final rule to first conduct the required Cybersecurity Assessment to determine the extent of their IT and OT footprint. Upon completion of that assessment, each regulated U.S.-flagged vessel, facility, or OCS facility can then develop a Cybersecurity Plan based on the applicable requirements. Even if an Assessment identifies only a minimal IT and OT footprint, that footprint may still represent levels of risk to the owner or operator, as well as the MTS. If the owner or operator finds there are portions of these regulations that do not apply to their U.S.-flagged vessel, facility, or OCS facility, the Coast Guard offers procedures in § 101.665 for an owner or operator to request a waiver or equivalence determination for the requirements. While an item may be identified by an owner or operator as not applicable, and therefore requires a waiver request from the requirement, it is necessary to identify that through the Cybersecurity Assessment and

document in a Cybersecurity Plan so that it can be reviewed in the future as needed.

Multiple commenters recommended the Coast Guard coordinate with the Bureau of Safety and Environmental Enforcement (BSEE) in the Department of the Interior before issuing any cybersecurity requirements for OCS facilities because of the shared authorities in OCSLA.

The Coast Guard and BSEE have a shared mission of ensuring safety on the OCS. We work closely together to ensure our requirements are not in conflict with each other. The Coast Guard will continue to work with BSEE and our other interagency partners to harmonize efforts as appropriate and according to OCSLA and any other applicable law.

One commenter requested clarity about applicability to §§ 104.105(b) and 105.105(b).

The Coast Guard revised the language in § 101.605 to clarify that these cybersecurity regulations apply to the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities required to have a security plan under parts 104, 105, and 106. The text ''required to have a security plan'' is the clearest means to clarify the applicability without the loss of legal precision, especially as MTSA addresses regulated entities in a similar manner at 46 U.S.C 70103.

The Coast Guard received multiple comments suggesting that the applicability for these requirements should be a risk-based approach based on the varied levels of IT and OT footprints, or how extensive a cybersecurity incident would be, based on vessel, facility, or OCS facility size and type of operation, including a consideration for the applicability to U.S. domestic vessels. Multiple commenters contended that prescribing the same requirements for all vessels and not scaling the applicability of requirements based on risk profile would impose unfeasible requirements and undue burdens on owners and operators of vessels. One commenter indicated that this risk-based approach should also apply to penetration test requirements. Another commenter further suggested that the Coast Guard add objective criteria for cybersecurity controls similar to what is currently addressed in NVIC 01–20.

The Coast Guard determined that these cybersecurity requirements should apply to the same entities to which MTSA currently applies, but that there are areas where a waiver under § 101.665 could apply. The Coast Guard would not currently be able to identify the unique aspects of each vessel and facility to develop a comprehensive risk factor system and base requirements off that. Additionally, risk factors could change, so the Coast Guard would either risk developing factors that become outdated, or otherwise could not keep up with a changing IT and OT landscape. The Coast Guard feels that the best approach is to develop a broad range of cybersecurity requirements in this final rule, which serve as baseline requirements across all regulated entities rather than a risk-based approach. Since each individual entity will have unique features, including their IT and OT footprint, we believe it makes the most sense for them to assess themselves, and, if needed, identify where they cannot comply or when a requirement is not applicable.

It is practical to maintain the existing MTSA applicability, particularly in requiring those regulated stakeholders to complete a Cybersecurity Assessment to identify the extent of their IT and OT footprint, so all entities can determine which requirements under these regulations would apply. In cases when an owner or operator determines, through their assessment, that certain criteria do not apply, they may follow the procedures in § 101.665 to request a waiver or equivalency. NVIC 01–20 serves as general guidance for incorporating cybersecurity into existing FSA and FSP requirements in 33 CFR part 105. This final rule represents more comprehensive cybersecurity requirements that go beyond those addressed by NVIC 01–20. An owner or operator may, however, use the principles of NVIC 01–20 to help inform their compliance with these regulations.

One commenter suggested that the Coast Guard revise § 101.605 so that this final rule would not apply to a vessel or facility that has not installed an IT or OT system that, if compromised, could result in a TSI. The commenter also suggested that the Coast Guard modify 33 CFR 104.305 and 105.305 so that VSAs and FSAs require an analysis of cybersecurity threats as defined in § 101.615.

The Coast Guard does not agree with this recommendation as we are not making changes to existing regulatory requirements in 33 CFR parts 104 and 105. In addition, the recommendation to revise 33 CFR part 101 would introduce too much uncertainty into applicability, especially as it relates to the need for entities to conduct a Cybersecurity Assessment to evaluate risks as a threshold matter. It would be premature to carve-out a regulated entity based on an assumption the regulated entity's IT or OT poses no risk to the MTS or risk of TSI before such an evaluation is made through a Cybersecurity Assessment. The function of the Cybersecurity Assessment is to provide the necessary information to develop the appropriate mitigation measures within the Cybersecurity Plan and to provide the substance that would inform any discussions with the COTP or MSC, especially as it may relate to requests for waivers or equivalencies.

One commenter requested clarification as to the applicability of these regulations in cases of a landlord port and tenant facilities.

These regulations create new baseline cybersecurity responsibilities for the owner or operator of an applicable U.S.-flagged vessel, facility, or OCS facility. ''Owner or operator'' is a term defined at 46 U.S.C. 70101(5). The applicability of these regulations may depend on the nature of any specific landlord port and tenant facility agreements. Therefore, the Coast Guard cannot make a blanket determination about all landlord-tenant relationships as it relates to the responsibility for compliance with the requirements of this final rule.

Some commenters suggested that the Coast Guard incorporate these rules into the existing 33 CFR parts 104, 105, and 106 requirements, as opposed to creating 33 CFR subpart F.

The Coast Guard considered this approach but determined that putting these cybersecurity requirements in a single subpart within 33 CFR part 101, which would then follow the applicability of 33 CFR parts 104, 105, and 106, allowed for the best alignment across regulated entities. The Coast Guard has chosen to articulate the cybersecurity requirements within 33 CFR part 101 because these regulations impact U.S.-flagged vessels, facilities, and OCS facilities collectively. This format is presented in a more organized and accessible manner to the maritime partners who are already familiar with the MTSA regulations.

Some commenters asked us to clarify whether 33 CFR subpart F will supersede NVIC 01–20.

NVIC 01–20 is a guidance document that states the Coast Guard's policy stance and an interpretation of its existing regulations. NVIC 01–20 itself is not enforceable as a legislative rule. The cybersecurity guidance provided by NVIC 01–20 relates to the requirements in 33 CFR part 105 that predate this rulemaking. Upon the effective date of this final rule, the requirements in these regulations will have the force of law. This final rule will supersede NVIC 01–20.

Some commenters raised concerns that some stakeholders will be affected

by limited workforce and resources and questioned the cybersecurity benefits. The commenters asserted that these challenges would be a significant hindrance to operational effectiveness and urged the Coast Guard to provide sufficient time and flexibility for operators to understand and implement the new requirements. The Coast Guard recognizes that regulated entities will have different workforce levels, as well as financial and other resources, that affect how they will comply with this final rule. In many cases, regulated entities with a smaller workforce and fewer resources will likewise have a smaller IT and OT footprint to assess and address in a Cybersecurity Plan. If those entities do have a large IT and OT footprint, then that reinforces the need to comply with the requirements in this final rule to prevent, mitigate, and respond to cybersecurity threats, vulnerabilities, and incidents.

One commenter stated that this final rule had an unclear impact on marine terminal operators participating in unified port authority cybersecurity programs.

The Coast Guard encourages participation and collaboration between stakeholders and maritime entities in addressing cybersecurity and other security risks throughout a port complex. However, a unified port authority cybersecurity program or similar higher-level arrangement may not adequately account for the unique cyber threats and vulnerabilities for a specific regulated entity. This final rule represents requirements for each regulated U.S.-flagged vessel, facility, and OCS facility, consistent with existing security requirements according to 33 CFR parts 104, 105, and 106.

The Coast Guard believes that both this final rule and unified port authority cybersecurity programs can work in complement to each other, as they both pursue the same goal of bolstering cybersecurity, where the port authority program can be viewed as a macro-level plan, rather than the micro-level, individualized plan specific to the U.S.-flagged vessel, facility, or OCS facility. This final rule is based on CISA's CPGs, which themselves are informed by NIST's Cybersecurity Framework (CSF), and all leverage commonly accepted cybersecurity best practices that should not conflict with other programs. This final rule represents minimum baseline standards that a regulated entity can further build upon in coordination with unified port authority cybersecurity programs.

Many ports have an active and robust AMSCs, which may include a Cybersecurity Subcommittee that can address coordination. Since this final rule and unified port authority cybersecurity programs all share a common goal of ensuring cybersecurity, the Coast Guard expects that regulated entities and port authorities will work together to ensure programs are not in conflict. Additionally, in cases when a unified port authority cybersecurity program may impact a regulated entity's specific cybersecurity plan, and owner or operator may be able to address the impact through the provisions in § 101.665 for noncompliance, waivers, and equivalents.

C. Comments Related to Definitions

Sources for Definitions Used in This Final Rule

Some commenters suggested using definitions for certain terms used in this final rule that come from sources such as NIST, DoD's Cybersecurity Maturity Model Certification program, and other standards.

The Coast Guard selected the definitions used in this final rule based on definitions used by our interagency partners to ensure alignment and harmonization across the interagency. The NPRM [46] discussed the citations for these definitions. The Coast Guard recognizes that there are numerous definitions for many of the terms used in this final rule, and that many might choose other sources, but these definitions meet the needs of the Coast Guard and are overwhelmingly accepted by stakeholders. The definitions used here are standard cybersecurity definitions used across industry and Government agencies and are listed in NIST's CSF. This common lexicon helps limit miscommunication.

Harmonizing Definitions

One commenter noted that harmonization of definitions for existing and proposed cybersecurity requirements is vital.

As discussed in the preamble of the NPRM, the Coast Guard consulted numerous sources for the definitions used in the NPRM. These sources include Executive Order 14028, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263) (the Act), the Homeland Security Act of 2002 (Pub. L. 107–296), as amended, CISA's National Initiative for Cybersecurity Careers and Studies, and NIST's Computer Security Resource Center (CSRC). We believe that these sources are reliable and generally accepted by the industry and Government agencies. Additionally, these terms are appropriate for usage in the maritime setting. The definitions used here are standard cybersecurity definitions used across industry and Government agencies and are listed in NIST's CSF. However, we also recognize that there is some variance in the cybersecurity terms used by industry and Government sources. For example, NIST defines a ''cyber incident'' as ''an occurrence that results in actual or potential jeopardy to the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies.'' Part 6 of title 33 of the CFR uses similar, but not identical, language to define a cyber incident as an occurrence that:

(1) Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or

(2) Constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.[47]

The Homeland Security Act of 2002 also uses similar language, defining an incident as ''an occurrence that actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information on an information system, or actually or imminently jeopardizes, without lawful authority, an information system.'' [48]

After reviewing all these definitions, we selected the ones that best fit the maritime setting and ensured that the regulatory definitions are consistent with the relevant statutory definitions. The definitions used here align with standard cybersecurity definitions used across industry and Government agencies and are listed in NIST's CSF. These sources provide a common lexicon for everyone to use to limit miscommunication and do not differ because they are used in a maritime setting.

Adding New Terms to the Final Rule

Several commenters suggested that we introduce new terms that were not defined in the NPRM, such as ''Marine Transportation System (MTS),'' ''Critical Cybersecurity Equipment,'' and ''transportation security incident.'' In some cases, commenters proposed adding new definitions to enhance understanding of this final rule. For

[46] 89 FR 13404.

[47] 33 CFR 6.01–8 and 44 U.S.C. 3552(b)(2).

[48] 6 U.S.C. 650(12).

example, they requested definitions for ''key personnel'' as described in § 101.650(d), Cybersecurity Training for Personnel, and ''sensitive or critical data'' instead of the current requirement that ''all data'' must be protected under § 101.650(c), Data Security Measures. The commenters noted that these suggestions were made to clarify specific requirements and improve the overall clarity and implementation of this final rule.

We did not make changes in response to most of these suggestions. Adding these terms is unnecessary, as many of them are already well-defined and have been commonly used in the maritime sector for many years. For example, ''Marine Transportation System'' or ''Maritime Transportation System'' are terms that are widely recognized and understood by industry and Government agencies.[49] Similarly, transportation security incident is a term that, although mentioned several times in the NPRM, was not defined because it is already defined at 46 U.S.C. 70101 and in 33 CFR 101.105. This definition has been in place for over 20 years under the MTSA regulations. Therefore, we do not see the need to introduce additional definitions for these terms.

Some commenters suggested that the Coast Guard define what is a ''significant number'' when disclosure or unauthorized access directly or indirectly of nonpublic personal information of individuals information requires reporting in the proposed definition for reportable cyber incident.

The Coast Guard did not make changes in response to these requests. We recognize that we use several terms, such as ''significant number,'' in this final rule without defining them. We intentionally left this and other terms undefined because their meanings can vary significantly depending on an organization's operational conditions and cybersecurity risks. This approach ensures that the definition is appropriately tailored to the unique context and needs of each organization. By allowing organizations to define these terms themselves, we aim to provide a more flexible approach to meet the requirements in the evolving cybersecurity environment in the maritime sector.

Defining the Term ''Reportable Cyber Incident''

Numerous commenters responded affirmatively to our request for comments on whether we should define and use the term ''reportable cyber incident'' in this rulemaking to clarify what incidents trigger reporting obligations. Some commenters offered suggestions on edits to this proposed definition, including reordering subparagraphs. One commenter suggested limiting the definition to known incidents and not including those still under investigation considering the DHS report, informed by the work of the Cyber Incident Reporting Council (CIRC), which advises that the Federal Government should adopt a consistent model definition of a ''reportable cyber incident'' wherever practicable. Another commenter noted that establishing a threshold for reportable cyber incidents based on the potential that the incident could result in a TSI would clarify what does and does not need to be reported. Another commenter recommended that the Coast Guard should narrowly tailor ''reportable cyber incident'' to align with the Coast Guard's mission and the underlying purpose of the MTSA.

The Coast Guard agrees with the suggestion to define and use the term reportable cyber incident. We have included the term reportable cyber incident in this final rule. The Coast Guard's definition of reportable cyber incident is based on the model definition proposed in the CIRC-informed DHS Report (the ''CIRC Model Definition'').[50] Interagency stakeholders reviewed this term and its definition to ensure alignment and harmonization to the extent practical. The Coast Guard did not adopt the suggested edits to the proposed definition. We are maintaining the definition we included in the preamble to the NPRM, based on other public comments and discussion with interagency partners on harmonization.

One commenter stated that the definition for reportable cyber incident should include clearly defined thresholds for such incidents.

The Coast Guard does not agree. The definition for a reportable cyber incident provides sufficient detail to allow owners, operators, or CySOs to determine what constitutes such an incident and reflects harmonization among the interagency on the substance of this definition.

As noted previously, after considering all public input, we have decided to include the term reportable cyber incident as defined in the NPRM. We concur with the many comments that this term is sufficiently well-defined to provide clear guidance on when and under what conditions cyber incidents must be reported to the NRC. This clarity will help eliminate the need to report minor cyber incidents, which will reduce the administrative burden on owners and operators as a result.

One commenter suggested that the Coast Guard include the definition for a reportable cyber incident, but to allow for a threshold that would include unauthorized attempts by third-party actors to access sensitive information. The commenter also stated that these incidents should include phishing attempts, attempts to gain access to terminal operating systems, and unsuccessful malware attacks, as well as loss of network availability, exposure of sensitive data, and disruption of business operations as a result of unauthorized access by third parties.

We did not adopt this suggestion. The Coast Guard's definition allows for the owner, operator, or CySO to determine if an incident meets the criteria for reporting. Further, the Coast Guard encourages stakeholders to report any situation or incident out of the ordinary if there is doubt or if they question whether it meets the definition of reportable cyber incident.

We acknowledge the concerns raised by some commenters about redundancy and the need for interagency coordination. The Coast Guard will continue to work with other Government agencies to ensure our language aligns among all regulations and ensure harmonization of efforts to the extent practicable.

The Coast Guard emphasizes information sharing among its interagency partners. The Coast Guard shares information with other Federal agencies through multiple channels: NRC reports of incidents are shared with DHS, CISA, and other relevant agencies. As a Co-Sector Risk Management Agency for the Transportation Systems Sector, the Coast Guard regularly communicates with the U.S. Department of Transportation, the Maritime Administration, TSA, and CISA.[51] The Coast Guard is a participant on numerous National Security Council-led Interagency Policy Committees. Engagement among local, State, Federal, and Tribal agencies also occurs through AMSCs. The Coast Guard shares cyber-focused products such as marine safety

[49] *See* for example, 46 U.S.C. 50401.

[50] *See* DHS Office of Strategy, Policy, and Plans, Harmonization of Cyber Incident Reporting to the Federal Government (Sept. 19, 2023), *https://www.dhs.gov/publication/harmonization-cyber-incident-reporting-federal-government,* accessed August 13, 2024.

[51] The White House, National Security Memorandum on Critical Infrastructure Security and Resilience, Apr. 30, 2024, *https://www.whitehouse.gov/briefing-room/presidential-actions/2024/04/30/national-security-memorandum-on-critical-infrastructure-security-and-resilience/,* accessed on December 20, 2024.

information bulletins, cyber advisories, and other products across interagency partners.

One commenter noted that they support defining reportable cyber incident to distinguish between incidents that must be reported and those that do not; however, they find the current definition of ''cyber incident'' in § 101.615 is too broad and overly focused on IT. The commenter also noted that they have concerns with the proposed definition of reportable cyber incident and its alignment, or lack thereof, with other definitions for reportable cyber incidents in regulation and policy.

The Coast Guard definition of cyber incident is based on the existing definition of incident in Title XXII of the Homeland Security Act of 2002,[52] which is not textually identical, but is substantively similar in relevant part to, the definition of ''cyber incident'' in Executive Order 14116. An incident in the Homeland Security Act of 2002 is ''an occurrence that actually jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system, or actually jeopardizes, without lawful authority, an information system.'' Although the Coast Guard recognizes that not all commenters may agree with our chosen definition, the Coast Guard values alignment with these established terms to minimize potential conflicts that could be created by significant deviations between definitions in these regulations and existing statutes.

''Information system'' is defined in this final rule as an interconnected set of information resources under the same direct management control that shares common functionality. Typically, a system includes hardware, software data, applications, communications, and people. It includes the application of IT, OT, or a combination of both. The definition of information system clearly covers both IT and OT systems.

The Coast Guard's definition of reportable cyber incident is based on the model definition proposed in the CIRC Model Definition. However, in CISA's proposed rule implementing the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) (Pub. L. 117–103), the proposed definition of ''substantial cyber incident'' (which is used within the definition of ''covered cyber incident,'' the term that describes what cyber incidents are required to be reported under CIRCIA) does not include the CIRC Model definition's phrase ''or, if still under the covered entity's investigation, could reasonably lead to any of the following,'' as CISA interprets CIRCIA to require an incident to actually result in one of the impacts listed in the definition of substantial (in this case, reportable) cyber incident under CIRCIA.[53] For similar reasons, CISA did not propose including in the definition of ''substantial cyber incident,'' the CIRC Model Definition's fourth threshold prong, ''potential operational disruption.'' A ''reportable cyber incident'' is a type of ''cyber incident'' as these terms are defined in this final rule. A ''reportable cyber incident'' as defined in this final rule would also trigger a reporting obligation under 33 CFR 6.16–1 for entities required to report a cyber incident as such term is defined in 33 CFR part 6.

Revising the Definition of ''Breach''

One commenter noted that the term ''breach,'' when used by the Coast Guard to discuss a breach of security, could have serious, significant legal and financial impacts in reference to cybersecurity.

We revised § 101.625(d)(10) in this final rule to refer to ''reportable cyber incidents'' rather than ''breaches of security, suspicious activity that may result in TSIs, TSIs, and cyber incidents.'' This is also consistent with our decision to define and include the term reportable cyber incident.

Adding a Definition for ''Cybersecurity Threat''

One commenter recommended adding the definition of ''cybersecurity threats'' to 33 CFR parts 104 and 105.

The Coast Guard does not agree to add the definition of ''cybersecurity threat'' because it is already encompassed by the defined term ''cyber threat'' the Coast Guard uses in this final rule. Cyber threat is the term used in CIRCIA, which amended the Homeland Security Act of 2002 (Pub. L. 107–296). CIRCIA defined cyber threat by cross-referencing to the term cybersecurity threat as it was already defined in the Homeland Security Act of 2002. The two statutory terms share the same definition, which is substantively repeated in this final rule. For the sake of consistency in this final rule, the Coast Guard has chosen cyber threat as the term-of-art for these regulations.

Furthermore, the Coast Guard does not concur with the suggestion to amend 33 CFR parts 104 and 105 because, except for amending 33 CFR 160.202, this final rule is limited to establishing requirements in 33 CFR part 101. Adding or removing requirements in parts 104, 105, or 106 is outside the scope of this final rule. The new definitions in § 101.615 are sufficient for this final rule.

Revising the Definition of ''Backup''

One commenter raised a concern that the primary issue with the concept of ''backup'' is that it lacks the flexibility to rebuild or re-instantiate a system from something other than a backup. When restoring from backups, time can be a critical factor. Therefore, the commenter recommended that the Coast Guard expand this definition and eliminate the requirement for all backups to be stored offsite.

The Coast Guard agrees with this commenter. We revised the definition of backup in § 101.615 to remove the phrase ''in a secondary location'' and the implication that backups must be stored ''offsite.'' Instead, we added language to clarify our definition of backup. In this final rule, backups refer to ''copies being stored separately for preservation and recovery.'' With these changes, the revised definition is sufficient for the requirements in these regulations. If an owner or operator of a U.S.-flagged vessel, facility, or OCS facility identifies a method that they feel falls outside of that definition, they may follow the process to request a waiver according to § 101.665.

Defining the Term ''Transportation Security Incident''

One commenter questioned the clarity of the definition of a ''transportation security incident,'' while another suggested a definition of ''security incident.''

Transportation security incident is defined by the MTSA, codified at 46 U.S.C. 70101, and in 33 CFR 101.105. Further guidance on what constitutes a TSI (as well as a ''breach of security'' or ''suspicious activity'') is provided in NVIC 02–24.

Revising the Definition of ''Hazardous Condition''

Multiple commenters addressed our request for input on whether we should amend the definition of ''hazardous condition'' in 33 CFR 160.202 by adding ''cyber incidents.'' The Coast Guard received several comments in favor of amending the definition of hazardous condition to include cyber incidents. Conversely, one commenter advised against including cyber incidents under the definition of hazardous condition in § 160.202. The commenter warned that doing so could lead to unnecessary sharing of sensitive information during

[52] Public Law 107–296, as added by Public Law 117–263, section 7143, classified to 6 U.S.C. 650.

[53] 89 FR 23644.

cyber incidents, such as losing confidential data, that do not impact marine operations. The commenter recommended against additional reporting requirements beyond those mandated by CISA if cyber incidents are added to the definition of hazardous condition. Other commenters also suggested that the Coast Guard clarify the application of this definition to marine terminals and OCS facilities, as much of this section pertains to vessel requirements and may cause confusion.

The Coast Guard concurs with the recommendations to include the term. Accordingly, we amended the definition of hazardous condition in that section to include the term cyber incident. Including the term cyber incident is a helpful example that adds clarity to the existing regulation in 33 CFR 160.202, which applies only to vessels. The Coast Guard recognizes that not all occurrences with a cyber aspect will create a hazardous condition, but believes the term's inclusion in the list of examples will be beneficial by highlighting that cybersecurity is an important consideration that operators should be cognizant of when assessing hazardous conditions.

As discussed elsewhere in this preamble, the Coast Guard amended the definition of hazardous condition to include cyber incidents. The Coast Guard is not changing the applicability of § 160.203 to include facilities or OCS facilities because § 160.203 relates to the Notice of Arrival and Departure regulations for vessels. This clarification to the definition of hazardous condition is distinct from the new baseline cybersecurity requirements for MTSA-regulated entities.

One commenter expressed concern with the NPRM's approach to requesting input on whether to define and use reportable cyber incident, and whether to amend the definition of ''hazardous condition.'' The commenter strongly advocated for harmonizing the reporting process, noting that owners and operators of U.S.-flagged vessels are already familiar with reporting to the NRC. They suggested that all cyber incidents should be reported through this channel, allowing the NRC to relay information to other Federal agencies as needed.

The Administrative Procedure Act requires that we provide general notice of a proposed rulemaking, including notice of the terms or substance of a proposed rule or a description of the subjects and issues involved.[54] Asking the public to comment on specific items, in addition to the NPRM as whole, is a commonly accepted way to seek public participation in the rulemaking process. In fact, as discussed above, we received numerous comments responsive to our request.

D. Comments Related to Owner or Operator

We received a series of comments about the responsibilities of the owner or operator for managing the Cybersecurity Plan.

One commenter recommended assigning responsibilities to the operator to ensure compliance with applicable regulations for regulated facilities. One commenter recommended assigning overall responsibility for vessels to the company or organization (in this case, a Document of Compliance (DOC) holder) if the owner and operator of a vessel are separate entities. Another commenter recommended the term ''owner and operator'' be clarified to signify a single responsibility for the vessel (in this case, a DOC holder), OCS facility, or other facility owned or operated, based on IMO practice.

We did not make changes in response to these recommendations. The Coast Guard desires consistency with the existing regulations and uses the term ''owner or operator'' as defined in § 101.105 throughout this final rule. The Coast Guard does not agree that further clarification of the term ''owner or operator'' is needed. The term owner or operator in this final rule is consistent with existing MTSA regulations, and it is unnecessary to specify further criteria for the entity with overall responsibility (such as requiring them to be holding a DOC).

One commenter requested clarification of the differences between the roles and responsibilities of the owner or operator and the CySO as there are similar or overlapping roles to both.

The roles and responsibilities of the CySO and owner or operator are clearly outlined in this final rule in §§ 101.625 and 101.620, respectively, and are in line with the existing relationships between the owner or operator, Vessel Security Officer (VSO), and Facility Security Officer (FSO) in existing regulations. While there is some overlap between the roles, any redundancy or overlap does not take away from the responsibilities of the CySO and owner or operator and enables the owner or operator to maintain oversight over the CySO position.

One commenter recommended that the Coast Guard change the phrase ''responsible for'' to ''accountable for'' in § 101.620(a) when referring to owners and operators assigning security duties to other personnel. According to the commenter, this change would highlight the importance of how these roles will be staffed and implemented, indicating a more structured approach to accountability within the organization.

The Coast Guard declined to make this change, as the term ''responsible for'' is consistent with existing language for VSOs, FSOs, and OCS FSOs in current regulations and is long-standing industry practice.

One commenter questioned whether ''person'' as stated in § 101.620(b)(2) is synonymous with ''role.''

An owner or operator subject to this final rule is required to identify each person exercising cybersecurity duties and responsibilities. Any person having such duties and responsibilities would likewise have a ''role.'' Owners and operators should focus on the language of this final rule and identify each person, as stated. The Coast Guard is concerned that the necessary duties are properly assigned and performed. The particular manner which an entity identifies and assign those duties, whether by individual name or by role, is left to the entity's discretion. The Coast Guard encourages owners and operators to comply with the requirements under § 101.620(b)(2) consistent with how their U.S.-flagged, facility, OCS facility, or organization addresses similar requirements in their VSP, FSP, or OCS FSP.

E. Comments Related to Cybersecurity Officer

Some commenters stated that they did not believe that cybersecurity warrants another designation for security personnel, in this case a CySO, and felt that a specific cybersecurity plan was not needed. They recommended adding cybersecurity duties to existing responsibilities of the Company Security Officer (CSO) and VSO. Another commenter felt that the CySO position might be unnecessary and requested a process for waiving this requirement. Another commenter believed that this final rule should state the actions that an organization must take, rather than specifying the individual role that needs to accomplish those actions. They felt that organizations should be able to identify who that person would be for their organization, which may align to other positions or titles within their organization.

The Coast Guard strongly believes that the present and evolving cybersecurity threats in the MTS require specific regulations to help prevent, mitigate, and respond to cybersecurity incidents and vulnerabilities. This final rule provides minimum cybersecurity

[54] 5 U.S.C. 553(b)(3).

requirements for a common cybersecurity baseline for regulated maritime entities. The threats and vulnerabilities addressed are not adequately covered by existing regulations. The requirements to designate a CySO and to develop a Cybersecurity Plan reflect the reality that cybersecurity threats, risks, and vulnerabilities exist in the MTS, and have the potential to significantly affect the safety and security of individual entities, as well as the MTS and other transportation critical infrastructure. The Coast Guard has determined that it is necessary to identify a specific CySO, similar to the identification of a VSO or FSO, that serves as the primary lead to organize these efforts within their U.S.-flagged vessel, facility, or OCS facility, to ensure that there is at least one representative focusing on and addressing the relevant requirements. Consistent with § 101.625, the CySO may perform other duties such as CSO, FSO, or VSO. It will be up to owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to decide whether they need to designate a sole security officer that focuses exclusively on cybersecurity.

One commenter stated that the requirements for cybersecurity should be directed at the executive level, and not create a CySO position to handle many of these requirements.

The owner or operator has ultimate responsibility for compliance with this final rule. This includes the designating a CySO, as required by § 101.620(b)(3). It is the responsibility of each regulated entity to ensure their executive leadership is aligned with the CySO and other cybersecurity professionals. Placing full ownership of cybersecurity requirements on the owner or operator, without the designation of a CySO, would be burdensome to the owner or operator. The position of CySO ensures the regulated entity has personnel with the necessary professional expertise to address cybersecurity.

Several commenters stated that the qualifications listed in these regulations did not fully encompass what would be required for a successful CySO position. Additionally, a commenter questioned the qualifications of the Coast Guard or a third-party organization to evaluate what is required of a specific organization's CySO. The commenter also suggested that either the Coast Guard or a third-party organization would be in a poor position to evaluate whether they meet the necessary qualifications. Another commenter stated that it could be difficult for small organizations to have someone on staff with these qualifications.

This final rule presents minimum baseline requirements, including the requirements of a CySO for a U.S.-flagged vessel, facility, or OCS facility. The qualifications required serve as a baseline that should be attainable and easily evaluated by organizations of any size or complexity. Organizations are welcome to identify additional requirements, such as additional qualifications, that they would require of their CySO position as best suits their individual needs, so long as the minimum requirements of this final rule are met. It is up to the owner or operator of a U.S.-flagged vessel, facility, or OCS facility to determine that their candidate meets these requirements, and for the Coast Guard to evaluate whether the owner or operator met their required responsibilities in their review of the Cybersecurity Plan.

The Coast Guard does not, and will not, have a role in an organization's hiring of new personnel or designation of new roles and responsibilities to existing personnel. These decisions are left up to the owner or operator. The Coast Guard has stated that the CySO can be an existing employee at a U.S.-flagged vessel, facility, or OCS facility. The Coast Guard will verify that a qualified CySO has been designated by the owner or operator according to this final rule. The Coast Guard recognizes that this final rule will result in costs incurred by industry. Failure to designate a CySO, as well as failure to comply with any other aspect of this final rule, would be subject to actions as determined by the COTP or other appropriate Coast Guard representative.

One commenter asked the Coast Guard to clarify if the CySO must be a U.S. citizen.

The Coast Guard does not impose citizenship requirements for the CySO position in this final rule. The Coast Guard may consider this issue in a subsequent rulemaking, as appropriate.

Some commenters noted that for small operators, or those with limited resources, the CySO would likely be a collateral duty. Another commenter similarly commented that it was not reasonable to expect every owner or operator of a vessel to employ a cybersecurity expert, and that the CySO position requires too much specialized knowledge and too much time to be added to an existing position. Many small companies without an in-house IT department might have to rely on a third-party provider for all cybersecurity needs and protections. Consequently, the commenters were concerned that this final rule would impose unrealistic requirements and undue burdens on small operators. Some commenters requested that the Coast Guard clarify that a CySO could be someone designated at the corporate level.

The Coast Guard notes in this final rule that the CySO designation may be given to an employee with other responsibilities consistent with § 101.625. The CySO role may be a collateral duty so long as all the requirements and responsibilities of the position are met. It is the responsibility of owners and operators to ensure that cybersecurity risks are managed and addressed, whether through in-house resources or through third-party services. While we understand the concerns regarding the potential burden of compliance, it is essential that cybersecurity requirements are met to safeguard the organization's assets and ultimately, maritime critical infrastructure and the MTS. Ensuring robust cybersecurity defenses is critical to protecting against potential threats and maintaining operational integrity.

The Coast Guard developed these regulations, including the cybersecurity requirements, to enable owners and operators to identify a person who can manage the requirements, even if they must rely on other cybersecurity, IT, or OT professionals for more technical items in the rule. Regardless of the size of an organization itself, the size of their IT and OT footprint dictates how much a CySO will have to address. A company with a small IT or OT footprint would likewise be scaled towards fewer items that the CySO would be responsible for. A company with a larger IT or OT footprint would similarly require more of the CySO position, commensurate to the level of risk posed. The Coast Guard believes, therefore, that there would be little to no undue burden or unrealistic requirement of any regulated entity, as the level of cybersecurity actions required of the CySO directly correlates to their cyber footprint. The Coast Guard reiterates that this final rule allows for the designation of the CySO role to an existing employee at any level of the organization, so long as the requirements and responsibilities are met for each individual U.S.-flagged vessel, facility, or OCS facility.

Some commenters requested that the Coast Guard recognize that a facility may designate an alternate CySO. Their concern is that, for a company with multiple facilities, one CySO may not have the knowledge or practical capability to effectively manage all of them.

The Coast Guard revised the definition for *Cybersecurity Officer* in § 101.615 to clarify that the owner or operator must designate a CySO, but

they also may designate an alternate CySO to assist in the duties and responsibilities at all times, including at times when the CySO may be away from the U.S.-flagged vessel, facility, or OCS facility.

One commenter supports including the phrase ''or equivalent job experience'' to the CySO requirements.

The Coast Guard agrees that the ''or equivalent job experience'' is an important phrase and maintains it as part of the final rule in § 101.625(e).

Some commenters requested that we rename the CySO position from ''CySO'' to ''Facility Cybersecurity Officer'' due to potential confusion with other positions and titles, such as the Chief Information Security Officer (CISO) or other ''C-Suite'' personnel. These commenters expressed concern that the Coast Guard was introducing a term that has not previously been used by other agencies and offered alternative titles for the role.

This final rule clearly defines the CySO position and differentiates it from other positions and titles at a U.S.-flagged vessel, facility, OCS facility, or organization. We do not agree with changing the name of the position in this final rule, especially as this applies specifically to U.S.-flagged vessels, facilities, and OCS facilities. We selected this term to differentiate from other roles identified in existing regulations, while clearly outlining the requirements of the position. If an owner or operator prefers to refer to the position by a different title within the organization, then they are free to do so as long as they explain the different title in their Cybersecurity Plan.

One commenter expressed concern that this final rule does not address how the CySO is expected to interact with the CSO, and that the relationship between these two positions should be clearly defined. They stated that the CSO should have ultimate responsibility on all security-related matters, including cybersecurity, and that the CSO should approve the Cybersecurity Plan.

The Coast Guard notes that the roles and responsibilities of the CSO are clearly outlined in existing regulations, and the roles and responsibilities of the CySO are clearly outlined in this final rule. Any interaction between the CySO and other security positions should be determined by the owner or operator at the U.S.-flagged vessel, facility, OCS facility, or organizational level, as appropriate. As long as statutory and regulatory requirements are met, it is the discretion of each owner or operator of U.S.-flagged vessel, facility, or OCS facility to determine how their employees interact.

One commenter requested that specific criteria be developed for the CySO position to develop training programs. The commenter requested that Government-funded training courses be considered for existing CSOs to be trained for the CySO designation. This commenter also requested that third-party training programs be eligible for Federal grant programs, such as FEMA's Port Security Grant Program.

The Coast Guard notes that the criteria in § 101.625 is sufficient as baseline requirements for the CySO position. When determining the baseline requirements for the CySO, we looked at similar jobs and pulled those requirements that suited the need. The Coast Guard does not currently have plans to develop and fund training programs for the CySO position. We advise affected entities that they are welcome to work with FEMA, local port partners, their Area Maritime Security Committee, and others, as appropriate, in requesting support through any Federal grant program in support of maritime security. The decision on what is eligible for, and would receive such grant funding, is not made by the Coast Guard.

One commenter requested clarification on the specifics of cybersecurity inspections that are the responsibility of the CySO, including how they will be conducted.

Coast Guard inspections are intended to verify compliance with an approved Cybersecurity Plan. When arranging for and during the inspection, it is the responsibility of the CySO to ensure that any disruptions to operations are minimized. The cybersecurity portion of the inspection will follow standard inspections procedures, similar in methodology to physical facility inspections, in verifying compliance with the regulations. The Coast Guard may consider future policy development, if needed, on the conduct of cybersecurity inspections.

One commenter recommended mandatory training and certification for the position of the CySO. For vessel CySOs, one commenter suggested implementing a certificate of proficiency similar to those required for other roles under the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers.

After reviewing the requirements for designating a CySO, the Coast Guard is not including additional requirements or certifications at this time. This final rule provides minimum baseline requirements necessary for the identification of this role, and the Coast Guard does not intend to place too prescriptive requirements that could impede stakeholders' ability to identify suitable candidates. Owners and operators are welcome to add additional requirements on their own, so long as they meet compliance with these regulations.

Some commenters questioned why there are physical security controls under the CySO when these are under the existing purview of VSOs, FSOs, and OCS FSOs.

The Coast Guard notes that physical security controls for IT and OT systems are listed in § 101.630(c)(8) as being part of the Cybersecurity Plan, which is developed and implemented by the CySO. These regulations do not preclude the VSO, FSO, or OCS FSO from performing their required roles and responsibilities and helping to inform the Cybersecurity Plan, or otherwise working with the CySO in the completion of security-related requirements.

One commenter expressed concern that the roles and responsibilities of the CySO are too complex for just one person, and often these functions are performed by a team or multiple employees.

The Coast Guard notes that the CySO is required to ''ensure'' that certain actions are conducted and allows for them to work with the team and others who assist in carrying out those functions. The CySO is also able to assign security duties as needed.

One commenter stated that the requirements under §§ 101.625(d)(8) and 101.625(d)(9) were very similar and could be combined. The requirements in question are to ensure the cybersecurity awareness and vigilance of personnel through briefings, drills, exercises, and training and to ensure adequate cybersecurity training of personnel.

The Coast Guard agrees with this comment and removed ''through briefings, drills, exercises, and training'' from § 101.625(d)(8) to provide CySOs with more flexibility, and less prescriptive measures, on how they would meet the requirements, and also alleviate redundancy in the language between paragraphs (d)(8) and (d)(9).

Several commenters requested that the Coast Guard remove the requirement for cybersecurity inspections to be arranged in conjunction with U.S.-flagged vessel, facility, and OCS facility inspections, as a U.S.-flagged vessel, facility, or OCS facility might feel that they need to conduct the cybersecurity inspection separately due to factors such as availability of the CySO.

In this final rule, the Coast Guard revised § 101.625(d)(6), which requires the CySO to arrange for the cybersecurity inspection to reflect that cybersecurity inspections may be held in conjunction with physical security inspections, to increase flexibility and decrease burden, for the U.S.-flagged vessel, facility, or OCS facility. The Coast Guard notes that scheduling inspections is ultimately up to the local COTP or the Officer in Charge, Marine Inspections (OCMI) in working with the regulated U.S.-flagged vessel, facility, or OCS facility.

F. Comments Related to the Cybersecurity Plan

Several commenters noted that there is a lack of clarity whether one Cybersecurity Plan for a fleet is acceptable, or if each vessel and facility requires its own Plan.

Each regulated U.S.-flagged vessel, facility, and OCS facility is required to develop and maintain a Cybersecurity Plan.

Multiple commenters noted a lack of reference to ASPs. One commenter also recommended that the Coast Guard allow the Passenger Vessel Association (PVA) specific ASP. As noted in § 101.660 of this final rule, the Coast Guard will allow owners and operators to use ASPs to comply with this final rule. We added additional text to § 101.660 to clarify that ASP provisions apply to cybersecurity compliance documentation. Given the unique nature of cybersecurity threats, vulnerabilities, and mitigation strategies, owners and operators must ensure that use of ASPs includes those items specific to each U.S.-flagged vessel, facility, and OCS facility. The Coast Guard will evaluate each ASP's cybersecurity component to ensure full regulatory compliance with each applicable requirement, including the PVA-specific ASP.

One commenter recommended that § 101.630(a) be amended to add ASPs and OCS FSPs to the requirement for CySOs.

The Coast Guard partially concurs with the recommendation and added references to OCS FSPs in § 101.630(a) to clarify that OCS FSPs follow the same requirements as VSPs and FSPs. However, we do not find it necessary to add the term ''Alternative Security Program'' because ASPs are already included as an option in § 101.660 and are also expressly addressed in 33 CFR parts 104, 105, and 106.

Some commenters stated that the Cybersecurity Plan should include additional security measures for the vessel, facility, or OCS facility to take in cases of increased MARSEC levels. For instance, MARSEC Level 3 Cybersecurity Controls may involve reviewing and authorizing all remote access sessions; removing unpatched systems from direct internet access; isolating or shutting down nonessential systems; requiring multifactor authentication for all accounts; and reporting suspicious activity to stakeholders, ISACs, CISA, and the Coast Guard. Cybersecurity MARSEC actions should be specific, achievable, and deliver meaningful security benefits. This enables the vessel or facility to reduce vulnerabilities and enhance resilience, even for short periods. They also suggested that the Cybersecurity Plan should encourage owners or operators to implement additional measures anytime credible threat information is known.

This final rule does not prevent a U.S.-flagged vessel, facility, or OCS facility from adding such language or additional measures to their Cybersecurity Plan, should they desire. However, the Coast Guard did not add requirements for increased MARSEC levels in this final rule and will not mandate this language because of multiple factors. First, it is difficult to set MARSEC conditions solely based on cybersecurity threats. Cybersecurity threats are constantly evolving, with new vulnerabilities, attack vectors, and tactics emerging regularly. This makes it challenging to establish static threat conditions that can effectively address all potential scenarios. Additionally, cybersecurity threats can originate from various sources, including nation-states, cybercriminals, insiders, hacktivists, and others. Each source has different capabilities, motivations, and methods, requiring tailored threat conditions that are difficult to generalize. Even if we were to set MARSEC conditions based on cybersecurity threats, it would be challenging to list one-size-fits-all requirements that would work for a wide array of vessels and port facilities, each with different risk profiles and operational conditions. For example, vessels may face different types of cyber-attacks depending on their routes, locations, cargoes, and onboard technologies. Imposing blanket cybersecurity requirements based on MARSEC conditions may not be practical in these cases.

Furthermore, creating specific requirements for each MARSEC level would necessitate constant updates and adjustments to keep pace with the dynamic nature of cyber threats. This would place a significant administrative burden on both the Coast Guard and the maritime industry. Instead, we are maintaining a flexible and adaptive approach to cybersecurity in this final rule that allows for tailored responses based on the unique circumstances of each U.S.-flagged vessel, facility, and OCS facility.

One commenter inquired about how a CySO would respond to elevations in MARSEC levels.

The regulations in this final rule do not tie these minimum baseline requirements to elevation in enforcement due to MARSEC level. Guidance on responding to elevated MARSEC levels would come in a separate Coast Guard directive.

One commenter questioned the use of ''major amendment'' when requiring a resubmission of a Cybersecurity Plan in the regulations and suggested further clarification or definition would be needed. Another commenter expressed appreciation for the flexibility for each owner or operator to determine what constitutes a ''major amendment'' as appropriate for their organization based on types of changes to their security measures and operational risks,'' but cautioned that this creates its own uncertainty. The commenter requested that in the final rule, the Coast Guard be more explicit or provide thresholds or examples of what it considers ''major.'' The commenter also suggested that factors such as cost and operational burden should be considered (for example, more operators and employees or more equipment), and that the threshold may be a percent of the current budget for cybersecurity since each company will be different. The commenter reasoned that this threshold would also provide clarity for Coast Guard personnel. Another commenter suggested that such further clarification would be similar to the Coast Guard's clarification of ''major conversion'' for materiel requirements. Similarly, a commenter stated that the proposed 30-day notice to the Coast Guard for approval of any proposed major amendments to the Cybersecurity Plan would be overly burdensome and would likely cause the Cybersecurity Plan to be in a constant state of flux because of waiting for approvals and revisions, or could unnecessarily delay security enhancements that may trigger a required audit or approval cycle.

The Coast Guard recognizes these concerns. The Coast Guard considered the suggestion to define ''major amendment'' much like the Coast Guard has done with ''major conversion'' for materiel requirements but does not agree with it. Rather than define the term ''major amendment,'' we removed it from §§ 101.625(d)(13) and 101.630(e)(2) in this final rule. This removes any ambiguity about which

amendments require resubmission of the Cybersecurity Plan. It is also consistent with our physical security requirements in 33 CFR parts 104, 105, and 106, which do not specify that only ''major'' amendments must be sent to the Coast Guard for approval. *See* 33 CFR 104.415(a)(2), 105.415(a)(2), 106.415(a)(2). Removing the term ''major'' allows stakeholders to address amendments uniformly across both physical security and cybersecurity requirements. We retained the requirement to submit proposed amendments within 30 days but note that § 101.630(e)(2)(i) provides that nothing in this section should be construed as limiting the owner or operator of the U.S.-flagged vessel, facility, or OCS facility from the timely implementation of such additional security measures not enumerated in the approved VSP, FSP, or OCS FSP as necessary to address exigent security situations.

Some commenters recommended that the Coast Guard strike the requirements, or make modifications to the requirements, related to an owner or operator's submission of proposed amendments to the Cybersecurity Plan. Some commenters suggested tailoring this to ''material'' or ''significant'' changes.

In this final rule, the Coast Guard did not remove this requirement, as it is consistent with existing practice and 33 CFR parts 104, 105, and 106. However, we revised § 101.630 to remove ambiguity by eliminating the term ''major amendment,'' as well as the associated requirement that changes to the Cybersecurity Plan must be proposed to the Coast Guard before implementation, as discussed above. We added language to § 101.630(e)(2)(i) to address situations when an owner or operator may feel that security measures are needed while an amendment is under review by the Coast Guard.

One commenter stated that it was not clear to the owner, operator, or CySO whether they submit their Cybersecurity Plan to the COTP or OCMI, or to the U.S. Coast Guard's MSC.

Under § 101.625(d)(13), and according to § 101.630(d), the CySO must ensure the owner or operator submits the Cybersecurity Plan for approval to the cognizant COTP or OCMI for facilities or OCS facilities, or to the MSC for U.S.-flagged vessels.

One commenter suggested removing the requirement that the CySO include ''a letter certifying that the plan meets the requirements of this subpart must accompany the submission'' under § 101.630(d).

The Coast Guard agrees with this recommendation, as submitting the Cybersecurity Plan itself qualifies as certification that the Plan meets all the requirements. The Coast Guard revised § 101.630(d) to remove the requirement to send this letter.

One commenter requested clarification on whether the Cybersecurity Assessment and Cybersecurity Plan could be done separately from the existing requirements for conducting an Assessment and Plan according to 33 CFR parts 104, 105, and 106. Additionally, they sought clarification on how this final rule affects § 105.305(c)(1)(iv) for existing security measures and procedures relating to services and utilities, and § 105.305(d)(2)(v) for radio and telecommunication systems, including computer systems and networks.

This final rule allows for regulated U.S.-flagged vessels, facilities, and OCS facilities to choose whether to incorporate Cybersecurity Assessments and Cybersecurity Plans into their existing assessments and plan submissions, or to submit them as separate documents. Nothing in this final rule is meant to replace existing regulations, and regulated entities should ensure compliance with all applicable regulations. In the event there is overlap, entities may identify where requirements are being simultaneously satisfied. We revised the definition in § 101.615 of *Cybersecurity Plan* and the reference to Plan submission in § 101.630(a) to clarify that separate submissions are acceptable.

Several commenters recommended adopting various specific standards, such as the NIST CSF, NIST's special publications, the Defense Counterintelligence and Security Agency's National Industrial Security Program, DoD's Cybersecurity Maturity Model Certification program 2.0, IEc 62443, IMO, ISO/IEc 17020, the International Association of Ports and Harbors' Cybersecurity Guidelines for Ports and Port Authorities, the International Association of Classification Societies' (IACS) Unified Requirements (UR) E26 and E27, the North American Electric Reliability Corporation's CIP–013, and the American Bureau of Shipping's (ABS) Cyber Resilience Program for vessels. Other commenters inquired about leveraging third-party inspection standards, such as ISO/IEc 17020. One commenter stated that this final rule's minimum cybersecurity requirements and the ABS' Cyber Resilience Program for vessels both leverage the NIST CSF and IEc 62443 and appear to be directing the same efforts under the same framework. They inquired about ABS and Coast Guard collaboration and alignment on these efforts.

The Coast Guard intentionally created this final rule to allow flexibility in implementing a CSF. In developing this final rule, the Coast Guard leveraged CISA's Cyber Performance Goals, which themselves are mapped to NIST's CSF, but this does not preclude owners and operators of U.S.-flagged vessels, facilities, and OCS facilities from using other resources. Owners and operators may use NIST's standards or other standards and frameworks to help inform how they comply with the mandatory requirements in this final rule. This final rule provides minimum baseline requirements, but we encourage affected entities to include items in their Cybersecurity Plan that they deem in their best interest to enhance cybersecurity. Each Plan will be evaluated by the cognizant COTP or the OCMI for facilities and OCS facilities, and the MSC for U.S.-flagged vessels to ensure it meets the Coast Guard requirements.

The Coast Guard acknowledges that there are many third party and international standards and frameworks that could be used to meet the regulations. The owner or operator may use ABS or other third-party frameworks to assist them in meeting the Coast Guard's requirements, though this approach does not guarantee automatic acceptance or approval by the Coast Guard. However, the Coast Guard retains all statutory functions under MTSA and international responsibilities under the International Ship and Port Facility Security Code. At this time, we do not intend to delegate any functions to third parties under this final rule.

One commenter stated that the current format, which closely follows the regulatory format of 33 CFR parts 104, 105, and 106, was not well-suited for cybersecurity requirements, and that something more in line with NIST's Framework would be better.

The Coast Guard has chosen to articulate the cybersecurity requirements within 33 CFR part 101 because these regulations impact U.S.-flagged vessels, facilities, and OCS facilities collectively. This format is presented in a more organized and accessible manner to the maritime partners who are familiar with the MTSA regulations. Additionally, § 101.650 lists cybersecurity measures that are based on CISA's CPGs, which are aligned with NIST's CSF. This approach ensures clarity and facilitates easier compliance, allowing stakeholders to view all pertinent

cybersecurity regulations in a single, consolidated section.

One commenter felt that certain areas of the NPRM were too prescriptive, and that the Coast Guard should take an outcome-based approach of the appropriate NIST CSF function.

Pursuing an outcome-based approach was not feasible based on necessary timelines to develop and implement cybersecurity measures, and the Coast Guard feels that its rules strike the best balance of prescriptiveness because they are based on existing MTSA regulations and existing interagency guidelines generally accepted by industry. We recognize that some stakeholders may feel the requirements are too prescriptive, while others commented that the requirements were not prescriptive enough. The cybersecurity measures listed in § 101.650 are based on CISA's CPGs, which are performance-based goals and recommended actions and align with the NIST CSF. This approach ensures clarity and facilitates easier compliance, allowing stakeholders to view all pertinent cybersecurity regulations in a single, consolidated section. The Coast Guard acknowledges that there are many third-party and international standards and frameworks that could be used to meet the regulations. Owners and operators of U.S.-flagged vessels, facilities, and OCS facilities may base their Cybersecurity Plan on a standard or framework that they prefer and explain how the requirements of this final rule are met.

One commenter requested that the Coast Guard update language in the regulations to clarify that the CySO does not conduct audits but is limited to ensuring audits are conducted. Another commenter asked for clarification on the scope of the audit the CySO must perform.

The Coast Guard agrees with this suggestion and revised § 101.630(f)(2) in this final rule to clarify that the CySO does not conduct the audit themselves and that the CySO must only ensure that an audit is conducted. The Coast Guard did not add the additional language to the regulatory text defining the term audit as it allows for flexibility in how the regulated entity conducts their audit. The regulatory text in § 101.630(f) is in line with existing audit requirements in 33 CFR parts 104, 105, and 106.

One commenter expressed support for Cybersecurity Assessments being part of the Cybersecurity Plan renewal every 5 years when there is a change in vessel or facility ownership, or there are major amendments to the Cybersecurity Plan. However, they disagreed with requiring a Cybersecurity Assessment annually, citing that annual Cybersecurity Assessments are excessive for small businesses.

The Coast Guard did not make changes to the frequency required for Cybersecurity Assessments. We believe that annual Cybersecurity Assessments are important for regulated entities to continually monitor for cybersecurity developments pursuant to § 101.650(e). The cybersecurity environment can change so rapidly that conducting a Cybersecurity Assessment less frequently than annually could lead to vulnerabilities going unnoticed, with potentially drastic consequences. Moreover, the NIST guidelines state that risk assessments such as this should be conducted no less than annually. We expect that entities with a smaller or less complex IT and OT footprint will have shorter Cybersecurity Assessments with annual assessments.

G. Comments Related to Drills and Exercises

We received many comments about requirements for drills and exercises. Several commenters asked about the frequency and scope of drills and exercises. Some commenters from regulated entities noted that quarterly drills and annual exercises seemed excessive for smaller, seasonal operators and low-risk MTSA-regulated entities. These commenters suggested that quarterly drills and annual exercises would create an excessive time and resource burden on those entities, especially those with limited cyber exposure. One commenter noted that the biggest security threats facing a domestic passenger vessel remain a physical breach of security and suspicious individuals or activities associated with criminal activity and not cyber activities.

Other commenters referenced existing drills and exercise requirements for MTSA-regulated entities and recommended that the Coast Guard allow for overlap with new cybersecurity drills and exercises and existing required drills and exercises. Commenters also suggested that drills should be conducted at the organizational level rather than at the vessel or facility level. One commenter asked if drills are expected to be a comprehensive test of the Cybersecurity Plan, meaning the entirety of cybersecurity capabilities outlined in the Cybersecurity Plan. Another commenter expressed confusion regarding exercise requirements and tabletop simulation. One commenter stated that separate drill requirements were excessive and unnecessary.

Another commenter requested further explanation on required crew involvement. The commenter explained that onboard personnel have little to no involvement in cyber-specific drills and recommended the Coast Guard provide further explanation on the intent and extent of crew involvement with these drills.

The Coast Guard believes that, while different stakeholders have varying IT and OT footprints, it remains critical to incorporate some level of drills and exercises to ensure that owners, operators, and regulated entities are prepared to prevent and respond to increasing cybersecurity threats. After considering these comments, in this final rule, we have adjusted the frequency of conducting drills from quarterly to twice each calendar year. We believe that two drills annually will ensure sufficient proficiency with the procedures, while allowing for a regulated entity to conduct additional drills if they choose to, and we understand how quarterly drills and exercises could be too frequent for some vessel operations, as noted by some commenters. The Coast Guard felt that one drill annually would not be sufficient, while requiring three drills annually would not be a significant decrease from the original requirement of four drills annually. We also clarified that cybersecurity drills required under this part may be performed in conjunction with existing MTSA-required drills and exercises. We decided to maintain annual exercises but will also similarly allow exercises to be performed in combination with existing MTSA-required exercises.

While owners and operators are authorized to conduct drills at the organization level, each vessel, facility, and OCS facility has unique risks and operators at the vessel, facility, and OCS facility level should be experienced in addressing those unique vulnerabilities and prepared to respond to such incidents appropriately. This final rule states that drills should test individual elements of the Cybersecurity Plan and, therefore, are not a comprehensive test of the entirety of cybersecurity capabilities. The Coast Guard feels that tabletop exercises, if selected by the regulated entity to comply with our requirements, can serve as a full test of the CSF. This is similar to tabletop exercises under §§ 104.230(c)(2)(ii), 105.220(c)(2)(ii), and 106.225(c)(2)(ii), as participants can discuss and simulate the implementation of specific measures found within the Cybersecurity Plan.

The Coast Guard believes that this final rule provides the necessary level of detail on the requirements on the

conduct and elements of drills and exercises. This final rule allows each regulated entity the flexibility to determine the specific drills and exercises they wish to conduct. Additionally, individual stakeholders can determine the level of crew involvement in drills and exercises based on individual crew and employee roles and responsibilities within the organization.

Furthermore, the Coast Guard understands that each U.S.-flagged vessel, facility, and OCS facility operates facing different cybersecurity risks. Owners and operators may seek an exemption or waiver using the procedures in § 101.665. This flexibility is intended to accommodate varying levels of risk and operational needs across different U.S.-flagged vessels, facilities, and OCS facilities.

H. Comments Related to Records and Documentation

One commenter noted that the 2-year recordkeeping mandate could be quite costly compared to its value proposition.

The 2-year recordkeeping requirement is consistent with the existing regulations and aligns with incorporating the Cybersecurity Plan into a VSP, FSP, or OCS FSP if a regulated entity chooses to include the Cybersecurity Plan as part of their VSP, FSP, or OCS FSP. The Coast Guard recognizes that there may be varied costs associated with record keeping but expects that these additional records would be maintained similar to the existing records and could prove important in the event of a future cyber incident.

One commenter requested clarification on what the Coast Guard was not obtaining from covered entities' use of the Cyber Annex—which supports an FSP and OCS FSP—under the MCAAG.

The Cyber Annex was intended to provide only initial cyber guidance based on the regulations available at the time. Moreover, the MCAAG is only a voluntary ''how-to'' guide and is not, itself, a regulation. The Coast Guard recognizes that further actions are needed to better secure the MTS from cyber threats and vulnerabilities. This final rule is the next step for a new suite of baseline requirements specific to cybersecurity that go beyond what was addressed previously in the regulations and earlier guidance documents.

Some commenters expressed concerns over omitting FSP and OCS FSP Cyber Annexes in the new regulatory framework and the implications for companies that have already invested resources in developing these annexes.

The existing requirement for the owners and operators of MTSA-regulated facilities and OCS facilities to analyze vulnerabilities associated with radio and telecommunication equipment, including computer systems and networks, allows an owner or operator to demonstrate compliance in a variety of formats. The information may be provided in a separate Cyber Annex to the FSP or OCS FSP, or incorporated into the FSP or OCS FSP together with the physical security measures. Regulated entities who chose to create a separate Cyber Annex may use the content of the existing Cyber Annex to help develop a Cybersecurity Plan that reflects all cybersecurity measures required in subpart F, as appropriate, to mitigate risks identified during the Cybersecurity Assessment. As noted in § 101.630(a), the Cybersecurity Plan may be included in an existing VSP or FSP or VSP or FSP annex. This final rule amended § 101.630(a) to clarify that the Cybersecurity Plan may also be included in an OCS FSP, part of an approved ASP, annex to the OCS FSP, or may be provided in a separate submission (but is still considered a part of the VSP, FSP, or OCS FSP).

The Coast Guard believes that this final rule provides sufficient information for regulated entities to comply with requirements for a Cyber Incident Response Plan. The term is defined in § 101.615, and the requirements for inclusion are described in §§ 101.620(b)(6), 101.625(d)(4), and 101.650(g)(2).

One commenter noted that some ship OT systems have cybersecurity requirements as mandated by the DoD and noted that some required compliance elements pose a documentation duplication effort. They asked what exceptions would be considered for those having to meet DoD requirements.

The Coast Guard recognizes that cybersecurity requirements of other Federal agencies may be similar to these requirements. However, due to the specific nature of maritime cybersecurity considerations while operating in the MTS, the Coast Guard requires documentation specifically showing compliance with these regulations. At this time, we are not considering blanket compliance exemptions for regulations of other Federal agencies. Owners or operators may use this similar, but separate, compliance to inform their compliance with Coast Guard regulations.

I. Comments Related to Communications

One commenter noted that it was important to foster open communication and explore diverse solutions for information sharing and collaboration across stakeholders.

The Coast Guard agrees and encourages interested stakeholders to communicate and explore information-sharing solutions. These regulations are intended to establish certain baseline requirements that establish a common regulatory framework for all stakeholders to have those discussions.

J. Comments Related to Incident Reporting

The Coast Guard received numerous comments in response to our request for input on the reporting of cybersecurity incidents and whether those reports should be made to the Coast Guard through the NRC or to CISA. Commenters were split between the two options, with some citing the existing requirement to report security incidents to the NRC as a reason to maintain this process, while others cited the proposed requirements of CISA's CIRCIA rulemaking project. One commenter suggested that reporting to CISA be updated to a 72-hour requirement, whereas other comments suggested that the reporting be delayed until a cybersecurity incident has been investigated by an entity. Another commenter suggested that Global Positioning System (GPS) jamming and spoofing should be included as incidents that require mandatory reporting. One commenter suggested reporting to the Defense Cyber Crimes Center (DC3)/DoD-Defense Industrial Base Collaborative Information Sharing Environment (DCISE). One commenter suggested that reporting should not be directed to the NRC due to the NRC being short-staffed and not suited to receive the incident reports. One commenter noted that CISA is already in a position to catalog such reports and share critical information with those impacted in both private industry and Government sectors, as this is part of their current mission.

One commenter cited the various reporting requirements of CIRCIA's proposed rulemaking,[55] the Coast Guard's NPRM, Executive Order 14116 (Amending Regulations Relating to the Safeguarding of Vessels, Harbors, and Waterfront Facilities of the United States), along with the Coast Guard's NVIC 02–24 and Policy Letter 08–16. The commenter requested that the Coast

[55] 89 FR 23644, April 4, 2024.

Guard work with CISA, who is less familiar with the maritime industry, and deconflict the reporting requirements. In response to whether the Coast Guard should require reporting of ransomware payments, one commenter stated that they did not feel this would be wise. Other commenters stated that they felt that ransomware and related payments should indeed be reported. One commenter expressed concern with reporting of incidents or KEVs between CySOs, noting that information specific to a company should not be shared with other companies.

One commenter asked how the Coast Guard intended to share reported information with all regulated entities. Another commenter similarly suggested that the Coast Guard establish procedures within these regulations for the reporting of Government incidents to other parties. One commenter expressed concern that NRC personnel who will take reports of cybersecurity incidents might not be specialized in cybersecurity or have the appropriate knowledge and experience; therefore, NRC personnel would be unequipped to take reports of cybersecurity incidents. One commenter expressed concern about the limitations for vessels when reporting an incident to the NRC via telephone. The commenter noted that vessels might have limited internet connections and requested that the Coast Guard allow alternative communication methods such as very high frequency (VHF) or International Maritime Satellite (INMARSAT) as options for reporting to the NRC.

With this final rule, the Coast Guard is expecting reportable cyber incidents be reported to the NRC only by those entities not already required to report cyber incidents under 33 CFR 6.16–1, as amended by Executive Order 14116. Title 33 of the CFR, part 6.16–1, requires the reporting of evidence of sabotage, subversive activity, or an actual or threatened cyber incident involving or endangering any vessel, harbor, port, or waterfront facility, which includes all current MTSA-regulated U.S. vessels and facilities regulated by this rule. 33 CFR part 6.16–1 does not apply to OCS facilities regulated under 33 CFR part 106. Therefore, those OCS facilities are subject to the reporting requirements of this rule. Reporting to the NRC by these entities is in line with established requirements and timelines, including under § 101.305. It also enables a timely response to incidents by the Coast Guard, as well as partner agencies with whom the NRC shares incident reports immediately upon receipt. To minimize duplicative reporting from the same entity, the requirement to report under this final rule does not apply if the entity has reported the cybersecurity incident to the Coast Guard pursuant to 33 CFR 6.16–1, highlighting that because OCS facilities are not subject to the reporting requirements in 33 CFR part 6, OCS facilities must report cyber incidents to the NRC under this final rule.

Entities subject to reporting cybersecurity incidents under 33 CFR 6.16–1 must also report to the FBI and CISA, and they may also be subject to reporting to CISA under CIRCIA once the final rule is published and effective. The Coast Guard and CISA are committed to minimizing the burden on entities and will assess the need for additional policy guidance regarding the content of reports and the mechanism for reporting to satisfy applicable requirements in this part, § 101.305, 33 CFR part 6, and the CIRCIA final rule to be issued by CISA. The Coast Guard and CISA are committed to proactively collaborating and issuing guidance to entities to harmonize cyber reporting requirements to the extent possible and to clarify procedures for reporting cyber incidents to the Coast Guard and to CISA, respectively under current regulations, as well as in the future once CIRCIA's regulations take effect.

Cyber incident reports to the Coast Guard and CISA serve complementary but distinct operational purposes that are consistent with each agency's respective missions and authorities. Reports to the Coast Guard ''without delay'' under this part, § 101.305, and 33 CFR part 6 serve as an immediate notification to support the rapid response to events that may result in a TSI. Notifications to the NRC are immediately shared with CISA, FBI, and other relevant agencies to allow for the earliest mobilization of response and resources. Cyber incidents can quickly escalate and evolve, and any delays to the reporting can affect the ability to successfully respond to an incident. Reporting to the NRC without delay allows the Coast Guard COTPs to understand the potential risks of an incident and apply their authority to protect the MTS, including the use control and compliance measures as provided at § 101.410. In many cases, the goal of the initial response is to ensure public safety, mitigate the consequences of disastrous events, or prevent cascading impacts on critical infrastructure or the public. This includes but is not limited to minimizing loss of life and property, preventing environmental disasters or other accidents at sea, assisting in the recovery of critical IT or OT systems at ports or other facilities, defending the sovereignty of the United States, and facilitating legitimate use of maritime waterways. After the initial response, the notifications enable the Coast Guard to evaluate the broader risks to the MTS based on the specific vulnerability.

Separate from the Coast Guard's authorities under MTSA, but consistent with what Congress has envisioned in CIRCIA, reporting ''covered cyber incidents'' to CISA under its future regulation within 72 hours of having a reasonable belief that such an incident occurred (and ransom payments resulting from a ransomware attack within 24 hours of the payment being made) serves a complementary but distinct operational purpose from Coast Guard reporting requirements. As the lead agency for Federal cybersecurity and the national coordinator for critical infrastructure risk and resilience, CISA is well-positioned to support Coast Guard cyber related operations and address cross-sector cyber risk more broadly under its forthcoming CIRCIA regulations. By collecting more technical information via the CISA incident report then was collected by the NRC in the initial report and cross-referencing that information with other incidents reported in other critical infrastructure sectors, CISA can support the Coast Guard's operations, assist other entities in the MTS in mitigating exploited vulnerabilities, quickly identify other entities that may be at risk across critical infrastructure sectors, automate sharing information across the public and private sectors to protect against similar incidents in the future, and counter sophisticated cyber campaigns earlier.

CISA's further sharing of reported threat activity and impact information (for example, techniques, tactics, and procedures used to cause physical, functional, or informational impacts) will enable other Federal and non-Federal stakeholders to more effectively allocate resources and inform the development of more secure products. Furthermore, reporting incidents to CISA under the CIRCIA final rule will improve the U.S. Government's collective visibility into the national cyber threat landscape and close critical information gaps.

The Coast Guard does not specify specific incident types in this final rule but relies on the definition of reportable cyber incidents, as well as existing definitions for *breaches of security* and *transportation security incidents,* as defined in § 101.105, and *suspicious activity* as described in § 101.305.

The Coast Guard through this final rule is not requiring reporting to any entity outside of the NRC, such as DC3

or DCISE, as the NRC already has an established process and relationship with the regulated entities affected by this final rule.

The Coast Guard disagrees that the NRC would be unable to accommodate reported cybersecurity incidents. The NRC already receives reports of cybersecurity incidents according to the reporting requirements of § 101.305, which includes cybersecurity.

The Coast Guard agrees that reporting requirements, including those of existing MTSA regulations, this final rule, and the recent Executive Order 14116 updating 33 CFR 6.16–1 on cybersecurity, should be harmonized to the extent practicable and in accordance with the law. Policy Letter 08–16 was superseded by NVIC 02–24, which provides guidance on existing MTSA reporting requirements as well as those addressed by the recent Executive Order. The Coast Guard will work with partner agencies to maximize harmonization and alignment with this final rule to the extent practicable by assessing the need for new policy guidance regarding reporting requirements under this final rule, 33 CFR 6.16–1, and the CIRCIA final rule to be issued to CISA.

The definition for a reportable cyber incident provides regulated entities with sufficient information to determine when to report a ransomware incident. The Coast Guard did not add a requirement for the reporting of a ransomware payment. Note that a separate requirement to report ransom payments to CISA may be included in the forthcoming CIRCIA final rule issued by CISA.

In § 101.650(e)(3)(iii), this final rule requires each owner or operator of a regulated entity to maintain a method to share threat and vulnerability information with external stakeholders, but does not require sharing information with private companies that have no relationship with the regulated entity or do not have a role in facilitating cybersecurity response or the cybersecurity posture of the regulated entity.

The requirements in this final rule for reporting cybersecurity incidents apply to U.S.-flagged vessels, facilities, and OCS facilities and detail how to report to the Government. This final rule does not establish requirements for the Government to share information with the public, and the Coast Guard does not intend to immediately share cybersecurity incident reports from a regulated entity with other private stakeholders. If needed, the Coast Guard or other agencies can develop bulletins, advisories, or other guidance to address cybersecurity threats, risks, and vulnerabilities that may be discovered. Similarly, this final rule does not establish processes or procedures for the Government to report its own incidents to the public, as this final rule only addresses requirements for those entities addressed under the Applicability section in § 101.605.

The Coast Guard disagrees with any suggestion that NRC personnel would be unable to take a report of a cybersecurity incident. NRC personnel stand watch 24 hours a day, 7 days a week, receive cybersecurity incident reports according to § 101.305, and have demonstrated the capability to collect the necessary required information made in an initial incident report. Upon receipt of the incident report, the NRC immediately shares the information with the Coast Guard Cyber Command (CGCYBER), DHS, CISA and other relevant Government agencies that have the specialization, knowledge, and experience to conduct any further follow up after the initial report.

The Coast Guard is not prescribing an alternative reporting process through VHF or INMARSAT, but this final rule does not limit the reporting of reportable cyber incidents by telephone only and affirms reports can be made by any means necessary. Vessels without connectivity are encouraged to use alternative methods to contact their designated person ashore to assist with reporting the incident without delay.

One commenter suggested that a vessel's RO be the one to report cyber issues to the Coast Guard.

The Coast Guard disagrees with this suggestion. This final rule provides sufficient clarification as to which entities should be reporting in each situation (for example, an assessment, audit, or a reportable cyber incident), and is consistent with existing MTSA regulations.

One commenter recommended that organizations develop tiered levels of cyber incident events and incidents in their Cyber Incident Response Plan.

The Coast Guard agrees that owners and operators of U.S.-flagged vessels, facilities, and OCS facilities should take the approach that best suits their needs when developing their Cyber Incident Response Plan. However, the Coast Guard does not prescribe any specific requirements in this final rule. While a tiered approach to cyber incident reporting can provide structure, it may inhibit the adaptability and responsiveness that are crucial for effectively managing cyber incidents in a rapidly evolving threat landscape. The Coast Guard prefers owners and operators to customize their incident response plans to meet their unique needs and requirements.

K. Comments Related to Cybersecurity Measures (§ 101.650)

One commenter requested that § 101.650 for cybersecurity measures include a caveat that, in situations when security measures might create safety risks, then the safety concern is to be prioritized.

The Coast Guard appreciates the concern for safety, and we do not intend for these regulations to conflict with other Coast Guard regulations for safety. The Coast Guard does not foresee a degradation in physical safety caused by these cybersecurity regulations and believes it would generate confusion if an undefined safety-based caveat were included. If owners or operators have concerns with specific application of the cybersecurity regulations, the Coast Guard encourages those owners and operators to discuss with the cognizant COTP, OCMI, or MSC, as appropriate. This final rule provides procedures for requesting equivalencies or waiver from the Coast Guard, if appropriate, in § 101.665.

One commenter suggested that cybersecurity measures be incorporated for heightened threat periods.

The Coast Guard has issued these regulations as baseline cybersecurity requirements, as cybersecurity can pose a risk at all times, even under normal threat periods. The Coast Guard encourages owners or operators of U.S.-flagged vessels, facilities, and OCS facilities to address and incorporate cybersecurity measures for heightened threat periods, if desired and as best fits their needs. The Coast Guard is also able to issue cybersecurity guidance or directives as needed, if there are specific threats and incidents. At this time, we do not believe that any specific and standing requirements for heightened threat periods should be added to this final rule.

One commenter requested that the Coast Guard add language specific to GPS denial and spoofing, and Automatic Identification System (AIS) and timing concerns.

The Coast Guard is not including a definitive list of systems and equipment in this final rule. We encourage affected entities to address those vulnerabilities which they identify in their own Assessments, or are otherwise concerned about, and to tailor drills and exercises to those areas where they have the most concern, which may include GPS denial and AIS spoofing. We also do not mandate training or drills on specific vulnerabilities or threats.

One commenter asked why outdated CPGs were used for the NPRM.

At the time the Coast Guard initially developed these regulations, Version 1.0 of CISA's CPGs were the most recent. The Coast Guard conducted an analysis to identify any significant changes between versions 1.0 and 2.0 and made changes to the regulatory text where appropriate. Only minor changes were needed. The Coast Guard will continue to monitor CISA's efforts related to CPGs to determine whether a subsequent rulemaking will be needed in the future.

One commenter suggested that the Coast Guard should clarify how this final rule applies to facilities already regulated by other authorities, particularly TSA's Security Directives. The commenter also suggested that docking ship connections be limited to systems essential for mooring, emergency operations, and ship-to-shore communications.

If an owner or operator is concerned that it may be subject to TSA's requirements and needs clarification on harmonizing compliance between TSA and Coast Guard requirements, they should notify the cognizant COTP or OCMI. If appropriate, the Coast Guard will consider procedures for waivers or equivalents in § 101.665 or have additional conversations with TSA. The Coast Guard is not placing specific requirements on what docking ship connections are allowed, and instead leaves this determination to the owner or operator.

One commenter recommended inclusion of additional requirements for logs, as well as a Shipboard Security Information and Event Management. They further recommended requirements for post-shipyard inspections and maintenance, particularly after a vessel departs an adversarial port.

The Coast Guard seeks to strike a balance and chose not to impose requirements that would be so prescriptive that compliance would be too difficult for some segments of the regulated industry. These requirements generally provide latitude for owners, operators, or CySOs to determine the specific means needed to comply with the regulatory requirements. These regulations represent minimum baseline requirements, but the Coast Guard encourages regulated entities to take any additional actions they feel are necessary to address their cybersecurity needs, so long as such additional cybersecurity measures are documented in their Cybersecurity Plans.

L. Comments Related to Account Security Measures (§ 101.650(a))

Some commenters requested changes to the section on account security measures, seeking to modify requirements for account lockout, multifactor authentication, and user credentials as they relate to certain OT systems. They expressed concerns that these measures could disrupt critical operations, deny access during emergency situations, and potentially be exploited by malicious actors to halt operations. One commenter suggested an outcome-based requirement for OT systems because the prescriptive approach may not suit many organizations and could quickly become outdated due to advancing technology.

The Coast Guard reviewed § 101.650(a) and revised specific requirements as appropriate, as they relate to OT systems. In some cases, we maintained the proposed text in line with CISA's CPGs, recognizing what provided the best level of cyber protection. The Coast Guard recognizes that OT systems may have unique considerations that are different from IT systems. The Coast Guard agrees that automatic account lockout in OT systems could have catastrophic consequences in emergency situations. We adjusted these requirements to reflect updates that CISA provided to its CPGs based on public comments they received. These updated requirements took into consideration the concerns noted in public comments that certain items, such as account lockout and multifactor authentication when applied to OT systems, could result in the concerns noted by the public comments.[56] Based on this review, we revised § 101.650(a)(1) to remove the references to OT systems and automatic account lockout due to failed logins.

The Coast Guard disagrees that these requirements are too prescriptive. The Coast Guard reiterates that these regulations represent minimum baseline requirements, and owners and operators are welcome to take additional actions and measures as they deem necessary or appropriate to best protect their systems and equipment. In cases when owners or operators do not feel that they can comply with account security measures, or that they feel a requirement is unnecessary, they may submit a request for a waiver or equivalent using the procedures in § 101.665.

One commenter noted the benefits of zero-trust architecture. Some commenters noted the importance of logs in detecting and responding to cyber-attacks and recommended that we accept next-generation logging capabilities. One commenter offered an example of one such system.

The Coast Guard notes that zero-trust architecture is one of many solutions that organizations may choose to use to comply with this final rule. The Coast Guard does not prescribe specific systems or equipment or ways to comply with these requirements. The Coast Guard recognizes that there are multiple systems, equipment, and products available, and it is up to the owner or operator to identify the option that best suits their needs while ensuring they meet the requirements of this final rule.

Some commenters expressed concern with multifactor authentication on vessels. They stated that the owner or operator should have flexibility to adequately and specifically address this, rather than a prescriptive approach. These commenters noted it is challenging especially for internationally operating vessels with a constantly changing crew and limited or no access to internet while in transit. They also stated that providing mobile phones to the crew is not advisable, noting that encouraging the use of personal devices may lead to significant resistance. The commenters believed that an alternative, such as hardware tokens for two-factor authentication, presents challenges, including distribution, configuration, and the risk of tokens being misplaced. Another commenter requested that multifactor authentication only be in place for remote access from untrusted networks into OT systems according to IACS UR E27 [57] for new ships, and with an implementation period for existing ships.

The Coast Guard recognizes that measures such as two-factor authentication may pose unique challenges to vessels, but also notes that there are multiple ways to implement multifactor authentication that do not require internet access. While carriers may not currently provide phones or other devices for this purpose, the nature of this being new rulemaking lends itself to the realization that owners and operators may have to take actions and steps that were not previously done, if that is how they determine they can best comply with the regulations. It is up the owner or operator to implement appropriate multifactor authentication given their

[56] *See https://www.cisa.gov/cybersecurity-performance-goals,* accessed November 12, 2024.

[57] IACS UR E27, Cyber Resilience of On-Board Systems and Equipment, press release information available at: *https://iacs.org.uk/news/iacs-ur-e26-and-e27-press-release,* accessed August 16, 2024.

business operations and accessibility to internet connectivity. Such multifactor authentication may include a variety of methods, including passwords, physical devices such as security tokens or access cards, or biometrics. Additionally, as is the case for all requirements in this final rule, if an owner or operator has reviewed all possible options and determines that they cannot comply with any aspect of the regulations, they may follow the process for requesting a waiver or equivalence. The Coast Guard is not relaxing the requirements further for U.S.-flagged vessels. If owners or operators do not feel that they can comply with account security measures, they may submit a request for a waiver or equivalent using the procedures in § 101.665.

One commenter requested clarification on the use of passwords; if they are required, and, if so, what the requirements for them would be.

The Coast Guard does not mandate the use of a password, only that if passwords are used or if a system is capable of password protection, the passwords are of sufficient strength and meet certain criteria to help defend against cyber-attacks based on the criticality of the system as described in § 101.650(a).

M. Comments Related to Device Security Measures (§ 101.650(b))

One commenter expressed concern about including a network map in the Cybersecurity Plan.

The Coast Guard recognizes the sensitivity of network maps. We revised § 101.650(b) to clarify that each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the device security measures are in place, addressed in Section 6 of the Cybersecurity Plan, and made available to the Coast Guard upon request. Therefore, network maps do not need to be submitted with the Plan, but they must be maintained by the regulated entity and made available to the Coast Guard upon request.

One commenter noted that far too few entities have inventoried their IT and OT assets and supported the requirement to maintain an up-to-date asset inventory. The commenter also noted that recognizing the unique needs and limitations of OT environments is essential for effective cybersecurity regulation and implementation. Finally, the commenter strongly supported the requirement for owners and operators of covered infrastructure to designate and inventory critical IT and OT systems. The commenter noted, however, that frequent IT patches and updates are impractical in OT environments, as they can disrupt critical operations and complicate compatibility testing due to real-time demands.

The Coast Guard appreciates the support for an IT and OT system inventory. It is up to the owner or operator to determine the frequency at which OT patches and updates are conducted according to their Cybersecurity Plan to mitigate the risks identified in their Cybersecurity Assessment.

Several commenters indicated concerns regarding requirements relating to OT systems. Paragraph (e)(3)(v) of § 101.650 indicates that no OT system is to be connected to the publicly accessible internet unless explicitly required for operation, if there is documented justification. However, the commenters noted that an OT system connected to the internet can transmit machine data to the manufacturer, enabling the manufacturer to offer Smart Planned Maintenance decision support to the owner.

The Coast Guard appreciates these concerns and notes that each situation will be evaluated on its own merits on a case-by-case basis. Regulated entities may discuss specific concerns with the cognizant COTP, OCMI, or the MSC as appropriate. An owner or operator may also request a waiver or equivalence determination for the requirements according to the procedures in § 101.665.

Several commenters indicated concern regarding creating and maintaining an approved list of hardware, software, and firmware.

The Coast Guard acknowledges the potential burden in creating an approved list of hardware, software, and firmware; however, it is necessary to increase visibility into deployed technology assets and reduce the likelihood of breach by users installing unapproved hardware, firmware, or software. The Coast Guard anticipates that after developing the initial list, it will be easier for owners and operators to update the list in the future. Owners and operators may also find that their list is similar across multiple vessels or facilities within their organization. The Coast Guard does acknowledge that this will rely on coordination and cooperation of vendors and managed service providers.

One commenter requested clarification whether the proposed requirements are applicable only to mission critical IT and OT systems, or, applicable to all onboard IT and OT systems.

The Coast Guard revised this final rule to clarify where the regulations apply to all IT and OT systems and where they apply to the critical IT and OT systems. For example, we removed reference to OT systems in § 101.650(a)(1) and specified that the requirements in § 101.650(e)(1)(i) and (iv) are for critical IT and OT systems.

One commenter stated that the requirement in § 101.650(b)(2) to ensure applications running executable code must be disabled by default on critical IT and OT systems is unclear and requested adjustment to the text.

The Coast Guard disagrees that this text is unclear. The text requires entities to disable applications running executable code on critical IT and OT systems. The primary vulnerability associated with executable code is the potential for malicious code to be embedded within them, allowing attackers to exploit vulnerable systems when users open certain programs without being aware what is being done in the background. This essentially turns the device into a vehicle for launching cyberattacks or can lead to data theft, unauthorized system access, and other harmful actions. Executable code technologies include Java applets, JavaScript, HTML5, WebGL, and VBScript as well as macros used within products like Microsoft Office. IT and OT personnel will be familiar with the vulnerabilities associated with executable code and will understand the requirements of this provision.

N. Comments Related to Data Security Measures (§ 101.650(c))

One commenter stated that the phrase ''document and mitigate any vulnerabilities'' in § 101.650(e)(1)(iv) caused concern with the use of the word ''any,'' as there may not be mitigations or patches available.

The Coast Guard revised paragraph (e)(1)(iv) in § 101.650 to clarify that the regulated entity will ensure patching or implementation of documented compensating controls for all KEVs in critical IT or OT systems, without delay, at the time of their annual assessment, as well as part of routine maintenance.

One commenter expressed concern about the lack of specificity in the level and type of logging and monitoring of IT and OT systems for breaches of security, suspicious activity, TSIs, and cyber incidents.

Given the wide array of IT and OT systems, mandating a one-size-fits-all level of logging is not practical. Each U.S.-flagged vessel, facility, and OCS facility should customize its logging system to best address its specific risks

and technologies and document the customization in the Plan.

Some commenters expressed concern about encrypting data, at transit and at rest, on IT and OT systems, as it may be difficult to do on OT systems, or other legacy systems.

The Coast Guard revised § 101.650(c)(2) to better describe our expectations regarding data encryption. The revised text specifies that effective encryption must be deployed to maintain confidentiality of sensitive data and integrity of IT and OT traffic, when technically feasible. Encrypting data, at transit and at rest, is an example of when a requirement may not be technically feasible. In this case, the regulated entity should describe the aspects that they can comply with in their Cybersecurity Plan. Additionally, if an owner or operator has further concerns about how they can comply with these requirements, they can follow the process for requesting a waiver or equivalent according to § 101.665.

One commenter recommended that the Coast Guard add specific requirements for wireless communications as noted in IACS UR E26 4.2.5.3.[58]

The Coast Guard has not added specific requirements for wireless communications. During their Cybersecurity Assessment, each owner or operator of a regulated U.S.-flagged vessel, facility, or OCS facility may identify wireless communications as part of their IT and OT systems and equipment being assessed, as applicable.

One commenter suggested adding the requirement that remote connections to OT systems be made with secure connection and endpoint authentication, protection of integrity and authentication, and encryption at network or transport layer.

The Coast Guard disagrees that additional requirements are necessary. This final rule's requirements for remote connections are sufficient as minimum baseline requirements as noted in § 101.650(a)(4). Owners or operators of U.S.-flagged vessels, facilities, and OCS facilities are welcome to take additional measures as appropriate to their systems, equipment, and operations.

Some commenters questioned the requirements for all data requiring encryption. Another commenter suggested that data security should include PII, to include employee records and access control data, such as access control databases used for physical access, which could include information on Transportation Worker Identification Credentials, other PII, etc. Physical Access Control Systems (PACS) log physical entries into a facility, and this should likewise be treated as PII and sensitive security information. When practical, PACS servers, networks, devices, applications, and software should be air-gapped or isolated from IT and OT networks to prevent intrusion or alteration of data to allow unauthorized physical access.

The Coast Guard revised § 101.650(c)(2) to clarify that only sensitive data be encrypted. The Coast Guard has not, however, added these specific items to the requirements, but, rather, allows for the owner or operator to determine whether this is considered sensitive data subject to the requirements of this regulation.

One commenter asked if there would be specific guidance on PACS, emergency management devices or applications, OT applications and architecture, and safety devices.

The Coast Guard notes that items related to the safety and security of the U.S.-flagged vessel, facility, or OCS facility, as it pertains to cybersecurity threats and vulnerabilities to such systems, should be addressed within the Cybersecurity Plan as determined by the owner, operator, or CySO according to the requirements stated in this final rule. The Coast Guard will determine whether it is necessary to address this further in future guidance.

One commenter inquired how facilities will address PACS and emergency management systems that are network-enabled. The commenter recommended that the Coast Guard add regulatory language speaking to the interdependency of the FSO and the CySO with respect to placing, conducting maintenance, and monitoring PACS.

The Coast Guard does not agree that such regulatory mandates are needed to address interdependency of the FSO and CySO as it is up to the owner, operator, FSO, and CySO to establish relationships and ensure personnel with security duties are interacting to support the full safety and security of each U.S.-flagged vessel, facility, and OCS facility.

One commenter suggested that PACS be included in the requirement for backing up critical IT and OT systems.

The Coast Guard has determined that the CySO is best positioned to determine and should have the discretion to identify whether a system would be included under critical IT or OT systems.

One commenter questioned the requirement that the owner or operator must ensure that users maintain separate credentials on critical IT and OT systems, which could be read to mean that individual users must have different usernames and passwords for each of the critical systems to which they have access. The commenter was concerned that even if the intent is to limit shared accounts, this is not always technically feasible for OT systems.

The Coast Guard has not changed the text in § 101.650(a)(6), which requires separate credentials for IT and OT systems. The requirement sets out the measures that owners or operators must take, which are minimum baseline requirements noted in § 101.650(a). If an owner or operator does not feel that they can comply with the requirements as written, they may follow the process for requesting a waiver or equivalent according to § 101.665.

One commenter requested clarification of the Coast Guard's proposed data security measures in § 101.650(c). The commenter stated that the term ''data logs'' is undefined, makes it unclear as to what is required and whether encryption with a suitably strong algorithm is appropriate.

The Coast Guard has added a definition for the term ''logs'' to these regulations and updated the requirement in the regulation from ''data logs'' to ''logs,'' consistent with NIST and CISA's Cyber Performance Goals. In addition, we revised § 101.650(c)(2) to provide that effective encryption must be deployed to maintain confidentiality of sensitive data and integrity of IT and OT traffic, when technically feasible, rather than the proposed regulatory text requiring it be encrypted ''using a suitably strong algorithm.'' We made that change based on the feedback that the standard was unclear.

O. Comments Related to Cybersecurity Training for Personnel (§ 101.650(d))

One commenter requested clarification on how often OT-specific training should be conducted, and what topics it should cover.

Given the wide array of OT systems (for example, crane control, navigation, propulsion and steering control) and operational settings (for example, different types of vessels and port facilities), mandating a one-size-fits-all cybersecurity training is not practical. Owners and operators of each type of U.S.-flagged vessel, facility, and OCS facility will need to customize their training so that it addresses the specific risks and technologies of each regulated entity. The timeframe and frequency for

[58] IACS (UR E26 4.2.5.3) Cyber Resilience of Ships: *https://www.american-club.com/files/files/ur-e26-new-apr-2022.pdf,* accessed November 13, 2024.

completing cybersecurity training are described in § 101.650(d)(4) of this final rule.

Some commenters stated that the requirements for training are overly broad and burdensome, and difficult to track and ensure training for contractors and temporary workers. They suggested that the requirements for training be updated to ease the required training. Others noted that it would not be possible to obtain training within 5 days of gaining system access. Some suggested that the training requirements be eliminated for contractors completely.

The Coast Guard disagrees that the training is overly burdensome. The nature of cybersecurity, the growing presence of cyber systems in the operations of U.S.-flagged vessels, facilities, and OCS facilities, and the evolving nature of cybersecurity threats and vulnerabilities necessitate that personnel who will be operating within the IT and OT environment be sufficiently trained. This includes contractors, whose access to IT and OT systems and equipment may be no different than that of regular employees when it comes to potential impacts and need for training and awareness. We recognize that some contracted and part-time personnel will be on board and operating on IT and OT systems and equipment for such a short duration that meeting the training requirements may be difficult, and there may be situations where an employee may not be able to receive initial training within the timeframe stated in this final rule. To accommodate this, we revised § 101.650(d)(3) to allow for those personnel to be escorted or accompanied by personnel who already have the required training.

One commenter recommended that the Coast Guard formalize training and leverage industry best practices to apply to maritime operations.

The Coast Guard does not prescribe specific training programs or methods in this final rule. It is at the discretion of each owner or operator of a U.S.-flagged vessel, facility, or OCS facility to determine the training program that best meets their individual needs. The Coast Guard encourages maritime stakeholders to work together to share best practices.

One commenter stated that the § 101.650(d)(1)(i) requirement for training on relevant provisions of the Cybersecurity Plan was vague. They also noted that the § 101.650(d)(1)(iii) requirement for all personnel to be trained on techniques used to circumvent cybersecurity measures was a suboptimal blanket approach and should be limited in some manner. Another commenter requested that the Coast Guard clarify the specific requirements, cadence, and expectations for training programs, drills, and audits.

The training required by this final rule provides the best baseline requirements to protect IT and OT systems and equipment, as well as the personnel operating the systems and equipment. The Coast Guard believes educating relevant personnel on these techniques, they become more aware of potential risks and can recognize suspicious activities. This knowledge fosters a culture of vigilance and preparedness. However, it is up to the owner or operator, in conjunction with the CySO, to determine, which provisions of the Cybersecurity Plan apply, depending on the individual employee requiring the training. The requirements, cadence, and expectations are sufficiently addressed in these regulations, while providing regulated entities with the necessary flexibility to determine how to comply with these regulations while accounting for their unique systems, equipment, and operations. If an owner, operator, or CySO has any questions, they may bring them to their COTP, OCMI, or MSC, as appropriate.

P. Comments Related to Risks and Vulnerabilities (§ 101.650(e))

One commenter suggested that the Coast Guard use Federal Advisory Committees to develop a rank-ordered list of cybersecurity risks to be used as a benchmark against which objectives could be pursued.

The Coast Guard recognizes the benefits of working with Federal Advisory Committees but is not using a rank-ordered list of cybersecurity risks to develop the requirements. As such, there is no need to work with Federal Advisory Committees to develop such a list. Our requirements for conducting a Cybersecurity Assessment and developing a Cybersecurity Plan are designed to help each owner or operator identify the particular cybersecurity risks and vulnerabilities at the regulated U.S.-flagged vessel, facility, or OCS facility.

Some commenters suggested that the Coast Guard change the requirements for the frequency of audits, assessments, and amendments. One commenter stated that it was unnecessary to conduct these if no systems or equipment has changed.

Coast Guard does not concur with the comments. The audit and assessment intervals in § 101.630(f) are appropriate for assessing rapidly changing cybersecurity risks, vulnerabilities, and threats. Moreover, these audit and assessment intervals are consistent with existing requirements in 33 CFR parts 104, 105, and 106. The Coast Guard disagrees that no change in systems or equipment means a Cybersecurity Assessment is unnecessary because the fact that there has been no change does not mean there is a lack of new threats or vulnerabilities.

One commenter recommended that the Coast Guard change ''mitigate'' to ''manage'' when referring to responding to vulnerabilities under ''risk management'' in these regulations. The commenter also suggested that the Coast Guard change the requirements on the frequency of these actions. Another commenter suggested that patching and mitigating of vulnerabilities be done according to an organization's policies and procedures, as opposed to the requirements stated in these regulations.

The Coast Guard revised § 101.650(e)(1)(iv) to remove ''mitigate any unresolved vulnerabilities'' and, instead, require that the owner or operator ensure patching or implementation of documented compensating controls for all KEVs in critical IT or OT systems, without delay. The Coast Guard did not alter the frequency for the requirement, as we believe that ''without delay'' is more appropriate than ''per the organization's vulnerability management policies and processes.'' Owners and operators of U.S.-flagged vessels, facilities, and OCS facilities subject to this final rule may not have vulnerability management policies and processes that would adequately protect their critical IT and OT given the current cybersecurity risks and threats. Therefore, ''without delay'' provides the expectation to all entities subject to this final rule that identification and mitigation of all KEVs in critical IT or OT systems is necessary to prevent a cyber incident. This provision also ensures the patching and documented compensating controls take place when there is a KEV in a critical IT or OT system. An owner or operator who is unable to meet the requirements of subpart F may seek a waiver or an equivalence determination using the procedures in § 101.665.

One commenter stated that no maritime organization should ever be made to ensure that no zero days could ever exist for their internet connected systems.

The Coast Guard does not reference zero-day vulnerabilities in these regulations. In § 101.650(e)(3)(iv), we require that owners and operators of U.S.-flagged vessels, facilities, and OCS facilities must ensure there are no exploitable channels directly exposed to

internet-accessible systems. The owner or operator should take precautions based on their risk posture to ensure that all internet connections are protected and monitored appropriately when complying with these requirements.

One commenter noted that arranging for Cybersecurity Assessments in conjunction with security inspections for vessels, facilities, and OCS facilities might not be realistic. The commenter also noted that a Cybersecurity Assessment conducted at the enterprise level would be more advantageous.

The Cybersecurity Assessments, audits, and inspections are each separate actions, and may need to be separate. Audits and assessments are conducted by the regulated entity, which are separate from inspections conducted by the Coast Guard. With respect to the commenter's preference for an enterprise-level Cybersecurity Assessment, while some aspects of the Cybersecurity Plan might be similar throughout an enterprise, each regulated U.S.-flagged vessel, facility, or OCS facility possesses unique aspects and characteristics that likely pose particular risks that must be addressed on an individual basis.

Some commenters questioned the use of the term ''without delay,'' and stated that it was unclear. Its interpretation may differ by each organization, potentially ranging from minutes to hours or even days.

The term ''without delay'' is recognized in existing MTSA regulation (§ 101.305 (a)) and requires urgent action as soon as reasonably and safely possible. This term represents the criticality of the action being required. For situations in this final rule when urgency is expected because of the critical nature of the threat, the expectation is that action should be taken as soon as possible, taking into account any immediate safety concerns. The Coast Guard clarified the requirement to read ''as soon as reasonably practicable, in light of the individual circumstances, but, in any case, not longer than 96 hours'' where appropriate throughout the regulatory text in this final rule. The 96-hour limit is intended as a reasonable timeline for owners and operators to accomplish any related processing and paperwork for administrative matters that are important, but do not rise to the level of urgency as other critical security actions that must be taken ''without delay.'' In the event that a CySO, owner, or operator believes more time is necessary they may discuss their concerns with the COTP or MSC who may grant additional time if warranted.

One commenter indicated concern with the consistency of accepting mitigations for unresolved vulnerabilities and inquired whether mitigations provided by owners would generally be accepted.

Each situation will be evaluated on its own merits on a case-by-case basis. Regulated entities may discuss specific concerns with the cognizant COTP, OCMI, or the MSC, as appropriate. The Coast Guard provides procedures in § 101.665 for an owner or operator to request a waiver or equivalence determination for the requirements.

One commenter stated that the minimum requirement of patching or implementing countermeasures for all KEVs is too prescriptive and noted that OT environments, patches, and countermeasures are often unavailable. Another commenter noted that CISA already has a KEV system in place and the Coast Guard should not require another one in this rulemaking.

This final rule allows either patching or implementation of documented compensating controls for all KEVs in critical IT or OT systems. Owners and operators are welcome to use an established process to comply with the requirements of these regulations.

Some commenters indicated concern with the proposed definition of *known exploited vulnerability (KEV)* and highlighted that the Coast Guard did not reference CISA's Known Exploited Vulnerability Catalog. The commenter also noted that the definition of *multifactor authentication* needs adjustment. Additionally, the commenter pointed out that multifactor authentication is not always technically feasible.

The Coast Guard intends its definition of *known exploited vulnerability* to be interpreted based on CISA's Known Exploited Vulnerability Catalog that CISA maintains and updates as necessary. The Coast Guard revised § 101.615 to reflect the recommended adjustment to *multifactor authentication.* With respect to concerns about the technical feasibility of multifactor authentication, the Coast Guard allows an owner or operator to request a waiver or equivalence determination using the procedures in § 101.665. Owners and operators may also discuss specific concerns with the cognizant COTP, OCMI, or the MSC, as appropriate.

Some commenters suggested the Coast Guard revise the requirements for amending Cybersecurity Plans to account for situations when an owner or operator believes they need to make an amendment and take associated action immediately because of a cyber threat, even while the cognizant COTP, OCMI, or MSC is still reviewing the Plan.

The Coast Guard revised § 101.630(e) to add a new paragraph (e)(2)(i) that states that nothing in that section should be construed as limiting the owner or operator of a U.S.-flagged vessel, facility, or OCS facility from the timely implementation of such additional security measures as necessary to address exigent security situations.

One commenter expressed concern that the 60 days for an owner or operator to amend a Cybersecurity Plan and cure deficiencies that may be identified by the COTP, OCMI, or MSC was an arbitrary number. The commenter noted that 60 days may be insufficient, as vessels operate internationally and access to materials and equipment may not be readily available and suggested a more practical timeframe of 180 days to address a deficiency.

The Coast Guard revised § 101.630(e)(1)(ii) to clarify that the owner and operator will have at least 60 days to submit its proposed amendments. We are not extending the timeframe to address a deficiency to 180 days because that period would be excessive in many cases. Many cybersecurity deficiencies need to be resolved quickly. If an owner or operator determines that more time is needed, then they should communicate the need to the COTP, OCMI, or the MSC, as appropriate.

Q. Comments Related to Penetration Testing (§ 101.650(e)(2))

Some commenters noted that the requirements for penetration testing are overly prescriptive or burdensome, while another commenter questioned what the Coast Guard's expectation was for penetration testing.

The regulation provides minimum baseline cybersecurity requirements. The Coast Guard does not agree that the penetration testing requirements are overly prescriptive. The requirements in § 101.650(e)(2) do not dictate the scope of the test but, instead, state that the owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must only ensure that a penetration test has been completed.

Some commenters requested clarification on multiple aspects of the penetration testing requirements, including whether the frequency is linked to the renewal of a VSP, FSP, or OCS FSP.

The Coast Guard revised § 101.650 in this final rule to clarify that penetration testing must be completed in conjunction with renewing the

Cybersecurity Plan. Furthermore, the owner or operator has the discretion to determine who has the capabilities to perform a penetration test. If personnel on the U.S.-flagged vessel, facility, or OCS facility have the technical expertise, penetration testing can be done internally. If personnel on the U.S.-flagged vessel, facility, or OCS facility do not have such technical expertise, then an external organization must conduct the penetration testing.

One commenter noted that not every cybersecurity incident has the potential to result in a TSI. The requirement to report threats could be arbitrary and overly burdensome, especially given the influx of reports from multiple threat vectors. One commenter requested that the Coast Guard adjust the language for what information the regulated entity is required to submit for the penetration test and suggested that owners and operators should provide the Coast Guard a letter certifying that a penetration test was conducted. This approach simplifies reporting expectations for the industry while alleviating pressure on the NRC.

The Coast Guard's definition of a reportable cyber incident in this final rule includes, among other things, ''Incidents that otherwise may lead to a transportation security incident'' which 33 CFR 101.105 defines as ''a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.'' The Coast Guard feels that the scope of this definition allows stakeholders to report a cybersecurity incident they reasonably identify as potentially leading to a TSI but also includes other types of cybersecurity incidents that would not require the entity estimate TSI risks. The scope of the definition also helps ensure the Coast Guard receive sufficient information so that it can best evaluate the risk of TSI and, in turn, coordinate any necessary response. It is likely the Coast Guard will be better positioned than a single regulated entity to evaluate the available facts, especially in circumstances when multiple entities are affected.

The Coast Guard has also issued, and will update as needed, guidance on incident reporting in the form of a NVIC. If there is a question as to whether an incident would meet these criteria, a regulated entity may report to the NRC, or they may notify their local Captain of the Port for guidance.

The Coast Guard notes that the requirements to report cybersecurity incidents in accordance with this final rule are satisfied by entities that are also covered by 33 CFR part 6 and report pursuant to 33 CFR 6.16–1. The Coast Guard recognized, based on public comments, that stakeholders would be best served with clear guidance on what would be required for submission to verify the penetration tests. The Coast Guard agreed that a letter verifying that the test was conducted, while noting any identified vulnerabilities, would represent a minimal burden on industry regarding submission requirements.

We revised § 101.650(e)(2) to specify that the CySO must submit a letter verifying that the test was conducted, as well as all vulnerabilities identified from the penetration testing. Additionally, the Coast Guard will consider developing a letter template as part of future guidance that will further assist stakeholders in meeting requirements. This information must be included in the Vessel Security Assessment (VSA), FSA, or OCS FSA, according to 33 CFR 104.305, 105.305, and 106.305. Further documentation related to the penetration tests must be made available to the Coast Guard upon request as required by § 101.660.

One commenter inquired if it would be possible for the owner or operator to apply for an exemption to the penetration test if there are not any major modifications during the 5 years in between penetration tests.

Each situation will be evaluated on its own merits on a case-by-case basis. Regulated entities may discuss specific concerns with the cognizant COTP, OCMI, or the MSC, as appropriate. The Coast Guard provides procedures in § 101.665 for an owner or operator to request a waiver or equivalence determination for the requirements.

One commenter asked if the Coast Guard would accept penetration testing of the same architecture but in a lab environment in light of the safety and operational risks active vessels face while conducting penetration testing on a voyage. The commenter noted that many vessels typically do not stop for prolonged periods of time. The commenter also asked if penetration testing of the IT environment could be limited to noncritical systems.

The Coast Guard understands the concern about conducting penetration testing on voyages. If an owner or operator of a U.S.-flagged vessel, facility, or OCS facility believes that their method of compliance with these regulations is outside of the stated requirements, or believes the requirements are not applicable to certain operations, they may request a waiver or equivalency according to the procedures in § 101.665. For example, if the organization wants to conduct the penetration testing in a lab environment, they can request an equivalent and explain how the lab environment satisfies the stated requirements in their case. In some cases, a temporary waiver may be appropriate. In terms of whether penetration testing could be limited to non-critical systems, if an owner or operator believes that penetration testing of their IT environment could be limited to noncritical systems, then they may request a waiver or equivalency according to the procedures in § 101.665.

One commenter noted that penetration testing should be considered a method of conducting a Cybersecurity Assessment and that penetration testing should be conducted with the audit as an assessment every several years, or as needed by the facility.

In this final rule, the Coast Guard considers penetration testing, Cybersecurity Assessments, and audits to be distinct actions. They are not interchangeable, and each serves specific functions as part of the comprehensive cybersecurity requirements of this final rule. These are separate and distinct actions ranging from less technical to very technical. Audits are on the less technical side. Audits serve to determine the accuracy and validity of a document against any potential changes since the last review, and usually include a review of policies, procedures, and records. Cybersecurity Assessments assist in identifying actual or potential vulnerabilities, whether new, evolving, or pre-existing, in a regulated entity's IT and OT systems, equipment, and procedures, so that the stakeholder can then address such vulnerabilities in a Cybersecurity Plan. Assessments also generally help ensure that policies and procedures are followed and verify that automated process are completed according to those policies and procedures (for example, whether patching was deployed accordingly). Penetration testing is a more technical test of the entity's cybersecurity to see what an outside cyberattack or inside threat could do. It may uncover gaps that an Assessment may not. The owner or operator of a U.S.-flagged vessel, facility, or OCS facility may choose, but is not required, to conduct the penetration testing in conjunction with a Cybersecurity Assessment and an audit.

R. Comments Related to Supply Chain (§ 101.650(f))

One commenter suggested that the Coast Guard not use the term ''breach''

when referring to incidents requiring reporting of a cyber incident by vendors to owners or operators. Other commenters indicated that any requirement for a vendor or service provide to notify a regulated entity of vulnerabilities or incidents was not practical.

The Coast Guard revised § 101.650(f)(2) to remove the references to ''breaches'' and ''incidents'' and replaced them with ''reportable cyber incidents,'' consistent with the decision to define and use that term in these regulations. It is our position that it is appropriate to require owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to establish a process for receiving information from vendors and third parties to best address potential threats and vulnerabilities. The Coast Guard recognizes that, with any cybersecurity vulnerability or incident, it may not be discovered immediately, and in fact, it could be any length of time before it is discovered, whether by the regulated entity itself or by a vendor, third party, or other entity. Vendors and third parties often have a significant role in an entity's operations, and in cases when they impact a regulated entity's IT and OT systems and equipment, it is vital to address this as a potential source of a cybersecurity threat and vulnerability. The Coast Guard believes that ignoring the potential cybersecurity impact of vendors and third parties is to ignore an identified threat vector.

The Coast Guard does not feel it is an undue burden to require regulated entities to incorporate a requirement in contracts or other agreements with vendors and third-party services that when a partner identifies a cybersecurity vulnerability or incident, they must notify regulated entities that could likewise be adversely impacted. Without requiring a notification when a vendor or third-party service provider is aware of an issue but there is no mechanism for their service partners to be made aware, our regulated entities are potentially subject to cybersecurity vulnerabilities and incidents for which they might otherwise be able to take more timely action to prevent, mitigate, and respond.

One commenter asked if there would be a list of approved vendors for equipment, services, and assessments.

The Coast Guard does not plan to provide a list of ''approved'' vendors. Owners or operators may choose those vendors that best meet their individual needs, which may not be the same for every organization. One commenter requested additional clarity regarding what information or capabilities are required of vendors and third-party contractors when providing services to vessels, facilities, and OCS facilities.

The Coast Guard does not determine what requirements or criteria a specific vendor, supply-chain provider, or other third party must meet. This final rule requires that owners and operators consider cybersecurity capabilities. It is up to the owner or operator of a U.S.-flagged vessel, facility, or OCS facility to determine whether a provider meets the requirements that best support their operations and what they feel are the necessary capabilities to safely and securely support their business operations.

One commenter suggested that the Coast Guard provide broad oversight of vendors that provide critical services to broad spectrums of the maritime industry.

This final rule applies to owners or operators of U.S.-flagged vessels, facilities, and OCS facilities who will need to select vendors or third parties based on their own criteria and to ensure regulatory requirements are met. The commenter's suggestion is outside the scope of the rulemaking. The Coast Guard will not create or maintain a list of approved vendors.

One commenter stated that the requirement for owners or operators to analyze all networks to identify vulnerabilities to IT and OT systems and the risks posed by each digital asset was overly burdensome, particularly because of the words ''all'' and ''each.''

The Coast Guard revised § 101.650(e)(1)(i) to clarify that the owner or operator of a U.S.-flagged vessel, facility, or OCS facility must analyze all networks to identify vulnerabilities to critical IT and OT systems, consistent with our definition and use of the term *critical IT and OT systems* throughout this final rule.

S. Comments Related to Resilience (§ 101.650(g))

One commenter suggested we require backups of critical IT and OT systems ''periodically'' as opposed to ''frequently.''

The term ''frequently'' in § 101.650(g)(4) emphasizes a timely review and the need to keep up with the rapidly evolving threat landscape that cybersecurity poses to the MTS. It is up to the owner or operator of a U.S.-flagged vessel, facility, or OCS facility to interpret ''frequently,'' develop a schedule that is appropriate for their organization, and document it in their Cybersecurity Plan. For these reasons, we did not make a change in response to this comment.

One commenter suggested that requirements for backups should include testing of restore processes for operations-critical systems and data annually.

The requirements for backups in this final rule are sufficient as minimum baseline requirements. Owners or operators of U.S.-flagged vessels, facilities, and OCS facilities are welcome to take additional measures as appropriate to their systems, equipment, and operations. For this reason, we did not make a change in response to this comment.

T. Comments Related to Network Segmentation (§ 101.650(h))

One commenter noted that the network segmentation requirements are too prescriptive, while other commenters recommended a ''standards-based, technology-neutral approach.''

The Coast Guard notes that the network segmentation requirements in § 101.650(h) provide minimum baseline standards while allowing an owner or operator of a U.S.-flagged vessel, facility, or OCS facility flexibility in conducting the segmentation. Regulated entities may discuss specific concerns with the cognizant COTP, OCMI, or MSC, as appropriate. When deviations must occur or equivalency to other cybersecurity standards are proposed, the owner or operator may file a waiver or equivalency request according to the procedures in § 101.665.

U. Comments Related to Cybersecurity Compliance Dates (§ 101.655)

Some commenters recommended that the Coast Guard extend the implementation period and compliance dates for the cybersecurity requirements in this final rule beyond the 12 to 18 months that we proposed in the NPRM. For example, one commenter asked the Coast Guard to allow an implementation period of 36 to 48 months following the effective date of a final rule. The commenter believed that the proposed implementation period would be insufficient because cybersecurity programs require more time to mature. The commenter stated that 36 to 48 months would afford sufficient time for owners and operators to comply. Another commenter requested that a phased schedule be developed to allow time to implement the proposed regulations. Another commenter stated that six months is not a sufficient amount of time for a vessel operator to develop a Cybersecurity Plan and develop and implement cybersecurity training on that Cybersecurity Plan. The commenter recommended that the Coast

Guard extend the deadline for completion of cybersecurity training to the date 365 days after the effective date of the final rule.

The Coast Guard does not agree with the suggestion to delay the overall implementation by 36 to 48 months, but has implemented a phased implementation period for all regulated entities. Under this rule, the regulatory text will take effect, and reporting requirements under this rule will commence, 180 days after publication. Training requirements are due 180 days thereafter, followed by a 24-month implementation period for the rule's requirements to conduct a Cybersecurity Assessment, submit a Cybersecurity Plan, and designate a CySO. We believe that this approach, which results in a one-year lead time for cybersecurity training accounts for the need for action to address continually evolving cybersecurity threats and vulnerabilities, and provides regulated entities with adequate time to comply with this final rule and address its requirements.

We revised § 101.650(e)(1) to specify that owners and operators will need to conduct the Cybersecurity Assessment within 24 months of the effective date of this final rule. The Cybersecurity Plan must also be submitted to the Coast Guard for review and approval within 24 months of the effective date of this final rule, rather than during the second annual audit following the effective date, as stated in the NPRM. We revised § 101.655 to reflect this change. We note that in Section VII of this preamble, we are requesting public comment on a potential 2-to-5-year delay for the implementation periods for U.S.-flagged vessels.

The Coast Guard has declined to phase in implementation based on a specific organization's audit date, in order to ensure that owners and operators are generally on equal footing with respect to the amount of time in which to implement these requirements. Owners and operators who prefer to align their Cybersecurity Plans with existing plans may submit their required Plans at any time before the 24-month deadline. Additionally, owners and operators may contact the cognizant COTP or OCMI for facilities or OCS facilities or the MSC for U.S.-flagged vessels, or follow the procedures for requesting a waiver, equivalence determination, or temporary permission under § 101.665 if more time is needed to comply with the requirements.

V. Comments Related to Cybersecurity Compliance Documentation (§ 101.660)

Some commenters expressed concern about portions of the Cybersecurity Plan being submitted to the Coast Guard, with the information being at risk of inadvertent release. The commenters believed this could unnecessarily expose participating entities to cybersecurity threats, inconsistent outcomes, foreseeable delays, and additional effort.

The Coast Guard understands the concerns with submitting information that could put a U.S.-flagged vessel, facility, OCS facility, or organization at risk of cybersecurity threats. However, the Coast Guard regularly handles sensitive information and does not agree that submitting Cybersecurity Plans will result in inconsistent outcomes, foreseeable delays, additional effort, or risk. If an owner or operator has concerns about submitting a specific section or portion of their Cybersecurity Plan, they may discuss these concerns with the cognizant COTP, OCMI, or MSC, who will work with the regulated entity to determine whether certain information could be submitted directly or made available to the Coast Guard through other means. The Coast Guard will also continuously evaluate any such concerns and feedback and, if necessary, provide amplifying guidance to all regulated entities as well as Coast Guard personnel to ensure uniform application of the requirements. While the Coast Guard will always emphasize consistency, it is noted that each entity's Plan will be assessed individually, and differences may result based on the regulated entity's specific Plan and cybersecurity needs.

One commenter stated that they believed that cybersecurity records should not be maintained on board a vessel but would be best kept shoreside. Another commenter recommended vessels follow processes similar to the International Convention for Safety of Life at Sea, 1974 (SOLAS) rules, where an RO system is already in place.

These regulations do not prescribe where the records need to be kept but do require that they be made available to the Coast Guard upon request. Each owner or operator may determine where their records are best secured, according to 49 CFR part 1520, and how to ensure the records can be made readily available to the Coast Guard upon request. So long as it meets these requirements, an owner or operator may choose to use an existing system, where appropriate.

One commenter expressed concerns about the level of details included in documentation of penetration testing. They believe that this information should be made available to the Coast Guard only with reasonable cause.

The Coast Guard does not agree with the commenter's assertion that required documentation under these regulations should be made available only with reasonable cause. This final rule allows for certain documentation to be maintained by the owner or operator, and to be made available to the Coast Guard upon request, as required by § 101.660, so that Coast Guard can ensure compliance with the regulations. Regarding the requirements for penetration testing, we revised § 101.650(e)(2) in this final rule to specify that following the penetration test, a letter certifying that the test was conducted, as well as all identified vulnerabilities, must be included in the VSA, FSA, or OCS FSA, according to 33 CFR 104.305, 105.305, and 106.305.

One commenter requested that these regulations include a mechanism for industry to share information and best practices with each other.

In § 101.650(e)(3)(iii) for routine maintenance, we require the owner or operator to maintain a method to share threat and vulnerability information with external stakeholders. We do not prescribe the particular mechanism and, instead, leave that to the discretion of the individual owners and operators.

One commenter recommended that the completed Cybersecurity Assessment, along with approval from vessel's master, facility manager, and port master be retained for a specified duration, as well as any action plan designed to reduce the residual risk.

The Coast Guard provides minimum baseline recordkeeping requirements for regulated entities in these regulations. As such, we are not specifying a minimum duration for retention of completed Cybersecurity Assessments by the regulated entity. Owners or operators may impose additional recordkeeping requirements if they desire.

One commenter suggested that the Coast Guard require ''Management of Change'' in documentation requirements.

The Coast Guard believes that ''Management of Change'' documentation is an internal process issue for the owner or operator, and that it is unnecessary to address it in these regulations. Each owner or operator should make their own determination as to whether and how they address their Management of Change processes and procedures.

One commenter acknowledged the importance of maintaining cybersecurity

documentation as required by this regulation, and the need to have the documentation made available to the Coast Guard upon request. They requested additional information as to how the Coast Guard will conduct its reviews of the documentation.

The Coast Guard cannot provide specifics about its procedures in conducting cybersecurity documentation reviews based on this final rule, as each situation will be handled on a case-by-case basis, starting with the local COTP.

W. Comments Related to Noncompliance, Waivers, and Equivalents (§ 101.665)

One commenter noted that some systems on board their facilities are fully managed by the system vendor, and modifying these systems to meet new regulations might affect the warranty and support of these systems. They questioned who is ultimately the accountable party for vendor-managed systems.

Owners and operators are ultimately responsible for the systems and equipment at their U.S.-flagged vessel, facility, or OCS facility. They should work with vendors to identify what security measures are in place that could meet the requirements of these regulations, or how they will adjust ensure systems and equipment are secured. Additionally, we have added language for the procedures for noncompliance, waivers, and equivalents with regulatory compliance.

One commenter requested that the Coast Guard provide a form of credit, equivalence, or exemption to owners and operators who already have similar structures in place to comply with these regulations. Some commenters asked about the ability to request alternative compliance methods.

The Coast Guard does not provide a blanket credit, equivalence, or exemption based on a regulated entity's compliance with similar regulations or requirements. An owner or operator of a U.S.-flagged vessel, facility, or OCS facility may use those structures to inform their Cybersecurity Assessment, Cybersecurity Plan, and compliance with this final rule and, as needed, may follow the procedures in § 101.665 to request a waiver or equivalence determination. When compliance with similar or parallel regulations or requirements is the basis for an owner or operator to request a waiver, the Coast Guard notes that the owner or operator must still detail the portions of the Coast Guard's regulation they meet, and the specific measures taken under that similar or parallel compliance when requesting a waiver or equivalency. An owner or operator simply stating that they are complying with equivalent measures does not provide the Coast Guard with enough information to ensure regulatory compliance.

Some commenters requested the Coast Guard exempt facilities subject to the TSA's Pipeline Security Directives or otherwise clarify the applicability of facilities subject to both this final rule and the Security Directives.

TSA's Pipeline Security Directives are issued under separate authorities and with a separate purpose from these regulations. This final rule establishes baseline cybersecurity requirements for a broader segment of the maritime industry than the entities under the Pipeline Security Directives. Stakeholders subject to this final rule that believe there is an overlap between agencies' requirements, stakeholders may use their compliance measures for the other requirements (for example, TSA's Pipeline Security Directive) to inform their compliance with the Coast Guard's cybersecurity requirements in this final rule. The Coast Guard may seek documentation that demonstrates to the Coast Guard how they are implementing the other agencies' cybersecurity requirements. Stakeholders may also submit a request for waiver or equivalency according to § 101.665 of this final rule.

X. Comments Related to Costs

Several commenters stated that Coast Guard underestimated the supply chain costs related to monitoring and that additional employee(s) may be necessary.

The Coast Guard decided not to estimate costs for § 101.650(f)(1) and (f)(2) because owners and operators would need to consider cybersecurity capabilities only when selecting third-party vendors for IT and OT systems or services. In addition, we assumed most third-party providers have existing cybersecurity capabilities and already have systems in place to notify the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities of any cybersecurity vulnerabilities, incidents, or breaches that take place. Therefore, we assume the commenter is primarily referring to our cost estimate for § 101.650(f)(3), which requires owners and operators to monitor and document all third-party remote connections to detect cyber incidents.

While we include costs for documenting remote third-party connections when developing the Cybersecurity Plan and costs for annual maintenance, we did not include a separate cost estimate for monitoring those connections but instead noted them as unquantifiable costs. The Coast Guard acknowledges that this could take additional time, mostly through reviewing logs for remote connections. The amount of time this could take is dependent on the size of the organization, making accurate estimates difficult. However, we disagree that most owners or operators will need to hire additional employees, since many affected entities are considered small (see our Final Regulatory Flexibility Analysis (FRFA)) and likely do not have complex networks that would require full-time active monitoring. Estimating costs associated with the hiring of a full-time employee would represent a severe overestimate for many of the small owner and operators affected by this final rule, and we have decided not to include those costs in the RA.

Several commenters stated that the Coast Guard underestimated the costs related to the required device security measures and that costs may ''balloon'' with each additional vessel, facility, or OCS facility owned or operated.

In our efforts to capture the costs related to device security measures outlined in § 101.650(b), the Coast Guard considered those measures as a part of the overall Cybersecurity Plan development and included any associated hour burden in the estimated hour burdens associated with Cybersecurity Plans. The Coast Guard acknowledges that these items take time, but we believe our hour-burden estimates reflect averages for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities of various types and sizes in the affected population, based on information and data from several different sources that we outlined in the *Cybersecurity Measure Costs* section of this RA.

Regarding the commenter's suggestion that the cost may balloon with each additional U.S.-flagged vessel, facility, or OCS facility, we estimated Cybersecurity Plan costs for each facility and OCS facility rather than for the owner or operator of a facility or OCS facility in the affected population, as explained in the RA. However, for owners and operators of U.S.-flagged vessels, we assumed that a CySO will not need to expend a great deal of additional time developing a Cybersecurity Plan for each U.S.-flagged vessel owned by a U.S.-flagged vessel company. We believe it is more likely that the CySO will create a master Cybersecurity Plan for all the U.S.-flagged vessels in the fleet, and then tailor each Plan according to a specific U.S.-flagged vessel, as necessary.

Because a large portion of the provisions required under this final rule will impact company-wide policies regarding network, account, and data security practices, as well as company-wide cybersecurity training, reporting procedures, and testing, we do not believe there will be much variation in how these provisions are implemented between specific U.S.-flagged vessels owned by the same owner or operator.

Similarly, we assume that much of the IT and OT technology on board the affected U.S.-flagged vessels will be consistent across vessels in the same fleet, making estimates that balloon with each additional vessel owned prone to overestimation. As a result, the Coast Guard decided to maintain its current cost estimates for the device security measures outlined in § 101.650(b) as part of the Cybersecurity Plan development and maintenance, barring the availability of any specific data from the affected population.

Several commenters stated that the costs related to penetration testing were grossly underestimated. Another commenter who represents operators of offshore supply vessels (OSVs) stated that our estimates failed to consider the costs associated with the additional internet protocol (IP) addresses [59] connecting to networks from industrial personnel, employees with multiple devices, and OT systems.

To estimate costs related to penetration testing, the Coast Guard used estimates provided to us by NMSAC members and Coast Guard SMEs with experience contracting for and performing penetration tests. We also relied on the Jones Walker survey,[60] which is a publicly available survey of the portion of facilities that currently conduct penetration testing. Our goal was to use an average estimate based on real world data. We also attempted to include some variability to capture increased costs for larger sized organizations by basing a portion of the cost on the number of IP addresses or employees in an organization. Though we did not receive additional estimates or data on real costs incurred by members of the affected population via public comments, we have adjusted our cost estimate for penetration testing. We base our adjustments on suggestions from public commenters who stated that we underestimated costs and failed to account for all IP addresses along with additional information collected from SMEs, who have experience performing penetration tests. With this additional data, we doubled our estimate of the initial penetration testing cost from $5,000 in the NPRM to $10,000 for the final rule, the cost per IP address from $50 in the NPRM to $100 for the final rule, and the number of IP addresses per organization, which is now based on the number of employees in an organization multiplied by 2. Please see the *Penetration Testing* section of the RA to see the impact of these changes on our cost estimates in the final rule for U.S.-flagged vessels, facilities, and OCS facilities.

One commenter stated that Coast Guard underestimated the cost of routine system maintenance, and that additional employee(s) may be necessary to perform the actions.

Concerning cost estimates related to routine system maintenance, the costs associated with § 101.650(e)(3)(i) through (v) are included in the costs for conducting a Cybersecurity Assessment and developing a Cybersecurity Plan. For § 101.650(e)(3)(vi), we included a separate cost for the annual subscription cost of a vulnerability scanner. The Coast Guard acknowledges that the patching in paragraph (e)(3)(i), monitoring for submitted vulnerabilities in paragraph (e)(3)(ii) and scanning for vulnerabilities in paragraph (e)(3)(vi) could require additional time to monitor in some circumstances, mainly related to OT systems. However, the Coast Guard disagrees that this is true for most of the affected population. Patching for IT systems can be set to automatically update and download without much risk, and vulnerability scans are typically background processes that only need monitoring in the event of an alert or incident. Patching for OT systems may be more complicated to allow for automatic updates, but the Coast Guard lacks data on how prevalent these systems are in the affected population, and how much time this could take. The estimates we used for the monetized portion of this provision in § 101.650(e)(3)(vi) are based on information from CGCYBER and NMSAC, as we outlined in the *Routine System Maintenance for Risk Management* section of this RA. As such, we do not anticipate the need for these items to require a full-time employee for most owners or operators in the affected population, and we are unable to adjust the cost estimates without more specific data provided to us through public comments.

Several commenters stated that the costs for drills and exercises were underestimated. Some commenters stated that the costs for drills were underestimated because the cybersecurity drills could not be rolled into existing drills. Further, multiple commenters stated that the CySO is not the only individual that would be involved, and so costs for other personnel should be included in the calculations. Another commenter stated that our estimates in the NPRM failed to take into account the costs of training personnel to supervise drills, documenting the conduct of drills, identifying lessons learned, and disseminating information to employees. Another commenter encouraged the Coast Guard to consult vessel operators to develop a more accurate understanding of the time burden and costs associated with drill development. Other commenters also requested that the Coast Guard reduce the frequency of drills, with some requesting a general frequency reduction, others requesting annual or semi-annual drill requirements, and others requesting a schedule of requirements based on the cybersecurity risk faced by the affected U.S.-flagged vessels and facilities.

Another comment, from trade associations representing nearly 750 MTSA regulated facilities, stated that they disagreed with the Coast Guard cybersecurity exercise estimates that did not require additional time from participants. The commenters disagreed that these new cyber exercises could be easily combined with existing security exercises because they are similar in scope and size. According to the commenter, to combine both would require the exercise to test more subject matter, and result in longer exercises requiring more participant time and preparation.

The Coast Guard agrees with suggestions from commenters that costs have been underestimated for drills and exercises if they are not combined with existing drills and exercises. As mentioned by multiple commenters, requiring drills and exercises at the same interval as physical security drills and exercises already required in 33 CFR parts 104, 105, and 106 facilitates the combination of cybersecurity and physical security drills, and this is still allowed in the final rule. However, we accept the points raised, which were shared by several other commenters, that cybersecurity drills and exercises

[59] An IP address is a unique numerical identifier for each device or network that connects to the internet.

[60] A survey conducted by Jones Walker, a limited liability partnership (Jones Walker LLP). The title of the survey is ''Ports and Terminals Cybersecurity Survey,'' which they conducted in 2022. This survey helped the Coast Guard to gain an understanding of the cybersecurity measures that are currently in place at facilities and OCS facilities in the United States. We cite relevant data from the survey when calculating industry costs throughout the RA. Readers can access the survey at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html,* accessed August 16, 2024.

are not always easily combined with physical security drills and exercises given the scope and material being tested. The Coast Guard acknowledges that employees beyond the CySO will need to participate in the drills and exercises in instances where they are not combined. For the purposes of our RA of this final rule, we now assume that no owners or operators will combine their cybersecurity drills or exercises with existing drills or exercises, and that a certain portion of employees at the organization will participate in the new drills and exercises.

Based on new information from Coast Guard SMEs in the Office of Port and Facility Compliance (CG–FAC) and the Atlantic Area (LANTAREA), we have adjusted our cost estimates to reflect 8 hours for drill development and 4 hours for drill participation for participating employees. Because our estimated costs are now higher due to the increased hour burden estimate per drill, and based on public commenter suggestions, we have reduced the frequency of the cybersecurity drill requirement from quarterly to at least 2 drills every 12 months, to relieve the burden on owners and operators. Upon review and consideration of comments, the Coast Guard recognizes that regulated entities can assess their cybersecurity risks and vulnerabilities and the status of their cybersecurity measures through 2 drills every 12 months instead of more frequent occurrences. While there are benefits of a more robust drill schedule, we believe that this reduction in the number of drills lowers costs and increases marginal benefits by allowing affected owners and operators to use resources that would have been directed to those drills to improve remaining drills or implement cybersecurity measures that can help reduce the risk of a cyber incident in other ways. Further, by having fewer drills to develop and conduct, we believe the remaining drills will be less superficial, which one commenter remarked was a concern with previously proposed frequency cybersecurity drills. However, the Coast Guard believes that anything less frequent than two drills per year could lead to a decrease in focus on the issues that a drill would emphasize. This is especially true with regard to cybersecurity, as risk and vulnerabilities can change rapidly over the course of a year.

In addition, we have adjusted our cost estimates for exercises to reflect 20 hours for exercise development and 4 hours for exercise participation for participating employees. According to § 101.635(a), drills and exercises must test the proficiency of the U.S.-flagged vessel, facility, and OCS facility personnel in assigned cybersecurity duties. Because we do not have data on which portion of a given owner or operator's employees will have cybersecurity responsibilities, we use the estimated 33 percent ''shoreside'' share of employees for vessel owners and operators, and the same percentage of employees for facility and OCS facility owners and operators, to estimate the costs associated with drill and exercise participation. We feel this is in line with the requirements of the regulatory text and suggestions from a commenter who stated that ''onboard personnel have little to no involvement in cyber specific drills.'' Please see the *Drills and Exercises* sections of the RA to see the impact of these changes on our cost estimates for U.S.-flagged vessels, facilities, and OCS facilities.

Several commenters stated the Coast Guard underestimated costs associated with network segmentation.

The Coast Guard acknowledges a challenge in estimating costs for network segmentation. As mentioned in this RA, network segmentation can be particularly difficult in the MTS, because of the age of infrastructure in the affected population of U.S.-flagged vessels, facilities, and OCS facilities. The older the infrastructure, the more challenging network segmentation may be. Given this, and the amount of diversity regarding the state of infrastructure across the various groups in our affected population, we are not able to fully estimate the compliance costs associated with this provision. We also did not receive any additional information or data from commenters that could be used to help us improve our estimate of the potential costs for network segmentation, which represented one of the largest sources of uncertainty in the RA. Therefore, we retained the original estimates from the NPRM for this provision.

In accordance with OMB Circular A–4, uncertainty analysis is a tool that can be used by Federal agencies to present uncertainty associated with the estimation of costs, sources of data, and more, in an RA. In table 42 of the RA, we list uncertainties related to the economic impact of certain provisions of this final rule, including the state of infrastructure for network segmentation. In some cases, we list a range of potential cost estimates, if a point estimate was not available for use in the RA. For other provisions of this final rule, where we received additional data or information from commenters, we used this information and updated our estimate of costs and burden hours, if applicable, in the RA.

One commenter stated that the affected population counts used in the NPRM for U.S.-flagged vessels regulated under subchapters H and K were inaccurate and provided updated numbers. According to the comment, the affected populations listed in table 6 of the NPRM for vessels inspected under 46 CFR subchapter H (34 vessels) and subchapter K (379 vessels) are too low. The commenter cited the USCG—PVA Quality Partnership Annual Report for the years 2021–2023, which indicated that there are 136 vessels inspected under 46 CFR subchapter H and 428 vessels inspected under subchapter K that would be subject to the cybersecurity requirements.

The Coast Guard thanks the commenter for noting the discrepancy in the population for U.S.-flagged vessels under subchapters H and K. We inadvertently removed certain public vessels that are included under the applicability of this final rule, or in ''Applicability'' in 33 CFR 101.605, which resulted in the error. Therefore, we now estimate the revised population for U.S.-flagged vessels under subchapters H and K to be approximately 131 and 430, respectively, based on our updated population data we obtained from our Marine Information for Safety and Law Enforcement (MISLE) database. These figures are only slightly different from those highlighted in the USCG–PVA Quality Partnership Annual Report for the years 2021–2023, which we assume is the result of small year-to-year changes in vessel populations. As a part of this update, we also updated all our other affected population data. Readers can view the section, *Affected Population,* and table 6 in the RA.

Several commenters stated that a there is a substantial additional cost to contract cybersecurity services or hire additional staff based on the estimates provided in the RA.

The Coast Guard thanks the commenter for raising the concern. However, in § 101.625 of this final rule, we do not require any owner or operator of a U.S.-flagged vessel, facility, or OCS facility to hire a dedicated CySO to perform the duties stated in this part or in § 101.630 for the Cybersecurity Plan. In the *Cybersecurity Plan Costs* section of the RA, we state that a CySO can be an existing person within a given organization who may perform the duties and assume the responsibilities of a CySO provided that this person can maintain their current responsibilities within the organization. Therefore, an organization has the flexibility to

determine if an existing employee such as a VSO, FSO, or CSO can perform the functions of a CySO. Despite this, we acknowledge that some owners or operators may need to hire a CySO if no existing employees are able take on these duties. However, rather than estimating the hours associated with bringing on a full-time employee, the hour burdens associated with CySO duties have been quantified in various sections of the cost analysis. This can capture the costs associated with contracting for the individual CySO duties or assigning them to a new or existing employee.

One commenter stated that we miscategorized the role of the CySO under the ''Information Security Analyst'' category, rather than using a CISO. The commenter also suggested that it is unlikely a single individual could perform all the required functions, indicating an underestimation of costs and management overhead. The commenter also noted that U.S. maritime academies currently lack curriculum for producing maritime cybersecurity professionals, making it difficult to fill CySO positions with qualified personnel. As a result, the commenter urged the Coast Guard to engage with public and private maritime academies to address a lack of qualified personnel.

The Coast Guard disagrees with the assertion that we have miscategorized the CySO role. A CISO, as the commenter suggests, is typically a C-suite or executive-level management position. While it is acceptable for affected entities to hire or designate an existing CISO as the CySO to comply with this final rule, it is not required. We believe that the roles and responsibilities assigned to the CySO role are of a smaller scope and scale than what would typically be expected of a C-suite level CISO, and that estimates in line with typical CISO wages would greatly overestimate the costs of this final rule for owners and operators of smaller U.S.-flagged vessels, facilities, and OCS facilities.

We believe the same is true for the claim that multiple individuals would need to take on the CySO duties. Assuming multiple personnel would result in overestimates for most small entities with less comprehensive cybersecurity programs and risks. Therefore, we used the estimates that we believe best reflect the average burden for the affected entities.

In order to have as large a population of CySOs as possible, graduation from a maritime academy, or having a Merchant Mariner Credential (MMC), is not required. Cybersecurity systems in the maritime industry are not so unique from other industries as to require specialization in MTSs. An MMC would be required only if the CySO's duties, as required by the company and its Cybersecurity Plan, require additional duties in a location, such as on a vessel, would otherwise require an MMC. CySOs, like VSOs, FSOs, or OCS FSOs, require only general knowledge of their company's maritime operations. The Coast Guard has no plans to create a CySO MMC. If maritime academies wish to develop CySO training programs so a graduate earns an MMC along with CySO credentials, they are encouraged to develop such programs.

One commenter stated that the cost for the commercial shipping sector is substantial, especially for smaller vessel owners and operators in an economic environment that has tight margins and substantial risk.

The Coast Guard acknowledges that this final rule will create significant costs for affected small entities, based on our FRFA, but it will also create significant benefits for the affected entities and the maritime industry as a whole. In several areas of this final rule, we referenced CEA's 2018 report (see the III. Basis and Purpose and the *Benefits* sections of the preamble and RA, respectively) on the state of cybersecurity in the marketplace and how firms viewed cybersecurity or behaved when faced with cybersecurity challenges. In support of this final rule, we provided excerpts from this report, which in part state that firms ''[r]ationally underinvest in cybersecurity relative to the socially optimal level'' and ''[i]t often falls to regulators to devise a series of penalties and incentives to increase the level of investment to the desired level.'' [61] With this understanding, we formulated minimum cybersecurity requirements that may assist firms and regulated entities with their cybersecurity posture in an effort to reduce the likelihood, vulnerability, and risk of a cyber incident. If a cyber incident occurs, the Coast Guard believes that the minimum cybersecurity requirements will mitigate its impact on firms, and regulated entities, and the U.S. economy, and create the intended benefits for the regulated entities.

In table 51 of the RA, we list the potential benefits of this final rule, and ones specifically related to cybersecurity measures for firms where we state, ''A cyber-resilient organization can maintain or quickly resume operations in the event of a cyber-attack, minimizing downtime and ensuring that essential services remain available to customers and stakeholders. This reduces the potential for costly disruptions to maritime operations,'' and reduces the downstream impacts to ''economic participants.'' Generally, firms with strong cybersecurity measures will have benefits that include improved preparedness, reduced vulnerability, improved data protection, reduced risk of reportable cyber incidents, improved training, improved incident response, and enhanced trust with economic partners, among many others we listed.

In our consideration of public comments in the FRFA, we state that we will provide assistance to small entities through reducing the required frequency of cybersecurity drills from quarterly to twice annually, extending the implementation period and compliance dates for the Cybersecurity Assessment and Cybersecurity Plan in this final rule to 24 months rather than the 12 to 18 months that we proposed in the NPRM. By using the same implementation period for each group of regulated entities rather than basing this on the organization's audit date, the relevant owners and operators will have the same amount of time in which to implement these requirements, and in many cases will have additional time to come into compliance when compared to the NPRM. Please see our Small Entity Compliance Guide, which is available in the docket, for additional help regarding how small entities can best comply with this final rule.

One commenter stated that the time requirement for updates under § 101.630 may be unrealistic due to vessels that are operating internationally with limited access to materials or equipment.

The Coast Guard understands that each U.S.-flagged vessel, facility, and OCS facility operates facing different cybersecurity risks. Owners and operators may seek an equivalency or waiver by following the procedures in § 101.665. This flexibility is intended to accommodate varying levels of risk and operational needs across different vessels, facilities, and OCS facilities. We revised § 101.630(e)(1)(ii) to clarify that the owner and operator will have at least 60 days to submit its proposed amendments. Further, we have revised § 101.655 to reflect that the Cybersecurity Plan must be submitted to the Coast Guard for review and approval within 24 months of the effective date of this final rule, rather than during the second annual audit following the effective date. In addition, we revised § 101.650(e)(1) to specify that owners

[61] Economic Report of the President *supra* note 2 at 323–24.

and operators will need to conduct the cyber assessment within 24 months of the effective date of this final rule, an increase from 12 months proposed in the NPRM. All these revisions should give owners and operators more time and flexibility to comply with this final rule.

One commenter stated that the Coast Guard failed to delineate costs between OCS and waterfront facilities in the RA, leading to potentially inaccurate cost estimates for the 33 OCS facilities operated by 9 different entities. In addition, the commenter stated that the Coast Guard failed to acknowledge the traditional costs for inspection of OCS facilities, including the commercial helicopter contract used to reach the OCS facility platforms.

The Coast Guard acknowledges that OCS facilities were grouped in with the waterfront facilities in the RA in the NPRM. The Coast Guard believes that the cost estimates for compliance with this final rule are similar across waterfront facilities and OCS facilities. Nonetheless, for greater clarity, in the RA for this final rule we highlight the specific OCS-related cost estimates for OCS facilities as a subset of the overall facility cost estimates, at the end of each section of the analysis.

Regarding the inspection costs for OCS facilities, we included cost estimates for the marginal increase in onsite inspection time for the population of facilities and OCS facilities. Coast Guard SMEs within CG–FAC conferred with local inspection offices to estimate the expected marginal increase in facility and OCS facility inspection time. Local facility inspectors estimate that the additional cybersecurity provisions from this final rule will add an average of 1 hour to an onsite inspection. We believe this is possible under the existing framework for facility and OCS facility inspections.

The Coast Guard also received an internal comment from Coast Guard District 9 that stated that we used the incorrect vessel inspector rank and wage in our analysis of Government costs.

In the NPRM, the Coast Guard assumed that vessel inspections are performed by an E–5 rank Petty Officer Second Class with a mean hourly wage rate of $58. We now assume that vessel inspections are performed by an O–2 rank Lieutenant Junior Grade with a mean hourly wage rate of $72 based on the commenter's suggestion. Readers can view the *Government Costs* section of the RA for more detail on the way this impacts the cost estimates of this final rule.

VI. Discussion of the Final Rule

This final rule adds minimum cybersecurity requirements to 33 CFR part 101 in new subpart F. Subpart F—Cybersecurity consists of the following sections:

- 101.600 Purpose
- 101.605 Applicability
- 101.610 Federalism
- 101.615 Definitions
- 101.620 Owner or Operator
- 101.625 Cybersecurity Officer
- 101.630 Cybersecurity Plan
- 101.635 Drills and Exercises
- 101.640 Records and Documentation
- 101.645 Communications
- 101.650 Cybersecurity Measures
- 101.655 Cybersecurity Compliance Dates
- 101.660 Cybersecurity Compliance Documentation
- 101.665 Noncompliance, Waivers, and Equivalents
- 101.670 Severability

A section-by-section explanation of the additions and changes follows. In addition to the additions and changes described there, we also made revisions to refer to ''U.S.-flagged vessels, facilities, and OCS facilities'' throughout for consistency and clarity related to the applicability of this final rule, as well as making other minor editorial changes.

Section 101.600—Purpose

This section states that the purpose of 33 CFR part 101, subpart F, is to set minimum cybersecurity requirements for U.S.-flagged vessels, facilities, and OCS facilities to safeguard and ensure the security and resilience of the MTS. The requirements will help safeguard the MTS from the evolving risks of cyber threats and align with the DHS goal of protecting critical U.S. infrastructure.

Section 101.605—Applicability

This section requires that subpart F apply to the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities required to have a security plan under parts 104, 105, and 106. A list of the vessels subject to subpart F is as follows:

- U.S. mobile offshore drilling units (MODUs), cargo vessels, or passenger vessels subject to SOLAS, Chapter XI–1 or Chapter XI–2;
- Self-propelled U.S. cargo vessels greater than 100 gross register tons subject to 46 CFR chapter I, subchapter I, except commercial fishing vessels inspected under 46 CFR part 105;
- U.S. vessels subject to 46 CFR chapter I, subchapter L;
- U.S. passenger vessels subject to 46 CFR chapter I, subchapter H;
- U.S. passenger vessels certificated to carry more than 150 passengers;
- U.S. passenger vessels carrying more than 12 passengers, including at least 1 passenger-for-hire, that are engaged on an international voyage;
- U.S. barges subject to 46 CFR chapter I, subchapter D or O;
- U.S. barges carrying certain dangerous cargo in bulk or barges that are subject to 46 CFR chapter I, subchapter I, that are engaged on an international voyage;
- U.S. tankships subject to 46 CFR chapter I, subchapter D or O; and
- U.S. towing vessels greater than 8 meters (26 feet) in registered length inspected under 46 CFR subchapter M, that are engaged in towing a barge or barges and subject to 33 CFR part 104, except a towing vessel that—
  - Temporarily assists another vessel engaged in towing a barge or barges subject to 33 CFR part 104;
  - Shifts a barge or barges subject to this part at a facility or within a fleeting facility;
  - Assists sections of a tow through a lock; or
  - Provides emergency assistance.

This rule does not apply to any foreign-flagged vessels subject to 33 CFR part 104. Cybersecurity regulations for foreign-flagged vessels under domestic law may create unintended consequences with the ongoing and future efforts to address maritime cybersecurity in the international arena and could be contrary to international law as U.S. regulatory authority over foreign-flagged vessels is limited. The traditional means to regulate vessels on the international-level is through diplomatic engagement at the IMO and through various treaty-based mechanisms. The IMO addressed cybersecurity measures for foreign-flagged vessels through MSC–FAL.1/Circ.3 and MSC Resolution 428(98). Therefore, based on IMO guidelines and recommendations, an SMS approved under the ISM Code should address foreign-flagged vessel cybersecurity and provide guidance to other flag administrations on how to regulate vessels subject to their jurisdiction.

In addition, the Coast Guard verifies how CRM is incorporated into a vessel's SMS via the process described in the updated October 11, 2023, CVC–WI–027(3), *Vessel Cyber Risk Management Work Instruction*.[62] This process will continue to be the Coast Guard's primary means of ensuring cybersecurity readiness on foreign-flagged vessels, which are exempt from this final rule. This includes working

[62] See footnote 13.

with their flag administrations to address possible deficiencies in cybersecurity.

Section 101.610—Federalism

We discuss the purpose and contents of this section in section VIII.E, *Federalism,* in this preamble.

Section 101.615—Definitions

This section lists new cybersecurity related definitions the Coast Guard has included in 33 CFR part 101, in addition to the maritime security definitions already in 33 CFR 101.105. These definitions explain concepts relevant to cybersecurity and will help eliminate uncertainty in referencing and using these terms in 33 CFR part 101.

The Coast Guard consulted several guides and authoritative sources for these new definitions. These sources include Executive Order 14028, 6 U.S.C. 148, and the Act.[63]

Another informal source for cybersecurity information is the CISA's National Initiative for Cybersecurity Careers and Studies website,[64] which is an online Federal resource for cybersecurity training and education. The Coast Guard also reviewed NIST's CSRC.[65] NIST maintains the CSRC to educate the public on computer security, cybersecurity, information security, and privacy. CISA and NIST are regarded as authoritative sources of information in areas related to technology and cybersecurity.

In addition, the Coast Guard has defined the term *cybersecurity risk* consistent with the definition at section 2200 of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended. The Coast Guard notes, however, that it does not believe paragraph (7)(B) of section 2200, which contains an exception for actions that solely involve a ''violation of a consumer term of service or a consumer licensing agreement'' is relevant to the U.S.-flagged vessels, facilities, and OCS facilities, that are the subject of this rulemaking. Therefore, we expect that exception will not be applicable to the regulated entities of this final rule. Nevertheless, for consistency with the definition found in the Homeland Security Act of 2002 and the sake of completeness, we have included the complete definition in this rule. *See also* 46 U.S.C. 70101(2); Public Law 115–254, sec. 1805(b)(2).

The Coast Guard has included definitions for *Cyber incident, Cyber risk, Cyber threat,* and *Cybersecurity vulnerability. Cyber incident* is related to *information systems* and is inclusive of both *Information Technology or IT* and *Operational Technology or OT.* The Coast Guard also defines new terms that are applicable to maritime cybersecurity, including *Critical Information Technology (IT) or Operational Technology (OT) systems, Cyber Incident Response Plan, Cybersecurity Officer or CySO,* and *Cybersecurity Plan.* A CySO, for example, is the person(s) responsible for developing, implementing, and maintaining cybersecurity portions of the VSP, FSP, or OCS FSP. The CySO also acts as a liaison with the COTP and CSOs, VSOs, and FSOs.

The Coast Guard revised some definitions to clarify their meaning based on public comments we received and added two definitions. These revisions are discussed in more detail in section V. Discussion of Comments and Changes, in the portion on *Comments Related to Definitions* in this preamble.

We revised *backup* to remove the reference to a secondary location and instead specify that the files and databases should be stored separately for preservation and recovery.

We revised *Cybersecurity Officer, or CySO* to add that owner or operator may designate an alternate CySO to assist with the duties and responsibilities of the CySO, including during periods when the CySO is on leave, unavailable, or unable to perform their duties.

We revised *Cybersecurity Plan* to add that a separate document may be submitted, in addition the originally proposed options to include the Cybersecurity Plan in the VSP, FSP, OCS FSP or the Annex to one of those plans.

We added a new definition for *log,* which means a record of the events occurring within an organization's systems and networks.

We revised *multifactor authentication* to mean more than one distinct authentication factor for successful authentication. In addition, we clarified that multifactor authentication can be performed using a multifactor authenticator or by a combination of authenticators that provide different factors. In addition, the three authentication factors are (1) something you know, (2) something you have, and (3) something you are.

Based on support from public comments, we added a definition for *reportable cyber incident.* The definition of a *reportable cyber incident* is based on the model definition in DHS's CIRC-informed Report to Congress of September 19, 2023.[66] The term *reportable cyber incident* replaces *cyber incident* in §§ 101.620(b)(7) and 101.650(g)(1). Specifically, a reportable cyber incident means an incident that leads to, or, if still under investigation, can reasonably lead to any of the following:

(1) Substantial loss of confidentiality, integrity, or availability of a covered information system, network, or OT system;

(2) Disruption or significant adverse impact on the reporting entity's ability to engage in business operations or deliver goods or services, including those that have a potential for significant impact on public health or safety or may cause serious injury or death;

(3) Disclosure or unauthorized access directly or indirectly of non-public personal information of a significant number of individuals;

(4) Other potential operational disruption to critical infrastructure systems or assets; or

(5) Incidents that otherwise may lead to a TSI as defined in 33 CFR 101.105.

The Coast Guard's existing regulations in 33 CFR part 101 require regulated entities to report suspicious activity that may result in a TSI, breaches of security, and TSIs involving computer systems and networks. *See* 33 CFR 101.305. The purpose of defining a reportable cyber incident in this final rule is to establish a threshold between the cyber incidents that have to be reported and the ones that do not.

Section 101.620—Owner or Operator

This section requires each owner and operator of a U.S.-flagged vessel, facility, or OCS facility to assign qualified personnel to develop a Cybersecurity Plan and ensure that the Cybersecurity Plan incorporates detailed preparation, prevention, and response activities for cybersecurity threats and vulnerabilities.

Additional responsibilities of owners and operators of U.S.-flagged vessels, facilities, and OCS facilities include:

- Designating a CySO, in writing, by name and title, and identifying how the CySO can be contacted at any time. A CySO must be accessible to the Coast Guard 24 hours a day, 7 days a week (see § 101.620(b)(3));

[63] Public Law 117–263, Sec. 11224(a)(1) (2022).

[64] National Initiative for Cybersecurity Careers and Studies, *Explore Terms: A Glossary of Common Cybersecurity Words and Phrases, https://niccs.cisa.gov/cybersecurity-career-resources/glossary,* accessed August 13, 2024.

[65] CSRC, *https://csrc.nist.gov/glossary,* accessed September 15, 2023.

[66] *See* DHS Office of Strategy, Policy, and Plans, Harmonization of Cyber Incident Reporting to the Federal Government (Sept. 19, 2023), *https://www.dhs.gov/publication/harmonization-cyber-incident-reporting-federal-government,* accessed August 13, 2024.

• Ensuring that a Cybersecurity Assessment is conducted annually or sooner, under the circumstances described in this final rule (see §§ 101.620(b)(4) and 101.650(e)(1));

• Ensuring that a Cybersecurity Plan is developed and submitted for Coast Guard approval, either as a separate document or as an addition to an existing FSP, VSP, or OCS FSP (see §§ 101.620(b)(1) and 101.630(a));

• Operating the U.S.-flagged vessel, facility, or OCS facility in accordance with the approved Cybersecurity Plan (see § 101.620(b)(5)); and

Reporting all reportable cyber incidents, including TSIs, to the NRC and relevant authorities according to the Cybersecurity Plan (see §§ 101.305 and 101.620(b)(7)). We revised this paragraph in this final rule to specify that *reportable cyber incidents* need to be reported, not all *cyber incidents.* We also removed the reference to a telephone number to allow flexibility in the way reports are made to the NRC.

Section 101.625—Cybersecurity Officer

The CySO may be a full-time, collateral, or contracted position. The same person may serve as the CySO for more than one U.S.-flagged vessel, facility, or OCS facility. The CySO needs to have general knowledge of a range of issues relating to cybersecurity, such as cybersecurity administration, relevant laws and regulations, current threats and trends, risk assessments, inspections, control procedures, and procedures for conducting exercises and drills. When considering assignment of the CySO role to the existing security officer, the owner or operator should consider the depth and scope of these new responsibilities in addition to existing security duties.

The most important duties a CySO performs include ensuring development, implementation, and finalization of a Cybersecurity Plan; auditing and updating the Plan; ensuring the Cyber Incident Response Plan is executed and exercised; ensuring adequate training of personnel; and ensuring that the U.S.-flagged vessel, facility, or OCS facility is operating in accordance with the Plan and in continuous compliance with this subpart. The CySO has the authority to assign cybersecurity duties to other personnel; however, the CySO remains responsible for the performance of these duties. Depending on operational conditions and cybersecurity risks, the CySO, owner, or operator may develop the required Cyber Incident Response Plan as a separate document or as an addition to the Cybersecurity Plan.

We revised § 101.625(a) to add that the CySO may serve in other roles or positions within the owner or operator's organization. In § 101.625(d)(6), we revised the text to clarify that cybersecurity inspections may be conducted in conjunction with any scheduled U.S.-flagged vessel, facility or OCS facility inspections. In § 101.625(d)(8), to allow greater flexibility for the CySO we changed the word ''ensure'' to ''enhance'' cybersecurity awareness and vigilance of personnel and removed ''through briefings, drills, exercises, and training.'' In § 101.625(d)(10), which requires the CySO to report and report information to the owner and operator, we replaced ''breaches of security, suspicious activity that may result in TSIs, TSIs, and cyber incidents'' with *reportable cyber incidents.* In § 101.625(d)(13), which covers submission of Cybersecurity Plans for approval, we removed reference to ''substantive changes (or major amendments)'' and instead only refer to amendments. In § 101.625(e) we added that a CySO may obtain the necessary qualifications for the position through education.

Section 101.630—Cybersecurity Plan

This section contains minimum requirements for the Cybersecurity Plan. The Cybersecurity Plan must be maintained consistent with the recordkeeping requirements in 33 CFR 104.235 for vessels, 33 CFR 105.225 for facilities, and 33 CFR 106.230 for OCS facilities. *See* § 101.640. A Cybersecurity Plan incorporates the results of a Cybersecurity Assessment and considers the recommended measures appropriate for the U.S.-flagged vessel, facility, or OCS facility. A Cybersecurity Plan can be combined with or complement an existing FSP, VSP, or OCS FSP. We revised § 101.630(a) to add that a separate submission may be used in addition to the originally proposed options to include the Cybersecurity Plan in the VSP, FSP, OCS FSP or the Annex to one of those Plans.

A Cybersecurity Plan can be kept in an electronic format if it can be protected from being deleted, destroyed, overwritten, accessed, or disclosed without authorization.

The format of a Cybersecurity Plan required under this final rule includes the following individual sections:

(1) Cybersecurity organization and identity of the CySO (see § 101.625 Cybersecurity Officer);

(2) Personnel training (see § 101.625(d)(8), (9) Cybersecurity Officer);

(3) Drills and exercises (see § 101.635 Drills and Exercises);

(4) Records and documentation (see § 101.640 Records and Documentation);

(5) Communications (see § 101.645 Communications);

(6) Cybersecurity systems and equipment with associated maintenance; (see § 101.650(e)(3) Cybersecurity Measures: Routine Maintenance);

(7) Cybersecurity measures for access control, including computer, IT, and OT areas (see § 101.650(a) Cybersecurity Measures: Account Measures);

(8) Physical security controls for IT and OT systems (see § 101.650(i) Cybersecurity Measures: Physical Security);

(9) Cybersecurity measures for monitoring (see § 101.650(f) Cybersecurity Measures: Supply Chain; (h) Network Segmentation; (i) Physical Security);

(10) Audits and amendments to the Cybersecurity Plan (see § 101.630(f) Cybersecurity Plan: Audits);

(11) Cybersecurity audit and inspection reports to include documentation of resolution or mitigation of all identified vulnerabilities (see § 101.650(e) Cybersecurity Measures: Risk Management);

(12) Documentation of all identified unresolved vulnerabilities to include those that are intentionally unresolved due to risk acceptance by the owner or operator (see § 101.650(e) Cybersecurity Measures: Risk Management);

(13) Cyber incident reporting procedures in accordance with part 101 of this subchapter (see § 101.650(g) Cybersecurity Measures: Resilience); and

(14) Cybersecurity Assessment (see § 101.650(e) Cybersecurity Measures: Risk Management).

Depending on operational conditions and cybersecurity risks, the owner or operator may develop the required Cyber Incident Response Plan as a separate document or as an addition to the Cybersecurity Plan.

Submission and Approval of the Cybersecurity Plan

An owner or operator must submit a Cybersecurity Plan for review to the cognizant COTP or the OCMI for facilities and OCS facilities, or to the MSC for U.S.-flagged vessels. *See* § 101.630(d). We removed the requirement for a letter certifying that the Plan meets the requirements of this subpart must accompany the submission in § 101.630(d). Once the COTP or MSC finds that the Plan meets the cybersecurity requirements in

§ 101.630, they will send a letter to the owner or operator approving the Cybersecurity Plan or approving the Plan under certain conditions.

If the cognizant COTP, OCMI, or MSC requires additional time to review the Plan, they have the authority to return a written acknowledgement to the owner or operator stating that the Coast Guard will review the Cybersecurity Plan submitted for approval, and that the U.S.-flagged vessel, facility, or OCS facility may continue to operate as long as it remains in compliance with the submitted Cybersecurity Plan. *See* § 101.630(d)(1)(iv).

If the COTP, OCMI, or MSC finds that the Cybersecurity Plan does not meet the requirements in § 101.630, the Plan will be returned to the owner or operator with a letter explaining why the Plan did not meet the requirements. In this final rule, we revised § 101.630(e)(1)(ii) to clarify that the owner or operator has at least 60 days to submit its proposed amendments. Until the amendments are approved, the owner or operator must ensure temporary cybersecurity measures are implemented to the satisfaction of the Coast Guard. *See* § 101.630(e)(1)(ii).

If the owner or operator disagrees with the deficiency determination, they have the right to appeal or submit a petition for reconsideration or review to the respective COTP, District Commander, OCMI, or MSC per 33 CFR 101.420.

When submitting amendments to the Coast Guard, either after a Cybersecurity Assessment or at other times, the owner or operator is not required to submit the Cybersecurity Plan with the amendment. Consistent with the discussion above concerning our elimination of the term ''major amendment,'' we removed the reference to major amendment from § 101.630(e)(2). We added a new paragraph, § 101.630(e)(2)(i), which provides that nothing in this section should be construed as limiting the owner or operator of the U.S.-flagged vessel, facility, or OCS facility from the timely implementation of such additional security measures not enumerated in the approved VSP, FSP, or OCS FSP as necessary to address exigent security situations. This new paragraph addresses questions from public commenters about whether entities would be able to implement necessary changes to their Plan to protect against cybersecurity threats and clarifies that stakeholders are not precluded from taking action to protect their systems.

Additionally, we moved the requirement that the owner or operator must notify the cognizant COTP for a facility or OCS facility, or the MSC for U.S.-flagged vessels, by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place into new paragraph § 101.630(e)(2)(ii). This paragraph provides that when the entity makes changes that do not allow for Coast Guard approval before implementation, they must notify the appropriate Coast Guard contact as soon as possible so that the Coast Guard has the most up-to-date and accurate description of the Cybersecurity Plan.

Finally, we clarified in § 101.630(e)(3) and (4) that the CySO must amend the Cybersecurity Plan, as soon as reasonably practicable, in light of the individual circumstances, but, in any case, not longer than 96 hours, when the owner or operator has changed.

Under § 101.630(f)(1), the CySO must ensure that an audit of the Cybersecurity Plan and its implementation is performed annually, beginning no later than 1 year from the initial date of approval. Additional audits must be conducted if there is a change in ownership or modifications of cybersecurity measures, but such audits may be limited to sections of the Plan affected by the modification. See § 101.630(f)(2) and (3). Those conducting an internal audit must have a level of knowledge and independence specified in § 101.630(f)(4). Under § 101.630(f)(5), if the results of the audit require the Cybersecurity Plan to be amended, the CySO must submit the amendments to the Coast Guard for review within 30 days of completing the audit.

Section 101.635—Drills and Exercises

Under § 101.635(a)(1), cybersecurity drills and exercises are required to test the proficiency of U.S.-flagged vessel, facility, and OCS facility personnel in assigned cybersecurity duties and in the effective implementation of the VSP, FSP, OCS FSP, and Cybersecurity Plan. Drills and exercises must also enable the CySO to identify any related cybersecurity deficiencies that need to be addressed. Additionally, in § 101.635(a)(2), we changed ''cyber incident'' to a ''reportable cyber incident.''

Cybersecurity drills generally test an operational response of at least one specific element of the Cybersecurity Plan, as determined by the CySO, such as access control for a critical IT or OT system, or network scanning. In this final rule, we changed the requirement in § 101.635(b)(1) from conducting at least one cybersecurity drill every 3 months to conducting two cybersecurity drills every 12 months, and added ''as required by 33 CFR 104.230, 105.220, or 106.225,'' where appropriate.

Cybersecurity exercises are a full test of an organization's cybersecurity regime and include substantial and active participation of cybersecurity personnel. The participants may include local, State, and Federal Government personnel. Cybersecurity exercises generally test and evaluate the organizational capacity to manage a combination of elements in the Cybersecurity Plan, such as detecting, responding to, and mitigating a cyber incident.

The exercises are required at least once each calendar year, with no more than 18 months between exercises. In § 101.635(c)(2)(iii), where exercises may be combined with other appropriate exercises, we added ''as required by 33 CFR 104.230, 105.220, or 106.225.'' Exercises may be specific to a U.S.-flagged vessel, facility, or OCS facility, or may serve as part of a cooperative exercise program or port exercises. The exercises for the Cybersecurity Plans can be combined with other required security exercises, if appropriate.

The drill or exercise requirements specified in this section may be satisfied by implementing cybersecurity measures required by the VSP, FSP, OCS FSP, and Cybersecurity Plan after a cyber incident, as long as the U.S.-flagged vessel, facility, or OCS facility achieves and documents the drill and exercise goals for the cognizant COTP or MSC. Any corrective action must be addressed and documented as soon as possible.

Section 101.640—Records and Documentation

This section requires owners and operators to follow the recordkeeping requirements in 33 CFR 104.235 for vessels, 33 CFR 105.225 for facilities, and 33 CFR 106.230 for OCS facilities. For example, records must be kept for at least 2 years and be made available to the Coast Guard upon request. The records can be kept in paper or electronic format and must be protected against unauthorized access, deletion, destruction, amendment, and disclosure. Records that each U.S.-flagged vessel, facility, or OCS facility keep vary because each organization maintains records specific to their operations. At a minimum, the records must capture the following activities: training, drills, exercises, cybersecurity threats, reportable cyber incidents, and audits of the Cybersecurity Plan as set

forth in the cited recordkeeping requirements above and made applicable to records under this subpart, per § 101.640. We revised the list of activities in § 101.640 to replace ''incidents'' with ''reportable cyber incidents,'' since we have revised this final rule to use that term.

Section 101.645—Communications

This section requires the CySO to maintain an effective means of communication to convey changes in cybersecurity conditions to the personnel of the U.S.-flagged vessel, facility, or OCS facility. In addition, the CySO must maintain an effective and continuous means of communicating with their security personnel, U.S.-flagged vessels interfacing with the facility or OCS facility, the cognizant COTP, and national and local authorities with security responsibilities. We revised § 101.645(a) to clarify that the means for effective notification must be documented in Section 5 of the Cybersecurity Plan. Documenting the communication process for changes will promote active information sharing among the various people responsible for the cybersecurity measures of the U.S.-flagged vessel, facility, or OCS facility.

Section 101.650—Cybersecurity Measures

This section lists specific cybersecurity measures to identify risks, detect threats and vulnerabilities, protect critical systems, and recover from cyber incidents. Any intentional gaps in cybersecurity measures must be documented as accepted risks under § 101.630(c)(12). If the owner or operator is unable to comply with the requirements of this subpart, they may seek a waiver or an equivalence determination under § 101.665.

A discussion of each component of § 101.650 follows.

Section 101.650 Paragraph (a): Account Security Measures

This paragraph lists minimum account measures to protect critical IT and OT systems from unauthorized cyber access and limit the risk of a cyber incident. Access control is a foundational category, highlighted as a ''Protect'' function of NIST's CSF.[67] Existing regulations in §§ 104.265, 105.255 through 105.260, and 106.260 through 106.265 prescribe control measures to limit access to restricted areas and detect unauthorized introduction of devices capable of damaging U.S.-flagged vessels, facilities, OCS facilities, or ports. This provision is derived from NIST's standards mentioned earlier for the cyber domain and establish minimum account security measures to manage credentials and secure access to critical IT and OT systems.

Account security measures for cybersecurity include lockouts on repeated failed login attempts, password requirements, multifactor authentication, applying the principle of least privilege to administrator or otherwise privileged accounts, and removing credentials of personnel no longer associated with the organization. Numerous consensus standards that are generally accepted employ similar requirements.[68] Together, these provisions mitigate the risks of brute force attacks, unauthorized access, and privilege escalation. The owner or operator is responsible for implementing and managing these account security measures, including ensuring that user credentials are removed or revoked when a user leaves the organization. The CySO must ensure documentation of such measures in Section 7 of the Cybersecurity Plan. We revised § 101.650(a)(1), which required automatic account lockouts after repeated failed login attempts for both IT and OT systems to remove the reference to OT systems. In § 101.650(a)(2), we added the information that, when changing default passwords is not feasible, appropriate compensating security controls must be implemented and documented.

Section 101.650 Paragraph (b): Device Security Measures

This paragraph provides specific requirements to mitigate risks and vulnerabilities in critical IT and OT systems and equipment. With increased connectivity to public internet, networks on U.S.-flagged vessels, facilities, and OCS facilities have an expansive attack surface. These provisions reduce the risks of unauthorized access, malware introduction, and service interruption. This paragraph applies the ''Identify'' function of the NIST CSF.[69] Existing regulations in 33 CFR 104.265, 105.255 through 105.260, and 106.260 through 106.265 are similar. For example, § 105.260 limits access to areas that require a higher degree of protection.

Paragraph (b) also requires owners and operators to designate critical IT and OT systems.[70] Developing and maintaining an accurate inventory and network map reduces the risk of unknown or improperly managed assets. The Cybersecurity Plan also governs device management. The CySO must maintain the network map and develop and maintain the list of approved hardware, software, and firmware. In addition to identifying risks, these provisions aid in the proper lifecycle management of assets, including patching and end-of-life management. These requirements are foundational to many industry consensus standards and reinforce Coast Guard regulations to protect communication networks. We revised § 101.650(b) to require that device security measures must be addressed, rather than documented, in Section 6 of the Cybersecurity Plan and also to clarify that they must be made available to the Coast Guard upon request. In § 101.650(b)(2), we removed the requirement that exemptions must be justified and documented in the Cybersecurity Plan.

Section 101.650 Paragraph (c): Data Security Measures

This paragraph prescribes fundamental data security measures that stem from the ''Protect'' function of the NIST CSF. Data security measures protect personnel, financial, and operational data and are consistent with basic risk management activities of the maritime industry. The IMO recognizes the importance of risk management related to data security on U.S.-flagged vessels,[71] and the Coast Guard previously highlighted data security

[67] NIST CSF, *www.nist.gov/cyberframework/protect,* accessed August 13, 2024.

[68] *See,* for example, NIST CSF: PR.AC, CIS Controls 1, 12, 15, 16, and COBIT DSS05.04, DSS05.10, DSS06.10, and ISA 62443–2–1.

[69] NIST CSF; Identify, ''NIST Cybersecurity Publication by Category,'' *Asset Management ID.AM,* updated May 3, 2021, *www.nist.gov/cyberframework/identify,* accessed August 13, 2024. NIST Special Publication 800–53, Revision 5, ''Security and Privacy Controls for Information Systems and Organizations,'' September 2020, page 107, *https://doi.org/10.6028/NIST.SP.800-53r5,* accessed August 13, 2024.

[70] To help CySOs identify which systems are critical, CG–FAC has published maritime specific CSF profiles on its homepage at *www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Office-of-Port-Facility-Compliance/Domestic-Ports-Division/cybersecurity/,* accessed August 13, 2024, and in pages 20 through 24 of Appendix A, Maritime Bulk Liquid Transfer Profile at *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.dco.uscg.mil%2FPortals%2F9%2FCG-FAC%2FDocuments%2FCyber%2520Profiles%2520Overview.docx%3Fver%3D2018-01-10-143126-467&wdOrigin=BROWSELINK,* accessed August 13, 2024.

[71] MSC–FAL.1/Circ.3/Rev.1: ''Implement risk control processes and measures, and contingency planning to protect against a cyber-event and ensure continuity of shipping operations.''

measures in its policy for MTSA-regulated facilities.[72]

Data security measures prevent data loss and aid in detection of malicious activity on critical IT and OT systems. The fundamental measures here establish baseline protections upon which owners and operators can build. This paragraph requires logs to be securely captured, stored, and protected so that they are accessible only by privileged users, and require encryption for data in transit and data at rest. CySOs will rely on generally accepted industry standards and risk management principles to determine the suitability of specific encryption algorithms for certain purposes, such as protecting critical IT and OT data with a more robust algorithm than for routine data. [73] Consistent with the discussion earlier about the term ''logs,'' we revised § 101.650(c)(1) to refer to logs, which we have defined in this final rule, rather than data logs. Additionally, we revised § 101.650(c)(2) to provide that effective encryption must be deployed to maintain confidentiality of sensitive data and integrity of IT and OT traffic, when technically feasible, rather than specifically referring to suitably strong algorithms. A CySO must establish detailed data security policies in Section 4 of the Cybersecurity Plan, adapting these policies to the unique operations of the U.S.-flagged vessel, facility, or OCS facility.

Section 101.650 Paragraph (d): Cybersecurity Training for Personnel

This paragraph specifies cybersecurity training requirements. Security training is a vital aspect of the MTSA. Relevant provisions in 33 CFR already require all personnel to have knowledge, through training, or equivalent job experience, in the ''Recognition and detection of dangerous . . . devices.'' [74] Since 2020, the Coast Guard has interpreted this requirement to include relevant cybersecurity training.[75] While formal training may be appropriate, the Coast Guard is not mandating a format of training. However, the training must, at minimum, cover relevant provisions of the Cybersecurity Plan to include recognizing, detecting, and circumventing cybersecurity threats; and reporting cyber incidents to the CySO.

The types of training must also be consistent with the roles and responsibilities of personnel, including access to critical IT and OT systems and operating network-connected machineries. Key cybersecurity personnel and management need to have current knowledge of threats to deal with potential cyber-attacks and understand procedures for responding to a cyber incident. The owner, operator, or CySO must ensure that all personnel designated by the CySO complete the core training within 5 days of gaining system access, but no later than 30 days after hiring, and annually thereafter, and that key personnel receive specialized training annually or more frequently as needed. Existing personnel are required to receive training on relevant provisions of the Cybersecurity Plan within 60 days of the Plan being approved, and, for all other required training, within 180 days of the effective date of this final rule and annually thereafter. (See § 101.650(d)(4)). We added a requirement in § 101.650(d)(3) that when personnel must access IT or OT systems but are unable to receive cybersecurity training as specified in paragraphs (d)(1) and (d)(2) of this section, they must be accompanied or monitored by a person who has completed the training specified in paragraphs (d)(1) and (d)(2) of this section. As a result, we redesignated the originally proposed § 101.650(d)(3) as § 101.650(d)(4).

Section 101.650 Pharagraph (e): Risk Management

This paragraph establishes three levels of Cybersecurity Assessment and risk management: (1) conducting annual Cybersecurity Assessments; (2) completing penetration testing upon renewal of a VSP, FSP, or OCS FSP; and (3) ensuring ongoing routine system maintenance. The owner, operator, or designated CySO must ensure that these activities, which are listed in Sections 11 and 12 of the Cybersecurity Plan, are documented and completed.

Following a Cybersecurity Assessment, the CySO must incorporate feedback from the assessment into the Cybersecurity Plan through an amendment to the Plan. We revised the timeframe that a Cybersecurity Assessment must be conducted from within 1 year from the effective date of a final rule and annually thereafter to 24 months after the effective date of the final rule and annually thereafter. The Assessment must be conducted sooner than annually if there is a change in ownership of a U.S.-flagged vessel, facility, or OCS facility. We removed the requirement for more frequent Cybersecurity Assessments if there is a major amendment to the Cybersecurity Plan.

We updated the implementation period in § 101.650(e)(1) to be 24 months from the effective date of this final rule. We revised § 101.650(e)(1)(i) to clarify that owners or operators must analyze all networks to identify vulnerabilities to *critical* IT and OT systems and the risk posed by each digital asset. We added a new paragraph § 101.650(e)(1)(iv) to explain that the Cybersecurity Assessment must document and ensure patching or implementing of documented compensating controls for all KEVs in critical IT or OT systems, without delay, rather than mitigate any unresolved vulnerabilities. We also redesignated the originally proposed § 101.650(e)(1)(iv) as § 101.650(e)(1)(v).

While Cybersecurity Assessments provide a valuable picture of potential security weaknesses, penetration tests can add additional context by demonstrating whether malicious actors can leverage those weaknesses. Penetration tests can also help prioritize resources based on what poses the most risk. We revised § 101.650(e)(2) to specify that penetration testing must be conducted in conjunction with Plan renewal and that a letter certifying that the test was conducted, as well as all identified vulnerabilities, must be included in the VSA, FSA, or OCS FSA.

Routine system maintenance requires an ongoing effort to identify vulnerabilities and must include scanning and reviewing KEVs by documenting, tracking, and monitoring them. These provisions mirror the security system and equipment maintenance requirements in 33 CFR 104.260 for vessels, 33 CFR 105.250 for facilities, and 33 CFR 106.255 for OCS facilities, and reflect the Coast Guard's longstanding view on cybersecurity. To improve risk management across the maritime sector, each owner, operator, or designated CySOs must establish, subject to any applicable antitrust law limitations,[76] information-sharing

[72] NVIC 01–20 at page 2: ''Each facility should also determine how, and where, its data is stored and, if it is stored offsite, whether the data has a critical link to the safety and/or security functions of the facility. If such a critical link exists, the facility should address any vulnerabilities . . . . ''

[73] *See,* for example, ISA 62443–3–3, CIS CSC 13, 14 in the EDM NIST Cybersecurity Framework Crosswalks, available at *www.cisa.gov/sites/default/files/publications/4_NIST_CSF_EDM_Crosswalk_v3_April_2020.pdf,* accessed August 13, 2024.

[74] 33 CFR 104.225(c) (Vessels), 105.215(c) (Facilities), and 106.220(c) (OCS Facilities).

[75] NVIC 01–20 ENCL(1) at page 3: ''Describe how cybersecurity is included as part of personnel training, policies, and procedures, and how this material will be kept current and monitored for effectiveness.''

[76] The sharing of competitively sensitive information between or among competitors raises antitrust concerns. For example, information sharing is not exempted under the Cybersecurity Information Sharing Act of 2015 if the information shared results in price fixing, market allocation,

procedures for their organizations, to include procedures to receive and act on KEVs, as well as methods for sharing threat and vulnerability information.

The ''Protect'' function of the NIST CSF emphasizes the importance of strong processes and procedures for protecting information.[77] For example, organizations must ensure that information and records (data) are managed consistently with the organization's risk strategy to protect the confidentiality, integrity, and availability of information. Risk management is key in protecting IT and OT components that may include cybersecurity vulnerabilities in their design, code, or configuration.

Owners and operators may use information-sharing services or organizations such as an Information Sharing and Analysis Center or an Information Sharing and Analysis Organization. The Coast Guard does not endorse specific information-sharing organizations; owners and operators are free to use information-sharing organizations to suit their needs.[78] Industry consensus standards provide generally accepted techniques that sanitize and reduce attribution to information to ensure that information sharing does not compromise proprietary business information.[79] In addition, regardless of the services or organizations used, owners and operators should comply with applicable antitrust laws and not share competitively sensitive information, such as price or cost data, that can result in unlawful price-fixing, market allocation, or other forms of competitor collusion. Use of any information-sharing services or organizations do not meet or replace reporting requirements under 33 CFR 101.305.

The Coast Guard emphasized its commitment to helping maritime industry stakeholders identify and address vulnerabilities in its *2023 Cyber Trends and Insights in the Marine Environment* report.[80] In that report, the Coast Guard highlighted additional resources that CySOs should leverage to manage cybersecurity vulnerabilities.

Section 101.650 Paragraph (f): Supply Chain

This paragraph includes provisions to specify measures to manage cybersecurity risks in the supply chain. Legitimate third-party contractors and vendors may inadvertently provide a means of attack or vectors that allow malicious actors to exploit vulnerabilities within the supply chain. Section 1.1 of the NIST CSF emphasizes managing cybersecurity risks in the supply chain as part of the ''Identify'' function.[81]

Under this paragraph, the owner, operator, or CySO must ensure that measures to manage cybersecurity risks in the supply chain are in place to mitigate the risks associated with external parties. These measures include considering cybersecurity capabilities in selecting vendors, establishing a process through which all IT and OT vendors or service providers notify the owner or operator or designated CySO of any cybersecurity vulnerability or reportable cyber incident, without delay, and monitoring third-party connections. In § 101.650(f)(3), we replaced ''incidents'' with ''reportable cyber incidents,'' since we have revised this final rule to use that term, where applicable, and removed ''breaches.''

Through their contractual agreements, vendors must ensure the integrity and security of software and hardware, such as software releases and updates, notifications, and mitigations of vulnerabilities. These provisions must establish a minimum level of CRM within the supply chain. Industry standards provide additional measures.[82] The IMO also recognizes cybersecurity risks in the supply chain, and these provisions align with the guidelines and recommendations referenced in MSC–FAL Circ. 3/Rev.1.[83]

Section 101.650 paragraph (g): Resilience

This paragraph lists a few key activities to ensure that U.S.-flagged vessels, facilities, and OCS facilities can recover from major cyber incidents with minimal impact to critical operations. Provisions under response and recovery can help an organization recover from a cyber-attack and restore capabilities and services.

This final rule requires the owner, operator, or CySO to ensure the following response and recovery activities: report reportable cyber incidents to the NRC; develop, implement, maintain, and exercise the Cyber Incident Response Plan; periodically validate the effectiveness of the Cybersecurity Plan; and perform backups of critical IT and OT systems. The Coast Guard accepts review of a cyber incident as meeting the periodic validation requirement in § 101.650(g). We revised § 101.650(g)(1) to replace the provisional ''any cyber incidents'' with ''reportable cyber incidents,'' since that is now a defined term in this final rule, after we received and considered public comments on that term. We removed the reference to a telephone number for reporting to the NRC. We also revised § 101.650(g)(3) to remove ''tabletop'' and refer only to ''exercises.'' The Coast Guard changed this for consistency with § 101.635, which defines ''exercises'' to include live exercises as well as ''tabletop simulations.'' The intent here is to use the more general ''exercises,'' which includes but is not limited to tabletop exercises or simulations, for consistency with § 101.635.

In addition, the NIST CSF describes numerous provisions within the ''Recover'' function aimed at improving response and recovery.[84] The IMO also notes resilience.[85]

Section 101.650 Paragraph (h): Network Segmentation

This paragraph requires a CySO to ensure that the network is segmented and to document those activities in the Cybersecurity Plan. Network integrity is a key provision under the ''Protect'' function of the NIST CSF.[86] Network architectures vary widely based on the operations of a U.S.-flagged vessel, facility, or OCS facility. Separating IT and OT networks is challenging, and it

boycotting, monopolistic conduct, or other collusive conduct.

[77] NIST CSF Internal Controls, Appendix A, Table A–1, PR.IP–12, page 261, *link.springer.com/content/pdf/bbm:978-1-4842-3060-2/1.pdf,* accessed August 13, 2024.

[78] The Coast Guard encourages CySOs to explore resources through CGCYBER Maritime Cyber Readiness Branch, available at *https://www.uscg.mil/MaritimeCyber/,* accessed August 13, 2024*; see also* CISA's ''Information Sharing and Awareness,'' available at *https://www.cisa.gov/information-sharing-and-awareness,* accessed August 13, 2024.

[79] *See,* for example, NIST Special Publication 800–150, ''Guide to Cyber Threat Information Sharing,'' Johnson et al, October 2016, *nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-150.pdf,* accessed August 13, 2024.

[80] ''2023 Cyber Trends and Insights in the Marine Environment,'' April 12, 2024, *https://www.uscg.mil/Portals/0/Images/cyber/CTIME_2023_FINAL.pdf,* accessed August 13, 2024.

[81] NIST CSF, Version 1.1, ''ID.SC: Supply Chain Risk Management,'' *https://csf.tools/reference/nist-cybersecurity-framework/v1-1/id/id-sc/*, accessed August 13, 2024.

[82] *See,* for example, NIST Special Publication 800–161, ''Supply Chain Risk Management Practices for Federal Information Systems and Organizations,'' May 2022, *https://doi.org/10.6028/NIST.SP.800-161r1,* accessed August 13, 2024.

[83] MSC–FAL.1/Circ.3/Rev.1, 2.1.6 and 4.2; see footnote 34.

[84] NIST CSF, Version 1.1 ''RC: Recover,'' *https://csf.tools/reference/nist-cybersecurity-framework/v1-1/rc/*, accessed August 13, 2024.

[85] MSC–FAL Circ. 3/Rev. 1, 3.5.5; see footnote 34.

[86] NIST CSF, Version 1.1, ''PR.AC–5: Network integrity is protected (for example, network segregation, network segmentation).'' *csf.tools/reference/nist-cybersecurity-framework/v1-1/pr/pr-ac/pr-ac-5/*, accessed July 19, 2023.

becomes increasingly difficult with an increase in the various devices connected to the network. Network segmentation ensures that valuable information is not shared with unauthorized users and decreases damage that can be caused by malicious actors. Nonetheless, the Coast Guard recognizes that the IT and OT interface represents a weak link. Industry standards in this area are evolving, and it is an area that NIST continues to research.[87]

Section 101.650 Paragraph (i): Physical Security

This paragraph specifies that, along with the cybersecurity provisions for inclusion in this part, owners, operators, or CySOs must manage physical access to IT and OT systems. As described in the ''Protect'' function of the NIST CSF, physical security protects critical IT and OT systems by limiting access to the human-machine interface (HMI).[88] Physical security measures here supplement the existing VSA, FSA, and OCS FSA requirements in 33 CFR 104.270 for vessels, 33 CFR 105.260 for facilities, and 33 CFR 106.260 for OCS facilities. Similarly, under this paragraph, the CySO must designate areas restricted to authorized personnel and secure HMIs and other hardware. Also under this paragraph, the CySO must establish policies to restrict the use of unauthorized media and hardware. These provisions mirror existing Coast Guard policy outlined in NVIC 01–20.[89]

Section 101.655—Cybersecurity Compliance Dates

This section states that a Cybersecurity Plan, as required by this final rule, must be made available to the Coast Guard for review no later than 24 months from the effective date of this final rule, as required by 33 CFR 104.410 for vessels, 33 CFR 105.410 for facilities, and 33 CFR 106.410 for OCS facilities. We updated § 101.655 to reflect the revised implementation period. We also corrected the cross-references in this section from §§ 104.415, 105.415, and 106.415 to §§ 104.410, 105.410, and 106.410, respectively.

Section 101.660—Cybersecurity Compliance Documentation

This section allows the Coast Guard to verify an approved Cybersecurity Plan for U.S.-flagged vessels, facilities, and OCS facilities. Each owner or operator must ensure that the cybersecurity portion of their Plan and penetration test results are available to the Coast Guard upon request. We revised what we proposed in § 101.660 to expressly state that Alternative Security Program provisions apply to cybersecurity compliance documentation.

Section 101.665—Noncompliance, Waivers, and Equivalents

This section provides owners and operators the opportunity for waiver and equivalence determinations from the cybersecurity requirements in subpart F of this final rule, pursuant to the existing regulations in 33 CFR 104.130, 104.135, 105.130, 105.135, and 106.130. Under this section, an owner or operator, after completion of the required Cybersecurity Assessment, may seek a waiver or an equivalence determination for the requirements in subpart F using the standards and submission procedures applicable to a U.S.-flagged vessel, facility, or OCS facility, as outlined in 33 CFR 104.130, 104.135, 105.130, 105.135, 106.125, or 106.130.

The Coast Guard revised § 101.665 to clarify that the owner or operator must conduct the Cybersecurity Assessment prior to requesting a waiver or equivalence because it is not possible to know if a requirement is unnecessary until the Cybersecurity Assessment is completed. As previously noted, one of the primary purposes of an Assessment is to identify whether there are actual or potential vulnerabilities to IT or OT systems, equipment, or procedures. The Assessment is the evaluation that helps determine whether there exists IT or OT systems, equipment, procedures, or other cyber elements that may be applicable to these rules. It is the review a regulated entity can point to in explaining why the request for a waiver or equivalence is necessary.

The Coast Guard finds it unlikely that any regulated entity would have no IT or OT systems or equipment. However, if an entity has no IT or OT footprint, then their Assessment would easily identify that fact.

While this was implied and accounted for in the NPRM by our assumption that all owners and operators would need to complete a Cybersecurity Assessment and Plan (see RA, section *Cybersecurity Plan Costs*), we have now stated this explicitly within the text. The Coast Guard will also need the information an owner or operator will gain from completing an Assessment to assess the flexibility possible for the entity making the request, in light of their individual circumstances.

The Coast Guard removed the text requiring the vessel or facility to be ''unable to meet the requirements in subpart F,'' as originally proposed. Instead, we specify that the waiver or equivalence determination may be sought using the same standards and submission procedures applicable to a U.S.-flagged vessel, facility, or OCS facility, as outlined in 33 CFR 101.130, 104.130, 104.135, 105.130, 105.135, 106.125, or 106.130. We made this change for consistency with the existing waiver and equivalence provisions in 33 CFR parts 104, 105, and 106.

Additionally, this section provides that, if an owner or operator must temporarily deviate from the requirements in this part, they must notify the cognizant COTP for facilities or OCS facilities, or the MSC for U.S.-flagged vessels, and may request temporary permission to continue to operate under the provisions as outlined in 33 CFR 104.125, 105.125, or 106.120. We updated this text from ''if an owner or operator is temporarily unable to meet'' the requirements to ''if an owner or operator must temporarily deviate from'' for consistency with existing temporary waiver regulations as outlined in 33 CFR 104.125, 105.125, or 106.120.

Finally, the Coast Guard made editorial changes within § 101.665 to reflect that facilities and OCS facilities will notify the cognizant COTP for temporary waiver requests, whereas U.S.-flagged vessels will make this notification to the MSC.

Section 101.670—Severability

This section reflects the Coast Guard's intent that the provisions of subpart F be considered severable from each other to the greatest extent possible. For instance, if a court of competent jurisdiction were to hold that this final rule or a portion thereof may not be applied to a particular owner or operator or in a particular circumstance, the Coast Guard intends for the court to leave the remainder of this final rule in place with respect to all other covered persons and circumstances. The inclusion of a severability clause in subpart F does not imply a position on

[87] *See* NIST Special Publication 800–82r3,'' Guide to Operational Technology (OT) Security,'' draft published April 26, 2022; *doi.org/10.6028/NIST.SP.800–82r3.ipd,* accessed July 19, 2023.

[88] NIST CSF, Version 1.1, ''PR.AC–2: Physical Access to Assets is Managed and Protected.'' *csf.tools/reference/nist-cybersecurity-framework/v1-1/pr/pr-ac/pr-ac-2/*, accessed July 19, 2023.

[89] NVIC 01–20, enclosure (1), at page 4: ''Security measures for access control 33 CFR 105.255 and 106.260 Establish security measures to control access to the facility. This includes cyber systems that control physical access devices such as gates and cameras, as well as cyber systems within secure or restricted areas, such as cargo or industrial control systems. Describe the security measures for access control.'' (85 FR 16108).

severability in other Coast Guard regulations.

Section 160.202—Definitions

This section revises the definition for hazardous condition to add cyber incident. In the NPRM, we requested public comments on whether we should amend this definition, and commenters were supportive of the change, as discussed previously.

VII. Request for Comment

The Coast Guard requests public comment on a potential 2-to-5-year delay for the implementation periods for new requirements applicable to U.S.-flagged vessels. This rule contains three broad categories of implementation periods, only two of which would be affected by a delay.

First, entities that have not reported to the Coast Guard pursuant to, or are not subject to, 33 CFR 6.16–1 must ensure that all reportable cyber incidents are reported to the NRC (§ 101.620(b)(7)) immediately upon the effective date of this rule. Because U.S.-flagged vessels have been subject to the reporting requirements in 33 CFR 6.16–1 since the issuance of Executive Order 14116 on February 21, 2024, we are not seeking comments on whether to delay the implementation period for incident reporting.

Second, this rule contains a variety of training requirements in § 101.650 that must be implemented within 6 months after the effective date of this rule.

Third, this rule contains three provisions, as follows, that must be implemented within 24 months after the effective date of this rule:

- Owners and operators must designate, in writing, the CySO (§ 101.620(b)(3) and (c)(1));
- Owners and operators must conduct the Cybersecurity Assessment within 24 months after the effective date of this final rule and annually thereafter (or sooner than annually if there is a change in ownership) (§ 101.650(e)(1)); and
- Owners and operators must submit the Cybersecurity Plan to the Coast Guard for approval within 24 months after the effective date of this final rule (§ 101.655).

As noted in Section V of this preamble, the Coast Guard received several public comments asking us to extend the implementation period for different periods, ranging from 36 to 48 months beyond those we proposed in the NPRM. Many of these comments were specific to vessels. Some commenters suggested that U.S.-flagged vessels would require more time than facilities to implement new requirements in this rule because of differences in the pre-existing guidance provided for vessels in CVC–WI–027(3), Vessel Cyber Risk Management Work Instruction, as opposed to guidance for facilities in NVIC 01–20, Guidelines for Addressing Cyber Risks at Maritime Transportation Security Act (MTSA) Regulated Facilities.[90] Some commenters also remarked on the rule's potential burden on U.S.-flagged vessels, writing that the United States should not impose specific requirements for the flag state on its vessels without imposing the same on foreign-flagged vessels. A commenter asserted that, once the IMO establishes international requirements, a new NPRM should be issued to implement these requirements for U.S.-flagged vessels. And some commenters remarked upon U.S.-flagged vessels' ability to complete training requirements within six months of the rule's effective date.

As described earlier in this preamble, in response to these comments, the Coast Guard has adjusted the final rule generally to contain a phased-in implementation schedule that results in greater lead time for implementation. Particularly in light of the public comments specific to vessels described in the previous paragraph, the Coast Guard invites the public to comment on whether we should further delay the implementation periods for new requirements applicable to U.S.-flagged vessels for a period of 2 to 5 years beyond what is specified in this rule. Comments submitted should include information supporting the specific period that the commenter suggests, with respect to specific provisions of the rule. (See the **ADDRESSES** portion of this preamble, under *Comment period for solicited additional comments,* for instructions on submitting comments.) After reviewing any comments and supporting information received, the Coast Guard may issue a future rule to implement this additional delay to provide time for U.S.-flagged vessels to come into compliance with these requirements. The Coast Guard also welcomes comment on whether a delay for vessels alone could result in unanticipated consequences for facilities.

VIII. Regulatory Analyses

We developed this final rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

[90] See footnote 13.

A. Regulatory Planning and Review

Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and Executive Order 13563 (Improving Regulation and Regulatory Review), direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action,'' as defined under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed $200 million in any year of the analysis. Accordingly, OMB has reviewed this rule. A final RA follows.

The Coast Guard received 99 comment submissions during the 90-day comment period that ended on May 22, 2024. We received numerous public comments related to the RA in the NPRM, including several commenters stating that the Coast Guard underestimated the costs related to certain provisions. These provisions included supply chain measures, device security measures, penetration testing, routine system maintenance, drills and exercises, network segmentation, CySO wages, and OCS facility inspections. In light of some of these comments, we have increased certain cost estimates associated with drills, exercises, and penetration testing. In addition, we have lowered the proposed frequency of drill requirements from quarterly to twice annually, which reduces the real burden faced by affected entities, even though our increased hour burden estimates associated with development and participation involved with drill and exercise requirements have increased our cost estimates. This also increases marginal benefits of drills by allowing owners and operators to develop and focus on more comprehensive drills for the remaining drills or allocate resources to the implementation or improvement of other cybersecurity measures. Beyond these cost estimate updates, and an update to our affected population based on a discrepancy noted by another public commenter, the

methodology employed in the RA is unchanged.

In accordance with OMB Circular A–4 (available at *www.whitehouse.gov/omb/circulars/*), we have prepared an accounting statement showing the classification of impacts associated with this final rule.

Agency/Program Office: U.S. Coast Guard

Rule Title: Cybersecurity in the Marine Transportation System

RIN#: 1625–AC77

Date: August 2024 (millions, 2022 dollars)

Table 2: OMB Circular A-4 Accounting Statement Categorizing Impacts for the Cybersecurity in the Marine Transportation System Final Rule

Category	*Primary Estimate*	*Low Estimate*	*High Estimate*	*Dollar Year*	*Discount Rate*	*Time Horizon*	*Source*
BENEFITS							
Annualized monetized benefits	-	-	-	2022	2%	10 Years	RA
Annualized quantified, but non-monetized, benefits	-	-	-	2022	2%	10 Years	RA
	Reduce the risk of cyber incidents through enhanced detection and correction of vulnerabilities in IT and OT systems. Improve mitigation for the impacted entity and downstream economic participants if an incident occurs.						RA
	Improve protection of data of MTS firms and customers to safeguard business operations, build consumer trust, and promote increased commerce in the U.S. economy.						RA
Unquantified benefits	Improve the minimum standard for cybersecurity to protect the MTS and avoid disruptions to the supply chain, which is vital to the U.S. economy and U.S. national security.						RA
COSTS							
Annualized monetized costs	$138.7 million	-	-	2022	2%	10 Years	RA
Annualized quantified, but non-monetized, costs	-	-	-	2022	2%	10 Years	RA
Unquantified costs	The unquantifiable costs of this final rule are associated with the actions to mitigate the cyber risks identified as a result of this final rule. These actions may involve changes to the physical security of hardware and physical access ports, network segmentation, the data space and encryption required for data backups and data logging measures, disabling applications running executable code, any necessary future software or hardware upgrades in addition to the incompatibility between older and newer software, and correcting vulnerabilities or issues identified during the implementation of this final rule.						RA
TRANSFERS							
Annualized monetized Federal budgetary transfers	N/A	N/A	N/A				
Bearers of transfer gain and loss?	N/A	N/A	N/A				
Other annualized monetized transfers	N/A	N/A	N/A				
Bearers of transfer gain and loss?	N/A	N/A	N/A				
NET BENEFITS							
Annualized monetized net benefits	-	-	-				
Effects on State, local, or Tribal governments	None						

Effects on small businesses	We conducted a FRFA and estimate that this final rule will have a significant economic impact on a substantial number of small entities.	RA/FRFA
Effects on wages	None	
Effects on growth	Not measured	

The Coast Guard has updated its maritime security regulations by adding minimum cybersecurity requirements to a new subpart F in 33 CFR part 101 for U.S.-flagged vessels, facilities, and OCS facilities required to have a security plan under 33 CFR parts 104, 105, and 106. Specifically, this final rule requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to develop an effective Cybersecurity Plan, which includes actions to prepare for, prevent, and respond to threats and vulnerabilities. One of these actions is to assign qualified personnel to implement the Cybersecurity Plan and all activities within the Plan. The Cybersecurity Plan includes the following: designating a CySO; conducting a Cybersecurity Assessment; developing and submitting the Plan to the Coast Guard for approval; operating a U.S.-flagged vessel, facility, and OCS facility in accordance with the Plan; implementing security measures based on new cybersecurity vulnerabilities; and reporting cyber incidents to the NRC, as defined in this preamble.

This final rule further requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to perform cybersecurity drills and exercises in accordance with their VSP, FSP, and OCS FSP. Owners and operators of U.S.-flagged vessels, facilities, and OCS facilities are also required to maintain records of cybersecurity related information in paper or electronic format.

Lastly, this final rule requires certain cybersecurity measures to identify risks, detect threats and vulnerabilities, protect critical systems, and to recover from cyber incidents. These measures include account security measures, device security measures, data security measures, cybersecurity training for personnel, risk management, supply chain risk measures, penetration testing, resilience measures, network segmentation, and physical security.

Baseline Summary

The Coast Guard is not codifying existing guidance in this final rule. The requirements of this final rule and the costs and benefits we estimate in this RA are new. The Coast Guard drafted the requirements of this final rule based on NIST's *Framework for Improving Critical Infrastructure Cybersecurity,* NIST's standards and best practices, and CISA's CPGs.

In February 2020, the Coast Guard issued NVIC 01–20, which provided clarity and guidance to MTSA-regulated facility and OCS facility owners and operators regarding existing requirements in the MTSA for computer systems and network vulnerabilities. However, the NVIC does not contain cybersecurity requirements for facility and OCS facility owners. Furthermore, the NVIC does not address the topic of cybersecurity for vessel owners and operators.

The IMO has issued other guidance on Cybersecurity in the past 7 years. In 2017, the IMO adopted resolution MSC.428(98) to the ISM Code on ''Maritime Cyber Risk Management in Safety Management Systems.'' Generally, this resolution states that an SMS should consider CRM and encourages Administrations to appropriately address cyber risks in an SMS by a certain date, in accordance with the ISM Code. In 2022, the IMO provided further guidance on maritime CRM in MSC–FAL.1/Circ.3–Rev.2, *Guidelines on Maritime Cyber Risk Management,* in an effort to raise awareness about cybersecurity risks in the maritime domain.

In addition, survey data indicates that some portions of the affected population of owners and operators of facilities and OCS facilities are already implementing cybersecurity measures consistent with select provisions of this final rule, including 87 percent who have implemented account security measures, 83 percent who have implemented multifactor authentication, 25 percent who have implemented annual cybersecurity training, and 68 percent who conduct penetration tests.[91] While we lack similar data on cybersecurity activities in the affected population of U.S.-flagged vessels, we acknowledge that it is likely that many owners and operators have implemented cybersecurity measures in response to private incentives and increasing cybersecurity risks over time. For the purpose of this analysis, however, we assume that owners and operators have no baseline cybersecurity activity, in the areas in which we lack data.

Estimated Costs of this Final Rule

We estimate the total discounted costs of this final rule to industry and the Federal Government to be approximately $1,245,594,930 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $138,667,759, using a 2-percent discount rate. See table 3.

[91] See footnote 60. In addition, for our cybersecurity training assumption, we use the more conservative brown-water facility rate of 25 percent rather than the blue-water rate of 57 percent given a lack of data about which facilities in the affected population would be considered brown- or blue-water. Further, while the survey does not specify if any of the surveyed population includes OCS facilities, the Coast Guard assumes that findings reflect current compliance for OCS facilities because we assume the scale of port and terminal operations surveyed would be similar to those on the OCS. Readers can access the survey at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html,* accessed August 26, 2024.

Table 3: Total Estimated Costs of the Final Rule to Industry and Government (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Facility and OCS Facility Costs	U.S.-flagged Vessel Costs	Government Costs	Total Costs	2 Percent
1	$57,844,636	$81,181,976	$402,629	$139,429,241	$136,695,334
2	$68,199,840	$110,518,021	$18,794,061	$197,511,922	$189,842,293
3	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$118,315,883
4	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$115,995,964
5	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$113,721,533
6	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$111,491,699
7	$55,920,448	$105,034,449	$4,809,252	$165,764,149	$144,307,667
8	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$107,162,341
9	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$105,061,119
10	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$103,001,097
Total	**$572,198,376**	**$768,567,346**	**$40,843,924**	**$1,381,609,646**	**$1,245,594,930**
Annualized					**$138,667,759**

Note: Totals may not sum due to independent rounding.

We present a summary of the impacts of this final rule in table 4.

Table 4: Summary of Impacts of the Final Rule

Category	Summary
Applicability: new sections to 33 CFR part 101, subpart F—Cybersecurity	• Cybersecurity requirements for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities.
Affected Population	• Approximately 1,372 facility owners and operators of approximately 3,718 facilities (33 of which are OCS facilities, with 9 unique owners or operators). • Approximately 2,075 U.S.-flagged vessel owners and operators of approximately 11,222 U.S.-flagged vessels (or 1,686 owners and operators of 6,379 U.S.-flagged vessels, excluding barges, where applicable).
Total Costs of the Final Rule (2-percent discount rate—all estimates in table)	**Costs to Industry:** Total discounted cost: $1.2 billion Annualized cost: $134.5 million Total discounted cost to facilities and OCS facilities cost $514.9 million Annualized cost: $57.3 million Total discounted cost to only OCS facilities: $3.7 million Annualized cost: $0.4 million Total discounted cost to U.S.-flagged vessels: $693.2 million Annualized cost: $77.2 million **Costs to Federal Government:** Total discounted cost: $37.5 million Annualized cost: $4.2 million **Total Costs of Final Rule:** Total discounted cost: $1.2 billion Annualized cost: $138.7 million

Unquantified Costs	• Costs associated with the physical security of physical access ports and removable media. • Costs associated with network segmentation. • The cost of data encryption and acquiring data space needed to store logs and backups. • Costs associated with disabling applications running executable code. • Costs associated with monitoring and all remote third-party connections. • Costs associated with patching and scanning for vulnerabilities in OT systems. • Costs associated with any future software or hardware upgrades needed to maintain system compatibility in the face of evolving cybersecurity threats. • Costs associated with the correction of vulnerabilities identified during the implementation of the provisions of this final rule.
Unquantified Benefits	• Reduce the risk of cyber incidents through enhanced detection and correction of vulnerabilities in IT and OT systems. Improve mitigation for impacted entities and downstream economic participants if an incident occurs. • Improve protection of MTS firm and customer data to protect business operations, build consumer trust, and promote increased commerce in the U.S. economy. • Improve the minimum standard for cybersecurity to protect the MTS and avoid supply chain disruptions, which is vital to the U.S. economy and U.S. national security.

Public Comments and Changes From the NPRM to the Final Rule

The Coast Guard received numerous public comments with implications for the RA. Summaries of those comments, and the Coast Guard's responses, are found in section V., Discussion of Comments and Changes, in the preamble of this final rule.

Table 5 describes the resulting changes from comments and the impacts on our cost estimates for this final rule. In addition to the changes described in table 5, the Coast Guard has also updated the analysis to a 2-percent discount rate, consistent with guidance in the updated OMB Circular A–4, published November 2023.[92]

[92] See page 75 in OMB Circular A–4, Regulatory Analysis, found at: *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf,* accessed August 26, 2024.

Table 5: Summary of Changes from NPRM to Final Rule

Element of the Analysis	NPRM	Final Rule	Resulting Change in the RA[93]
Affected Population	10,286 U.S.-flagged vessels (1,775 owners and operators) and 3,411 facilities and OCS facilities (1,708 owners and operators). Inadvertently excluded a portion of publicly owned vessels and facilities from the affected population.	11,222 U.S.-flagged vessels (2,075 owners and operators) and 3,718 facilities and OCS facilities (1,372 owner and operators). Now includes impacted publicly owned vessels and facilities and more accurately consolidates the number of owners and operators.[94]	-Increases total and annualized cost estimates for the rule. NPRM Costs (2%): Total cost - $711.7M Annualized - $79.2M Final Rule Costs (2%): Total cost - $1.2B Annualized - $138.7M
Cybersecurity Drills in § 101.635(b)	Cybersecurity drills required every 3 months or quarterly combined with existing physical security drills required under 33 CFR parts 104, 105, and 106. Cost estimates based on the CySO developing cyber components to add to existing drills, taking 30 minutes per drill, or 2 hours annually.	Cybersecurity drills required twice annually and held separately with all employees participating. Cost estimates based on the CySO developing new cybersecurity drills, taking 8 hours per drill, or 16 hours annually. 33 percent of employees per owner or operator will take 4 hours to participate in each drill, or 8 hours annually.	-Halving the annual drill requirement lowers the burden on the affected population, but the total and annual cost estimates for drills are increased. NPRM Costs (2%): Total cost - $5.3M Annualized - $0.6M Final Rule Costs (2%): Total cost - $298M Annualized - $33.2M
Cybersecurity Exercises in § 101.635(c)	Cybersecurity exercises required annually combined with existing physical security exercises. Cost estimates based on the CySO developing cyber components to add to existing exercises, taking 8 hours annually.	Cost estimates based on the CySO developing cyber exercises, taking 20 hours annually, and participating employees taking 4 hours annually. 33 percent of employees estimated to participate in cybersecurity exercises.	-Increased total and annualized exercise cost estimates. NPRM costs (2%): Total cost - $21.1M Annualized - $2.3M Final Rule costs (2%): Total cost - $180.3M Annualized - $20.1M
Penetration Testing in § 101.650(e)(2)	Testing required with submission of the Cybersecurity Plan in Years 2 and 7 of the period of analysis.	Initial cost estimate increased to $10,000 and $100 per IP address. Number of employees multiplied	- Increased total and annualized penetration testing cost estimates. NPRM costs (2%):

	Initial cost estimate was $5,000 for a third party to conduct the test, and $50 per IP address. Number of employees used as a proxy for number of IP addresses at a given company.	by 2 used as a proxy for the number of IP addresses at a given company.	Total cost - $35M Annualized - $3.9M Final Rule costs (2%): Total cost - $100.2M Annualized - $11.2M
Vessel Inspector Wage	Vessel inspector assumed to be an E-5 rank Petty Officer Second Class with a mean hourly wage rate of $58.	Vessel inspector assumed to be an O-2 rank Lieutenant Junior Grade with a mean hourly wage rate of $72.	- Increased total and annualized Government vessel inspection cost estimates. NPRM costs (2%): Total cost - $894,935 Annualized - $0.1M Final rule costs (2%): Total cost - $1.2 million Annualized - $0.1M
Reportable Cyber Incident Reporting	20 reportable cyber incidents required to be reported to NRC annually (18 from facilities population, and 2 from vessel population). Estimated that each incident took 0.15 hours to report.	Reportable cyber incidents only required to be reported to NRC for the population of 33 OCS facilities not already required to report cyber incidents under 33 CFR 6.16-1, as amended by Executive Order 14116. With only 1 reportable cyber incident report by OCS facilities since 2018, we consider the annual estimated costs negligible in the final rule.	- Removes total and annualized reportable cyber incident reporting costs. NPRM Costs (2%): Total cost - $2,263 Annualized - $252 Final rule costs (2%): Total cost - $0 Annualized - $0

Affected Population

This final rule affects owners and operators of U.S.-flagged vessels subject to 33 CFR part 104 (Maritime Security: Vessels), facilities subject to 33 CFR part 105 (Maritime Security: Facilities), and OCS facilities subject to 33 CFR part 106 (Marine Security: Outer Continental Shelf (OCS) Facilities). The Coast Guard estimates this final rule will affect approximately 11,222 vessels and 3,718 facilities (including 33 OCS facilities).

The affected U.S.-flagged vessel population includes:

- U.S. towing vessels greater than 8 meters (26 feet) in registered length inspected under 46 CFR, subchapter M that are engaged in towing a barge or barges inspected under 46 CFR, subchapters D and O;
- U.S. tankships inspected under 46 CFR, subchapters D and O;
- U.S. barges inspected under 46 CFR, subchapters I (includes combination barges), D, and O, carrying certain dangerous cargo in bulk or barges and engaged on international voyages;
- Small U.S. passenger vessels carrying more than 12 passengers, including at least 1 passenger-for-hire, that are engaged on international voyages;
- Small U.S. passenger vessels inspected under 46 CFR, subchapter K that are certificated to carry more than 150 passengers;
- Large U.S. passenger vessels inspected under 46 CFR, subchapter H;
- OSVs inspected under 46 CFR, subchapter L;
- Self-propelled U.S. cargo vessels greater than 100 gross register tons inspected under 46 CFR, subchapter I, except for commercial fishing vessels inspected under 46 CFR part 105; and
- U.S. MODUs and cargo or passenger vessels subject to SOLAS (1974), Chapter XI–1 or Chapter XI–2.

The affected facility population includes:

- Facilities subject to 33 CFR parts 126 (Handling of Dangerous Cargo at Waterfront Facilities) and 127 (Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas);
- Facilities that receive vessels certificated to carry more than 150

[93] We have updated NPRM cost totals to 2-percent discounting to better compare with the estimated cost totals from the final rule.

[94] See table 6 for more information on the number of affected facilities and OCS facilities and U.S.-flagged vessels by vessel type. Along with changes related to the inclusion of publicly owned vessels, removal of duplicate vessels in the Sub I vessel population, and more accurately consolidating the counts of owners and operators, the number of towing vessels has increased by approximately 901 vessels (4,822–3,921 = 901) primarily due to the ''Inspection of Towing Vessels'' final rule published June 20, 2016. See 81 FR 40004 or 46 CFR 136.202(a). This final rule requires owners and operators owning more than 1 towing vessel to have 100 percent of their towing vessels inspected and have valid certificates of inspection by July 19, 2022. This means our original data missed some of the affected population of towing vessels because their inspections were not yet recorded in MISLE when we pulled our data for the NPRM.

passengers, except vessels not carrying and not embarking or disembarking passengers at the facility;

- Facilities that receive vessels subject to SOLAS (1974), Chapter XI;
- Facilities that receive foreign cargo vessels greater than 100 gross register tons;
- Facilities that receive U.S. cargo vessels, greater than 100 gross register tons, inspected under 46 CFR, subchapter I, except facilities that receive only commercial fishing vessels inspected under 46 CFR part 105; and
- Barge fleeting facilities that receive barges carrying, in bulk, cargoes regulated by 46 CFR subchapter I, inspected under 46 CFR, subchapters D or O, or certain dangerous cargoes.

Table 6 presents the affected population of U.S.-flagged vessels, facilities, and OCS facilities of this final rule.[95] For the vessel population, the Coast Guard assumes the same number of vessels that leave and enter service. Therefore, we assume the population to be constant over the 10-year period of analysis. We also make the same assumption for facilities and OCS facilities. Additionally, we assume that changes in the ownership of vessels and facilities is very rare, and any audits that result from a change in ownership are accounted for by the annual audit requirements.

[95] This data was retrieved from the Coast Guard's MISLE database in July 2024.

Table 6: Estimated Affected U.S. Population of the Final Rule

Population Group	Total Number of Vessels or Facilities
Vessels	
U.S. towing vessels greater than 8 meters (26 feet) in registered length inspected under 46 CFR subchapter M that are engaged in towing a barge or barges inspected under 46 CFR subchapters D and O.	4,822
U.S. tankships inspected under 46 CFR subchapters D and O.	114
Self-propelled U.S. cargo and miscellaneous vessels—self-propelled vessels greater than 100 gross register tons inspected under 46 CFR subchapter I, except for commercial fishing vessels inspected under 46 CFR part 105.	398
Small U.S. passenger vessels carrying more than 12 passengers, including at least 1 passenger-for-hire, that are engaged on international voyages.	53
Small U.S. passenger vessels inspected under 46 CFR subchapter K (certificated to carry more than 150 passengers).	430
Large U.S. passenger vessels inspected under 46 CFR subchapter H.	131
OSVs inspected under 46 CFR subchapter L	430
U.S. MODUs subject to SOLAS Chapter XI-1 or Chapter XI-2 that are inspected under 46 CFR subchapter I-A.	1
U.S. barges inspected under 46 CFR subchapters D, O, or I (includes combination barges) carrying certain dangerous cargo in bulk or barges engaged on international voyages.	4,843
Total U.S.-flagged vessel population	**11,222 (2,075 owners and operators)**
Facilities	
33 CFR part 105 - facilities	**3,685**
33 CFR part 106 - OCS facilities	**33**
Total facilities and OCS facilities (includes MTSA-regulated facilities)	**3,718 facilities (1,372 owners and operators)**

Cost Analysis of the Final Rule

This final rule imposes costs on the U.S. maritime industry for cybersecurity requirements that include:

- Developing a Cybersecurity Plan, which includes designating a CySO, in 33 CFR 101.630;
- Performing drills and exercises in 33 CFR 101.635; and
- Ensuring and implementing cybersecurity measures in 33 CFR 101.650, such as account security measures, device security measures, data security measures, cybersecurity

training for personnel, reporting cyber incidents, risk management, supply chain management, resilience, network segmentation, and physical security.

We present the costs associated with some of the regulatory provisions in the following analysis; however, we are not able to estimate the costs fully for certain provisions because of the lack of data and the uncertainty associated with these provisions. Also, some regulatory provisions may be included in developing the Cybersecurity Plan and maintaining it on an annual basis; therefore, we may not have estimated a cost for these specific provisions in this analysis. We clarify this in the analysis where applicable.

In addition, U.S. barges inspected under 46 CFR subchapters D, O, or I (including combination barges), carrying certain dangerous cargo in bulk or barges engaged on international voyages, represent a special case in our analysis of cybersecurity-related costs. Unlike other vessels in the affected population of this final rule, in most cases, barges do not have IT or OT systems on board. Many types of barges rely on the IT and OT systems on board their associated towing vessels or the facilities where they deliver their cargo. This also means that barges are typically unmanned, making the costs associated with provisions such as cybersecurity training difficult to estimate. While we acknowledge that there are some barges with IT or OT systems on board, for the purposes of this analysis, we calculate costs only for the affected population of barges related to developing, resubmitting, maintaining, and auditing the Cybersecurity Plan, as well as developing cybersecurity-related drill and exercise components.

We believe that the hour-burden estimates associated with the components of the Cybersecurity Plan should still be sufficient to capture the implementation of any cybersecurity measures identified as necessary by the owner or operator of a barge. In addition, we believe it should capture any burden associated with requests for waivers or equivalents for provisions that do not apply to a vessel or vessel company lacking significant IT or OT systems.

Cybersecurity Plan Costs

Each owner and operator of a U.S.-flagged vessel, facility, or OCS facility is required to develop and submit a Cybersecurity Plan to the Coast Guard. The CySO will develop, implement, and verify a Cybersecurity Plan for each U.S.-flagged vessel, facility, or OCS facility. The owner or operator will submit a copy of the Plan for approval to the cognizant COTP or the OCMI for a facility or OCS facility, or to the MSC for a U.S.-flagged vessel. The contents of the Cybersecurity Plan are detailed in § 101.630.

Unless otherwise stated, in this RA we used information and obtained estimates from SMEs in the Coast Guard's Office of Commercial Vessel Compliance (CG–CVC), CG–FAC, and the Coast Guard's Office of Design and Engineering Standards (CG–ENG). We also obtained information from CGCYBER and NMSAC.

The Coast Guard acknowledges that some owners and operators of U.S.-flagged vessels, medium-sized and larger facilities, and OCS facilities may have already adopted a cybersecurity posture and implemented measures to counter and prevent a cyber incident. We also acknowledge that owners and operators of smaller U.S.-flagged vessels, facilities, and OCS facilities might not have any cybersecurity measures in place. For the purpose of calculations in this analysis, we assume that all owners or operators of U.S.-flagged vessels, facilities, and OCS facilities will comply with the full extent of the requirements of this final rule, and we assume no waivers or exemptions outside of the population of U.S.-flagged barges with limited IT and OT systems. Cost estimates for requesting waivers or exemptions for U.S.-flagged barges are included in the Cybersecurity Plan development costs. For example, we assume that rather than taking the time to implement account security measures for nonexistent IT and OT systems, CySOs working for owners and operators of U.S.-flagged barges will use the time normally taken to document those measures to instead request a waiver and place the approval in their plan. As such, we include U.S.-flagged barges in our cost estimates for Cybersecurity Plan development and maintenance costs even though we do not include them in our estimates for the implementation of many of the cybersecurity measures analyzed later in the RA. Regarding waivers for implementing cybersecurity measures on other types of vessels or in facilities or OCS facilities, the Coast Guard is unable to estimate who in the affected population will request waivers and for which provisions. Instead, we discuss this as a source of uncertainty in table 42.

However, we have survey data indicating that a portion of owners and operators of affected facilities and OCS facilities already have some cybersecurity measures in place.[96] We present this survey data in the applicable sections of the cost analysis. For other regulatory provisions, we do not estimate regulatory costs for industry because the Coast Guard does not have data on the extent of cybersecurity measures currently in the industry for these provisions.

We list the regulatory provisions included in developing and maintaining a Cybersecurity Plan that we did not estimate costs for in other sections of this RA:

- Designation of a CySO in §§ 101.620(b)(3) and 101.630(c)(1);
- Device security measures in § 101.650(b)(1) through (4);
- Cybersecurity Assessment in § 101.650(e)(1);
- Letter certifying a completed penetration test and documentation of identified vulnerabilities in § 101.650(e)(2);
- Routine system maintenance measures in § 101.650(e)(3)(i) through (vi); and
- Supply chain management in § 101.650(f)(1) through (3);
- Development and maintenance of a Cyber Incident Response Plan in § 101.650(g)(2);
- Drafting of waiver or equivalence determination requests in § 101.665.

Developing a Cybersecurity Plan has five major cost components: the initial development of the Plan; annual maintenance of the Plan (including amendments); revision and resubmission of the Plan as needed; renewal of the Plan after 5 years; and the cost for annual audits. Owners and operators of U.S.-flagged vessels, facilities, and OCS facilities are required to submit their Cybersecurity Plan to the Coast Guard within 2 years following the effective date of this final rule; therefore, submitting a Cybersecurity Plan for approval will likely not occur until the second year of the 10-year period of analysis.

The CySO is responsible for all aspects of developing and maintaining the Cybersecurity Plan. While several public commenters indicated that they may need to hire a dedicated, salaried employee to serve as a CySO, the Coast Guard does not have specific data on what portion of owners and operators of vessels, facilities, and OCS facilities will need to do so. In this final rule, § 101.625 states that a CySO may serve in other roles and may perform other duties within an owner or operator's

[96] Readers can access the survey at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html,* accessed August 26, 2024.

organization, and that a person may serve as a CySO for more than one U.S.-flagged vessel, facility, or OCS facility. For facilities and OCS facilities, this person may be the FSO. For vessels, this person may be the VSO. When considering assigning the CySO role to the existing security officer, the owner or operator should consider the depth and scope of these new responsibilities in addition to existing security duties. For the purpose of this analysis, we assume that an existing person in a U.S.-flagged vessel, facility, or OCS facility company or organization will assume the duties and responsibilities of a CySO. This means that, while the Coast Guard is not requiring any security credentials for the CySO at this time, any costs associated with obtaining security credentials at the discretion of the owner or operator would already be incurred before the implementation of this final rule. Additionally, if the designated CySO has security responsibilities that overlap with an existing VSO, FSO, or CSO, we assume that those individuals will work together to handle those duties.

Despite our assumption that owners and operators will redesignate an existing employee, we acknowledge that some owners or operators may need to hire a CySO if no existing employees are able take on these duties. However, rather than estimating the hours associated with bringing on a full-time employee, the hour burdens associated with CySO duties have been quantified in various sections of the cost analysis. This can capture the costs associated with contracting for the individual CySO duties or assigning them to a new or existing employee.

We use the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics (OEWS) for the United States for May 2022. A CySO is comparable to the occupational category of ''Information Security Analysts'' with an occupational code of 15–1212 and an unloaded mean hourly wage rate of $57.63.[97] In order to obtain a loaded mean hourly wage rate, we use BLS's ''Employer Costs for Employee Compensation'' database to calculate the load factor, which we applied to the unloaded mean hourly wage rate using fourth quarter data from 2022.[98] We determine the load factor for this occupational category to be about 1.46, rounded. We then multiply this load factor by the unloaded mean hourly wage rate of $57.63 to obtain a loaded mean hourly wage rate of about $84.14, rounded ($57.63 × 1.46).

Cybersecurity Plan Cost for Facilities and OCS Facilities

This final rule requires owners and operators of facilities and OCS facilities to create a Cybersecurity Plan for each facility within a company. For the purpose of this analysis, the cost to develop a Cybersecurity Plan is a function of the number of facilities, not the number of owners and operators, because an owner or operator may own more than one facility. Based on data obtained from the Coast Guard's MISLE database, we estimate this final rule will affect about 3,685 facilities and 33 OCS facilities (including MTSA-regulated facilities), and about 1,372 owners and operators of these facilities. MISLE data contains incomplete information on owners and operators for 951 of the 3,718 facilities and OCS facilities included in the affected population. Of the 2,767 facilities and OCS facilities with complete information for owners and operators, we found 1,055 unique owners. This means that, on average, each owner owns approximately 3 facilities (2,767 ÷ 1,055 = 2.62, or 3.0 rounded). We apply this rate of ownership to the remaining facilities and OCS facilities without complete ownership information to arrive at our total of 1,372 owners [1,055 + (951 ÷ 3)].

We use hour-burden estimates from Coast Guard SMEs and the currently approved OMB Information Collection Request (ICR), Control Number 1625–0077, titled, ''Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements.'' The hour-burden estimates in ICR 1625–0077 include 100 hours for developing the Cybersecurity Plan (average hour burden), 10 hours for annual maintenance of the Cybersecurity Plan (which includes amendments), and 15 hours to resubmit Cybersecurity Plans every 5 years. In addition, SMEs estimate that it takes 40 hours to conduct annual audits of Cybersecurity Plans.

While the Cybersecurity Plan can be incorporated into an existing FSP for a facility or OCS facility, this does not mean that the Cybersecurity Plan is expected to be less complex to develop or maintain than an FSP. In general, the provisions outlined in this rule are meant to reflect the depth and scope of the physical security provisions established by MTSA. As a result, we feel the hour-burden estimates for developing and maintaining the FSP represents a fair proxy for what is expected with respect to a Cybersecurity Plan.

Based on estimates from the Coast Guard's FSP reviewers at local inspections offices, approximately 10 percent of Plans will need to be revised and resubmitted in the second year, which is consistent with the current resubmission rate for FSPs. Plans must be renewed after 5 years (occurring in the seventh year of the analysis period), and we estimate that 10 percent of renewals will also require revision and resubmission. We estimate the time to revise and resubmit the Cybersecurity Plan to be about half the time to develop the Plan itself, or 50 hours in the second year of submission, and 7.5 hours after 5 years (in the seventh year of the analysis period).

Because we include the annual Cybersecurity Assessment in the cost to develop Cybersecurity Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Plan or implementing related cybersecurity measures, we divide the estimated 100 hours to develop Plans equally across the first and second years of analysis. We estimate the first- and second-year (the first year of Plan submission) undiscounted cost to develop a Cybersecurity Plan for owners and operators of facilities and OCS facilities to be about $31,283,252 (3,718 Plans × 100 hours × $84.14). We estimate the second-year undiscounted cost for owners and operators to resubmit Plans for facilities or OCS facilities (or to send amendments) for corrections to be about $1,565,004 (372 Plans or amendments × 50 hours × $84.14). Therefore, we estimate the total undiscounted first- and second-year cost to facility and OCS facility owners and operators to

[97] Readers can access BLS's website at *https://www.bls.gov/oes/2022/may/oes151212.htm* to obtain information about the wage we used in this analysis, accessed August 22, 2024.

[98] A loaded mean hourly wage rate is what a company pays per hour to employ a person, not the hourly wage an employee receives. The loaded mean hourly wage rate includes the cost of non-wage benefits (health insurance, vacation, etc.). We calculated the load factor by accessing the ECEC Multi-Screen database tool at *https://data.bls.gov/multi-screen?survey=cm*. We then selected the category of ''2 Private industry workers'' at screen 1. At screen 2, we first selected the category ''01 Total compensation,'' then we continued to select ''530000 Transportation and materials moving occupations'' at screen 3, then ''All Workers'' at screens 4 and 5, and then for ''Area,'' we selected ''99999 United States (National)'' at screen 6. At screen 7, we selected the category ''D Cost of compensation (Cost per hour worked).'' At screen 8, we selected the category ''not seasonally adjusted.'' At screen 9, we selected the series ID, CMU2010000520000D. We used the ''Cost of Compensation'' for quarter 4 of 2022, or $33.07. We performed this process again to obtain the value for ''02 Wages and salaries,'' which we selected on screen 2. On screen 9, we selected the series ID CMU2020000520000D and obtained a value of $22.64. We divided $33.07 by $22.64 and obtained a load factor of 1.46, rounded, accessed August 15, 2024.

develop, submit, and resubmit a Cybersecurity Plan to be approximately $32,848,256 ($31,283,252 + $1,565,004)).

In years 3 through 6 and years 8 through 10 of the analysis period, owners and operators of facilities and OCS facilities will be required to maintain their Cybersecurity Plans. This may include recordkeeping and documenting cybersecurity items at a facility or OCS facility, as well as amending the Plan. The CySO is required to maintain each Plan for each facility or OCS facility. Maintaining the Plan does not occur in the second year (initial year of Plan submission) or in the renewal year, Year 7 of the analysis period. We again obtain the hour-burden estimate for the annual maintenance of Plans from ICR 1625–0077, which is 10 hours.

In the same years of the analysis period, this final rule also requires owners and operators of facilities and OCS facilities to conduct annual audits. The audits will be necessary for owners and operators of facilities and OCS facilities to identify vulnerabilities (via the Cybersecurity Assessment) and to mitigate them.[99] Audits will also be necessary if there is a change in the ownership of a facility, but because the costs for audits are estimated annually, this should capture audits as a result of very rare changes in ownership each year as well. The CySO is responsible for ensuring the audit of a Cybersecurity Plan, and we assume that an individual of similar experience and wage rate will conduct the annual audit. Based on input provided by Coast Guard SMEs who review Plans at the Coast Guard, we estimate the time to conduct an audit to be about 40 hours for each Plan. We estimate the undiscounted cost for the annual maintenance of Cybersecurity Plans for owners and operators of facilities and OCS facilities to be approximately $3,128,325 (3,718 facility Plans × 10 hours × $84.14). We estimate the undiscounted cost for annual audits of Cybersecurity Plans to be approximately $12,513,301 (3,718 facility Plans × 40 hours × $84.14). We estimate the total undiscounted annual cost each year in years 3 through 6 and 8 through 10 for Cybersecurity Plans to be approximately $15,641,626 ($3,128,325 + $12,513,301).

Because a Cybersecurity Plan approved by the Coast Guard is valid for 5 years, in Year 7 of the analysis period, owners and operators of facilities and OCS facilities will be required to renew the approval of their Plans with the Coast Guard. We use the hour-burden estimate in ICR 1625–0077 for renewing the Plan, which is 15 hours. The hour-burden estimate for revision and resubmission of renewals is half of the original hour-burden for renewals, or 7.5 hours. The CySO is responsible for resubmitting the Cybersecurity Plan to the Coast Guard for renewal, including additional resubmissions because of corrections. We estimate the undiscounted cost for renewing and resubmitting a Cybersecurity Plan due to corrections to be approximately $4,927,238 [(3,718 facility Plans × 15 hours × $84.14) + (372 resubmitted facility Plans × 7.5 hours × $84.14)].

We estimate the total discounted cost of this final rule for developing Cybersecurity Plans for owners and operators of facilities and OCS facilities to be approximately $132,678,949 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $14,770,687, using a 2-percent discount rate. See table 7. We estimate that the subset of 33 OCS facilities operated by 9 owners will incur costs of $1,176,239 over a 10-year period of analysis and $130,947 annualized, using a 2-percent discount rate.

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[99] The Jones Walker survey (see footnote 60) reports about 72 percent of ports and terminals conduct a risk assessment at least once a year. We did not estimate a separate cost for this item because the Coast Guard believes that a risk assessment can be a part of an annual audit. Readers can access the survey at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html,* accessed August 26, 2024.

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Table 7: Estimated Cost of the Final Rule for Developing Cybersecurity Plans for Facilities and OCS Facilities (2022 Dollars, 10-year Period of Analysis, 2-percent Discount Rate)

Year	Number of Companies (a)	Number of Submissions (b)	Number of Resubmissions (c)	CySO Wage (d)	Development Hours (e)	Annual Maintenance Hours (f)	Resubmission Hours (g)	Audit Hours (h)	Total Cost = [(b × d × (e + f + h)) + (c × d × g)]	2 Percent
1	1372	3718	0	$84.14	50	0	0	0	$15,641,626	$15,334,927
2	1372	3718	372	$84.14	50	0	50	0	$17,206,630	$16,538,476
3	1372	3718	0	$84.14	0	10	0	40	$15,641,626	$14,739,454
4	1372	3718	0	$84.14	0	10	0	40	$15,641,626	$14,450,445
5	1372	3718	0	$84.14	0	10	0	40	$15,641,626	$14,167,103
6	1372	3718	0	$84.14	0	10	0	40	$15,641,626	$13,889,316
7	1372	3718	372	$84.14	15	0	7.5	0	$4,927,238	$4,289,457
8	1372	3718	0	$84.14	0	10	0	40	$15,641,626	$13,349,977
9	1372	3718	0	$84.14	0	10	0	40	$15,641,626	$13,088,213
10	1372	3718	0	$84.14	0	10	0	40	$15,641,626	$12,831,581
Total									**$147,266,876**	**$132,678,949**
Annualized										**$14,770,687**

Note: Totals may not sum due to independent rounding.

Cybersecurity Plan Cost for U.S.-Flagged Vessels

The methodology for owners and operators of U.S.-flagged vessels to develop a Cybersecurity Plan is the same as for facilities and OCS facilities. We estimate the affected vessel population to be about 11,222. We estimate the number of owners and operators of these vessels to be about 2,075.

We use estimates provided by Coast Guard SMEs and ICR 1625–0077 for the hour-burden estimates for vessels as we did for facilities and OCS facilities. The hour-burden estimates in ICR 1625–0077 include 80 hours for developing the Cybersecurity Plan, 8 hours for annual Plan maintenance, and 12 hours to renew the Plan every 5 years. In addition, Coast Guard SMEs estimate that it takes 40 hours to conduct annual audits of Plans for vessels. Similar to facilities, we estimate 10 percent of all Cybersecurity Plans for vessels will need to be resubmitted for corrections in the second year (initial year of Plan submission), and 10 percent of Cybersecurity Plans for vessels will need to be revised and resubmitted in the seventh year of the analysis period. Based on information from Coast Guard SMEs, we estimate the time to make corrections to the Plan in the second year will be about half of the initial time to develop the Plan, or 40 hours in the second year, and 6 hours in the seventh year. We include the annual Cybersecurity Assessment in the cost to develop Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures. Therefore, we divide the estimated 80 hours to develop Plans equally across the first and second years of analysis.

The methodology to determine the cost to develop a Cybersecurity Plan for U.S.-flagged vessels is slightly different than the methodology for facilities and OCS facilities. The Coast Guard does not believe that a CySO for U.S.-flagged vessels will expend 80 hours developing a Plan for each vessel in a company's fleet. For example, if a vessel owner or operator has 10 vessels, it would take a CySO 800 hours of time to develop Plans for all 10 vessels, which is nearly 40 percent of the total hours of work in a calendar year. It is more likely that the CySO will create a master Cybersecurity Plan for all the vessels in the fleet, and then tailor each Plan according to a specific vessel, as necessary.

Because a large portion of the provisions required under this final rule will impact company-wide policies regarding network, account, and data security practices, as well as company-wide cybersecurity training, reporting procedures, and testing, we do not believe there will be much variation in how these provisions are implemented between specific vessels owned by the same owner or operator. Therefore, the cost to develop a Cybersecurity Plan for vessels becomes a function of the number of vessel owners and operators and not a function of the number of vessels.

When a vessel owner or operator submits a Plan to the Coast Guard for approval, the owner or operator will send the master Cybersecurity Plan, which might include a more tailored or abbreviated Plan for each vessel. For example, the owner or operator of 10 vessels will send the master Cybersecurity Plan along with the tailored Plans for each vessel in one submission to the Coast Guard for approval, instead of 10 separate documents.

We estimate the first- and second-year (initial year of Plan submission) undiscounted cost for owners and operators of U.S.-flagged vessels to develop a Cybersecurity Plan to be approximately $13,967,240 (2,075 Plans × 80 hours × $84.14) split over the first two years of analysis. We estimate the second-year undiscounted cost for owners and operators to resubmit vessel Plans (or send amendments) for corrections to be approximately $700,045 (208 Plans or amendments × 40 hours × $84.14). Therefore, we estimate the total undiscounted first- and second-year cost to the owners and operators of U.S.-flagged vessels to develop a Cybersecurity Plan to be approximately $14,667,285 ($13,967,240 + $700,045).

As with facilities and OCS facilities, in years 3 through 6 and years 8 through 10 of the analysis period, CySOs, on behalf of owners and operators of U.S.-flagged vessels, will be required to maintain their Cybersecurity Plans. We again obtain the hour-burden estimate for annual maintenance of Plans from ICR 1625–0077, which is 8 hours. In the same years of the analysis period, this final rule also requires owners and operators of U.S.-flagged vessels to conduct annual audits. The audits will be necessary for owners and operators of U.S.-flagged vessels to identify vulnerabilities through the Cybersecurity Assessment and to mitigate them. Audits will also be necessary if there is a change in the ownership of a vessel. The CySO would likely conduct an audit of the master Cybersecurity Plan, which includes each vessel, instead of conducting a separate audit for each individual vessel.

The time estimate for a CySO to conduct an audit for U.S.-flagged vessels in a fleet is the same as it is for facilities and OCS facilities, or 40 hours per Plan. We estimate the undiscounted cost for the annual maintenance of Cybersecurity Plans for the owners and operators of U.S.-flagged vessels to be about $1,396,724 (2,075 Plans × 8 hours × $84.14). We estimate the undiscounted cost for annual audits of Cybersecurity Plans to be approximately $6,983,620 (2,075 Plans × 40 hours × $84.14). We estimate the total undiscounted annual cost each year in years 3 through 6 and 8 through 10 for Cybersecurity Plans to be approximately $8,380,344 ($1,396,724 + $6,983,620).

Again, as with facilities and OCS facilities, Coast Guard approval for the Cybersecurity Plan is valid for 5 years. Therefore, in Year 7 of the analysis period, owners and operators of U.S.-flagged vessels will be required to renew their Plans with the Coast Guard. We use the hour-burden estimate in ICR 1625–0077 for Plan renewal, which is 12 hours. The CySO is responsible for resubmitting the Cybersecurity Plan to the Coast Guard for renewal. We estimate the undiscounted cost for owners and operators of U.S.-flagged vessels to renew the Plan to be approximately $2,200,093 [(2,075 Plans × 12 hours × $84.14) + (208 resubmitted vessel Plans × 6 hours × $84.14)].

We estimate the total discounted cost of this final rule for owners and operators of U.S.-flagged vessels to develop Cybersecurity Plans to be approximately $67,857,908 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $7,554,385, using a 2-percent discount rate. See table 8.

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Table 8: Estimated Cost of the Final Rule for Developing the Cybersecurity Plan for U.S.-flagged Vessels (2022 Dollars, 10-year Period of Analysis, 2-percent Discount Rate)

Year	Number of Companies (a)	Number of Submissions (b)	Number of Resubmissions (c)	CySO Wage (d)	Development Hours (e)	Annual Maintenance Hours (f)	Resubmission Hours (g)	Audit Hours (h)	Total Cost = [(b × d × (e + f + h)) + (c × d × g)]	2 Percent
1	2075	2075	0	$84.14	40	0	0	0	$6,983,620	$6,846,686
2	2075	2075	208	$84.14	40	0	40	0	$7,683,665	$7,385,299
3	2075	2075	0	$84.14	0	8	0	40	$8,380,344	$7,896,985
4	2075	2075	0	$84.14	0	8	0	40	$8,380,344	$7,742,142
5	2075	2075	0	$84.14	0	8	0	40	$8,380,344	$7,590,336
6	2075	2075	0	$84.14	0	8	0	40	$8,380,344	$7,441,506
7	2075	2075	208	$84.14	12	0	6	0	$2,200,093	$1,915,313
8	2075	2075	0	$84.14	0	8	0	40	$8,380,344	$7,152,543
9	2075	2075	0	$84.14	0	8	0	40	$8,380,344	$7,012,297
10	2075	2075	0	$84.14	0	8	0	40	$8,380,344	$6,874,801
Total									**$75,529,786**	**$67,857,908**
Annualized										**$7,554,385**

Note: Totals may not sum due to independent rounding.

Drills

In § 101.635(b), this final rule requires drills that test the proficiency of U.S.-flagged vessel, facility, and OCS facility personnel who have assigned cybersecurity duties and individual elements of the Plan, including responses to cybersecurity threats and incidents. The drills enable the CySO to identify any cybersecurity deficiencies that need to be addressed. The CySO will need to conduct the drills at least twice annually, and they may be held in conjunction with other security or non-security-related drills, as appropriate. After considering public comments, in this final rule, we have adjusted the frequency of conducting drills from quarterly to twice each calendar year. We believe that two drills annually will ensure sufficient proficiency with the procedures, while allowing for a regulated entity to conduct additional drills if they choose to, and we understand how quarterly drills and exercises could be too frequent for some vessel operations, as noted by some commenters.

While there are benefits of a more robust drill schedule, we believe that this reduction in the number of drills lowers costs and increases marginal benefits by allowing affected owners and operators to use resources more efficiently. Further, by having fewer drills to develop and conduct, we believe the remaining drills will be the primary focus, addressing the commenter's concern about the previously proposed frequency and integration of cyber drills with other required drills. However, the Coast Guard believes that anything less frequent than two drills per year could lead to a decrease in benefits that drills provide. This is especially true with regard to cybersecurity, as risk and vulnerabilities can change rapidly over the course of a year.

The Coast Guard does not have data on who is currently conducting cybersecurity drills in either the population of facilities and OCS facilities or the population of U.S.-flagged vessels. Therefore, we assume that the entire population of facilities and U.S.-flagged vessels will need to develop new cybersecurity related drills to comply with the requirements. While owners and operators in the affected population are allowed to combine these new cybersecurity drills with the drills required in accordance with 33 CFR parts 104, 105, and 106, several commenters suggested that combining these drills would be difficult or impossible. Accordingly, we have updated our cost estimates to reflect a longer time to develop and conduct drills and include employee participation in the new drills. Coast Guard SMEs who are familiar with MTSA's requirements and practices for drills and exercises, as well as Coast Guard SMEs at LANTAREA who have reviewed current drills in the affected population estimate that it will take a CySO 8 hours to develop each new cybersecurity drill.

The CySO is the person who develops cybersecurity drills. Each CySO, on behalf of the owner or operator of a facility or OCS facility, will be required to develop the drill's components beginning in the first year of the analysis period and document procedures in the Cybersecurity Plan.

In addition to the development costs, we also estimate the costs of employee participation in the cybersecurity drills. Coast Guard SMEs who are familiar with MTSA's requirements and practices for drills and exercises, as well as Coast Guard SMEs at LANTAREA who have reviewed current cybersecurity drills in the affected population estimate that each drill requires 4 hours of participation per employee. According to § 101.635(a)(1), drills and exercises must be used to test the proficiency of personnel in assigned cybersecurity duties. Because the Coast Guard is unable to determine which employees at a given facility or OCS facility will be in assigned cybersecurity duties and required to participate in the drills, we assume that 33 percent of employees will participate.[100] This share of employees is consistent with the estimated share of shoreside employees in the affected population of owners and operators of U.S.-flagged vessels. Coast Guard SMEs with knowledge of existing cybersecurity drill practices believe this is a more reasonable estimate than assuming the entire portion of employees will participate. We obtain the average number of facility employees from a Coast Guard contract that uses D&B Hoovers' database for company employee data (spreadsheet analysis available in the docket for this rulemaking, see file titled ''facilities_hoovers_employee_counts''). The average number of employees at a facility company is 74. We estimate that the average number of employees that will participate in cybersecurity drills is 24 (74 employees × 0.33 = 24.42).

To obtain the unloaded mean hourly wage rate of employees at facilities and OCS facilities, we use BLS's Quarterly Census of Employment and Wages (QCEW) data. We also use the North American Industry Classification System (NAICS) code for ''Port and Harbor Operations,'' which is 488310, to obtain the representative hourly wage for employees at facilities and OCS facilities. The BLS reports the weekly wage to be $1,653.[101] Dividing this value by the standard number of hours in a work week, or 40, we obtain the unloaded hourly wage rate of approximately $41.33. We once again apply a load factor of 1.46 to this wage to obtain a loaded mean hourly wage rate for facility employees of approximately $60.34 ($41.33 × 1.46).

We estimate the cost for facilities to develop and conduct cybersecurity drills by using the number of owners and operators of facilities we presented earlier (1,372), the CySO's loaded mean hourly wage rate, the estimated time to develop the drill's components (8 hours), the estimated time to participate in the drills (4 hours), the average number of employees at a facility company (24 employees), the facility employee wage, and the frequency of the drill (twice annually).[102] We estimate the undiscounted annual cost for owners and operators of facilities and OCS facilities to develop, conduct, and participate in drills to be approximately $17,742,045 [1,372 facility companies × ((2 drills per year × 8 hours per drill development × $84.14 CySO wage) + (2 drills per year × 4 hours drill participation × 24 facility employees × $60.34 facility employee wage))]. We estimate the total discounted cost of drills for owners and operators of facilities and OCS facilities to be approximately $159,369,428 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the

[100] Under § 101.635(a)(1), cybersecurity drills and exercises are required to test the proficiency of U.S.-flagged vessel, facility, and OCS facility personnel in assigned cybersecurity duties. Full participation in drills and exercises from all personnel, including those without assigned cybersecurity duties, is not a requirement of this final rule.

[101] Readers can access this web page at *www.bls.gov/cew/*. Select the dropdown under ''QCEW data'' and click ''Databases.'' On this page, select the one-screen tool (*https://data.bls.gov/PDQWeb/en*). In fields 1 and 2, select ''U.S. TOTAL.'' In field 3, select ''NAICS 488310 Port and harbor operations.'' Select ''Private,'' ''All establishment sizes,'' and ''Average Weekly Wage'' in fields 4, 5, and 6, respectively. Click ''Add to selection'' and then ''Get Data.'' Relevant Series ID is ENUUS000405488310). For this RA, we used Q1 2022 QCEW data. We use the average weekly wage here because this QCEW database does not contain mean hourly wage data, accessed on August 15, 2024.

[102] For the purposes of capturing the cost of the CySO delivering the drill, we assume that the CySO is averaged into the number of employees participating in the drill. As such, we do not estimate a separate cost for CySO delivery of the drill.

annualized cost to be approximately $17,742,045, using a 2-percent discount rate. See table 9. We estimate that the subset of 33 OCS facilities operated by 9 owners will incur costs of $1,045,430 over a 10-year period of analysis and $116,384 annualized, using a 2-percent discount rate.

Table 9: Estimated Costs of the Final Rule for Drills for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Number of Facility Companies (a)	CySO Wage (b)	Drill Development Hours (c)	Hours to Conduct Drill (d)	Frequency of Drills (e)	Facility Employee Wage (f)	Number of Employees (g)	Total Cost = [a × ((b × c × e) + (d × e × f × g))]	2 Percent
1	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$17,394,162
2	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$17,053,100
3	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$16,718,725
4	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$16,390,907
5	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$16,069,517
6	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$15,754,428
7	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$15,445,518
8	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$15,142,665
9	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$14,845,750
10	1372	$84.14	8	4	2	$60.34	24	$17,742,045	$14,554,656
Total								$177,420,450	**$159,369,428**
Annualized									**$17,742,045**

Note: Totals may not sum due to independent rounding.

We use the same methodology and estimates for U.S.-flagged vessel drills. As we presented previously, there are about 2,075 CySOs, on behalf of owners and operators of U.S.-flagged vessels, who are required to develop drills with this final rule. As with facilities and OCS facilities, we have increased our development and hour-burden estimates, and now include cost estimates for a share of employees participating in cybersecurity drills. To determine the costs for employee participation, we use estimates for the number of employees per company and mean hourly wage estimates for employees based on vessel types.[103] We then subtract the total number of seafaring crew from the number of total company employees.[104] We use the estimated 33 percent ''shoreside'' share of employees for owners and operators of vessels because we do not have data on which portion of a given owner or operator's employees will have cybersecurity responsibilities. We feel this is more in line with the requirements of the regulatory text than assuming that all employees would participate. It also better aligns with suggestions from a public commenter who stated that ''onboard personnel have little to no involvement in cyber specific drills.''

For the vessel employee wage estimates, we chose several representative labor categories of vessel employees based on the manning requirements listed in the certificates of inspection for each vessel.[105] From the BLS OEWS program, we use the labor categories, ''Captains, Mates, and Pilots of Water Vessels,'' with an occupational code of 53–5021, ''Sailors and Marine Oilers,'' with an occupational code of 53–5011, and ''Ship Engineers,'' with an occupational code of 53–5031.[106] The unloaded mean hourly wage rates from May 2022 for these occupations are $50.09, $25.65, and $48.55, respectively. We also use an assortment of labor categories to estimate a mean hourly wage for the industrial personnel identified in the certificate of inspection for MODUs in the affected population. According to SMEs with CG–CVC, industrial personnel aboard MODUs generally include a mixture of hotel and steward staff; laborers and riggers; specialized technicians; and mechanics, electricians, and electronic technicians for maintenance. For these groups, we find a combined unloaded weighted mean hourly wage of $25.16. For each vessel type, we weight the representative wages based on the average occupational ratios across vessels in the population. See Appendix A: Wages Across Vessel Types, in the docket of this rulemaking, for more details on how the industrial personnel and weighted mean hourly wages for

[103] To estimate the average number of mariners and shoreside employees for each company, Coast Guard conducted an internet search for publicly available employment data for the owners and operators of MTSA-regulated vessels. In total, Coast Guard was able to identify eight owners and operators of MTSA-regulated vessels who publicly provided their shoreside and seafarer employment numbers. Using this data, we calculated the percentage of total employees working shoreside for each vessel. We then took an average of these percentages and applied that average to the population of owners and operators of MTS-regulated vessels. The percentage of shoreside employees ranged from 8 to 87 percent, with an average of 33 percent, which we used for each subpopulation of vessels.

[104] For example, the average OSV in the affected population carries 12 seafaring crew per vessel according to certificate of inspection manning requirements. We multiply this by 1.33 to arrive at 16 total employees per OSV. We then subtract the 12 seafaring crew from the 16 total employees to isolate the 4 shoreside employees per vessel that would need to participate in the cybersecurity drills.

[105] Manning requirements for U.S.-flagged vessels were established by regulation in 46 CFR part 15.

[106] See *https://www.bls.gov/oes/2022/may/oes_nat.htm#00-0000* for 2022 wage rates associated with the listed occupations, accessed August 22, 2024.

each vessel type were calculated.[107] We apply the same load factor we used previously in this analysis, 1.46, to these wage rates, to obtain the loaded mean hourly wage rates shown in table 10.

Table 10: Estimated Weighted Mean Hourly Wage Rates for Employees On board U.S.-flagged Vessels[108]

Vessel Type	Loaded Weighted Mean Hourly Wage
MODU	$39.60
Subchapter I Vessels	$46.36
OSVs	$54.92
Subchapter H Passenger Vessels	$41.85
Subchapter K Passenger Vessels	$45.52
Subchapter M Towing Vessels	$51.28
Subchapter D and Combination Subchapters O&D Tank Vessels	$55.94
Subchapters K and T International Passenger Vessels	$44.59

We estimate the undiscounted annual cost of cybersecurity drill participation for vessel employees to be approximately $12,644,432 (number of vessels for each affected vessel category × number of employees for each vessel type × representative mean hourly wage for vessel type × 4 hours for drill participation × 2 drills per year).[109] For example, using OSVs, there are about 430 OSVs, with 4 shoreside employees for each OSV. Therefore, we estimate the annual drill participation cost for OSVs to be about $755,699 (430 OSVs × 4 shoreside employees × $54.92 × 4 hours × 2 drills), rounded. We perform this calculation for all for the affected vessel types in this final rule and add it to the estimated costs for drill development. We estimate the undiscounted annual cost to develop cybersecurity drills to be approximately $2,793,448 (2,075 vessel companies × 1 CySO per vessel company × $84.14 × 8 hours to develop drills × 2 drills per year)]. This means the total undiscounted annual drill cost for the affected population of U.S.-flagged vessels is $15,437,880 ($12,644,432 drill participation costs + $2,793,448 drill development costs). Table 11 displays the total employee drill participation costs for each vessel type impacted by the drill requirement.

[107] It should be noted that the wage calculations in Appendix A: Wages Across Vessel Types, are conducted with occupational ratios based on employee counts without the 1.33 shoreside employee modifier applied. Applying this multiplier evenly across all the employee counts would not have an impact on the occupational ratios, and thus would not impact our estimated weighted mean hourly wages. Because we do not have a good grasp on what occupations the shoreside employees would have, we simply apply the weighted mean hourly wages to all employees in the given population of vessels.

[108] See Appendix A: Wages Across Vessel Types for more information on how these wages rates were calculated.

[109] To capture the cost of the CySO delivering the drill, we assume that the CySO is averaged into the number of employees participating in the drill. As such, we do not estimate a separate cost for CySO delivery of the drill.

Table 11: Estimated Costs of the Final Rule for Drill Participation by Vessel Type for U.S.-flagged Vessels (2022 Dollars, Undiscounted Costs)

Vessel Type	Number of Vessels	Number of Shoreside Employees per Vessel	Drill Wage	Number of Drills per year	Hours to Complete Drills per Year	Total
MODU	1	92	$39.60	2	4	$29,146
Subchapter I Vessels	398	20	$46.36	2	4	$2,952,205
OSVs	430	4	$54.92	2	4	$755,699
Subchapter H Passenger Vessels	131	21	$41.85	2	4	$921,035
Subchapter K Passenger Vessels	430	9	$45.52	2	4	$1,409,299
Subchapter M Towing Vessels	4822	3	$51.28	2	4	$5,934,532
Subchapter D and Combination O&D Tank Vessels	114	10	$55.94	2	4	$510,173
Subchapters K and T International Passenger Vessels	53	7	$44.59	2	4	$132,343
Total						**$12,644,432**

We estimate the total discounted cost of drills for U.S.-flagged vessels to be approximately $138,672,070 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $15,437,880, using a 2-percent discount rate. See table 12.

Table 12: Estimated Costs of the Final Rule for Drills for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Total Cost	2 Percent
1	$15,437,880	$15,135,176
2	$15,437,880	$14,838,408
3	$15,437,880	$14,547,459
4	$15,437,880	$14,262,215
5	$15,437,880	$13,982,564
6	$15,437,880	$13,708,396
7	$15,437,880	$13,439,604
8	$15,437,880	$13,176,082
9	$15,437,880	$12,917,727
10	$15,437,880	$12,664,439
Total	$154,378,800	**$138,672,070**
Annualized		**$15,437,880**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of this final rule for drills for the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to be approximately $298,041,496 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $33,179,925, using a 2-percent discount rate. See table 13.

Table 13: Estimated Costs of the Final Rule for Drills for U.S.-flagged Vessels, Facilities, and OCS Facilities (2022 Dollars, 10-year period of Analysis, 2-percent Discount Rate)

Year	Facilities Drill Cost	Vessel Drill Cost	Total Cost	2 Percent
1	$17,742,045	$15,437,880	$33,179,925	$32,529,338
2	$17,742,045	$15,437,880	$33,179,925	$31,891,508
3	$17,742,045	$15,437,880	$33,179,925	$31,266,184
4	$17,742,045	$15,437,880	$33,179,925	$30,653,122
5	$17,742,045	$15,437,880	$33,179,925	$30,052,080
6	$17,742,045	$15,437,880	$33,179,925	$29,462,824
7	$17,742,045	$15,437,880	$33,179,925	$28,885,121
8	$17,742,045	$15,437,880	$33,179,925	$28,318,747
9	$17,742,045	$15,437,880	$33,179,925	$27,763,477
10	$17,742,045	$15,437,880	$33,179,925	$27,219,095
Total	$177,420,450	$154,378,800	$331,799,250	**$298,041,496**
Annualized				**$33,179,925**

Note: Totals may not sum due to independent rounding.

Exercises

In § 101.635(c), this final rule requires exercises that test the communication and notification procedures of U.S.-flagged vessels, facilities, and OCS facilities. These exercises may be vessel- or facility-specific, or part of a cooperative exercise program or comprehensive port exercises. The exercises are a full test of the cybersecurity program with active participation by the CySO and may include Government authorities and vessels visiting a facility. The exercises must be conducted at least once each calendar year, with no more than 18 months between exercises.

As with drills, we assume that exercises will begin in the first year of the analysis period as CySOs develop Cybersecurity Plans. We also assume that the exercises developed to satisfy § 101.635(c) will also satisfy the exercise requirements outlined in § 101.650(g)(2) and (3), which requires the exercise of the Cybersecurity Plan and Cyber Incident Response Plan.

The Coast Guard does not have data on who is currently conducting cybersecurity exercises in either the population of facilities and OCS facilities or the population of U.S.-flagged vessels. In addition, because the affected populations are already required to conduct exercises per §§ 104.230, 105.220, and 106.225, this final rule allows for owners and operators to hold cybersecurity exercises in conjunction with other exercises. However, based on suggestions from public commenters, the size and scope of these exercises may make them difficult to combine in all cases. Due to a lack of data on who will be able to combine exercises, we assume that the entire populations will need to develop new cybersecurity-related exercises to comply with the requirements. In either case, these development and participation hour-burden estimates could cover the development of new internal exercises, or preparation and participation in local area exercises.

Coast Guard SMEs who are familiar with MTSA's requirements and practices for drills and exercises, Coast Guard SMEs at LANTAREA who have reviewed current exercises in the affected population, and Coast Guard SMEs at Sector San Juan who worked to develop cybersecurity exercises with the local AMSC estimate that it takes a CySO 20 hours on average to develop new functional, full scale cybersecurity exercises. We have increased our hour-burden estimate for developing exercise components from 8 hours in the NPRM to 20 hours in the final rule to reflect the development of full-scale exercises since we no longer assume that they will be combined with existing exercises. It should be noted that CySOs can access widely available resources and planning materials for developing cybersecurity exercises online.[110] In addition, the proliferation of cybersecurity components already being added to AMSC exercises around the United States provide examples for CySOs working to develop their own exercises.[111]

We assume each CySO, on behalf of the owner and operator of a facility or OCS facility, will develop the exercises specified in this final rule. Using the 1,372 facility owners and operators we presented earlier, the CySO's loaded mean hourly wage rate, the 20-hour estimate for developing the exercise, and one annual exercise, we estimate the cost for facilities to develop cybersecurity exercise components. We estimate the undiscounted annual cost of exercises for owners and operators of facilities and OCS facilities to be approximately $2,308,802 (1,372 facility CySOs × 20 hours per exercise × $84.14 CySO wage).

In addition to the development costs, we also estimate the costs of employee participation in the cybersecurity exercises. Coast Guard SMEs who are

[110] For example, CISA offers free resources on cybersecurity scenarios and cybersecurity exercises on their website. See *https://www.cisa.gov/cybersecurity-training-exercises,* accessed August 22, 2024.

[111] See *https://digitaleditions.walsworthprintgroup.com/publication/?i=459304&article_id=2956672&view=articleBrowser* and *https://www.news.uscg.mil/Press-Releases/Article/3920011/coast-guard-area-maritime-security-partners-conduct-2-cyber-security-exercises/* for just two examples of AMSC cyber exercises in recent years, accessed August 22, 2024.

familiar with MTSA's requirements and practices for drills and exercises, Coast Guard SMEs at LANTAREA who have reviewed current cybersecurity drills in the affected population, and Coast Guard SMEs at Sector San Juan who worked to develop cybersecurity exercises with the local AMSC estimate that each exercise requires 4 hours of participation per employee. This is based on the average length of time it took to lead and administer local AMSC cybersecurity exercises.[112]

According to § 101.635(a)(1), drills and exercises must be used to test the proficiency of personnel in assigned cybersecurity duties. Because the Coast Guard is unable to determine which employees at a given facility or OCS facility will be in assigned cybersecurity duties and required to participate in the exercises, we assume that 33 percent of employees will participate.[113] This share of employees is consistent with the estimated share of shoreside employees in the affected population of owners and operators of U.S.-flagged vessels. Coast Guard SMEs with knowledge of existing cybersecurity exercise practices believe this is a more reasonable estimate than assuming the entire portion of employees will participate. We estimate that the average number of employees that will participate in cybersecurity exercises is 24 (74 total employees × 0.33 = 24.42) with a loaded mean hourly wage of $60.34.

We estimate the cost for facilities to develop and conduct cybersecurity exercises by using the number of facilities owners and operators we presented earlier (1,372), the CySO's loaded mean hourly wage rate, the estimated time to develop the exercise components (20 hours), the estimated time to participate in the exercises (4 hours), the average number of participating employees at a facility company (24 employees), and the facility employee wage.[114]

We estimate the undiscounted annual cost for owners and operators of facilities and OCS facilities to develop and conduct exercises to be approximately $10,256,304 [1,372 facility companies × ((20 hours exercise development × $84.14 CySO wage) + (4 hours exercise participation × 24 facility employees × $60.34 facility employee wage))].[115] We estimate the total discounted cost of exercises for owners and operators of facilities and OCS facilities to be approximately $92,128,123 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $10,256,304, using a 2-percent discount rate.

We estimate that the subset of 33 OCS facilities operated by 9 owners will incur costs of $604,339 over a 10-year period of analysis and $67,279 annualized, using a 2-percent discount rate. See table 14.

[112] We estimate similar lengths of participation time for both exercises and drills because, while drills are meant to test individual elements of the Cybersecurity Plan and exercises are required to be a full test of the cybersecurity program, depending on what is being drilled, drills can be more open-ended or involve lengthy and in-depth practice of incident response and recovery procedures. Consider a suite of cybersecurity drills that includes phishing attack simulations, which would involve the CySO sending false emails from a seemingly trusted source in order to extract personal identifying information from recipients. For example, a mock phishing email can have an attachment or link that alerts the testing team when it's opened, or can include a link that goes to a mock login page. This will allow the CySO to see how many people not only click the link but also insert their credentials. Drilling through this scenario could take hours to wait and see who interacts with the email, record results, and assemble their team to discuss lessons learned and response procedures if the phishing attempt is successful. While only an example, drilling one of these scenarios (or another like it) in-depth can require a similar length of time as a full exercise when considering time to conduct the drill, record results, practice response procedures, and discuss lessons learned as a team.

[113] Under § 101.635(a)(1), cybersecurity drills and exercises are required to test the proficiency of U.S.-flagged vessel, facility, and OCS facility personnel in assigned cybersecurity duties. Full participation in drills and exercises from all personnel, including those without assigned cybersecurity duties, is not a requirement of this final rule.

[114] To capture the cost of the CySO delivering the exercise, we assume that the CySO is averaged into the number of employees participating in the exercise. As such, we do not estimate a separate cost for CySO delivery of the exercise.

[115] To capture the cost of the CySO administering the exercise, we assume that the CySO is averaged into the number of employees participating in the exercise. As such, we do not estimate a separate cost for CySO delivery of the exercise.

Table 14: Estimated Costs of the Final Rule for Exercises for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Number of Facility Companies (a)	CySO Wage (b)	Exercise Development Hours (c)	Exercise Participation Hours (d)	Facility Employee Wage (e)	Number of Employees (f)	Total Cost = [a × ((b × c) + (d × e × f))]	2 Percent
1	1372	$84.14	20	4	$60.34	24	$10,256,304	$10,055,200
2	1372	$84.14	20	4	$60.34	24	$10,256,304	$9,858,039
3	1372	$84.14	20	4	$60.34	24	$10,256,304	$9,664,744
4	1372	$84.14	20	4	$60.34	24	$10,256,304	$9,475,240
5	1372	$84.14	20	4	$60.34	24	$10,256,304	$9,289,451
6	1372	$84.14	20	4	$60.34	24	$10,256,304	$9,107,304
7	1372	$84.14	20	4	$60.34	24	$10,256,304	$8,928,730
8	1372	$84.14	20	4	$60.34	24	$10,256,304	$8,753,657
9	1372	$84.14	20	4	$60.34	24	$10,256,304	$8,582,016
10	1372	$84.14	20	4	$60.34	24	$10,256,304	$8,413,742
Total							$102,563,040	**$92,128,123**
Annualized								**$10,256,304**

Note: Totals may not sum due to independent rounding.

We use the same methodology and estimates for vessel exercises that we use for facilities. About 2,075 CySOs, on behalf of vessel owners and operators, will be required to conduct exercises with this final rule. As with facilities and OCS facilities, we have increased our development hour-burden estimates, and now include cost estimates for shoreside employees participating in cybersecurity exercises. To determine the costs for employee participation, we use estimates for the number of employees per company and mean hourly wage estimates for employees based on vessel types previously calculated in our analysis of cybersecurity drill costs. See table 10 for a breakdown of the mean hourly wage estimates used for employees in the U.S.-flagged vessel population.

We estimate the undiscounted annual cost of cybersecurity exercise participation for vessel employees to be approximately $6,322,216 (number of vessels for each affected vessel category × number of employees for each vessel type × representative mean hourly wage for vessel type × 4 hours for exercise participation).[116] For example, using OSVs, there are about 430 OSVs, with 4 shoreside employees for each OSV. Therefore, we estimate the annual exercise participation cost for OSVs to be about $377,850 (430 OSVs × 4 shoreside employees × $54.92 employee wage × 4 hours), rounded. We perform this calculation for all for the affected vessel types in this final rule and add it to the estimated costs for exercise development. We estimate the undiscounted annual cost to develop cybersecurity exercises to be approximately $3,491,810 (2,075 vessel companies × 1 CySO per vessel company × $84.14 CySO wage × 20 hours to develop exercises)]. This means the total undiscounted annual exercise cost for the affected population of U.S.-flagged vessels is $9,814,026 ($6,322,216 exercise participation costs + $3,491,810 exercise development costs). Table 15 displays the total employee exercise participation costs for each vessel type impacted by the exercise requirement.

[116] To capture the cost of the CySO administering the exercise, we assume that the CySO is averaged into the number of employees participating in the exercise. As such, we do not estimate a separate cost for CySO delivery of the exercise.

Table 15: Estimated Costs of the Final Rule for Exercise Participation by Vessel Type for U.S.-flagged Vessels (2022 Dollars, Undiscounted Costs)

Vessel Type	Number of Vessels	Number of Shoreside Employees	Employee Wage	Number of Exercises	Hours to Complete Exercises per Year	Total
MODU	1	92	$39.60	1	4	$14,573
Subchapter I Vessels	398	20	$46.36	1	4	$1,476,102
OSVs	430	4	$54.92	1	4	$377,850
Subchapter H Passenger Vessels	131	21	$41.85	1	4	$460,517
Subchapter K Passenger Vessels	430	9	$45.52	1	4	$704,650
Subchapter M Towing Vessels	4822	3	$51.28	1	4	$2,967,266
Subchapter D and Combination O&D Tank Vessels	114	10	$55.94	1	4	$255,086
Subchapters K and T International Passenger Vessels	53	7	$44.59	1	4	$66,172
Total						**$6,322,216**

We estimate the total discounted cost of exercises for U.S.-flagged vessels to be approximately $88,155,323 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $9,814,026, using a 2-percent discount rate. See table 16.

Table 16: Estimated Costs of the Final Rule for Exercises for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Total Cost	2 Percent
1	$9,814,026	$9,621,594
2	$9,814,026	$9,432,935
3	$9,814,026	$9,247,976
4	$9,814,026	$9,066,643
5	$9,814,026	$8,888,866
6	$9,814,026	$8,714,574
7	$9,814,026	$8,543,700
8	$9,814,026	$8,376,177
9	$9,814,026	$8,211,938
10	$9,814,026	$8,050,920
Total	$98,140,260	**$88,155,323**
Annualized		**$9,814,026**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of this final rule for the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities for exercises to be approximately $180,283,445 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $20,070,330, using a 2-percent discount rate. See table 17.

Table 17: Estimated Cost of the Final Rule for Exercises for U.S.-flagged Vessels Facilities, and OCS Facilities (2022 Dollars, 10-year Period of Analysis, 2-percent Discount Rate)

Year	Facilities Exercise Cost	Vessel Exercise Cost	Total Cost	2 Percent
1	$10,256,304	$9,814,026	$20,070,330	$19,676,794
2	$10,256,304	$9,814,026	$20,070,330	$19,290,975
3	$10,256,304	$9,814,026	$20,070,330	$18,912,720
4	$10,256,304	$9,814,026	$20,070,330	$18,541,883
5	$10,256,304	$9,814,026	$20,070,330	$18,178,316
6	$10,256,304	$9,814,026	$20,070,330	$17,821,879
7	$10,256,304	$9,814,026	$20,070,330	$17,472,430
8	$10,256,304	$9,814,026	$20,070,330	$17,129,833
9	$10,256,304	$9,814,026	$20,070,330	$16,793,954
10	$10,256,304	$9,814,026	$20,070,330	$16,464,661
Total	$102,563,040	$98,140,260	$200,703,300	**$180,283,445**
Annualized				**$20,070,330**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of this final rule for the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to conduct annual drills and exercises to be approximately $478,324,941 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $53,250,255, using a 2-percent discount rate. See table 18.

Table 18: Summary of Discounted Costs of the Final Rule for Drills and Exercises (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

	Facilities and OCS Facilities	U.S.-flagged Vessels	Total Cost	2 Percent
Drills	$177,420,450	$154,378,800	**$331,799,250**	**$298,041,496**
Exercises	$102,563,040	$98,140,260	**$200,703,300**	**$180,283,445**
Total	$279,983,490	$252,519,060	**$532,502,550**	**$478,324,941**
Annualized				**$53,250,255**

Note: Totals may not sum due to independent rounding.

Cybersecurity Measure Costs

The remaining regulatory provisions with associated costs are the cybersecurity measures in § 101.650. There are four cost provisions associated with cybersecurity measures: account security measures, cybersecurity training for personnel, penetration testing, and risk management.

The first provision is account security measures in § 101.650(a). The owners and operators of each U.S.-flagged vessel, facility, and OCS facility will ensure that account security measures are implemented and documented. This includes general account security measures in § 101.650(a)(1) through (3) and (5) through (7) and multifactor authentication for end users in § 101.650(a)(4). Based on the Jones Walker ''Ports and Terminals Cybersecurity Survey,'' (see footnote 60), 87 percent of facilities currently have account security measures, and 83 percent of facilities currently use multifactor authentication software. Using the total number of 1,372 facility and OCS facility owners and operators, we multiply this number by 0.13 and 0.17, respectively, to obtain the number of facility owners and operators who need to implement security measures and have multifactor authentication software under this final rule, or about 178 and 233, respectively.

We obtain the hour estimates and the labor category for these security measures for implementing and managing account security from NMSAC members with extensive experience in contracting to implement similar account security measures for facilities and OCS facilities in the affected population. A database administrator ensures that account security measures are implemented. Using wage data from the BLS OEWS program as previously referenced, the unloaded mean hourly wage rate for this labor category, occupational code of 15–1242, is $49.29.[117] Using Employer Costs for Employee Compensation data from BLS, we apply the same load factor of 1.46 to the aforementioned wage rate to obtain a loaded mean hourly wage rate of approximately $71.96.

It takes a database administrator about 8 hours to implement the account security measures and 8 hours for account security management annually thereafter for 178 facility and OCS facility companies. We estimate the undiscounted initial-year cost to implement account security for 178 facilities and OCS facilities and the annually recurring cost of account security management to be approximately $102,471, rounded [(178 facility companies × ($71.96 × 8 hours)].

The number of facility and OCS facility companies that will need multifactor authentication security is about 233. Based on estimates from CG–FAC SMEs with experience implementing multifactor authentication at other Government agencies, implementation of multifactor authentication will cost each facility anywhere from $3,000 to $15,000 in the initial year for setup and configuration. For this RA, we use the average of approximately $9,000 for the costs of initial setup and configuration. It will also cost each facility approximately $150 per end user for annual maintenance and support of the implemented multifactor authentication system. These costs represent the average costs for implementing and maintaining a multifactor authentication system across different organization and company sizes based on the SMEs' experience.

We use the total number of estimated employees at an affected facility company in our analysis of costs because the Coast Guard currently lacks data on (1) which systems in use at a facility or OCS facility will need multifactor authentication, and (2) whether only a subset of the total employees will require access. This is largely because owners and operators have the discretion to designate both critical IT and OT systems as well as the number of employees needing access. Therefore, for the purpose of this RA, we assume all employees will need multifactor authentication access.

We obtain the average number of facility employees from a Coast Guard contract that uses D&B Hoovers' database for company employee data (available in the docket for this rulemaking). The average number of employees at a facility company is 74. We estimate the undiscounted initial-year cost to implement multifactor authentication for 233 facility and OCS facility companies to be approximately $2,097,000 (233 facilities × $9,000). We estimate the undiscounted initial-year and annual cost for multifactor authentication support and maintenance at facilities and OCS facilities to be approximately $2,586,300 (233 facility companies × 74 employees × $150).

We estimate the total undiscounted initial-year cost to implement account security measures and multifactor authentication for facilities and OCS facilities to be approximately $4,785,771 ($102,471 cost to implement account security measures + $2,097,000 cost to set up and configure multifactor authentication + $2,586,300 cost for multifactor authentication support). We estimate the undiscounted annual cost in Years 2 through 10 to be approximately $2,688,771 ($102,471 cost to manage account security + $2,586,300 cost to maintain and provide multifactor authentication support).

We estimate the total discounted cost to implement account security measures for (1) 178 facilities and OCS facilities that will need to implement general account security measures and (2) 233 facilities and OCS facilities that will need to implement multifactor authentication to be approximately

[117] See *https://www.bls.gov/oes/2022/may/oes151242.htm,* accessed August 22, 2024.

$26,207,997 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $2,917,645, using a 2-percent discount rate.

Using the same rates of baseline activity for the total population of facilities, we estimate that a subset of (1) 1 OCS facility owner or operator that will need to implement general account security measures and (2) 2 OCS facility owners or operators that will need to implement multifactor authentication to be approximately $222,234 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $24,741, using a 2-percent discount rate. See table 19.

Table 19: Estimated Costs of the Final Rule for Account Security Measures and Multifactor Authentication for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Account Security Measure Costs	Multifactor Authentication Costs	Total Cost	2 Percent
1	$102,471	$4,683,300	$4,785,771	$4,691,932
2	$102,471	$2,586,300	$2,688,771	$2,584,363
3	$102,471	$2,586,300	$2,688,771	$2,533,689
4	$102,471	$2,586,300	$2,688,771	$2,484,009
5	$102,471	$2,586,300	$2,688,771	$2,435,303
6	$102,471	$2,586,300	$2,688,771	$2,387,552
7	$102,471	$2,586,300	$2,688,771	$2,340,737
8	$102,471	$2,586,300	$2,688,771	$2,294,840
9	$102,471	$2,586,300	$2,688,771	$2,249,843
10	$102,471	$2,586,300	$2,688,771	$2,205,729
Total			$28,984,710	**$26,207,997**
Annualized				**$2,917,645**

Note: Totals may not sum due to independent rounding.

Owners and operators of U.S.-flagged vessels will need to implement the same account security measures as facilities and OCS facilities. The population of vessels affected, where applicable, will be about 6,379, rather than 11,222, because we subtract the barge population of 4,843 from 11,222, the total number of affected vessels. Because barges are unmanned, we assume they do not have computer systems on board and, therefore, may not require account security measure implementation. Instead, we assume they will request waivers for these provisions, a cost included in Cybersecurity Plan development costs estimated earlier in the analysis.

The number of affected vessel owners and operators will be about 1,686, excluding 389 barge owners and operators that do not own or operate other affected vessels. Based on the NMSAC estimates detailed above, it will take a database administrator about 8 hours to implement the account security measures and 8 hours to manage account security annually thereafter on behalf of each owner and operator of a vessel. We estimate the undiscounted initial-year cost to implement and annually recurring cost to manage account security measures for owners and operators of U.S.-flagged vessels, excluding barge owners and operators, to be approximately $970,596 [(1,686 vessel owners and operators × (8 hours × $71.96)].

The number of owners and operators who will require multifactor authentication security is about 1,686, for approximately 6,379 vessels. Based on Coast Guard information, multifactor authentication systems will be implemented at the company level because networks and account security policies will be managed at the company level, and not for each individual vessel. Any security updates or multifactor authentication programs implemented at the company level can be pushed out to devices located on board vessels owned or operated by the company. We use the same cost estimate from CG–FAC that we use for facilities. It will cost the owner or operator of a vessel approximately $9,000 to implement multifactor authentication in the first year and about $150 annually for multifactor authentication support and maintenance per end user. To determine the number of employees for each vessel company, we use data from the certificate of inspection manning requirements in MISLE for each vessel subpopulation as described in the cost analysis for cybersecurity drills. Similarly, we assume 2 crews and multiply the total number of seafaring crew by 1.33 to account for shoreside staff to obtain an estimate of total company employees per vessel. We estimate the total undiscounted initial-year cost to implement multifactor authentication for 1,686 vessel owners and operators to be approximately $15,174,000 (1,686 vessel owners and operators × $9,000).

To calculate the annual cost per end user, we multiply the number of vessels for a given vessel type by the average number of employees per vessel and the $150 annual cost of support and maintenance. For example, there are

about 430 OSVs in the affected population, with an average number of 16 employees for each OSV. Therefore, the undiscounted annual cost of support and maintenance for OSV owners and operators will be approximately $1,032,000 (16 employees per each OSV (including shoreside) × $150 × 430 OSVs). We perform this calculation for each vessel type in the affected population and add the costs together to obtain the total initial-year cost and annual cost thereafter. We estimate the total undiscounted annual cost for multifactor authentication maintenance and support on vessels to be about $20,212,500 (number of employees for each vessel type × $150 × number of vessels for each vessel type). See table 20. We add these costs to the previously calculated implementation costs to obtain the initial-year costs associated with multifactor authentication of $35,386,500 ($15,174,000 implementation costs + $20,212,500 annual support and maintenance costs) as seen in column 3 of table 21.

Table 20: Estimated Annual Costs of the Final Rule for Multifactor Authentication Support and Maintenance for U.S.-flagged Vessel Companies by Vessel Type (2022 Dollars)

Vessel Type	Number of Vessels	Number of Employees Per Vessel (Includes Shoreside)	Multifactor Authentication Annual Cost Per End User	Annual Costs
MODU	1	372	$150	$55,800
Subchapter I Vessels	398	82	$150	$4,895,400
OSVs	430	16	$150	$1,032,000
Subchapter H Passenger Vessels	131	85	$150	$1,670,250
Subchapter K Passenger Vessels	430	35	$150	$2,257,500
Subchapter M Towing Vessels	4822	13	$150	$9,402,900
Subchapter D and Combination O&D Tank Vessels	114	40	$150	$684,000
Subchapters K and T International Passenger Vessels	53	27	$150	$214,650
Total				**$20,212,500**

Note: Totals may not sum due to independent rounding.

We estimate the total undiscounted initial-year cost to implement account security measures in § 101.650(a)(1) through (3), and (5) through (7) and multifactor authentication for end users in § 101.650(a)(4) for 1,686 owners and operators of U.S.-flagged vessels to be approximately $36,357,096 ($970,596 cost to implement account security + $35,386,500 cost to implement and provide multifactor support). We estimate the total undiscounted annual cost in Years 2 through 10 to be approximately $21,183,096 ($970,596 cost to manage account security + $20,212,500 cost to maintain and provide multifactor authentication).

We estimate the total discounted cost to implement all the account security measures in § 101.650(a)(1) through (3), and (5) through (7) and multifactor authentication for end users in § 101.650(a)(4) for 1,686 owners and operators of U.S.-flagged vessels to be approximately $205,155,431 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $22,839,242 using a 2-percent discount rate. See table 21.

Table 21: Estimated Costs of the Final Rule for Account Security Measures and Multifactor Authentication for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Account Security Measure Costs	Multifactor Authentication Costs	Total Cost	2 Percent
1	$970,596	$35,386,500	$36,357,096	$35,644,212
2	$970,596	$20,212,500	$21,183,096	$20,360,531
3	$970,596	$20,212,500	$21,183,096	$19,961,304
4	$970,596	$20,212,500	$21,183,096	$19,569,906
5	$970,596	$20,212,500	$21,183,096	$19,186,183
6	$970,596	$20,212,500	$21,183,096	$18,809,983
7	$970,596	$20,212,500	$21,183,096	$18,441,160
8	$970,596	$20,212,500	$21,183,096	$18,079,568
9	$970,596	$20,212,500	$21,183,096	$17,725,067
10	$970,596	$20,212,500	$21,183,096	$17,377,517
Total			$227,004,960	**$205,155,431**
Annualized				**$22,839,242**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost to implement account security measures for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities, including multifactor authentication, to be approximately $231,363,427 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $25,756,887, using a 2-percent discount rate. See table 22.

Table 22: Summary of Costs of the Final Rule for Account Security Measures and Multifactor Authentication for U.S.-flagged Vessels, Facilities, and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Facilities and OCS Facilities Cost	U.S.-flagged Vessels Cost	Total Cost	2 Percent
1	$4,785,771	$36,357,096	$41,142,867	$40,336,144
2	$2,688,771	$21,183,096	$23,871,867	$22,944,893
3	$2,688,771	$21,183,096	$23,871,867	$22,494,993
4	$2,688,771	$21,183,096	$23,871,867	$22,053,915
5	$2,688,771	$21,183,096	$23,871,867	$21,621,485
6	$2,688,771	$21,183,096	$23,871,867	$21,197,535
7	$2,688,771	$21,183,096	$23,871,867	$20,781,897
8	$2,688,771	$21,183,096	$23,871,867	$20,374,409
9	$2,688,771	$21,183,096	$23,871,867	$19,974,910
10	$2,688,771	$21,183,096	$23,871,867	$19,583,246
Total			**$255,989,670**	**$231,363,427**
Annualized				**$25,756,887**

Note: Totals may not sum due to independent rounding.

Cybersecurity Training Cost

The second cost provision under cybersecurity measures, in § 101.650(d), will be training. All persons with access to IT and OT will need annual training in topics such as the relevant aspects of the owner or operator's specific cybersecurity technology and concerns, recognition of threats and incidents, and incident reporting procedures. Given the importance of having a workforce trained on onsite cybersecurity systems as soon as possible to detect and mitigate cyber incidents, cybersecurity training will be verified during annual inspections following the implementation of this final rule. This means we assume there will be costs related to training in the first year of analysis.

Based on information from the Jones Walker ''Ports and Terminals Cybersecurity Survey,'' (see footnote 60), about 25 percent of facilities are currently conducting cybersecurity training on an annual basis.[118] Therefore, we estimate the number of owners and operators of facilities and OCS facilities who need to implement training to be about 1,029 (1,372 owners and operators × 0.75).

Based on information from Coast Guard SMEs, we assume that the CySO at a facility or OCS facility will spend 2 hours per year to develop, update, and provide cybersecurity training. This is an average estimate based on the time it would take to either develop unique training or identify existing training resources to use within their organizations. This length of time will vary widely based on the complexity of the material and general familiarity with the subject matter but is aided by publicly available training resources online.[119] Subject matter experts with Coast Guard also estimate that it will take 1 hour per facility employee to complete the training annually, based on existing industry-leading cyber awareness training programs.[120]

This final rule will also require part-time employees and contractors to complete the training but allow for personnel unable to receive cybersecurity training to be accompanied or monitored by a person who has completed the required training when accessing IT or OT systems. However, the Coast Guard has data only on the number of full-time employees at facilities and OCS facilities, so we use this estimate. We acknowledge that costs may be higher for facilities than we estimate in this analysis if we take other employees into account. Missing from this estimate are part-time employees and contractors, and if pertinent, estimated costs for the unknown number of employees who will need to be accompanied when accessing IT or OT systems. If included, the training costs would be higher than currently estimated. However, it is possible that some of these individuals would already require an escort under 33 CFR part 105 for access to designated secure areas, and that this would not lead to any change in operations. As before, we use the estimate of the average number of employees at facilities and OCS facilities, or 74. We also use the previously calculated loaded mean hourly wage rate of approximately $60.34 for the facility employees.

We estimate the undiscounted initial-year and annual cost for facility and OCS facility owners and operators to train employees on aspects of cybersecurity to be approximately $4,767,810, rounded [1,029 facility owners and operators × ((74 employees at each facility company × $60.34 facility employee wage × 1 hour) + (1 CySO developing training × $84.14 CySO wage × 2 hours))].

We estimate the discounted cost for facility and OCS facility owners and operators to complete annual training to be approximately $42,827,259 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $4,767,810, using a 2-percent discount rate. See table 23. Using the same rate of baseline activity estimated for the overall population of facilities, we estimate that the subset of 7 owners or operators of OCS facilities will incur costs of $291,340 over a 10-year period of analysis and $32,434 annualized, using a 2-percent discount rate.

[118] See footnote 60 and page 48 of the survey in the docket.

[119] For example, see CISA's compilation of Cybersecurity Education and Training Resources: *https://www.cisa.gov/sites/default/files/2024-02/Resources%20Collection_02062024_508c.pdf,* accessed October 11, 2024.

[120] In addition, CG–FAC recently worked with ABS to deliver Cybersecurity Awareness Training for AMSC members. This training took approximately 1 hour to deliver and is available here: *https://ww2.eagle.org/en/news/abs-news/abs-leads-cyber-trainings-for-us-coast-guard-maritime-security-committee-members.html,* accessed October 11, 2024.

Table 23: Estimated Training Costs of the Final Rule for Owners and Operators of Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rates)

Year	Total Cost	2 Percent
1	$4,767,810	$4,674,324
2	$4,767,810	$4,582,670
3	$4,767,810	$4,492,814
4	$4,767,810	$4,404,719
5	$4,767,810	$4,318,352
6	$4,767,810	$4,233,679
7	$4,767,810	$4,150,666
8	$4,767,810	$4,069,280
9	$4,767,810	$3,989,490
10	$4,767,810	$3,911,265
Total	$47,678,100	**$42,827,259**
Annualized		**$4,767,810**

Note: Totals may not sum due to independent rounding.

Employees on board U.S.-flagged vessels will also be required to complete annual cybersecurity training. The hour estimates for the CySO to develop cybersecurity training and employees to complete the training are the same as for facility estimates, 2 hours and 1 hour, respectively. The training costs for U.S.-flagged vessels are based upon the number of employees for each vessel type (excluding barges), similar to the cost analysis for drills and account security measures. Similarly, we use the loaded mean hourly wage rates shown in table 10 in our cost analysis for cybersecurity drills.

We estimate the undiscounted initial-year and annual cost of cybersecurity training for vessel employees to be approximately $6,590,094 (number of vessels for each affected vessel category × number of employees for each vessel type × representative mean hourly wage for vessel type × 1 hours for training). For example, using OSVs, there are about 430 OSVs, with 16 employees for each OSV (including shoreside). Therefore, we estimate the annual training cost for OSVs to be about $377,850 (430 OSVs × 16 employees × $54.92 OSV employee wage × 1 hour), rounded. We perform this calculation for all for the affected vessel types in this final rule and add it to the estimated costs for training development. We estimate the undiscounted annual cost to develop cybersecurity training to be approximately $283,720 (1,686 vessel companies (excluding barge companies) × 1 CySO per vessel company × $84.14 CySO wage × 2 hours to develop training)]. This means the total undiscounted annual training cost for the affected population of U.S.-flagged vessels is $6,873,814 ($6,590,094 employee training costs + $283,720 training development costs). Table 24 displays the total employee training costs for each vessel type impacted by the training requirement.

Table 24: Estimated Training Costs of the Final Rule for U.S.-flagged Vessels by Vessel Type (2022 Dollars)

Vessel Type	Number of Vessels	Number of Employees (Includes Shoreside)	Trainee Wage	Total
MODU	1	372	$39.60	$14,731
Subchapter I Vessels	398	82	$46.36	$1,513,005
OSVs	430	16	$54.92	$377,850
Subchapter H Passenger Vessels	131	85	$41.85	$466,000
Subchapter K Passenger Vessels	430	35	$45.52	$685,076
Subchapter M Towing Vessels	4822	13	$51.28	$3,214,538
Subchapter D and Combination O&D Tank Vessels	114	40	$55.94	$255,086
Subchapters K and T International Passenger Vessels	53	27	$44.59	$63,808
Total				**$6,590,094**

Note: Totals may not sum due to independent rounding.

We estimate the discounted cost for employees aboard U.S.-flagged vessels to complete annual cybersecurity training to be approximately $61,744,618 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $6,873,814, using a 2-percent discount rate. See table 25.

Table 25: Estimated Training Costs of the Final Rule for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Total Cost	2 Percent
1	$6,873,814	$6,739,033
2	$6,873,814	$6,606,895
3	$6,873,814	$6,477,348
4	$6,873,814	$6,350,342
5	$6,873,814	$6,225,825
6	$6,873,814	$6,103,750
7	$6,873,814	$5,984,069
8	$6,873,814	$5,866,734
9	$6,873,814	$5,751,700
10	$6,873,814	$5,638,922
Total	$68,738,140	**$61,744,618**
Annualized		**$6,873,814**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of cybersecurity training for facilities and vessels to be approximately $104,571,877 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $11,641,624, using a 2-percent discount rate. See table 26.

Table 26: Summary of Training Costs of the Final Rule for U.S.-flagged Vessels, Facilities, and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Facilities and OCS Facilities	U.S.-flagged Vessels	Total Cost	2 Percent
1	$4,767,810	$6,873,814	$11,641,624	$11,413,357
2	$4,767,810	$6,873,814	$11,641,624	$11,189,566
3	$4,767,810	$6,873,814	$11,641,624	$10,970,162
4	$4,767,810	$6,873,814	$11,641,624	$10,755,061
5	$4,767,810	$6,873,814	$11,641,624	$10,544,178
6	$4,767,810	$6,873,814	$11,641,624	$10,337,429
7	$4,767,810	$6,873,814	$11,641,624	$10,134,734
8	$4,767,810	$6,873,814	$11,641,624	$9,936,014
9	$4,767,810	$6,873,814	$11,641,624	$9,741,190
10	$4,767,810	$6,873,814	$11,641,624	$9,550,186
Total	**$47,678,100**	**$68,738,140**	**$116,416,240**	**$104,571,877**
Annualized				**$11,641,624**

Note: Totals may not sum due to independent rounding.

Penetration Testing

The third provision under cybersecurity measures that will impose costs on industry is penetration testing, in § 101.650(e)(2). The CySO for each U.S.-flagged vessel, facility, and OCS facility will ensure that a penetration test is completed in conjunction with renewing the Cybersecurity Plan. We assume facility and vessel owners and operators in the affected population will pay a third party to conduct a penetration test to maintain safety and security within the IT and OT systems for all KEVs. The cost for penetration testing is a function of the number of vessel and facility owners and operators, because networks are typically managed at a corporate level. At the conclusion of the test, the CySO will also need to include a letter certifying the test was conducted and document all identified vulnerabilities in the FSA, OCS FSA, or VSA—a cost that is included in our analysis of annual Cybersecurity Plan maintenance. Further, it is expected that the CySO will also work to correct or mitigate the identified vulnerabilities. However, the methods employed and time taken to correct or mitigate these vulnerabilities represent a source of uncertainty in our analysis, and we are unable to estimate the associated costs.

Based on the Jones Walker survey (see footnote number 60), 68 percent of facilities and OCS facilities are currently conducting penetration testing. Using 1,372 affected owners and operators of facilities and OCS facilities, the number of owners and operators of facilities and OCS facilities who need to conduct penetration testing is about 439 (1,372 × 0.32). Using cost estimates for penetration testing from NMSAC members who have experience conducting and contracting with facilities and OCS facilities to conduct penetration tests, as well as Coast Guard SMEs with similar experience, we estimate it will cost each owner or operator of a facility or OCS facility $10,000 for the initial penetration test and an additional $100 for each IP address on the network to capture the additional costs of network complexity.

In the NPRM, we estimated initial costs of $5,000 for the penetration test, an additional $50 per IP address, and used the number of employees as a rough estimate for the number of IP addresses on a given network. We received several public comments on these estimates that suggested that we were underestimating the costs of penetration testing and the number of IP addresses by not including estimates for additional industrial personnel and OT systems. While none of the commenters provided specific cost estimates beyond stating that our estimates were underestimates, one comment from Offshore Marine Service Association stated that we did not include all relevant costs by assuming that there would be IP addresses equal to the number of employees at a company. In addition to crewmembers outlined in a certificate of inspection, vessels will often carry additional crew or industrial personnel with their own devices, and many vessels will contain OT systems with unique IP addresses. Although this comment is focused on U.S.-flagged vessels, it is evident that these same concerns could apply to estimated costs in the population of facilities and OCS facilities.

Based on these comments, the Coast Guard revisited its initial estimates and, in order to better estimate the costs associated with penetration testing, doubled the initial cost estimate to $10,000 and the estimate of the cost per IP address to $100, which better reflects industry averages.[121] In addition, to better estimate number of IP addresses on a given company's network, we now

[121] In 2023, RSI Security estimated that on average, a high quality, professional penetration test can cost from $10,000–$30,000, depending on the size, complexity, methodology, and scope of the test, among other factors. Our estimated range of $24,800 for owners and operators of facilities or OCS facilities, and $12,600 to $27,000 for most owners of one U.S.-flagged vessel, depending on the type of vessel, fall within this estimated range. Costs can exceed this range when considering owners of multiple vessels, or our estimated costs for the owner of the MODU in our population ($84,400, see section *Total Costs of the Final Rule per Affected Owner or Operator* in this RA for more details on this outlier vessel) given the additional network complexity we would expect to see based on the size of the organization and number of employees using its IT and OT systems. See *https://blog.rsisecurity.com/what-is-the-average-cost-of-penetration-testing/* for more information on industry estimates and factors contributing to penetration testing costs, accessed November 5, 2024.

use the number of employees and multiply it by 2 to capture employees potentially using multiple devices, additional industrial personnel working at facilities, or any OT systems on the network. We acknowledge that some owners or operators could face costs in excess of these estimates because of the large range of costs and network complexity, but our SMEs with penetration testing experience believe these adjustments better reflect average costs.

The number of employees for each facility is 74, meaning we estimate 148 IP addresses per owner or operator of a facility or OCS facility. Owners and operators of facilities and OCS facilities will incur penetration testing costs in conjunction with submitting and renewing the Cybersecurity Plan, or every 5 years. This means costs for penetration testing will be incurred in the second and seventh year of analysis. We estimate the undiscounted second- and seventh-year costs to owners and operators of facilities and OCS facilities for penetration testing to be about $10,887,200 [(439 facility owners and operators × $10,000) + (148 IP addresses × 439 facility owners and operators × $100)]. We estimate the discounted cost for owners and operators of facilities and OCS facilities to conduct penetration testing to be about $19,942,400 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be about $2,220,118 using a 2-percent discount rate. Using the same rate of baseline activity estimated for the overall population of facilities, we estimate that the subset of 3 owners or operators of OCS facilities will incur costs of $136,281 over a 10-year period of analysis and $15,172 annualized, using a 2-percent discount rate. See table 27.

Table 27: Estimated Costs of the Final Rule for Penetration Testing for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Number of Facility Owners and Operators	Number of IP Addresses per Owner and Operator	Initial Cost of Penetration Test	Cost per IP Address	Total Cost	2 Percent
1	0	0	$0	$0	$0	$0
2	439	148	$10,000	$100	$10,887,200	$10,464,437
3	0	0	$0	$0	$0	$0
4	0	0	$0	$0	$0	$0
5	0	0	$0	$0	$0	$0
6	0	0	$0	$0	$0	$0
7	439	148	$10,000	$100	$10,887,200	$9,477,963
8	0	0	$0	$0	$0	$0
9	0	0	$0	$0	$0	$0
10	0	0	$0	$0	$0	$0
Total					**$21,774,400**	**$19,942,400**
Annualized						**$2,220,118**

Note: Totals may not sum due to independent rounding.

Owners and operators of U.S.-flagged vessels will also need to conduct penetration testing, similar to facilities and OCS facilities. We do not include barges or barge-specific owners and operators, given the unmanned nature of barges and their relatively limited onboard IT and OT systems. Instead, we assume they will request waivers for these provisions, a cost included in Cybersecurity Plan development costs estimated earlier in the analysis. All estimates for penetration testing on U.S.-flagged vessels are the same as for facilities and OCS facilities. We estimate the undiscounted second- and seventh-year costs for owners and operators of vessels to conduct penetration testing to be approximately $43,810,000 [(1,686 vessel owners and operators × $10,000) + (number of vessels for each vessel type × number of IP addresses for each vessel type × $100)]. See table 28 for a calculation of the costs per IP address for the various vessel populations, which can be added to the costs per owner or operator, or $16,860,000 (1,686 owners and operators × $10,000) in Years 2 and 7.

Table 28: Estimated Costs of the Final Rule for Penetration Testing per IP Address for U.S.-flagged Vessels by Vessel Type (2022 Dollars, Undiscounted)

Vessel Type	Number of Vessels	Number of IP Addresses per Vessel	Cost per IP Address	Total for Population
MODU	1	744	$100	$74,400
Subchapter I Vessels	398	164	$100	$6,527,200
OSVs	430	32	$100	$1,376,000
Subchapter H Passenger Vessels	131	170	$100	$2,227,000
Subchapter K Passenger Vessels	430	70	$100	$3,010,000
Subchapter M Towing Vessels	4822	26	$100	$12,537,200
Subchapter D and Combination O&D Tank Vessels	114	80	$100	$912,000
Subchapters K and T International Passenger Vessels	53	54	$100	$286,200
Total				**$26,950,000**

Note: Totals may not sum due to independent rounding.

We estimate the discounted cost for owners and operators of U.S.-flagged vessels to conduct penetration testing to be approximately $80,248,045 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $8,933,736 using a 2-percent discount rate. See table 29.

Table 29: Estimated Costs of the Final Rule for Penetration Testing for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Total Cost	2 Percent
1	$0	$0
2	$43,810,000	$42,108,804
3	$0	$0
4	$0	$0
5	$0	$0
6	$0	$0
7	$43,810,000	$38,139,241
8	$0	$0
9	$0	$0
10	$0	$0
Total	**$87,620,000**	**$80,248,045**
Annualized		**$8,933,736**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost to conduct penetration testing for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to be approximately $100,190,445 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $11,153,854 using a 2-percent discount rate. See table 30.

Table 30: Estimated Costs of the Final Rule for Penetration Testing for U.S.-flagged Vessels, Facilities, and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Facilities and OCS Facilities Cost	U.S.-flagged Vessel Cost	Total Cost	2 Percent
1	$0	$0	$0	$0
2	$10,887,200	$43,810,000	$54,697,200	$52,573,241
3	$0	$0	$0	$0
4	$0	$0	$0	$0
5	$0	$0	$0	$0
6	$0	$0	$0	$0
7	$10,887,200	$43,810,000	$54,697,200	$47,617,204
8	$0	$0	$0	$0
9	$0	$0	$0	$0
10	$0	$0	$0	$0
Total	**$21,774,400**	**$87,620,000**	**$109,394,400**	**$100,190,445**
Annualized				**$11,153,854**

Note: Totals may not sum due to independent rounding.

Routine System Maintenance for Risk Management

The final cost provision under cybersecurity measures will be routine system maintenance for risk management, in § 101.650(e)(3)(i) through (vi). This final rule will require the CySO of a U.S.-flagged vessel, facility, or OCS facility to (1) ensure patching (software updates) or implementing controls for all KEVs in critical IT and OT systems in paragraph (e)(3)(i), (2) maintain a method to receive or act on publicly submitted vulnerabilities in paragraph (e)(3)(ii), (3) maintain a method to share threat and vulnerability information with external stakeholders in paragraph (e)(3)(iii), (4) ensure there are no exploitable channels exposed to internet accessible systems in paragraph (e)(3)(iv), (5) ensure that no OT is connected to the publicly accessible internet unless explicitly required for operation in paragraph (e)(3)(v), and (6) conduct vulnerability scans according to the Cybersecurity Plan in paragraph (e)(3)(vi).

Based on information from CGCYBER and NMSAC, we estimate costs for only the vulnerability scans in this RA, because it is expected that CySOs will incorporate many of these provisions into the initial development and annual maintenance of the Cybersecurity Plan. Provisions that require setting up routine patching, developing methods for communicating vulnerabilities, and ensuring limited network connectivity of OT and other exploitable systems are expected to be less time-intensive efforts that will be completed following an initial Cybersecurity Assessment and documented in the Cybersecurity Plan. As a result, we include those costs in that portion of the analysis. However, if an OT system does need to be taken offline to be patched or segmented from other IT systems, the Coast Guard does not have information on how long or intensive that process would be because of the great degree of variability in OT systems within the affected population. We discuss patching of OT systems, network segmentation, and uncertainty more in later sections in this final rule.

Based on information from CGCYBER, the cost for each owner or operator of a U.S.-flagged vessel, facility, and OCS facility to acquire third-party software capable of vulnerability scans will be approximately $3,390 annually, including the cost for a software subscription. We base our analysis on the cost of a prevalent vulnerability scanner or virus software for business.

Vulnerability scans can occur in the background while systems are operational and represent a less intensive method of monitoring IT and OT systems for vulnerabilities, which complements more intensive penetration tests that will be required every 5 years. For this reason, we do not estimate an hour burden in addition to the annual subscription cost of securing vulnerability scanning software. We estimate the undiscounted annual cost for owners and operators of facilities and OCS facilities to subscribe to and use vulnerability scanning software to be approximately $4,651,0800 (1,372 facility owners and operators × $3,390). We estimate the undiscounted annual cost for the subset of 33 facilities owned and operated by 9 unique operators to subscribe to and use vulnerability scanning software to be approximately $30,510 (9 OCS facility owners and operators × $3,390) of the total cost estimate for facilities. We estimate the undiscounted annual cost for owners and operators of U.S.-flagged vessels to subscribe to and use vulnerability scanning software to be approximately $5,715,540 (1,686 vessel owners and operators × $3,390).

Combined, we estimate the total discounted cost for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to use vulnerability scanning software to be approximately $93,119,046 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $10,366,620, using a 2-percent discount rate. See table 31.

Table 31: Estimated Costs of the Final Rule for Vulnerability Scanning Software for U.S.-flagged Vessels, Facilities, and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Facility and OCS Facility Costs	U.S.-flagged Vessel Costs	Total Cost	2 Percent
1	$4,651,080	$5,715,540	$10,366,620	$10,163,353
2	$4,651,080	$5,715,540	$10,366,620	$9,964,072
3	$4,651,080	$5,715,540	$10,366,620	$9,768,698
4	$4,651,080	$5,715,540	$10,366,620	$9,577,154
5	$4,651,080	$5,715,540	$10,366,620	$9,389,367
6	$4,651,080	$5,715,540	$10,366,620	$9,205,262
7	$4,651,080	$5,715,540	$10,366,620	$9,024,767
8	$4,651,080	$5,715,540	$10,366,620	$8,847,810
9	$4,651,080	$5,715,540	$10,366,620	$8,674,324
10	$4,651,080	$5,715,540	$10,366,620	$8,504,239
Total			$103,666,200	**$93,119,046**
Annualized				**$10,366,620**

Note: Totals may not sum due to independent rounding.

Total Costs of the Final Rule to Industry

We estimate the total discounted cost of this final rule to the affected population of facilities and OCS facilities to be approximately $514,932,875 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $57,325,689, using a 2-percent discount rate. See table 32.

As a subset of the cost estimate for facilities, we estimate that the 33 OCS facilities operated by 9 different owners and operators will incur costs of approximately $3,749,921 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized costs for OCS facilities to be approximately $417,466, using a 2-percent discount rate. See table 33.

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Table 32: Summary of Total Discounted Costs of the Final Rule for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Cybersecurity Plan Costs	Drills and Exercises Costs	Account Security and Multifactor Authentication Costs	Training Costs	Penetration Testing Costs	Vulnerability Management Costs	Total Costs	2 Percent
1	$15,641,626	$27,998,349	$4,785,771	$4,767,810	$0	$4,651,080	$57,844,636	$56,710,427
2	$17,206,630	$27,998,349	$2,688,771	$4,767,810	$10,887,200	$4,651,080	$68,199,840	$65,551,557
3	$15,641,626	$27,998,349	$2,688,771	$4,767,810	$0	$4,651,080	$55,747,636	$52,532,243
4	$15,641,626	$27,998,349	$2,688,771	$4,767,810	$0	$4,651,080	$55,747,636	$51,502,199
5	$15,641,626	$27,998,349	$2,688,771	$4,767,810	$0	$4,651,080	$55,747,636	$50,492,352
6	$15,641,626	$27,998,349	$2,688,771	$4,767,810	$0	$4,651,080	$55,747,636	$49,502,305
7	$4,927,238	$27,998,349	$2,688,771	$4,767,810	$10,887,200	$4,651,080	$55,920,448	$48,682,115
8	$15,641,626	$27,998,349	$2,688,771	$4,767,810	$0	$4,651,080	$55,747,636	$47,580,071
9	$15,641,626	$27,998,349	$2,688,771	$4,767,810	$0	$4,651,080	$55,747,636	$46,647,128
10	$15,641,626	$27,998,349	$2,688,771	$4,767,810	$0	$4,651,080	$55,747,636	$45,732,478
Total	**$147,266,876**	**$279,983,490**	**$28,984,710**	**$47,678,100**	**$21,774,400**	**$46,510,800**	**$572,198,376**	**$514,932,875**
Annualized							**$57,219,838**	**$57,325,689**
Percent of Total	25.74%	48.93%	5.07%	8.33%	3.81%	8.13%	100.00%	-

Note: Totals may not sum due to independent rounding

Table 33: Summary of Total Discounted Costs of the Final Rule for OCS Facilities as a Subset of the Total Costs for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Cybersecurity Plan Costs	Drills and Exercises Costs	Account Security and Multifactor Authentication Costs	Training Costs	Penetration Testing Costs	Vulnerability Management Costs	Total Costs	2 Percent
1	$138,831	$183,663	$40,776	$32,434	$0	$30,510	$426,214	$417,857
2	$151,452	$183,663	$22,776	$32,434	$74,400	$30,510	$495,235	$476,004
3	$138,831	$183,663	$22,776	$32,434	$0	$30,510	$408,214	$384,669
4	$138,831	$183,663	$22,776	$32,434	$0	$30,510	$408,214	$377,127
5	$138,831	$183,663	$22,776	$32,434	$0	$30,510	$408,214	$369,732
6	$138,831	$183,663	$22,776	$32,434	$0	$30,510	$408,214	$362,482
7	$43,542	$183,663	$22,776	$32,434	$74,400	$30,510	$387,325	$337,190
8	$138,831	$183,663	$22,776	$32,434	$0	$30,510	$408,214	$348,407
9	$138,831	$183,663	$22,776	$32,434	$0	$30,510	$408,214	$341,575
10	$138,831	$183,663	$22,776	$32,434	$0	$30,510	$408,214	$334,878
Total	**$1,305,642**	**$1,836,630**	**$245,760**	**$324,340**	**$148,800**	**$305,100**	**$4,166,272**	**$3,749,921**
Annualized							**$416,627**	**$417,466**
Percent of Total	31.34%	44.08%	5.90%	7.78%	3.57%	7.32%	100.00%	-

Note: Totals may not sum due to independent rounding

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As seen in table 32, the primary cost drivers for the population of facilities and OCS facilities are costs for drills and exercises at 48.93 percent of the

total costs to industry. Cybersecurity Plan-related costs and costs for training come in second and third at 25.74 percent and 8.33 percent of the total costs, respectively. We believe some of this is due to the analysis of drills and exercises, and Cybersecurity Plan costs, which assume no baseline activity within the affected population because of a lack of information. Costs that appear as a higher percentage of the total costs in the population of U.S.-flagged vessels (account security measures and multifactor authentication, for example) have been adjusted based on current baseline activity within the population of facilities based on survey results, and thus, appear as smaller impacts to the population in general.

We estimate the total discounted cost of this final rule to the affected population of U.S.-flagged vessels to be approximately $693,173,722 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $77,168,624, using a 2-percent discount rate. See table 34.

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Table 34: Summary of Total Costs of the Final Rule for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Cybersecurity Plan Costs	Drills and Exercises Costs	Account Security and Multifactor Authentication Costs	Training Costs	Penetration Testing Costs	Vulnerability Management Costs	Total Costs	2 Percent
1	$6,983,620	$25,251,906	$36,357,096	$6,873,814	$0	$5,715,540	$81,181,976	$79,590,173
2	$7,683,665	$25,251,906	$21,183,096	$6,873,814	$43,810,000	$5,715,540	$110,518,021	$106,226,472
3	$8,380,344	$25,251,906	$21,183,096	$6,873,814	$0	$5,715,540	$67,404,700	$63,516,954
4	$8,380,344	$25,251,906	$21,183,096	$6,873,814	$0	$5,715,540	$67,404,700	$62,271,524
5	$8,380,344	$25,251,906	$21,183,096	$6,873,814	$0	$5,715,540	$67,404,700	$61,050,514
6	$8,380,344	$25,251,906	$21,183,096	$6,873,814	$0	$5,715,540	$67,404,700	$59,853,445
7	$2,200,093	$25,251,906	$21,183,096	$6,873,814	$43,810,000	$5,715,540	$105,034,449	$91,438,809
8	$8,380,344	$25,251,906	$21,183,096	$6,873,814	$0	$5,715,540	$67,404,700	$57,529,262
9	$8,380,344	$25,251,906	$21,183,096	$6,873,814	$0	$5,715,540	$67,404,700	$56,401,238
10	$8,380,344	$25,251,906	$21,183,096	$6,873,814	$0	$5,715,540	$67,404,700	$55,295,331
Total	**$75,529,786**	**$252,519,060**	**$227,004,960**	**$68,738,140**	**$87,620,000**	**$57,155,400**	**$768,567,346**	**$693,173,722**
Annualized							**$76,856,735**	**$77,168,624**
Percent of Total	9.83%	32.86%	29.54%	8.94%	11.40%	7.44%	100.00%	-

Note: Totals may not sum due to independent rounding.

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As in table 34, the primary cost drivers for the population of U.S.-flagged vessels are costs related to drills and exercises at 32.86 percent of the

total costs to industry. Costs related to account security measures and multifactor authentication come in second at 29.54 percent of the total costs. Costs related to penetration testing are third at 11.40 percent of the total costs. We estimate that costs for account security measures and multifactor authentication represent such a high portion of the overall costs related to cybersecurity because the Coast Guard was unable to estimate current baseline activity for these provisions and used conservative (upper-bound) estimates related to the population required to implement and manage multifactor authentication. In the NPRM, the Coast Guard requested public comment on who in the affected population of U.S.-flagged vessels has already implemented multifactor authentication and what the associated costs were but received no additional information.

We estimate the total discounted cost of this final rule to industry to be approximately $1,208,106,595 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $134,494,313, using a 2-percent discount rate. See table 35.

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Table 35: Summary of Total Costs of the Final Rule to Industry (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Cybersecurity Plan Costs	Drills and Exercises Costs	Account Security and Multifactor Authentication Costs	Training Costs	Penetration Testing Costs	Vulnerability Management Costs	Total Costs	2 Percent
1	$22,625,246	$53,250,255	$41,142,867	$11,641,624	$0	$10,366,620	$139,026,612	$136,300,600
2	$24,890,295	$53,250,255	$23,871,867	$11,641,624	$54,697,200	$10,366,620	$178,717,861	$171,778,029
3	$24,021,970	$53,250,255	$23,871,867	$11,641,624	$0	$10,366,620	$123,152,336	$116,049,197
4	$24,021,970	$53,250,255	$23,871,867	$11,641,624	$0	$10,366,620	$123,152,336	$113,773,722
5	$24,021,970	$53,250,255	$23,871,867	$11,641,624	$0	$10,366,620	$123,152,336	$111,542,865
6	$24,021,970	$53,250,255	$23,871,867	$11,641,624	$0	$10,366,620	$123,152,336	$109,355,750
7	$7,127,331	$53,250,255	$23,871,867	$11,641,624	$54,697,200	$10,366,620	$160,954,897	$140,120,924
8	$24,021,970	$53,250,255	$23,871,867	$11,641,624	$0	$10,366,620	$123,152,336	$105,109,333
9	$24,021,970	$53,250,255	$23,871,867	$11,641,624	$0	$10,366,620	$123,152,336	$103,048,366
10	$24,021,970	$53,250,255	$23,871,867	$11,641,624	$0	$10,366,620	$123,152,336	$101,027,809
Total	**$222,796,662**	**$532,502,550**	**$255,989,670**	**$116,416,240**	**$109,394,400**	**$103,666,200**	**$1,340,765,722**	**$1,208,106,595**
Annualized							**$134,076,572**	**$134,494,313**
Percent of Total	16.62%	39.72%	19.09%	8.68%	8.16%	7.73%	100.00%	-

Note: Totals may not sum due to independent rounding.

Total Costs of the Final Rule per Affected Owner or Operator

We estimate the average annual cost per owner or operator of a facility or OCS facility to be approximately $50,362, under the assumption that an owner or operator will need to implement each of the provisions required by this final rule. Each additional facility owned or operated will increase the estimated annual costs by an average of $4,396 per facility, since each facility or OCS facility will require an individual Cybersecurity Plan. Year 2 of the analysis period represents the year with the highest costs incurred per owner, with estimated costs of $73,320 for an owner or operator with one facility or OCS facility. See table 36 for a breakdown of the costs per entity for an owner or operator owning one facility or OCS facility.

Table 36: Summary of Total Costs of the Final Rule per Owner or Operator of a Facility or OCS Facility (2022 Dollars, 10-year Undiscounted Costs)[122]

Year	Facility Count	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Total
1	1	$4,207	$20,407	$576	$20,100	$4,633	$0	$3,390	$53,313
2	1	$8,414	$20,407	$576	$11,100	$4,633	$24,800	$3,390	$73,320
3	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
4	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
5	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
6	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
7	1	$1,893	$20,407	$576	$11,100	$4,633	$24,800	$3,390	$66,799
8	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
9	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
10	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
Total									**$503,623**
Annualized									**$50,362**

Note: Totals may not sum due to independent rounding.

To estimate the cost for an owner or operator of a facility or OCS facility to develop, resubmit, conduct annual maintenance and audit the Cybersecurity Plan, we use estimates provided earlier in the analysis. The hour-burden estimates are 100 hours for developing the Cybersecurity Plan (average hour burden), 10 hours for annual maintenance of the Cybersecurity Plan (which will include amendments), 15 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans.

Based on estimates from Coast Guard FSP and OCS FSP reviewers at local inspections offices, approximately 10 percent of Cybersecurity Plans will need to be resubmitted in the second year due to revisions that will be needed to the Plans, which is consistent with the current resubmission rate for FSPs and OCS FSPs. For renewals of Plans after 5 years (occurring in the seventh year of the analysis period), Plans will need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of the RA, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases, resulting in an upper-bound (high) estimate of costs for each entity. We estimate the time for revision and resubmission to be about half the time to develop the Plan itself, or 50 hours in the second year of submission, and 7.5 hours after 5 years (in the seventh year of the analysis period). Because we include the annual Cybersecurity Assessment in costs to develop Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing relevant cybersecurity measures, we divide the estimated 100 hours to develop Plans equally across the first and second years of analysis.

Using the CySO loaded hourly CySO wage of $84.14, we estimate the Cybersecurity Plan-related costs by adding the total number of hours to develop, resubmit, maintain, and audit each year and multiplying by the CySO wage. For example, we estimate owners and operators will incur $8,414 in costs in Year 2 of the analysis period [1 facility × $84.14 CySO wage × (50 hours to develop the Plan + 50 hours to revise and resubmit the Plan) = $8,414]. Table 37 displays the cost estimates per entity for an owner or operator of 1 facility or OCS facility over a 10-year period of analysis. For an owner or operator of multiple facilities or OCS facilities, we estimate the total costs by multiplying the total costs in table 37 by the number of owned facilities.

Table 37: Cybersecurity Plan-Related Costs of the Final Rule per Owner or Operator of a Facility or OCS Facility (2022 Dollars, 10-year Undiscounted Costs)

Year	Facility Count	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	1	$84.14	50	0	0	0	$4,207
2	1	$84.14	50	50	0	0	$8,414
3	1	$84.14	0	0	10	40	$4,207
4	1	$84.14	0	0	10	40	$4,207
5	1	$84.14	0	0	10	40	$4,207
6	1	$84.14	0	0	10	40	$4,207
7	1	$84.14	15	7.5	0	0	$1,893
8	1	$84.14	0	0	10	40	$4,207
9	1	$84.14	0	0	10	40	$4,207
10	1	$84.14	0	0	10	40	$4,207
Total							**$43,963**
Average							**$4,396**

Note: Totals may not sum due to independent rounding.

Similarly, we use earlier estimates for the calculation of costs for each entity for drills and exercises, account security measures, multifactor authentication, cybersecurity training, penetration testing, and vulnerability management.

For drills and exercises, we assume that a CySO on behalf of each owner and operator will develop cybersecurity drills and cybersecurity exercises. This development is expected to take 8 hours for each of the 2 annual drills and 20 hours for an annual exercise. We also include costs for drill and exercise participation for a portion of facility or OCS facility employees. We assume 33 percent of all employees will take 4 hours to participate in each drill and exercise, consistent with the share of shoreside employees estimated at U.S.-flagged vessel organizations. Using the loaded hourly wage for a CySO of

[122] The cost totals in table 36 represent cost estimates for owners and operators of one facility or OCS facility under the assumption that they will need to implement all cost-creating provisions of this final rule. Therefore, when multiplied over the full number of affected entities, the calculated totals will exceed those estimated for the population of facilities and OCS facilities elsewhere in the analysis. In addition, the cost estimates for items related to the Cybersecurity Plan are dependent upon the number of facilities owned and must be multiplied accordingly by the number of facilities owned. This is discussed in further detail later in the analysis of costs per owner or operator.

$84.14 and the loaded hourly wage for a facility employee of $60.34, we estimate annual costs of approximately $20,407 per facility owner or operator [($84.14 CySO wage × 8 hours × 2 drills) + ($84.14 CySO wage × 20 hours × 1 exercise) + (24 employees × $60.34 facility employee wage × 4 hours × 2 drills) + (24 employees × $60.34 facility employee wage × 4 hours × 1 exercise = $20,407], as seen in table 36.

For account security measures, we assume that a database administrator on behalf of each owner or operator will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576 ($71.96 database administrator wage × 8 hours = $576), as seen in table 36.

For multifactor authentication, we assume that an owner or operator of a facility or OCS facility will spend $9,000 in the initial year on average to implement a multifactor authentication system and spend approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first year costs of approximately $20,100 [$9,000 implementation cost + ($150 support and maintenance costs × 74 average facility company employees)], and subsequent year costs of $11,100 ($150 support and maintenance costs × 74 average facility company employees), as seen in table 36.

For cybersecurity training, we assume that a CySO will take 2 hours each year to develop and manage employee cybersecurity training, and employees at a facility or OCS facility will take 1 hour to complete the training each year. Using the estimated CySO wage of $84.14 and the estimated facility employee wage of $60.34, we estimate annual training costs of approximately $4,633 [($84.14 × 2 hours) + ($60.34 × 74 facility company employees × 1 hour)], as seen in table 36.

For penetration testing, we estimate costs only in the second and seventh years of analysis since tests are required to be performed in conjunction with submitting and renewing the Cybersecurity Plan. We assume that owners and operators of facilities and OCS facilities will spend approximately $10,000 per penetration test and an additional $100 per IP address at the organization to capture network complexity. We use the total number of company employees multiplied by 2 as a proxy for the number of IP addresses, based on suggestions from public commenters stating that networks often include employees with multiple devices, outside industrial personnel accessing the networks, and OT systems that increase the number of IP addresses and the network complexity at a given company. As a result, we estimate second- and seventh-year costs of approximately $24,800 [$10,000 testing cost + ($100 × 148 IP addresses)], as seen in table 36.

For vulnerability management, we assume that each owner or operator of a facility or OCS facility will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden associated with the implementation or use of a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 36.

We perform the same calculations to estimate the costs per entity for owners and operators of U.S.-flagged vessels. However, the estimates for the population of U.S.-flagged vessels have more dependency upon the type and number of vessels owned by the company being analyzed. This is largely due to the varying numbers of employees per vessel, by vessel type. We estimate average annual costs for each entity of approximately $14,052 per U.S.-flagged vessel owner or operator, as seen in table 38.

Table 38: Summary of Costs of the Final Rule per Owner or Operator of U.S.-flagged Vessels (2022 Dollars, 10-year Undiscounted Costs)[123]

Year	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Total
1	$3,366	$3,029	$576	$9,000	$168	$0	$3,390	$19,529
2	$6,731	$3,029	$576	$0	$168	$10,000	$3,390	$23,894
3	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
4	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
5	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
6	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
7	$1,515	$3,029	$576	$0	$168	$10,000	$3,390	$18,678
8	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
9	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
10	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
Total								**$140,515**
Annualized								**$14,052**

Note: Totals may not sum due to independent rounding.

To estimate the costs that depend on the number and type of U.S.-flagged vessel for each entity, we use the number of employees per vessel and, in the case of cybersecurity training costs, a unique weighted hourly wage based on the personnel employed on each vessel type as calculated in Appendix A: Wages Across Vessel Types. Table 39 displays the average number of employees for each vessel type, including shoreside employees, and their unique weighted mean hourly wages. Table 40 displays the per-vessel costs associated with each type of vessel.

Table 39: Summary of Employees and Wages by Vessel Type

Vessel Type	Number of Employees per Vessel (Includes Shoreside)	Weighted Mean Hourly Wage
MODU	372	$39.60
Subchapter I Vessels	82	$46.36
OSVs	16	$54.92
Subchapter H Passenger Vessels	85	$41.85
Subchapter K Passenger Vessels	35	$45.52
Subchapter M Towing Vessels	13	$51.28
Subchapter D and Combination Subchapters O&D Tank Vessels	40	$55.94
Subchapter D, O, or I Barges	0	$0.00
Subchapters K and T International Passenger Vessels	27	$44.59

[123] The cost estimates in table 38 represent the costs incurred at a company level for each owner and operator of U.S.-flagged vessels, so they must be added to the costs calculated in table 42, which are dependent on the type and number of vessels owned. We do this to create a full picture of the estimated costs per owner or operator. When these totals are multiplied over the full number of affected entities, the calculated totals will exceed those estimated for the population of U.S.-flagged vessels elsewhere in this RA because we assume that each owner or operator will need to implement all provisions of this final rule that create costs. This is discussed in further detail in the analysis of costs per owner or operator.

Table 40: Summary of Annual Costs of the Final Rule per U.S.-flagged Vessels Based on Type of Vessel (2022 Dollars, Undiscounted Costs)

Vessel Type	Vessel Count	Multifactor Authentication	Cybersecurity Training	Penetration Testing (Years 2 and 7)[124]	Drills and Exercises	Total
MODU	1	$55,800	$14,731	$74,400	$43,718	$188,649
Subchapter I Vessels	1	$12,300	$3,802	$16,400	$11,126	$43,628
OSVs	1	$2,400	$879	$3,200	$2,636	$9,115
Subchapter H Passenger Vessels	1	$12,750	$3,557	$17,000	$10,546	$43,853
Subchapter K Passenger Vessels	1	$5,250	$1,593	$7,000	$4,916	$18,759
Subchapter M Towing Vessels	1	$1,950	$667	$2,600	$1,846	$7,063
Subchapter D and Combination O&D Tank Vessels	1	$6,000	$2,238	$8,000	$6,713	$22,951
Subchapter D, O, or I Barges	1	$0	$0	$0	$0	$0
Subchapters K and T International Passenger Vessels	1	$4,050	$1,204	$5,400	$3,746	$14,400

To calculate the total cost for each entity in the population of U.S.-flagged vessels, we add the annual per-vessel costs from table 40 based on the number and types of vessels owned to the per-entity costs estimated in table 38.

To estimate the cost for an owner or operator of a U.S.-flagged vessel to develop, resubmit, conduct annual maintenance for, and audit the Cybersecurity Plan, we use estimates provided earlier in this RA. The hour-burden estimates are 80 hours for developing the Cybersecurity Plan (average hour burden), 8 hours for annual maintenance of the Cybersecurity Plan (which will include amendments), 12 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans. Based on estimates from reviewers of Coast Guard VSPs at MSC, approximately 10 percent of Plans will need to be resubmitted in the second year due to revisions that will be needed to the Plans, which is consistent with the current resubmission rate for VSPs. For renewals of Plans after 5 years (occurring in the seventh year of the analysis period), Cybersecurity Plans will need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of this RA, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases resulting in an upper-bound (high) estimate of costs for each entity.

We estimate the time for revision and resubmission to be about half the time to develop the Cybersecurity Plan itself, or 40 hours in the second year of submission, and 6 hours after 5 years (in the seventh year of the analysis period). Because we include the annual Cybersecurity Assessment in the cost to develop Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures, we divide the estimated 80 hours to develop Plans equally across the first and second years of analysis.

Using the CySO loaded hourly CySO wage of $84.14, we estimate the Cybersecurity Plan-related costs by adding the total number of hours to develop, resubmit, maintain, and audit each year and multiplying by the CySO wage. For example, we estimate owners and operators will incur approximately $6,731 in costs in Year 2 of the analysis period [$84.14 CySO wage × (40 hours to develop the Plan + 40 hours to revise and resubmit the Plan) = $6,731]. See table 41.

[124] When adding these costs to the per-entity costs for owners and operators, add only these estimated penetration costs in Years 2 and 7.

Table 41: Cybersecurity Plan-Related Costs of the Final Rule per Owner or Operator of a U.S.-flagged Vessel (2022 Dollars, 10-year Undiscounted Costs)

Year	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	$84.14	40	0	0	0	$3,366
2	$84.14	40	40	0	0	$6,731
3	$84.14	0	0	8	40	$4,039
4	$84.14	0	0	8	40	$4,039
5	$84.14	0	0	8	40	$4,039
6	$84.14	0	0	8	40	$4,039
7	$84.14	12	6	0	0	$1,515
8	$84.14	0	0	8	40	$4,039
9	$84.14	0	0	8	40	$4,039
10	$84.14	0	0	8	40	$4,039
Total						**$39,885**
Average						**$3,989**

Note: Totals may not sum due to independent rounding.

Similarly, we use earlier estimates for the calculation of costs for each entity for drills and exercises, account security measures, multifactor authentication, cybersecurity training, penetration testing, and vulnerability management.

For drills and exercises, we assume that, on behalf of each owner and operator, a CySO will develop new cybersecurity drills and cybersecurity exercises. This development is expected to take 8 hours for each of the 2 annual drills and 20 hours for an annual exercise. We also include costs for drill participation for a portion of U.S.-flagged vessel employees. We assume only shoreside employees will take 4 hours to participate in each drill and exercise. The costs per employee associated with drills and exercises vary depending on the types and number of vessels and will be based on the average number of shoreside employees per vessel and the associated weighted hourly wage. For example, using the estimated CySO wage of $84.14 and the estimated OSV employee wage of $54.92, we estimate annual drills and exercises costs of approximately $5,665 [($84.14 × 8 hours × 2 drills) + ($84.14 × 20 hours × 1 exercise) + ($54.92 × 4 average shoreside employees per OSV × 4 hours × 2 drills) + ($54.92 × 4 average shoreside employees per OSV × 4 hours × 1 exercise)]. Development costs per entity of $3,029 can be found in table 38 and variable per-vessel participation costs can be found in table 40.

For account security measures, we assume that, on behalf of each owner or operator, a database administrator will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576 ($71.96 database administrator wage × 8 hours = $576), as seen in table 38.

For multifactor authentication, we assume that an owner or operator of a U.S.-flagged vessel will spend $9,000 in the initial year on average to implement a multifactor authentication system and spend approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first-year implementation costs of approximately $9,000 for all owners and operators, with annual costs in Years 2 through 10, depending on the number of employees for each type of vessel. For example, we estimate the first-year costs to an owner or operator of one OSV to be approximately $11,400 [$9,000 implementation cost + ($150 support and maintenance costs × 16 average employees per OSV)], and subsequent year costs of $2,400 ($150 support and maintenance costs × 16 average employees per OSV). Implementation costs per entity of $9,000 for implementing the multifactor authentication system can be found in table 38, and variable costs per vessel can be found in table 40.

For cybersecurity training, we assume that on behalf of each owner or operator of a U.S.-flagged vessel, a CySO will take 2 hours each year to develop and manage employee cybersecurity training, and vessel employees will take 1 hour to complete the training each year. The costs per employee associated with training vary depending on the types and number of vessels and will be based on the average number of employees per vessel and the associated weighted hourly wage. For example, using the estimated CySO wage of $84.14 and the estimated OSV employee wage of $54.92, we estimate annual training costs of approximately $1,047 [($84.14 × 2 hours) + ($54.92× 16 average employees per OSV × 1 hour)]. Development costs per entity of $168 can be found in table 38 and variable per vessel participation costs can be found in table 40.

For penetration testing, we estimate costs only in the second and seventh years of analysis since tests are required to be performed in conjunction with submitting and renewing the Cybersecurity Plan. We assume that owners and operators of U.S.-flagged vessels will spend approximately $10,000 per penetration test and an additional $100 per IP address at the organization to capture network complexity. We use the average number of employees per vessel multiplied by 2 as a proxy for the number of IP addresses, based on suggestions from

public commenters stating that networks often include employees with multiple devices, outside industrial personnel accessing the networks, and OT systems that increase the number of IP addresses and network complexity at a given company. As a result, we estimate second- and seventh-year costs as follows: [10,000 testing cost + ($100 × average number of employees per vessel)]. For example, we estimate second- and seventh-year cost of approximately $13,200 for an owner or operator of an OSV [$10,000 testing cost + ($100 × 32 average IP addresses per OSV)]. Initial costs of $10,000 per entity can be found in table 38, and variable per-vessel costs can be found in table 40.

For vulnerability management, we assume that each U.S.-flagged vessel owner or operator will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden associated with the implementation or use of a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 38.

Unquantifiable Cost Provisions or No-Cost Provisions of This Final Rule

Communications

Under § 101.645, this final rule requires CySOs to have a method to effectively notify owners and operators of U.S.-flagged vessels, facilities, and OCS facilities, as well as personnel of changes in cybersecurity conditions. The requirements will allow effective and continuous communication between security personnel on board U.S.-flagged vessels and at facilities and OCS facilities; U.S.-flagged vessels interfacing with a facility or an OCS facility, the cognizant COTP, and national and local authorities with security responsibilities. Based on communication requirements established in 33 CFR 104.245 for vessels, 33 CFR 105.235 for facilities, and 33 CFR 106.240 for OCS facilities, the Coast Guard assumes that owners and operators of U.S.-flagged vessels, facilities, and OCS facilities already have communication channels established for physical security notifications which can easily be used for cybersecurity notifications. As a result, we do not estimate regulatory costs for communications. The Coast Guard received no public comments on this assumption and whether this communications provision will add an additional time burden.

Device Security Measures

Under § 101.650(b)(1), this final rule requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to develop and maintain a list of company-approved hardware, firmware, and software that may be installed on IT or OT systems. This approved list will be documented in the Cybersecurity Plan. Because this requirement is included in developing the Cybersecurity Plan, we estimated these costs earlier in that section of the cost analysis.

Under § 101.650(b)(2), this final rule requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to ensure applications running executable code are disabled by default on critical IT and OT systems. Based on information from CGCYBER, the time it will take to disable such applications is likely minimal; however, we currently lack data on how prevalent these applications are within the affected population. Therefore, we are unable to estimate the regulatory costs of this provision.

Under § 101.650(b)(3) and (4), this final rule requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to develop and maintain an accurate inventory of network-connected systems, the network map, and OT device configuration. Because these items will be developed and documented as a part of the Cybersecurity Plan, we previously estimated these costs in that section of the cost analysis. The Coast Guard received several public comments on the NPRM related to its analysis of device security measures under this provision, stating that the Coast Guard underestimated costs. However, the Coast Guard received no additional information or cost-specific data that would allow us to adjust our estimates. As such, we retain our assumption that the 80 to 100 hours estimated for the overall Cybersecurity Plan development and maintenance are sufficient to capture the hour burdens associated with these device security measures like developing a network map or system inventory in addition to documenting policies and results related to measures like drills or training. As a result, our cost estimates are unchanged.

Data Security Measures

Under § 101.650(c), this final rule requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to securely capture, store, and protect logs, as well as use encryption to maintain confidentiality of sensitive data and integrity of IT and OT traffic, when technically feasible. The Jones Walker survey (see footnote number 60) reveals that 64 percent of facilities and OCS facilities are currently performing active data logging and retention, and 45 percent are always encrypting data for the purpose of communication.

Because data logging can be achieved with default virus-scanning tools, such as Windows Defender on Microsoft systems, the cost of storage and protection of data logs is primarily a function of the data space required to store them. Based on information from CGCYBER, cloud storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data. However, the Coast Guard does not have information on the amount of data space the affected population will need to comply with this final rule, or if data purchases will be necessary in all cases. The Coast Guard requested public comment on these estimates in order to update the analysis but received none. Therefore, we are unable to estimate regulatory costs for this provision.

Similarly, encryption is often available in default systems or in publicly available algorithms.[125] The Coast Guard will accept these encryption standards that came with the software or on default systems. However, there are potentially some IT and OT systems in use that do not have native encryption capabilities. In these instances, encryption will likely represent an additional cost. However, the Coast Guard does not have information on the number of systems lacking encryption capabilities. As a result, we are unable to estimate the regulatory costs for encryption above and beyond what is included in default systems. Instead, in accordance with OMB Circular A–4, we include the storage and encryption of logs as source of uncertainty listed in table 42.

Routine System Maintenance

Under § 101.650(e)(3)(i) and (vi), owners and operators are required to patch KEVs in critical IT and OT systems (paragraph (e)(3)(i)) and conduct vulnerability scans (paragraph (e)(3)(vi)). The Coast Guard believes that these are processes that are typically

[125] For example, see the following web pages for descriptions of default encryption policies on Google and Microsoft programs and cloud-based storage systems: *https://cloud.google.com/docs/security/encryption/default-encryption* and *https://learn.microsoft.com/en-us/microsoft-365/compliance/encryption?view=o365-worldwide,* accessed August 22, 2024.

conducted in the background without much active work. However, we acknowledge the potential for these requirements to take additional time in certain circumstances, particularly when considering the complexity of patching and monitoring critical OT systems. Patching for IT systems can be set to automatically update and download without much risk, and vulnerability scans are typically background processes that need monitoring only in the event of an alert or incident. However, patching and monitoring of OT systems may be more complicated to allow for automatic updates and could even require periodically taking the systems offline. The Coast Guard lacks data on how prevalent critical OT systems are in the affected population, and how much time patching and monitoring could take in these unique systems.

While we received a public comment suggesting that we underestimated costs related to these provisions, we disagree with the commenter's suggestion that the provisions would require hiring additional employees, given our understanding of these processes as primarily occurring in the background.[126] As a result, without additional data on costs related to OT systems, we are unable to estimate costs for this provision, and instead include patching and monitoring of critical OT systems as a source of uncertainty listed in table 42.

Supply Chain Management

Under § 101.650(f)(1) and (2), this final rule includes provisions to specify measures for managing risks to the supply chain. This will not create any additional hour burden, as owners and operators will need to consider cybersecurity capabilities only when selecting third-party vendors for IT and OT systems or services. In addition, based on information from CGCYBER, most third-party providers have existing cybersecurity capabilities and already have systems in place to notify the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities of any cybersecurity vulnerabilities, incidents, or breaches that take place. Therefore, the Coast Guard does not estimate a cost for this provision.

Additionally, under § 101.650(f)(3), this final rule requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to monitor third-party remote connections and document how and where a third party connects to their networks. Based on information from CGCYBER, many IT and OT vendors provide systems with the ability to remotely access the system to perform maintenance or trouble-shoot problems as part of a warranty or service contract. Because remote access is typically identified in warranties and service contracts, the Coast Guard assumes that industry is already aware of these types of connections and will need to document them only when developing the Cybersecurity Plan. We estimated these costs previously in the development of the Cybersecurity Plan section of this RA.

The Coast Guard requested public comment on the validity of this assumption and received several public comments stating that we underestimated costs, and that this requirement could require the hiring an additional employee. The Coast Guard acknowledges that this could take additional time, mostly through reviewing logs for remote connections, but we disagree that this would require a full-time employee, in most cases. The amount of time it takes is highly dependent on the size of the organization and its risk appetite, making accurate estimates difficult across organizations of various types and sizes, especially for those with simple networks and limited remote connections. As a result, we are unable to estimate costs for this provision, and instead include monitoring remote third-party connections as a source of uncertainty listed in table 42.

Resilience

Under § 101.650(g), each CySO for a U.S.-flagged vessel, facility, and OCS facility will be required to develop a Cyber Incident Response Plan, validate the effectiveness of Cybersecurity Plans through annual exercises or periodic reviews of incident response cases, and perform backups of critical IT and OT systems. In addition, entities not subject to 33 CFR 6.16–1 must report reportable cyber incidents to the NRC without delay. Of these requirements, the costs associated with developing a Cyber Incident Response Plan are already captured in the overall costs to develop the Cybersecurity Plan. Any subsequent annual maintenance for the Cyber Incident Response Plan will be captured in the costs for annual maintenance of the Cybersecurity Plan. In addition, costs associated with validating Cybersecurity Plans through annual exercises or periodic reviews of incident response cases is already captured in the costs estimated for drills and exercises in § 101.635.

For the population of entities not subject to 33 CFR 6.16–1 who must report reportable cyber incidents to the NRC without delay, we consider costs to be minimal, and do not include them in our total cost estimates. We base this decision on the removal of NRC reporting requirements for all U.S.-flagged vessels and facilities, as proposed in the NPRM. Now that reporting requirements only apply to entities not subject to 33 CFR 6.16–1, the only portion of the affected population subject to the new reporting requirements are the 33 OCS facilities affected by this final rule.

Based on historical cyber incident reporting data from 2018 to 2022, the NRC fielded and processed an average of 18 cyber incident reports from facilities and OCS facilities and an average of 2 cyber incident reports from U.S.-flagged vessels, for a total of 20 cyber incident reports per year. However, OCS facilities only reported 1 cyber incident over that 5-year span. Although we anticipate that this number can increase or decrease following the publication of a final rule focused on cybersecurity standards and procedures, we use the historical averages to estimate costs for the affected population.[127] As a result, we estimate that OCS facilities only report 0.2 cyber incidents per year, on average. Using the methodology established in the NPRM, we assume that it will take 8.5 minutes (0.15 hours) of a CySO's time to report a cyber incident to the NRC. We base this estimated hour burden on the time to report suspicious maritime activity to the NRC in currently approved ICR 1625–0096. This means that for the affected OCS facilities, we estimate annual undiscounted costs of $2.52 (0.2 cyber incident reports × 0.15 hours to report × $84.14 CySO wage). Given this low annual estimated cost, the Coast Guard does not include costs related to cyber incident reporting in its estimate of costs related to the final rule.

Further, the Coast Guard does not have data on the IT resources that

[126] Leading cybersecurity and vulnerability management firms like Qualys and Tenable produce vulnerability scanner technology that operates continuously in the background. In addition, Microsoft Defender (Microsoft's own vulnerability scanner for Windows, one of the most popular operating systems) has built-in and agentless scanners to continuously monitor and detect risk. See *https://learn.microsoft.com/en-us/defender-vulnerability-management/defender-vulnerability-management* for more details on how this scanner works in practice, accessed October 11, 2024.

[127] The Coast Guard believes that cyber incident reports can increase following publication of this final rule due to greater enforcement of reporting procedures and greater awareness surrounding the need to report. However, the Coast Guard acknowledges that cyber incident reports can also decrease because greater prevention measures would be implemented because of this final rule. As a result, we use historical cyber incident reporting data to analyze costs moving forward.

owners and operators will need to back up data, either internally or externally. Coast Guard SMEs indicate that most of the affected population is likely already performing data backups.[128] The time burden of backing up data is minimal because backups can occur in the background through automated processes, making any new costs a result of making space for data storage. Providing external storage of data will require cloud storage (that is, storage on an external server), and the cost will be dependent upon the capacity needed; for example, 1 terabyte or 100 terabytes of space. These costs will likely be incurred on a monthly basis, although we do not know how much additional data space an owner or operator will need, if any. Coast Guard SMEs with CG–CYBER indicate that the current market prices for cloud storage subscriptions range from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data. There may also be costs associated with the encryption of data that we are not able to estimate in this analysis. Instead, we consider these sources of uncertainty in table 42.

Network Segmentation

Under § 101.650(h)(1) and (2), this final rule requires owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to segment their IT and OT networks and log and monitor all connections between them. Based on information from CGCYBER, CG–CVC, and NMSAC, network segmentation can be particularly difficult in the MTS, largely due to the age of infrastructure in the affected population of U.S.-flagged vessels, facilities, and OCS facilities. The older the infrastructure, the more challenging network segmentation may be. Given the amount of diversity and our uncertainty regarding the state of infrastructure across the various groups in our affected population, we are not able to estimate the regulatory costs associated with this provision. The Coast Guard requested public comment on the anticipated costs of network segmentation within the affected population, especially from those who have previously segmented networks at their organizations. While we received several comments that stated we have underestimated costs related to network segmentation, we received no additional information that would have allowed us to adjust our analysis. Instead, in accordance with OMB Circular A–4, we include the storage and encryption of logs as source of uncertainty listed in table 42.

Physical Security

Under § 101.650(i)(1) and (2), this final rule will require owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to limit physical access to IT and OT equipment; secure, monitor, and log all personnel access; and establish procedures for granting access on a by-exception basis. The Coast Guard assumes that owners and operators have already implemented physical access limitations and systems, by which access can be granted on a by-exception basis, based on requirements established in §§ 104.265 and 104.270 for vessels, §§ 105.255 and 105.260 for facilities, and §§ 106.260 and 106.265 for OCS facilities. Therefore, we do not believe that this final rule will impose new regulatory costs on owners and operators of U.S.-flagged vessels, facilities, and OCS facilities for this provision. However, we understand that § 101.650(i)(2), which requires potential blocking, disabling, or removing of unused physical access ports on IT and OT infrastructure, may represent taking steps above and beyond what has been expected under established requirements. The Coast Guard currently lacks information on the prevalence of these physical access ports on systems in use in the affected population and, therefore, cannot currently calculate an associated cost. We requested but did not receive public comments on the anticipated costs associated with physical security provisions in this final rule above and beyond what has already been incurred under existing regulation. As such, we retain our assumption that this will not create additional costs, and leave costs associated with blocking, disabling, or removing of unused physical access ports on IT and OT infrastructure as a source of uncertainty in the analysis.

Hazardous Conditions

In addition to the requirements outlined in 33 CFR part 101, the Coast Guard is also amending the definition of a hazardous condition found in 33 CFR 160.202 to include ''cyber incident.'' This change impacts but does not create costs for the population of 11,222 U.S.-flagged vessels and the population of 11,490 foreign-flagged vessels that visit the U.S. each year on average.[129] Before this final rule, 33 CFR 160.202 defined a hazardous condition as ''any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage.'' The Coast Guard already interpreted this as including cyber incidents given the definition referring to ''any condition'' that ''may, but need not, involve,'' a list of potential conditions. This was never meant to be an exhaustive list, and, while the Coast Guard has previously interpreted it as including cyber incidents, we are now adding ''cyber incident'' to the list of example conditions to further clarify the affected population's obligation to report in light of this final rule. Accordingly, the Coast Guard does not estimate any costs related to this change.

Installation of Any New Software

Lastly, it is likely that this final rule will have unquantifiable costs associated with the incompatibility between the installation of the newer software and the use of older or legacy software systems on board U.S.-flagged vessels, facilities, and OCS facilities. We did not receive comments from the public on the anticipated costs associated with this difference in software for the affected population of this final rule, and instead include it as a source of uncertainty in table 42.

Sources of Uncertainty Related to Quantified Costs in the Rule

Given the large scope of this final rule, our analysis contains several areas of uncertainty that can lead us to overestimate or underestimate the quantified costs associated with certain provisions. In table 42, we outline the various sources of uncertainty, the expected impact on cost estimates due to the uncertainty, potential cost ranges, and a ranking of the source of uncertainty based on how much we believe it is impacting the accuracy of our estimates. A rank of 1 indicates that we believe the source of uncertainty has the potential to cause larger overestimates or underestimates than a

[128] For example, the Ports and Terminals Cybersecurity Survey produced by Jones Walker referenced in footnote 60 asked facility owners and operators if their backups were ''segmented offline, cloud, redundant.'' Beyond this question appearing to assume that owners and operators are already conducting backups, 83 percent of respondents answered that their backups met the criteria, indicating that most owners and operators are conducting backups in this population.

[129] MISLE data indicates that, on average, 11,490 distinct foreign-flagged vessels entered the United States from 2021 through 2023 (11,346 in 2021, 11,717 in 2022, and 11,407 in 2023). Data was retrieved June 11, 2024. See table 6 in the *Affected Population* section of the analysis for more details on how the total of 11,222 U.S.-flagged vessels was calculated.

source of uncertainty ranked 2, and so on. The Coast Guard requested public comments from members of the affected populations of U.S.-flagged vessels, facilities, and OCS facilities who could provide insight into the areas of uncertainty specified in table 42, especially those relating to potential cost estimates, hour burdens, or current baseline activities. While we received several comments regarding underestimated costs, we did not receive information that allowed us to update our cost estimates for our sources of uncertainty.

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Table 42: Sources of Uncertainty in the Final Rule

Source of Uncertainty or Relevant Provision	Reason for Uncertainty	Impact on Cost Estimates	Potential Cost Range	Rank
Baseline cybersecurity activities in the U.S.-flagged vessel population	The Coast Guard was able to estimate current cybersecurity activity related to some of the provisions in the population of facilities and OCS facilities based on the results of the "Ports and Terminals Cybersecurity Survey" conducted by Jones Walker. However, we lack similar information on current cybersecurity activity in the population of U.S.-flagged vessels, and instead assumed that affected vessel entities have no level of baseline activity. This has led to overestimated costs for the affected population of U.S.-flagged vessels.	Overestimate	Not able to estimate.	1

Correction of vulnerabilities, performing fixes, and alleviating issues discovered in assessments, testing, or scanning	This final rule includes various types of provisions dealing with cybersecurity testing, assessment, and monitoring that are designed to help owners and operators identify vulnerabilities and other security issues that may be impacting an organization's IT and OT systems. While the provisions for cybersecurity measures of this final rule are designed to address many vulnerabilities that may be discovered, the Coast Guard has no way of calculating the costs associated with any fixes or mitigations that may be necessary above and beyond what is outlined in the rule. The costs associated with mitigations and vulnerability corrections will be highly dependent on what is discovered and will vary from affected entity to affected entity, making cost estimates unreliable.	Underestimate	Not able to estimate.	2
Future cybersecurity technology upgrades	Many of the provisions for cybersecurity measures under § 101.650 involve the implementation of hardware and software solutions to improve cybersecurity or monitor vulnerabilities within an organization's IT and OT systems. Because cybersecurity technology is rapidly evolving, we expect that upgrades to implemented solutions may be necessary in later years. However, the Coast Guard lacks information on how often or how costly these upgrades may be.	Underestimate	Not able to estimate.	3

§ 101.650(h)(1) and (2) - Network segmentation	Network segmentation can be particularly difficult in the MTS, largely due to the age of infrastructure in the affected population of U.S.-flagged vessels, facilities, and OCS facilities. The older the infrastructure, the more challenging network segmentation may be. Given the amount of diversity and our uncertainty regarding the state of infrastructure across the various groups in our affected population, we are not able to estimate the regulatory costs associated with this provision.	Underestimate	Not able to estimate.	4

§ 101.650(e)(3)(i) and (vi) - Patching and scanning for vulnerabilities in OT systems	The Coast Guard believes that patching of KEVs in critical IT and OT systems required under (i) and conducting vulnerability scans required under (vi) are processes that are typically conducted in the background without much active work. However, we acknowledge the potential for these requirements to take additional time in certain circumstances, particularly when considering the complexity of patching and monitoring critical OT systems. Patching for IT systems can be set to automatically update and download without much risk, and vulnerability scans are typically background processes that only need monitoring in the event of an alert or incident. Patching of OT systems may be more complicated to allow for automatic updates, but the Coast Guard lacks data on how prevalent these systems are in the affected population, and how much time this could take.	Underestimate	Not able to estimate.	5
§ 101.650(f)(3) - Monitoring and documenting all remote third-party connections	While we include costs for documenting remote third-party connections in the Cybersecurity Plan development and annual maintenance costs, we did not include a separate cost estimate for monitoring those connections under the assumption that the CySO would be aware of these remote connections as they would be specified in their existing contracts with third-party vendors. However, the Coast Guard acknowledges that this could take additional time, mostly through reviewing logs for remote connections.	Underestimate	Not able to estimate.	6

	The amount of time this could take is dependent on the size of the organization and its risk appetite, making accurate estimates difficult. As a result, we are unable to estimate costs for this provision.			
§ 101.665 Waivers and equivalency determinations	We acknowledge that it is likely there are other organizations beyond barge owners and operators with limited IT and OT systems who may request waivers under this rule. However, we are unable to determine who in the affected population will request waivers, and for which provisions, due to a lack of data. As a result, we are unable to estimate costs for this provision or determine where our other cost estimates may be overestimated. Costs for these organizations could be lower if they are able to secure a waiver rather than spend time or other resources to implement the required provisions.	Overestimate	Not able to estimate, but costs for drafting waiver requests could be included in the currently estimated Cybersecurity Plan development hours if the hour burdens to document the waived cybersecurity measures are reallocated.	7

§ 101.650(c) - Store logs and encrypt data	Logging can be achieved in the background using programs native to common computer operating systems, and therefore has a negligible cost. The primary cost will be the data space necessary to store the logs. The Coast Guard does not currently know who in the affected population will need to purchase additional data space to store logs, if any. Similarly, the Coast Guard does not know who in the affected population will need to purchase data encryption capabilities given a lack of information on systems in use that lack encryption capabilities.	Underestimate	The costs will scale with the amount of data space purchased. Based on current market prices, cloud-based storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data.	8

§ 101.650(g)(4) - Perform and secure data backups	Backing up data can be achieved in the background using programs native to common computer operating systems, and therefore has a negligible cost. The primary cost will be the data space necessary to store the data logs. The Coast Guard does not currently know who in the affected population will need to purchase additional data space to store logs, if any. Similarly, the Coast Guard does not know who in the affected population will need to purchase data encryption capabilities or other security measures for data backups given a lack of information on systems in use that lack these capabilities.	Underestimate	The costs will scale with the amount of data space purchased. Based on current market prices, cloud-based storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data.	9
§ 101.650(i)(2) - Removable media and hardware	While the Coast Guard believes that limiting of physical access to critical IT and OT systems is likely already being done under existing regulation, requiring blocking, disabling, or removing of unused physical access ports on IT and OT infrastructure may represent efforts above and beyond requirements already in regulation. However, the Coast Guard currently lacks information on the prevalence of these physical access ports on systems in use in the affected population, and therefore cannot currently estimate an associated cost.	Underestimate	Costs can range from installing security or antitamper tape over unused USB or other access ports, installing access port locks, or taking the time to manually disable or remove ports from system hardware. According to Coast Guard SMEs, costs for antitamper tape typically range from approximately $10 to $20 per 55-yard roll. Costs for access port	10

			locks range from approximately $10 to $20 for a pack of 10 locks. Costs for manually disabling ports on system hardware will be dependent on the time taken to disable, either through a software program or physically with a medium like caulk or epoxy resin. In either case, we estimate this will take approximately 1 to 5 minutes per access port.	11
		Underestimate	Potential costs are likely negligible. The time required to disable these applications is likely small and only required to be performed once. Many operating systems include this policy by default, and it can be considered a no-cost provision of the rule.	
	The Coast Guard has limited data on what applications are prevalent in the affected population that may need to have executable code disabled.			
	§ 101.650(b)(2) - Disable applications running executable code by default on critical IT and OT systems			

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The uncertainty surrounding these aspects of this analysis makes estimating many costs challenging. The Coast Guard has considered several

alternative scenarios to demonstrate how alternative assumptions may affect the cost estimates presented in this analysis.

First, we consider an alternative assumption regarding the baseline cybersecurity activities in the population of U.S.-flagged vessels, which we determined may have the biggest impact on our cost estimates for this final rule. Because the Coast Guard lacks data on current cybersecurity activities in the population of U.S.-flagged vessels, we assume that all owners and operators of U.S.-flagged vessels have no baseline cybersecurity activity to avoid potentially underestimating costs in the preceding cost analysis. However, we were able to use existing survey data to estimate baseline cybersecurity activity in the population of facilities and OCS facilities, which allowed us to more accurately estimate the cost impacts of many of the provisions.

If we use the same rates of baseline activity we assume for facilities and OCS facilities for the U.S.-flagged vessels as well, we would see a reduction in undiscounted cost estimates related to account security measures, multifactor authentication implementation and management, cybersecurity training, and penetration testing. Like the rates of baseline activity cited for the population of facilities and OCS facilities, this alternative would assume that 87 percent of the U.S.-flagged vessel population are managing account security, 83 percent have implemented multifactor authentication, 25 percent are conducting cybersecurity training, and 68 percent are conducting penetration tests.[130] Using these assumptions would result in estimated annual population costs of approximately $126,177 for account security ($970,596 primary estimated cost × 0.13), $6,015,705 for multifactor authentication implementation and maintenance ($35,386,500 primary estimated cost × 0.17), $5,155,361 for cybersecurity training ($6,873,814 primary estimate cost × 0.75), and $14,019,200 for penetration testing ($43,810,000 primary estimated cost × 0.32). This would result in reduced undiscounted annual cost estimates of approximately $61,724,467 for the population of U.S.-flagged vessels. See table 43.

Table 43: Comparison of Primary and Alternative Cost Estimates for U.S.-flagged Vessel Population (2022 Dollars, Undiscounted Costs)

Source of Cost	Primary Cost Estimates	Alternative Estimates
Account Security Costs	$970,596	$126,177
Multifactor Authentication Costs	$35,386,500	$6,015,705
Cybersecurity Training Costs	$6,873,814	$5,155,361
Penetration Testing Costs	$43,810,000	$14,019,200
Total	**$87,040,910**	**$25,316,443**

The Coast Guard requested but did not receive public comments on whether these assumptions of baseline activity are more reasonable than what is currently used in this RA, or if there are additional alternative assumptions about baseline activities in these areas or other areas not discussed that would lead to more accurate estimates. As such, we retained our assumption of no baseline activity in the affected population of U.S.-flagged vessels.

In addition, we considered adding cost estimates for those areas of uncertainty where we were able to estimate a range of potential costs. For provisions in § 101.650(c) and (g) related to storing logs and performing data backups, we anticipate that this data storage will be set up to occur in the background, meaning systems will not need to be taken offline and no burden hours. However, this makes the associated cost a function of the data space required to store and backup data. While we do not have information on how much data space a given company would need, we can estimate industry costs based on SME estimates for a range of potential data space amounts. As described in table 42, current market prices indicate that cloud-based storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data. To estimate the annual cost of 1 additional terabyte of data, we take the average estimated monthly cost of $31 [($41 + $21) ÷ 2] and multiply it by 12 to find the average annual cost of $372 per terabyte. If each facility and OCS facility company required an additional terabyte of data space because of this final rule, we would estimate approximately $510,384 ($372 × 1,372 facility owners and operators) in additional undiscounted annual costs to industry. Similarly, if we assumed each U.S.-flagged vessel company required an additional terabyte of data space because of this final rule, we would estimate approximately $771,900 ($372 × 2,075 vessel owners and operators) in additional undiscounted annual costs to industry. See table 44.

[130] See footnote 60.

Table 44: Comparison of Cost Estimates for Alternative Data Space for the Affected Population and Impact on Undiscounted Cost Totals (2022 Dollars, Undiscounted Costs)

Affected Population	Annual Data Space Cost Estimates	Total Data Space Cost Estimates Over 10 Years	Primary Population Cost Totals Over 10 Years	Alternative Population Cost Totals Over 10 Years
Facilities and OCS Facilities	$510,384	$5,103,840	$572,198,376	$577,302,216
U.S.-flagged Vessels	$771,900	$7,719,000	$768,567,346	$776,286,346
Total	**$1,282,284**	**$12,822,840**	**$1,340,765,722**	**$1,353,588,562**

These costs can change if we were to add additional assumptions about current baseline activities or adjusted the expected need for data space. We requested public comment on the accuracy and inclusion of these estimates but received none. As such, we were unable to add these cost estimates to our overall cost estimates for the rule.

Government Costs

There are two primary drivers of Government costs associated with this final rule. The first will be under § 101.630(d), where owners and operators of the affected population of U.S.-flagged vessels, facilities, and OCS facilities will be required to submit a copy of their Cybersecurity Plan for review and approval to either the cognizant COTP or the OCMI for facilities or OCS facilities, or to the MSC for U.S.-flagged vessels. In addition, § 101.630(e) will require owners and operators to submit Cybersecurity Plan amendments to the Coast Guard, under certain conditions, for review and approval. The second cost driver is related to the marginal increase in inspection time because of added Cybersecurity Plan components that will be reviewed as a part of an on-site inspection of U.S.-flagged vessels, facilities, and OCS facilities. An additional potential cost driver will be under § 101.650(g)(1), where owners and operators of the affected population of OCS facilities will be required to report cyber incidents to the NRC. The NRC will then need to process the report and generate notifications for each incident report they receive. However, based on historic NRC data related to cybersecurity incidents in the OCS facility population, we only estimate negligible costs related to this provision. The Coast Guard examines these costs under the assumption that we will use the existing frameworks in place to review security plans and amendments, process incident reports, and conduct inspections. Given uncertainty surrounding Coast Guard staffing needs related to this final rule, we have not estimated costs associated with new hires or the establishment of a centralized office.

First, we analyze the costs to the Government associated with reviewing and approving Cybersecurity Plans and amendments. Based on Coast Guard local facility inspector estimates, it will take Plan reviewers about 40 hours to review an initial Cybersecurity Plan for a facility or OCS facility, 8 hours to review a resubmission of a Plan in the initial year, and 4 hours to review an amendment in years 3 through 6 and 8 through 10 of the analysis period. It will also take about 8 hours of review for the renewal of Plans in Year 7 of the analysis period, and another 8 hours for any necessary resubmissions of Plan renewals. The estimated hours to review initial, resubmitted, and renewal Cybersecurity Plans and amendments include review and approval of any requested waivers or equivalence determinations received from the affected owners and operators. The hour-burden and frequency estimates for resubmissions and amendments are consistent with estimates for resubmissions of FSPs and OCS FSPs, as we expect the Cybersecurity Plans and amendments to be of a similar size and scope. As discussed earlier in the analysis, we estimate that resubmissions of initial Cybersecurity Plans and Plan renewals occur at a rate of 10 percent in Years 2 and 7 of the analysis period. We use the number of facilities and OCS facilities that will submit Plans, which will be about 3,718 (33 of which are OCS facilities).

We determine the wage of a local facility inspector using publicly available data found in Commandant Instruction 7310.1W.[131] We use an annual mean hourly wage rate of $89 for an inspector at the O–3 (Lieutenant) level, based on the occupational labor category used in ICR 1625–0077.

We estimate the undiscounted second-year (initial year of Plan review) cost for the Coast Guard to review Cybersecurity Plans for facilities and OCS facilities to be approximately $13,500,944 [(3,718 facility Plan initial submissions × $89.00 × 40 hours) + (372 facility Plan resubmissions × $89.00 × 8 hours)]. Except in Year 7, when renewal of all Plans will occur, we estimate the undiscounted annual cost to the Coast Guard for the review of amendments to be approximately $1,323,608 (3,718 amendments × $89.00 × 4 hours). In Year 7, we estimate the undiscounted cost to be approximately $2,912,080 [(3,718 Plans for 5-year renewal × $89.00 × 8 hours) + (372 facility Plan resubmissions × $89.00 × 8 hours)]. We estimate the discounted cost for the Coast Guard to review U.S. facility and OCS facility Cybersecurity Plans to be approximately $23,679,103 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $2,636,112, using a 2-percent discount rate. See table 45.

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[131] Readers can view Commandant Instruction 7310.1W for military personnel at *media.defense.gov/2022/Aug/24/2003063079/-1/-1/0/CI_7310_1W.PDF*, accessed August 19, 2024.

Table 45: Estimated Final Rule Costs for Government to Review Facility and OCS Facility Cybersecurity Plans and Amendments (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Reviewer Wage	Facility Cybersecurity Plan Submissions	Facility Cybersecurity Resubmissions	Cybersecurity Plan Review Hours	Resubmission Review Hours	Amendment Review Hours	Total Cost	2 Percent
1	$89.00	0	0	0	0	0	$0	$0
2	$89.00	3718	372	40	8	0	$13,500,944	$12,976,686
3	$89.00	3718	0	0	0	4	$1,323,608	$1,247,265
4	$89.00	3718	0	0	0	4	$1,323,608	$1,222,809
5	$89.00	3718	0	0	0	4	$1,323,608	$1,198,833
6	$89.00	3718	0	0	0	4	$1,323,608	$1,175,326
7	$89.00	3718	372	8	8	0	$2,912,080	$2,535,141
8	$89.00	3718	0	0	0	4	$1,323,608	$1,129,687
9	$89.00	3718	0	0	0	4	$1,323,608	$1,107,536
10	$89.00	3718	0	0	0	4	$1,323,608	$1,085,820
Total							**$25,678,280**	**$23,679,103**
Annualized								**$2,636,112**

Note: Totals may not sum due to independent rounding.

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Based on Coast Guard MSC estimates, it will take about 28 hours to review an initial U.S.-flagged vessel Cybersecurity Plan, 8 hours to review a resubmission

of the Cybersecurity Plan in the initial year, and 4 hours to review an amendment in years 3 through 6 and 8 through 10 of the analysis period. It will also take about 8 hours of review for the renewal of Plans, and another 8 hours to review resubmitted Plan renewals in Year 7 of the analysis period. The hour-burden and frequency estimates for resubmissions and amendments are consistent with estimates for resubmissions of VSPs, as we expect the Cybersecurity Plans and amendments to be of a similar size and scope. We use the number of U.S.-flagged vessel owners and operators who will submit Plans, about 2,075. As discussed earlier in the analysis, we estimate that resubmissions of initial Cybersecurity Plans and Plan renewals occur at a rate of 10 percent in Years 2 and 7 of the analysis period.

According to ICR 1625–0077, the collection of information related to VSPs, FSPs, and OCS FSPs, the MSC uses contract labor to conduct Plan and amendment reviews. The MSC provided us with its independent Government cost estimate for their existing contract for VSP reviews. The average loaded annual mean hourly wage rate for the various contracted reviewers from the independent Government cost estimate is $81.83.

We estimate the undiscounted second-year cost for the Coast Guard to review Cybersecurity Plans for U.S.-flagged vessels to be approximately $4,890,488 [(2,075 initial vessel Plan submissions × $81.83 × 28 hours) + (208 vessel Plan resubmissions × $81.83 × 8 hours)]. Except in Year 7, when resubmission of all Plans will occur, we estimate the undiscounted annual cost to the Coast Guard for reviewing amendments to be approximately $679,189 (2,075 amendments × $81.83 × 4 hours). In Year 7, we estimate the undiscounted cost to be approximately $1,494,543 [(2,075 Plans for 5-year renewal × $81.83 × 8 hours) + (208 vessel Plan resubmissions × $81.83 × 8 hours)]. We estimate the discounted cost for the Coast Guard to review U.S.-flagged vessel Cybersecurity Plans to be approximately $10,192,585 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $1,134,705, using a 2-percent discount rate. See table 46.

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Table 46: Estimated Final Rule Costs for Government to Review U.S.-flagged Vessel Cybersecurity Plans and Amendments (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Reviewer Wage	Vessel Cybersecurity Plan Submissions	Vessel Cybersecurity Plan Resubmissions	Cybersecurity Plan Review Hours	Resubmission Review Hours	Amendment Review Hours	Total Cost	2 Percent
1	$81.83	0	0	0	0	0	$0	$0
2	$81.83	2075	208	28	8	0	$4,890,488	$4,700,584
3	$81.83	2075	0	0	0	4	$679,189	$640,015
4	$81.83	2075	0	0	0	4	$679,189	$627,466
5	$81.83	2075	0	0	0	4	$679,189	$615,162
6	$81.83	2075	0	0	0	4	$679,189	$603,100
7	$81.83	2075	208	8	8	0	$1,494,543	$1,301,090
8	$81.83	2075	0	0	0	4	$679,189	$579,681
9	$81.83	2075	0	0	0	4	$679,189	$568,315
10	$81.83	2075	0	0	0	4	$679,189	$557,172
Total							**$11,139,354**	**$10,192,585**
Annualized								**$1,134,705**

Note: Totals may not sum due to independent rounding.

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The second source of Government costs is the marginal increase in onsite inspection time due to the expansion of FSPs, OCS FSPs, and VSPs to include

the Cybersecurity Plans and provisions by this final rule. The cybersecurity provisions will add to the expected onsite inspection times for the populations of U.S.-flagged vessels, facilities, and OCS facilities. Coast Guard SMEs within CG–FAC conferred with local inspection offices to estimate the expected marginal increase in facility and OCS facility inspection time. Local facility inspectors estimate that the additional cybersecurity provisions from this final rule will add an average of 1 hour to an onsite inspection, and that the inspection will typically be performed by an inspector at a rank of O–2 (Lieutenant Junior Grade). According to Commandant Instruction 7310.1W Reimbursable Standard Rates, an inspector with an O–2 rank has a fully loaded wage rate of $72.[132] Therefore, we estimate the annual undiscounted Government cost associated with the expected marginal increase in onsite inspections of facilities and OCS facilities is $267,696 (3,718 facilities and OCS facilities × 1 hour inspection time × $72 facility inspector wage). We estimate the total discounted cost of increased inspection time to be approximately $2,404,602 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $267,696, using a 2-percent discount rate. See table 47.

Table 47: Estimated Final Rule Costs for Government for On-site Inspection of Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Number of Facilities	Facility Inspection Hours	Facility Inspector Wage	Total Cost	2 Percent
1	3718	1	$72	$267,696	$262,447
2	3718	1	$72	$267,696	$257,301
3	3718	1	$72	$267,696	$252,256
4	3718	1	$72	$267,696	$247,310
5	3718	1	$72	$267,696	$242,461
6	3718	1	$72	$267,696	$237,706
7	3718	1	$72	$267,696	$233,045
8	3718	1	$72	$267,696	$228,476
9	3718	1	$72	$267,696	$223,996
10	3718	1	$72	$267,696	$219,604
Total				**$2,676,960**	**$2,404,602**
Annualized					**$267,696**

Note: Totals may not sum due to independent rounding.

Similarly, Coast Guard SMEs within CG–ENG and inspectors in Coast Guard District 9 estimate that the additional cybersecurity provisions from this final rule will add an average of 0.167 hours (10 minutes) to an on-site inspection of a U.S.-flagged vessel and that the inspection will also typically be performed by an inspector at a rank of O–2 (Lieutenant Junior Grade). According to Commandant Instruction 7310.1W Reimbursable Standard Rates, an inspector with an O–2 rank has a fully loaded wage rate of $72. Therefore, we estimate the annual undiscounted Government cost associated with the expected marginal increase in onsite inspections of U.S.-flagged vessels is $108,696 (11,222 vessels × 0.167 hours inspection time × $72 vessel inspector wage). We estimate the total discounted cost of increased inspection time to be approximately $1,212,046 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $134,933, using a 2-percent discount rate. See table 48.

[132] Readers can view Commandant Instruction 7310.1W for military personnel at *media.defense.gov/2022/Aug/24/2003063079/-1/-1/0/CI_7310_1W.PDF*, accessed August 19, 2024.

Table 48: Estimated Final Rule Costs for Government for On-site Inspection of U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Number of Vessels	Vessel Inspection Hours	Vessel Inspector Wage	Total Cost	2 Percent
1	11222	0.167	$72	$134,933	$132,287
2	11222	0.167	$72	$134,933	$129,693
3	11222	0.167	$72	$134,933	$127,150
4	11222	0.167	$72	$134,933	$124,657
5	11222	0.167	$72	$134,933	$122,213
6	11222	0.167	$72	$134,933	$119,817
7	11222	0.167	$72	$134,933	$117,467
8	11222	0.167	$72	$134,933	$115,164
9	11222	0.167	$72	$134,933	$112,906
10	11222	0.167	$72	$134,933	$110,692
Total				**$1,349,330**	**$1,212,046**
Annualized					**$134,933**

Note: Totals may not sum due to independent rounding.

The final potential source of Government costs from this final rule is the time to process and generate notifications for each cyber incident reported to the NRC. As discussed earlier in our analysis of costs associated with cyber incident reporting, from 2018 to 2022, the NRC fielded and processed an average of 0.2 cyber incident reports from OCS facilities per year. Cyber incident reports for other U.S.-flagged vessels and facilities are not included in this analysis because they are already required under 33 CFR 6.16–1. In addition, the NRC generated an average of 31 notifications for appropriate Federal, State, local, and Tribal agencies per processed cyber incident over that same time period. However, because the rate of reportable cyber incidents in the population of OCS facilities is so low (only 0.2 reportable cyber incidents per year, on average), we estimate that any associated costs would be negligible. Therefore, we do not include cyber incident report processing costs in our estimated Government cost totals.

We estimate the total discounted Government costs of this rule for the review of Cybersecurity Plans and marginal increase in on-site inspection time to be approximately $37,488,336 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $4,173,446, using a 2-percent discount rate. See table 49.

Table 49: Total Estimated Costs of the Final Rule for Government (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rate)

Year	Facility Cybersecurity Plan Review Costs	Vessel Cybersecurity Plan Review Costs	Facility Inspection Costs	Vessel Inspection Costs	Total Cost	2 Percent
1	$0	$0	$267,696	$134,933	$402,629	$394,734
2	$13,500,944	$4,890,488	$267,696	$134,933	$18,794,061	$18,064,265
3	$1,323,608	$679,189	$267,696	$134,933	$2,405,426	$2,266,687
4	$1,323,608	$679,189	$267,696	$134,933	$2,405,426	$2,222,242
5	$1,323,608	$679,189	$267,696	$134,933	$2,405,426	$2,178,668
6	$1,323,608	$679,189	$267,696	$134,933	$2,405,426	$2,135,949
7	$2,912,080	$1,494,543	$267,696	$134,933	$4,809,252	$4,186,743
8	$1,323,608	$679,189	$267,696	$134,933	$2,405,426	$2,053,008
9	$1,323,608	$679,189	$267,696	$134,933	$2,405,426	$2,012,753
10	$1,323,608	$679,189	$267,696	$134,933	$2,405,426	$1,973,287
Total					**$40,843,924**	**$37,488,336**
Annualized					**$4,084,392**	**$4,173,446**

Note: Totals may not sum due to independent rounding.

Total Costs of the Rule

We estimate the total discounted costs of this final rule to industry and Government to be approximately $1,245,594,930 over a 10-year period of analysis, using a 2-percent discount rate. We estimate the annualized cost to be approximately $138,667,759, using a 2-percent discount rate. See table 50.

Table 50: Total Estimated Costs of the Final Rule to Industry and Government (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rates)

Year	Facility and OCS Facility Costs	U.S.-flagged Vessel Costs	Government Costs	Total Costs	2 Percent
1	$57,844,636	$81,181,976	$402,629	$139,429,241	$136,695,334
2	$68,199,840	$110,518,021	$18,794,061	$197,511,922	$189,842,293
3	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$118,315,883
4	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$115,995,964
5	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$113,721,533
6	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$111,491,699
7	$55,920,448	$105,034,449	$4,809,252	$165,764,149	$144,307,667
8	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$107,162,341
9	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$105,061,119
10	$55,747,636	$67,404,700	$2,405,426	$125,557,762	$103,001,097
Total	**$572,198,376**	**$768,567,346**	**$40,843,924**	**$1,381,609,646**	**$1,245,594,930**
Annualized				**$138,160,965**	**$138,667,759**

Note: Totals may not sum due to independent rounding.

Benefits

While the Coast Guard is able to describe the qualitative benefits that this final rule may have for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities, and others who would be affected by a cyber-attack, the Coast Guard is not able to quantify and monetize benefits. One reason is that it is challenging to project the number of cyber-attacks that would occur over a relevant period without this final rule; another reason is that it is challenging to quantify the magnitude of the harm from such attacks. It is further challenging to quantify the marginal impact of this final rule, both because the Coast Guard cannot quantify the effectiveness of the included provisions (how many attacks will be prevented or how much damage will be mitigated) and because the Coast Guard has uncertainty around the appropriate baseline to consider regarding what cybersecurity actions are being taken for reasons beyond this rulemaking. Without such projections and quantification, it is not possible to monetize the benefits of the rule in terms of harms averted. We summarize public comments that highlight benefits of the final rule, provide a qualitative analysis of benefits, and analyze cyber incidents and risks addressed by the final rule below.

Public Comments That Support the Final Rule or Address Benefits

We received several public comments for the support of specific provisions of this final rule. For IT and OT systems, one commenter supports the requirements to ''designate critical IT and OT systems'' and to keep an inventory of these systems given the importance of an owner or operator knowing their own cybersecurity environment in order to properly defend it. Another commenter agrees ''that network segmentation is in fact an effective practice to help mitigate the damage caused by an attack on an IT or OT network.'' A third commenter ''strongly supports'' the ''requirements to analyze networks to identify IT and OT vulnerabilities, mitigate unresolved vulnerabilities, conduct vulnerability scans, and conduct annual penetration testing,'' because these provisions are key in ensuring resilience and preventing cybersecurity incidents.

We also received several comments about the use of and lack of reference to ASPs in the NPRM. Commenters recommended the Coast Guard to include the Cybersecurity Plan in existing ASPs. One commenter stated that submitting separate Cybersecurity Plans to the MSC for vessels and the local COTP for facilities is ''resource-intensive,'' and that ''the ASP framework has proved to be effective in allowing owners and operators to determine the best way to implement security requirements across the domestic passenger vessel fleet.'' The same commenter added, ''ASP should be added to applicable sections of the proposed rule when referencing requirements for FSP, VSP, or OCS FSP.'' Another commenter suggested permitting a Cybersecurity Plan to be included in an Alternative Security Program. This commenter stated that ''ASPs have been proven to be successful at both managing vessel and facility security risks and reducing costs and administrative burdens for vessel and facility operators, as well as the Coast Guard.''

Based on these comments, the Coast Guard revised § 101.660 of this final rule to explicitly allow owners and operators to use ASPs to comply with this final rule. We added additional text in § 101.660 to clarify that ASP provisions apply to cybersecurity compliance documentation. Given the unique nature of cybersecurity threats, vulnerabilities, and mitigation strategies, owners and operators must ensure that use of ASPs includes those items specific to each U.S.-flagged vessel, facility, and OCS facility. The Coast Guard will evaluate each ASP's cybersecurity component to ensure full regulatory compliance with each applicable requirement. These changes to this final rule can create marginal cost reductions and will create marginal benefits for owners and operators using ASPs because they are less resource intensive, as argued by several commenters. These owners and operators will not be required to submit separate Plans to the Coast Guard, and they will be able to include a Cybersecurity Plan as part of an approved ASP, which will allow owners and operators using ASPs to reallocate resources to implement or improve other cybersecurity measures.

We received numerous comments on the term ''reportable cyber incident.'' As a result, and as we stated in our response to comments in V. Discussion of Comments and Changes of this preamble, we included the use and definition of the term in this final rule, which will provide clear guidance on when and under what conditions cyber incidents must be reported to the NRC. This clarity will help eliminate the need to report minor cyber incidents, which will reduce the administrative burden on owners and operators.

We also received several public comments on the frequency of drills, with some requesting a general frequency reduction, others requesting annual or semi-annual drill requirements, and others requesting a schedule of requirements based on the cybersecurity risk faced by the affected U.S.-flagged vessels and facilities. These requests were made because commenters felt that the proposed quarterly drill requirements were too burdensome. As a result, the Coast Guard reduced the frequency of drills from quarterly to 2 drills in a calendar year. This will have a marginal benefit for affected owners and operators to use and direct resources to improve remaining drills or implement other cybersecurity measures that can help reduce the risk of a cyber incident in other ways.

Qualitative Analysis of Benefits

Malicious cyber actors, including individuals, groups, and nation states, have rapidly increased in sophistication over the years and use techniques that make them more and more difficult to detect. Recent years have seen the rise of cybercrime as a service, where malicious cyber actors are hired to conduct cyber-attacks.[133] In a paper published by Akpan, Bendiab, Shiaeles, Karamperidis, and Michaloliakos (2022), the authors state that the maritime sector has shown a 900-percent increase in cybersecurity

[133] See *https://cybernews.com/security/crimeware-as-a-service-model-is-sweeping-over-the-cybercrime-world/* for a description of cybercrime as a service and *https://cybersecurityventures.com/cybercrime-damage-costs-10-trillion-by-2025/* for a description of its growth in recent years, accessed July 15, 2024.

breaches as it enters the digital era.[134] The paper adds that many automated systems on vessels, by their nature, are vulnerable to a cyber-attack, and include navigation systems such as Electronic Chart Display and Information Systems, GPS, and Global Navigation Satellite Systems. Other affected systems include radar systems; AIS; communication systems; and systems that control the main engine, generators, among others (Akpan et al., 2022).[135] Furthermore, the paper presents the vulnerabilities and consequences of cyber-attacks to ships' systems ranging from hijacking ships, destroying and stealing data, damaging equipment, disrupting vessel operations, uploading malware to computer systems, losing lives and cargo, and more (Akpan et al., 2022).[136]

In a paper by Jones (2016), the author noted that outdated systems are vulnerable to cyber-attacks. The paper refers to a study that states 37 percent of servers running Microsoft failed to download the correct patch and left systems vulnerable to a cyber-attack. Additionally, Jones states that ''many ships were built before cyber security was a major concern'' and goes on to state that many newer software systems are not compatible with older software systems.[137]

Akpan, et al. (2022) also list a few cyber-attacks that have occurred in the maritime transportation sector in the past few years. Allianz Global Corporate and Specialty (AGCS) reports that there was a record 623 million ransomware attacks in 2021.[138] In a paper published by Meland, Bernsmed, Wille, Rodseth, and Nesheim (2021), the authors state that 46 successful [139] cyber-attacks with a significant impact on the maritime industry have occurred worldwide between 2010 and 2020, or an average of 4.2 attacks a year.[140] Some national governments have also used ransomware to advance their strategic interests, including evading sanctions.[141] The increased growth of cybercrime is a factor that has intensified in the last 20 years. Per the FBI's cybercrime reporting unit, financial losses from reported incidents of cybercrime exceeded $10.3 billion in 2022, and $35.9 billion from 2001 to 2022.[142] While there are significant private economic incentives for MTS participants to implement their own cybersecurity measures, and survey results indicate that MTS participants are more confident in their cybersecurity capabilities than in years past, the same survey indicates that there are important gaps in capabilities that leave the MTS exposed to risk.[143] In its 2018 report, the CEA stated, ''[b]ecause no single private entity faces the full costs of the adverse cyber events, the Government can step in to achieve the optimal level of cybersecurity, either through direct involvement or by incentivizing private firms to increase cyber protection.'' [144]

The overall benefit of this final rule is the reduction in the probability of a cyber incident and, if an incident occurs, improvement in the mitigation of its impacts. This benefits owners and operators and help protect the maritime industry and the United States. We expect this final rule to have significant but currently unquantifiable benefits for the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities, as well as downstream economic participants [145] and the public at large. This final rule benefits owners and operators of U.S.-flagged vessels, facilities, and OCS facilities by having a means, through the Cybersecurity Plan, to ensure that all cybersecurity measures are in place and tested periodically, which improves the resiliency of owners and operators to respond to a cyber incident and to maintain a current cybersecurity posture, reducing the risk of economic losses for owners and operators as well as downstream economic participants. For example, this final rule requires training, drills, and exercises, which benefits owners and operators by having a workforce that is knowledgeable and trained in most aspects of cybersecurity, which reduces the risk of a cyber incident and mitigates the impact if an incident occurs. Conducting training, drills, and exercises also enables the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to prevent, detect, and respond to a cyber incident with improved capabilities.

In addition, cybersecurity measures in this final rule require owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to identify weaknesses or vulnerabilities in their IT and OT systems and to develop strategies or safeguards to identify and detect security breaches when they occur. The software and physical requirements of this final rule ensure the minimal level of protection for critical IT and OT systems and allow for the proper monitoring of these systems. In table 51, we list the expected benefits associated with each major regulatory provision of this final rule.

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[134] Frank Akpan, Gueltoum Bendiab, Stavros Shiaeles, Stavros Karamperidis, and Michalis Michaloliakos; ''Cybersecurity Challenges in the Maritime Sector''; *Network;* March 7, 2022; page 123; *https://www.mdpi.com/2673-8732/2/1/9;* accessed August 2024. Multidisciplinary Digital Publishing Institute has open access to journals and published papers. Additionally, NIST provides a definition of the term *breach,* although not specifically related to cybersecurity at, *https://csrc.nist.gov/glossary/term/breach,* accessed July 2024.

[135] Akpan et al., *supra* note 132, at 129–30.

[136] Id.

[137] Kevin Jones, ''Threats and Impacts in Maritime Cyber Security,'' April 15, 2016, pages 7 and 8, *https://www.researchgate.net/publication/304263412_Threats_and_Impacts_in_Maritime_Cyber_Security,* accessed August 15, 2024.

[138] AGCS is a global insurance company. Readers can access this report at *https://www.agcs.allianz.com/news-and-insights/news/cyber-risk-trends-2022-press.html,* accessed November 13, 2024. AGCS' website is *https://www.agcs.allianz.com.*

[139] The analysis did not include mere attempts to attack, unsuccessful attacks, or attacks categorized as ''white hat'' attacks, which are attempts to infiltrate cybersecurity systems to identify vulnerabilities in software, hardware, or networks. Definition of ''white hat hacking'' at *https://www.fortinet.com/resources/cyberglossary/whitehat-security,* accessed July 20, 2024.

[140] The title of this paper is ''A Retrospective Analysis of Maritime Cyber Security Incidents.'' Readers can access this paper at *https://www.semanticscholar.org/paper/A-Retrospective-Analysis-of-Maritime-Cyber-Security-Meland-Bernsmed/6caba4635f991dd1d99ed98cf640812f8cae16ba* (pages 519 and 523), accessed November 13, 2024. Readers may need to create an account to view this paper, other papers, and research literature. The paper is also available at, *https://www.transnav.eu.* The authors of the study noted that shipping is a very diverse sector and that their source materials tend to focus on larger ships and operations. The authors stated that it is highly unlikely that this study has captured all the different cyber incidents over the sector. Additionally, the authors did not define what a ''significant impact'' entails; nevertheless, in some cyber-attacks they cited, they provided the effect of an attack in their description of the incident.

[141] Institute for Security and Technology, ''RTF Report: Combating Ransomware: A Comprehensive Framework for Action: Key Recommendations from the Ransomware Task Force,'' *https://securityandtechnology.org/ransomwaretaskforce/report/,* accessed July 15, 2024.

[142] See the FBI's ''2022 Internet Crime Report,'' Internet Crime Complaint Center (IC3), March 14, 2023. This report can be found at *https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3Report.pdf,* accessed August 19, 2024. For a summary of financial losses from reported incidents of cybercrime since 2001, see *https://www.statista.com/statistics/267132/total-damage-caused-by-by-cybercrime-in-the-us/,* accessed August, 19, 2024.

[143] Readers can access the survey in the docket or at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html,* accessed July 15, 2024. See page 16 of the survey for data on industry confidence and pages 34–41 for data on cybersecurity practices.

[144] Economic Report of the President *supra* note 2 at 369.

[145] Downstream economic participants are entities or individuals involved in the later stages of the supply chain or production process, such as distributors, wholesalers, service providers, and retailers that supply and sell products directly to consumers.

Table 51. Expected Actions of the Final Rule that Accrue Benefits

§ 101.630 Cybersecurity Plan	1. Improved incident response: A well-designed Cybersecurity Plan includes procedures for incident response and enables vessels and port facilities to address cybersecurity incidents quickly and effectively to minimize their impact and duration. 2. Employee awareness and training: A Cybersecurity Plan includes employee training and awareness programs, which ensures that staff members (1) understand their role in protecting both the vessel and port facility's digital assets to prevent cyber incidents, and (2) know how to respond to potential threats to minimize their impact and duration.
§ 101.635 Drills and Exercises	1. Increased awareness and understanding: Cybersecurity drills and exercises promote a better understanding of the risks and challenges associated with cyber threats among all stakeholders, including crew members, port facility personnel, and other relevant parties, allowing them to better prevent cyber incidents. 2. Improved preparedness: Regular drills and exercises help organizations to identify vulnerabilities in their cybersecurity posture, allowing them to develop and implement effective countermeasures to address potential threats and prevent cyber incidents. 3. Enhanced response capabilities: Drills and exercises allow staff to practice their roles and responsibilities during a potential cybersecurity incident, ensuring they can respond quickly and effectively to minimize the impact of any potential cyber-attacks. 4. Identification of gaps and weaknesses: By simulating real-world cyber-attacks, organizations can identify gaps in their security policies, procedures, and technologies, and take appropriate steps to address gaps in those areas to prevent cyber incidents. 5. Continuous improvement: Regularly conducting drills and exercises allows organizations to learn from their experiences and refine and update their Cybersecurity Plans and strategies to ensure ongoing effectiveness in preventing cyber incidents.
§ 101.645 Communications	1. Improved situational awareness: Clear communication enables stakeholders to stay informed about potential cyber threats and vulnerabilities, allowing them to respond promptly and effectively. 2. Enhanced collaboration: Effective communication fosters collaboration between different departments, stakeholders, and external partners, such as shipping companies, port authorities, and cybersecurity

	experts. This collaboration is crucial for identifying and mitigating cybersecurity risks. 3. Streamlined incident response: In the event of a cyber-attack or security breach, effective communication helps ensure that all relevant parties are aware of the situation and can coordinate their response efforts, minimizing the impact of the incident.
§ 101.650 Cybersecurity Measures. (a) *Account security measures*.	1. Preventing unauthorized use: A secured account prevents malicious actors from using it as a platform to spread malware, spam, or launch other attacks, ensuring systems remain operational and free from disruption. 2. Preserving digital identity: Prevents cyber criminals from using compromised accounts to impersonate the account holder, reducing identity theft or other fraudulent activities. This promotes trust in clients and partners and maintains the positive reputation of the organization in the marketplace. 3. Personal data protection: Accounts often contain or provide access to personal and sensitive information. Securing them ensures this data remains confidential and prevents it from being stolen, altered, or deleted. Further, the organizations can promote greater consumer confidence by protecting client data from malicious actors. 4. Maintaining privacy: Securing accounts helps in safeguarding private communications, photos, videos, and other personal content from unauthorized access and prevents it from being stolen, altered, or deleted, retaining the trust of clients and partners.
§ 101.650 Cybersecurity Measures. (b) *Device security measures*.	1. Limiting spread: Secured devices can prevent malware or malicious activities from spreading to other connected devices or networks, mitigating the effects of a cyber incident. 2. Data protection: Prevent unauthorized access, theft, or damage to personally identifiable information (PII) and other sensitive data. This includes financial information, health records, intellectual property, and other confidential data. By protecting the digital assets of the organization and its clients, organizations can help prevent their customers from becoming unwitting victims of cybercrime and lessen the impacts of cyber incidents on other economic participants, increasing consumer trust and commerce in the U.S. economy. 3. Reduced vulnerability: Regularly updated and secured devices are less vulnerable to the newest exploits or zero-day attacks, reducing the chance of

	cyber-attacks and mitigating the effects of a cyber incident. 4. Limiting spread: Secured devices can prevent malware or malicious activities from spreading to other connected devices or networks, mitigating the effects of a cyber incident.
§ 101.650 Cybersecurity Measures. (c) *Data security measures*.	1. Protecting sensitive information: Both vessels and port facilities handle sensitive data, such as personal information from crew and passengers, cargo details, financial transactions, and operational data. Data security measures help protect this information from unauthorized access, ensuring privacy and compliance with regulations for data protection. This measure helps prevent sensitive data from being stolen, altered, or deleted. Thus, the organization retains the trust of clients and partners and helps protect downstream economic participants from the effects of a cyber incident. 2. Building trust and reputation: Ensuring sensitive information remains secure and maintaining reliable operations contribute to a positive reputation for shipping companies and port facilities. This can lead to increased business opportunities, better relationships with stakeholders, and improved trust of clients and partners. 3. Promoting collaboration and information sharing subject to any applicable antitrust limitations: Secure data sharing between vessels, port facilities, and other stakeholders in the maritime industry is essential for effective collaboration and coordination, which helps facilitate early warnings about cyber threats and incidents to improve response times and mitigate impacts to other actors. Also, collective data and lessons learned can be used to develop better security practices and policies, helps determine the "appropriate levels of defense investments," and facilitate the "effective functioning of the cyber insurance market."[146] Data security measures help create an environment where parties can confidently share information without compromising its confidentiality, integrity, or availability. In its 2018 report, the CEA stated, "Government-monitored information-sharing platforms for anonymous disclosures of adverse cyber events are designed to increase the real-time awareness of cyber vulnerabilities and facilitate timely and publicly shared security solutions." The CEA also states that

	"the Government can be a valuable contributor to sharing threat information."[147]
§ 101.650 Cybersecurity Measures. (d) *Cybersecurity training for personnel.*	1. Enhanced security awareness: Cybersecurity training increases awareness of potential threats, vulnerabilities, and best practices, empowering personnel to take a proactive approach to addressing potential cyber risks and preventing cyber incidents. 2. Risk reduction: Training helps reduce the risk of successful cyber-attacks by teaching personnel how to identify, mitigate, and respond to threats. This reduces the potential for costly disruptions to maritime operations. 3. Improved incident response: Training equips personnel with the skills necessary to effectively respond to and recover from cyber incidents, which minimizes damage and downtime. 4. Strengthened collaboration and communication: Cybersecurity training fosters a culture of shared responsibility among all stakeholders, encouraging collaboration and communication between onboard and port facility personnel, as well as with other entities in the maritime industry, which helps prevent cyber incidents. 5. Continuous improvement: Regular cybersecurity training helps to keep personnel updated on the latest threats, technologies, and best practices, ensuring that maritime cybersecurity measures remain effective at preventing cyber incidents over time. 6. Reduction in human error: Cybersecurity training helps reduce the likelihood of human errors, such as falling victim to phishing attacks or accidentally exposing sensitive information, which are some of the most common causes of security incidents. This prevents an accidental cyber incident or falling victim to cyber-attacks such as a phishing attack.
§ 101.650 Cybersecurity Measures. (e) *Risk management.*	1. Protection of critical assets: By managing cybersecurity risks, ship and port facilities can better protect essential assets such as navigation systems, communication systems, cargo handling equipment, and access control systems from cyber threats, preventing disruptions to the system and maintaining business continuity. 2. Strengthened resilience: Developing a comprehensive CRM plan enables vessels and port facilities to respond to and recover from cyber incidents more quickly, mitigating the impact of an attack and recovering quickly from cyber-attacks.
§ 101.650 Cybersecurity	1. Reduced risk of cyber-attacks: By ensuring that hardware and software components are genuine,

Measures. (f) *Supply chain.*	untampered, and up to date, a secure supply chain helps to minimize vulnerabilities that can be exploited by cyber-attackers. Organizations with a secure supply chain can assure partners and customers of the reliability and safety of their goods and services. The benefit of avoiding supply chain disruptions may be the reduction in the "spillover effects to economically linked firms" and possibly a reduction in risk to "corporate partners, employees, customers, and firms with a similar business model."[148] Multiple authentication methods "may help to prevent cyber breaches across the supply chain,"[149] thereby reducing the cost of incidents when they occur. 2. Enhanced trust: A secure supply chain promotes trust among stakeholders, such as customers, partners, and regulatory agencies, by demonstrating a commitment to maintaining high cybersecurity standards. Organizations with a secure supply chain are better equipped to deal with disruptions, ensuring smooth operations and uninterrupted supply chain processes for their business partners, which maintains their organization's share of the commerce. 3. Better risk management: A comprehensive understanding of supply chain security risks allows organizations to develop effective risk management strategies, reducing the likelihood of cyber-attacks and their potential impact.
§ 101.650 Cybersecurity Measures. (g) *Resilience*.	1. Protection of sensitive data: Cyber resilience helps protect sensitive information, such as customer data, intellectual property, and trade secrets, from being stolen or compromised by hackers. Cyber resilience is about minimizing the financial losses associated with data breaches, ransomware, and other cyber threats. In its 2018 report, the CEA stated from a case study that a data breach of PII "will likely negatively affect the firm's ability to raise new capital and make new investments" and generally may adversely affect a firm's stock price.[150] Therefore, protecting sensitive information may be beneficial in protecting a firm's market value. 2. Business continuity: A cyber-resilient organization can maintain or quickly resume operations in the event of a cyber-attack, minimizing downtime and ensuring that essential services remain available to customers and stakeholders.

	3. Reputation and trust: A strong cyber resilience posture can enhance an organization's reputation and foster trust with customers, partners, and stakeholders, as it demonstrates a commitment to protecting their data and interests.
§ 101.650 Cybersecurity Measures. (h) *Network segmentation.*	1. Enhanced security: By segregating the network into separate segments, each with its own access controls, network segmentation helps to minimize the risk of unauthorized access to critical systems and sensitive data. This reduces the potential for cyber-attacks, data breaches, and other security incidents. It also reduces disruptions to operations and the impact of the cyber incident, and, thereby, economic losses to firms. 2. Easier monitoring and management: Segmented networks can be more easily monitored and managed. Administrators can more effectively track network traffic and troubleshoot issues, as well as apply and enforce security policies on a per-segment basis, preventing cyber incidents. 3. Isolating issues: If a security breach or a technical problem occurs within one network segment, it can be more easily contained, preventing the issue from spreading throughout the entire network. This can minimize the impact on operations and reduce the time and resources required to address the issue.
§ 101.650 Cybersecurity Measures. (i) *Physical security.*	1. Prevention of unauthorized access: Physical security measures can prevent unauthorized individuals from accessing sensitive areas or equipment, such as data centers, server rooms, or computer systems, where critical information is stored. Direct access to critical assets like servers, computers, and storage devices can cause immediate and significant damage. For example, destruction of physical assets can be a greater financial burden and more difficult to recover from after an attack, and the loss or destruction of PII, loss of financial data, and online services being down during the attack may result in lost revenues. 2. Protection of hardware: Implementing physical security measures can protect valuable hardware and equipment from theft, tampering, or damage. This includes devices like servers, workstations, routers, switches, and storage devices. Physical security represents a first line of defense against an internal attack. Direct access would enable the attackers to bypass digital security measures like firewalls or encryption, directly impacting core systems and data. Protecting hardware may help prevent against the loss or destruction of PII, loss of financial data, lost revenue, and so on.

	3. Deterrent to attackers: Visible physical security measures can deter potential attackers and make it more difficult for them to execute a cyber-attack. This can include security cameras, access control systems, or security personnel. Physical damage to infrastructure can take longer to recover from, be more costly, and is potentially irreversible. 4. Minimize the risk of insider threats: Physical security measures can help detect and prevent insider threats, such as employees or contractors attempting to access sensitive information or systems without authorization. Unlike digital breaches that often leave digital traces, physical breaches that are carried out by employees or contractors may go unnoticed until significant damage has occurred. Insider attacks can lead to loss of trust among customers, business partners, and stakeholders which can reduce the flow of commerce.

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Cyber Incidents and Risks Addressed by the Final Rule

In May 2021, a major pipeline company suffered a cyber-attack that disrupted the supply of fuel to the east coast of the United States. The company was forced to shut down operations for 6 days, which created gasoline and fuel shortages. In addition to the direct financial losses incurred by the company, the shutdown and subsequent shortages negatively impacted consumers, creating a 4 cents-per-gallon increase in average gasoline prices in the impacted areas, with price increases lingering even after the pipeline returned to operation.[151] Further, fuel shortages caused some fuel stations to temporarily close due to shortened supply. Some airlines in the impacted area were forced to scramble for additional fuel sources and added stops along select long-haul flights.[152] This was a ransomware cyber-attack that, based on public reports, was a result of the attackers using a legacy Virtual Private Network and the pipeline company not having a two-factor authentication method, more commonly known as multifactor authentication, in place on its computer systems.[153] Therefore, it was possible for computer hackers to access the pipeline company's computer systems with only a password.

This final rule can prevent an attack similar to the pipeline company attack from occurring by requiring owners and operators of vessels, facilities, and OCS facilities to implement account security measures and multifactor authentication on their computer systems. An example of multifactor authentication would be requiring a five- or six-digit passcode after a password has been entered by company personnel. Multifactor authentication is part of account security measures in § 101.650.

The encryption of data in § 101.650 under data security measures may have also relegated stolen data to being useless in the event of a cyber-attack. Furthermore, the pipeline company would likely have benefitted from a penetration test, which they had not conducted, to ensure the safety and security of its critical systems. The requirement of a penetration test simulates real-world cyber-attacks that helps companies identify the risks to their computer systems and prepare the necessary measures to lessen the severity of a cyber-attack.

Additionally, under § 101.650 for device security measures, documenting and identifying the network map and OT device configuration information, the pipeline company may have been able to detect exactly where the connections to the affected systems were and may have been able to isolate the problem without having to shut down all pipeline operations, as it did temporarily, which greatly affected its fuel supply operations.

Lastly, the pipeline company did not have a Cybersecurity Plan in place but did have an emergency response plan. With § 101.630, Cybersecurity Plan, and § 101.635, Drills and Exercises, a Cybersecurity Plan could have benefitted the company because it includes periodic training and exercises that increase the awareness of potential cyber threats and vulnerabilities throughout the organization. A Cybersecurity Plan also creates best practices so company personnel have the knowledge and skills to identify, mitigate, and respond to cyber threats when they occur. Creating the Cybersecurity Plan will allow the CySO to ensure all aspects of the Plan have been implemented at a CySO's respective company. Improved awareness of potential cybersecurity vulnerabilities and the steps taken to correct them could have helped the pipeline company identify the issue of a weak password before it was exploited.

In another cyber-attack that occurred in 2017 against a major global shipping company, computer hackers, based on public reports, exploited the company's computer systems because of vulnerabilities in Microsoft's Windows operating system. The malware was disguised as ransomware, which created

[146] Economic Report of the President supra note 2 at 370.

[147] Economic Report of the President supra note 2 at 370 and 327.

[148] Economic Report of the President supra note 2 at 362.

[149] Economic Report of the President supra note 2 at 382–383.

[150] Economic Report of the President supra note 2 at 342.

[151] Tsvetanov, T., & Slaria, S. (2021). The effect of the colonial pipeline shutdown on gasoline prices. Economics Letters, 209. *https://doi.org/10.1016/j.econlet.2021.110122,* accessed August 15, 2024.

[152] Josephs, L. (2021). *Pipeline outage forces American Airlines to add stops to some long-haul flights, Southwest flies in Fuel.* CNBC. *https://www.cnbc.com/2021/05/10/colonial-pipeline-shutdown-forces-airlines-to-consider-other-ways-to-get-fuel.html,* accessed August 15, 2024.

[153] U.S. Senate, Joseph Blount, Jr. Committee on Homeland Security & Governmental Affairs. ''Hearing Before the United States Senate Committee on Homeland Security and Governmental Affairs—Threats to Critical Infrastructure: Examining the Colonial Pipeline Cyber Attack.'' June 8, 2021. Washington, DC and via video conference. Text can be downloaded at *https://www.hsgac.senate.gov/hearings/threats-to-critical-infrastructure-examining-the-colonial-pipeline-cyber-attack/,* accessed August 15, 2024.

more damage to the company's computer systems. In 2016, one year before the attack, IT professionals at the shipping company highlighted imperfect patching policies, outdated operating systems, and a lack of network segmentation as the largest holes in the company's cybersecurity. While there were plans to implement measures to address these concerns, they were not undertaken, leaving the company exposed and underprepared for the attack it faced in 2017.

The effects of this attack were far-reaching. Beyond the direct financial losses incurred by the company (estimated at nearly $300 million), shipping delays and supply chain disruptions caused additional downstream economic losses that are much more difficult to quantify as shipments went unfulfilled for businesses and consumers, and trucks were forced to sit and wait at ports.[154] Under § 101.650, cybersecurity measures such as patching would likely prevent a similar attack from occurring and help prevent such losses. Patching U.S.-flagged vessel, facility, and OCS facility computer systems ensures they are not vulnerable to a cyber-attack because the latest software updates will be installed on these systems with periodic software patches.

Additionally, penetration testing may have identified the vulnerabilities in the shipping company's computer systems. Regular cybersecurity drills and exercises may have enabled the company's employees to quickly identify the cyber threat and may have reduced the impact and longevity of the cyber-attack. Further, network segmentation as in § 101.650(h) could have helped stop the spread of malware to all its computer systems, which ultimately crippled its operations. By separating networks, the shipping company could have better isolated the attack and kept larger portions of its business open, meaning fewer financial losses and downstream economic impacts to other companies and consumers.

Resilience played a significant role in the company's ability to recover from the cyber-attack quickly. Company personnel worked constantly to recover the affected data and eventually restored the data after 2 weeks.[155] In this final rule, § 101.650 contains provisions for resilience, which owners and operators of companies such as this must possess to recover from a cyber-attack. With proper backups of critical IT and OT systems, this company may have been able to recover more quickly from the attack.

The Coast Guard emphasizes that this final rule might also have quantifiable benefits from reducing or preventing lost productivity from a cyber incident and possibly lost revenues from the time that critical IT and OT systems are inoperable as a result of a cyber incident, if one occurs. Such benefits accrue to owners and operators of vessels and facilities, as well as to downstream participants in related commerce and to the public at large. For instance, short-term disruptions to the MTS can result in increases to commodity prices, while prolonged disruptions can lead to widespread supply chain shortages. Short- and long-term disruptions and delays may affect other domestic critical infrastructure and industries, such as our national defense system, that depend on materials transported via the MTS.

The societal impacts from a cybersecurity incident such as the attack that occurred against the global shipping company are difficult to quantify. They may include the effects of delays in cargo being delivered, which can result in the loss of some or all the cargo, especially if the cargo is comprised of perishable items such as food or raw goods; for example, certain types of oil that would be used later in the supply chain to manufacture final goods for consumption. Delays themselves may result in the unfulfillment of shipping orders to customers as vessels wait offshore to enter a port. This can create downstream effects for customers who would not receive goods because delivery trucks would sit idle at ports until OT and IT systems, either at the port or on board vessels, become operational again after the attack. Other societal impacts can include, but are not limited to, delays in shipments of medical supplies that may be carried on board vessels that would not be delivered on time to individuals and medical institutions relying on these supplies for their healthcare needs and service. Therefore, it should be noted that a cyber-attack may have considerable economic impacts on multiple industries in the United States such as, but not limited to, healthcare, food, transportation, utilities, defense, and retail. It should also be noted that the Coast Guard is not able to estimate, quantify, or predict the societal harm of shipping delays from a cyber-attack on the MTS or the economic impact it can cause because it would be dependent on many variables such as the type of attack, the severity of the attack, the length of the attack, the response by the affected parties to the attack, and so on.

The benefits of this final rule can be particularly salient in the case of a coordinated attack by a malicious actor seeking to disrupt critical infrastructure for broader purposes. For instance, in a circumstance where this final rule's provisions prevented a terrorist or nation-state actor[156] from using a cyber-attack in connection with a broader scheme that threatened human life, a strategic waterway, or a major port, the avoided economic and social costs may be substantial.

With respect to the latter, as noted by Cass R. Sunstein in *Laws of Fear: Beyond the Precautionary Principle (The Seeley Lectures, Series Number 6),* ''fear is a real social cost, and it is likely to lead to other social costs.''[157] In addition, Ackerman and Heinzerling state ''terrorism 'works' through the fear and demoralization caused by uncontrollable uncertainty.''[158] As devastating as the direct impacts of a successful cyber-attack can be on the

[154] Andy Greenberg, ''The Untold Story of NotPetya, the Most Devastating Cyberattack in History,'' *WIRED,* August 22, 2018; *https://www.wired.com/story/notpetya-cyberattack-ukraine-russia-code-crashed-the-world/,* accessed August 15, 2024.

[155] News reports suggest this recovery time was luck and not due to existing cybersecurity practices. ''Maersk staffers finally found one pristine backup in their Ghana office. By a stroke of luck, a blackout had knocked the server offline before the NotPetya attack, disconnecting it from the network. It contained a single clean copy of the company's domain controller data, and its discovery was a source of great relief to the recovery team.'' See Daniel E. Capano, ''Throwback Attack: How NotPetya Ransomware Took Down Maersk,'' September 30, 2021, *https://www.industrialcybersecuritypulse.com/threats-vulnerabilities/throwback-attack-how-notpetya-accidentally-took-down-global-shipping-giant-maersk/,* accessed August 15, 2024.

[156] For instance, the Office of the Director of National Intelligence recently reported on the cyber espionage and attack threats from multiple nation-states with respect to U.S. critical infrastructure. *See* Office of the Director of National Intelligence, Annual Threat Assessment of the U.S. Intelligence Community at 10, 15, 19 (Feb. 6, 2023), available at *https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf* (last visited August 15, 2024) (describing cyber threats associated with China, Russia, and Iran). A recent multi-national cybersecurity advisory noted that ''Russian state-sponsored cyber actors have demonstrated capabilities to compromise IT networks; develop mechanisms to maintain long-term, persistent access to IT networks; exfiltrate sensitive data from IT and [OT] networks; and disrupt critical [ICS/OT] functions by deploying destructive malware.'' *See* Joint Cybersecurity Advisory, Russian State Sponsored and Criminal Cyber Threat to Critical Infrastructure, Alert AA22–110A (May 9, 2022), available at: *https://www.cisa.gov/uscert/ncas/alerts/aa22-110a,* accessed August 15, 2024.

[157] Cass R. Sunstein, *Laws of Fear,* at 127; Cambridge University Press (2005).

[158] Frank Ackerman and Lisa Heinzerling, ''Priceless: On Knowing the Price of Everything and the Value of Nothing,'' 136–137 (2004).

U.S. MTS and supply chain, avoiding the impacts of the more difficult to measure indirect effects of fear and demoralization in connection with a coordinated attack would also entail substantial benefits. However, the Coast Guard is not able to quantify these potential benefits because they would depend on the incident, the duration of the incident, and how various private and public actors would respond to the incident.

Through the provisions of this final rule, benefits from implementing and enhancing a cybersecurity program may likely increase over time. By requiring that a range of cybersecurity measures be implemented, such as account security measures, vulnerability scanning, and automated backups, an organization can drastically reduce the downtime it takes to remedy a breach. Education and training can also help guide employees to identify potential email phishing scams, suspect links, and other criminal efforts, which will likely increase protection against external and internal threats before they occur. Further, because so many of the provisions include periodic updates and modifications following tests or assessments, we believe that cybersecurity programs will continue to improve each time they are tested and reexamined by the implementing entity.

This final rule addresses the challenges facing businesses today by requiring the implementation of safeguards to cybersecurity on the MTS. In adopting these measures, owners and operators of U.S.-flagged vessels, facilities, and OCS facilities can take preemptive action before malicious actors and the threats they pose take advantage of vulnerabilities in their critical IT and OT systems.

Analysis of Alternatives

The Coast Guard received multiple public comments regarding the penetration testing requirements that were the primary focus of our alternatives analysis in the NPRM. While we did receive a comment in support of the penetration testing requirement, many of the relevant comments highlighted concerns. Several commenters noted that penetration tests are expensive, and that the Coast Guard underestimated costs associated with the requirement. Further, some commenters stated that penetration tests would be ineffective at the frequency required in this final rule. In response, the Coast Guard revised our cost estimates to better reflect industry averages and continued to consider alternative frequencies of penetration testing in our analysis of alternatives. Despite the increased cost estimates, we ultimately decided to retain the proposed frequency of penetration testing, as analyzed below.

Cybersecurity has become a critical issue across all sectors. The maritime industry, a pivotal component of the global supply chain, is no exception. With an increasing amount of sensitive data being stored and processed online, regulations are needed to protect this data from unauthorized access and breaches. As cyber threats grow more sophisticated and pervasive, it has become increasingly apparent that clear and actionable cybersecurity regulations are needed for the maritime industry. Furthermore, cybersecurity is not just a matter of individual or business concerns, it is also a national security issue. Robust regulations help protect critical infrastructure and Government services from cyber-attacks that can threaten national stability. For instance, unauthorized access to a vessel's navigation system can lead to disastrous consequences, including collisions or groundings, which can put people at risk and lead to economic losses for the affected entities and the U.S. economy. To prevent incidents like this, the Coast Guard has included several regulatory provisions in this final rule that identify potential network and system vulnerabilities. Of these provisions, penetration testing is one of the more intensive and costly, but provides important benefits, including demonstrating where and how malicious actors can exploit system weaknesses, so that organizations can better prioritize cybersecurity upgrades and improvements based on risk.

Given the relatively high costs associated with penetration testing, and the significant vulnerability risks associated with not performing these tests, the Coast Guard contemplated four alternatives: (1) maintain the status quo; (2) require annual penetration testing and submission of results to the Coast Guard; (3) allow penetration testing at the discretion of the owner or operator; or (4) require penetration testing every 5 years in conjunction with the submission and approval of Cybersecurity Plans (the preferred alternative).

(1) Status quo

Currently, the Coast Guard does not require owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to conduct penetration tests as a part of their security plans. Despite this, survey data indicates that some MTS entities are already conducting penetration tests for their organizations as they face an evolving cyber threat landscape. While we expect the adoption of penetration testing policies to grow over time, 32 percent of owners and operators of facilities and OCS facilities (see footnote number 60) and an unknown number of owners and operators of U.S.-flagged vessels have yet to add this test to their suite of cybersecurity measures.

Maintaining the status quo by not requiring any penetration testing would reduce the costs for affected owners and operators of this final rule by $100,190,445, with an annualized cost reduction of $11,153,854 over a 10-year period of analysis, discounted at 2 percent, when compared to the preferred alternative. However, not requiring penetration testing would leave a significant gap in vulnerability detection capabilities of a large portion of the MTS, exposing MTS stakeholders and the wider U.S. economy to greater risk. Without periodic penetration tests to determine weaknesses in critical IT and OT systems, the affected population puts itself at greater risk of cyber incidents, which can endanger employees, consumers, and the supply chain. As a result, the Coast Guard rejected the status quo alternative and chose to require penetration tests every 5 years, aligned with the renewal of a Cybersecurity Plan, as discussed in alternative (4), below.

(2) Annual Penetration Testing

Penetration testing represents a crucial element of a comprehensive cybersecurity strategy. It involves proactively testing computer systems, networks, and software applications to identify vulnerabilities that might be exploited by attackers. Because penetration testing provides a much more in-depth review of the vulnerabilities and weaknesses of IT and OT systems, the Coast Guard considered an alternative that would require it on an annual basis. Through annual penetration testing, an organization would be better equipped to identify weaknesses within their systems and prepare for real cyber threats. However, the costs and resources needed for penetration testing can be significant. As such, annual testing might impose an undue burden on the affected organizations.

Based on Coast Guard estimates, penetration testing costs approximately $10,000 per test, plus an additional $100 per IP address at the organization to capture network complexity. By increasing the frequency of these tests, the costs to U.S.-flagged vessels, facilities, and OCS facilities would increase significantly. Under the preferred alternative, which requires

penetration testing every 5 years in conjunction with the submission and renewal of a Cybersecurity Plan, the Coast Guard estimates total costs of penetration testing to industry of $100,190,445 and annualized costs of $11,153,854 over a 10-year period of analysis, discounted at 2 percent (see the *Penetration Testing* section of the RA for more details on the calculations underlying this estimate). Requiring annual penetration testing would increase industry costs for penetration testing by just under 400 percent, to approximately $491,322,248 total and $54,697,200 annualized over a 10-year period of analysis, discounted at 2 percent. This alternative would result in a 31.4-percent increase in the total cost of this final rule, bringing the total cost to industry and the Government to approximately $1,636,726,735 total and $182,211,104, annualized, over a 10-year period of analysis, discounted at 2 percent. The Coast Guard believes these increased costs are prohibitive and ultimately decided to reject this alternative. See table 52 for the costs associated with annual penetration testing over a 10-year period of analysis.

Table 52: Estimated Penetration Testing Costs of the Alternative for U.S.-flagged Vessels, Facilities, and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 2-percent Discount Rates)

Year	Facilities and OCS Facilities Cost	U.S.-flagged Vessel Cost	Total Cost	2 Percent
1	$10,887,200	$43,810,000	$54,697,200	$53,624,706
2	$10,887,200	$43,810,000	$54,697,200	$52,573,241
3	$10,887,200	$43,810,000	$54,697,200	$51,542,393
4	$10,887,200	$43,810,000	$54,697,200	$50,531,758
5	$10,887,200	$43,810,000	$54,697,200	$49,540,939
6	$10,887,200	$43,810,000	$54,697,200	$48,569,548
7	$10,887,200	$43,810,000	$54,697,200	$47,617,204
8	$10,887,200	$43,810,000	$54,697,200	$46,683,534
9	$10,887,200	$43,810,000	$54,697,200	$45,768,170
10	$10,887,200	$43,810,000	$54,697,200	$44,870,755
Total	**$108,872,000**	**$438,100,000**	**$546,972,000**	**$491,322,248**
Annualized				**$54,697,200**

Note: Totals may not sum due to independent rounding.

(3) Penetration Testing at the Discretion of an Owner or Operator

Given the cost of penetration testing, particularly for small businesses with limited resources, the Coast Guard considered an alternative that would make penetration an optional provision. This would allow those in the affected population to choose to prioritize different cybersecurity measures. The decision to undertake penetration testing could be made as a result of thorough risk assessments for each organization, considering its operational environments, risk profile, and pertinent threats.

Under this alternative, an owner or operator, or a CySO, on their behalf, could determine when a penetration test is warranted, if at all. Because the testing would be optional, we assume that fewer owners and operators would conduct penetration testing in a given year; however, we have no way of knowing how many this would be. If none of the affected owners or operators elected to conduct penetration testing, this can hypothetically reduce costs for owners and operators for penetration testing down to zero, meaning a cost reduction of $100,190,445 and an annualized cost reduction of $11,153,854 over a 10-year period of analysis, discounted at 2 percent when compared to the preferred alternative.

However, the value of penetration testing for most organizations cannot be overstated. When integrated into a comprehensive cybersecurity strategy, penetration testing can be very effective in identifying vulnerabilities. By fostering a proactive rather than reactive approach in cybersecurity, penetration testing enables organizations to stay ahead of potential threats and better understand how malicious actors can exploit weaknesses in IT and OT systems. This is particularly crucial given the quickly evolving landscape of cyber threats. In addition, because the costs of a potential cyber incident can be high, with potential downstream economic impacts, the Coast Guard must prioritize some level of oversight on provisions that can lessen the risk of a cyber incident. Therefore, we rejected this alternative, despite the potential cost savings. It should be noted, however, that according to § 101.665, owners and operators of U.S.-flagged vessels, facilities, and OCS facilities can seek a waiver or an equivalence determination, penetration testing included.

(4) Penetration Testing in Conjunction With Cybersecurity Plan Submission (Preferred Alternative)

In an effort to best balance the cost of annual penetration testing with the risk of leaving the MTS vulnerable to cyber incidents with even more costly impacts, the Coast Guard considered (and ultimately chose) requiring penetration tests every 5 years, aligned with the renewal of a Cybersecurity Plan. This is the preferred alternative because penetration testing would

supplement other cybersecurity measures in the regulations such as vulnerability scanning, annual Cybersecurity Assessments and audits, quarterly drills, and annual exercises, which may limit the necessity of annual penetration testing. However, making penetration testing an optional requirement for organizations can inadvertently leave them more exposed to cyber-attacks and limit the Coast Guard's understanding of the MTS' cybersecurity readiness. Under the preferred alternative, owners and operators are still free to conduct more frequent tests at their discretion if they would like to increase their awareness of vulnerabilities. Alternatively, they can apply for waivers or equivalence determinations if they feel like they cannot meet the requirements related to penetration testing or find them unnecessary. According to § 101.665, an owner or operator, after completing the required Cybersecurity Assessment, may seek a waiver or an equivalence determination for any requirements in subpart F consistent with parallel waiver and equivalence provisions in 33 CFR parts 104, 105, and 106. If an owner or operator must temporarily deviate from the requirements, they must notify the cognizant COTP for facilities or OCS facilities, or the MSC for U.S.-flagged vessels, and may request temporary permission to continue to operate.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, we have considered the impact of this final rule on small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The U.S. Small Business Administration (SBA) provides guidelines on the analytical process to assess the impact of a particular rulemaking on small entities.[159] With its proposed rule, the Coast Guard prepared and published an Initial Regulatory Flexibility Analysis (IRFA) because a threshold analysis indicated that the proposed rule may have a significant impact on a substantial number of small entities. After reviewing public comments, the Coast Guard's conclusion has not changed; it cannot certify the rule pursuant to the RFA. As a result, it is required to prepare a FRFA for publication with the final rule. A FRFA discussing the impact of this rule on small entities follows.

A FRFA addresses the following:

(1) A statement of the need for, and objectives of, the rule.

(2) A statement of the significant issues raised by public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. A statement of the need for, and objective of, the rule.

The maritime industry is undergoing a significant transformation that involves the increased use of cyber-connected systems. While these increasingly interconnected and networked systems improve commercial vessel and port facility operations, they also bring a new set of challenges affecting design, operations, safety, security, training, and the workforce.

Every day, malicious actors (including, but not limited to, individuals, groups, and adversary nations posing a threat) attempt unauthorized access to control system devices or networks using various communication channels. Cybersecurity threats require the maritime community to effectively manage constantly changing risks to create a safe cyber environment. Vulnerabilities in the operation of vital systems increase the risk of cyber-attacks. Unmitigated cyber-related risks to the maritime domain can compromise the critical infrastructure that people and companies depend on to fulfill their daily needs and that maintain the effective operation of the MTS.

A 2018 report by the CEA stated that ''[a] firm with weak cybersecurity imposes negative externalities on its customers, employees, and other firms, tied to it through partnerships and supply chain relations. In the presence of externalities, firms would rationally underinvest in cybersecurity relative to the socially optimal level. Therefore, it often falls to regulators to devise a series of penalties and incentives to increase the level of investment to the desired level.'' In the report, the CEA also emphasized the following:

''[c]ontinued cooperation between the public and private sectors is the key to effectively managing cybersecurity risks. . . . The government is likewise important in incentivizing cyber protection—for example, by disseminating new cybersecurity standards, sharing best practices, conducting basic research on cybersecurity, protecting critical infrastructures, preparing future employees for the cybersecurity workforce, and enforcing the rule of law in cyberspace.'' [160]

The objective of this final rule is to respond to the growing need for cybersecurity regulation in the MTS by establishing minimum performance-based cybersecurity requirements for U.S.-flagged vessels, facilities, and OCS facilities subject to MTSA. The requirements include account security measures, device security measures, data security measures, governance and training, risk management, supply chain management, resilience, network segmentation, reporting, and physical security.

2. A statement of the significant issues raised by public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

The Coast Guard did not receive any public comments specifically addressing the IRFA. However, it received several comments addressing costs experienced by regulated owners and operators of facilities and vessels, which affect estimates of per-entity costs, including the following:

[159] U.S. Small Business Administration (SBA). 2017. *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act. https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf*, accessed November 1, 2024.

[160] Economic Report of the President *supra* note 2 at 324–25.

• *Commenters stated that the cost estimates for penetration testing in the NPRM were underestimated.* In response to these comments, the Coast Guard adjusted its penetration testing cost estimates based on information provided by Coast Guard SMEs. The Coast Guard doubled the estimate of the initial penetration testing cost from $5,000 in the NPRM to $10,000 for the final rule, the cost per IP address from $50 in the NPRM to $100 for the final rule. In addition, the number of IP addresses per organization, which is now based on the number of employees in an organization, multiplied by 2.

• *Commenters raised concerns about the feasibility of combining cybersecurity and physical security drills and exercises and stated that we underestimated costs.* In its cost analysis, the Coast Guard now assumes that that no owners or operators will combine their cybersecurity drills with existing drills, and that all employees at the organization will participate in the new drills. Based on new information from Coast Guard SMEs in CG–FAC and LANTAREA, Coast Guard adjusted its cost estimates to reflect 8 hours for drill development and 4 hours for drill participation for vessel shoreside employees and the same share of facility and OCS facility employees. Based on this information, Coast Guard also adjusted its cost estimate for cybersecurity exercise development from 8 hours to 20 hours. To reduce the burden associated with the higher estimated cost of drills and exercises, the Coast Guard has reduced the frequency of required drills from quarterly to at least two drills every 12 months.

• Commenters noted a lack of reference to Alternative Security Programs (ASPs), and one commenter recommended that the Coast Guard amend § 101.630(a) to add ASPs to the requirement for CySOs. Some commenters specifically asked about using an ASP from the PVA, a trade association that represents several small entities. The Coast Guard will allow owners and operators to use ASPs to comply with this final rule. We added additional text to § 101.660 to clarify that ASP provisions apply to cybersecurity compliance documentation, giving small entities greater flexibility in how they can comply with the final rule. Given the unique nature of cybersecurity threats, vulnerabilities, and mitigation strategies, owners and operators must ensure that use of ASPs—including PVA's ASP, or ASPs developed on behalf of other small entities—contains those items specific to each U.S.-flagged vessel, facility, and OCS facility. The Coast Guard will evaluate each ASP's cybersecurity component to ensure full regulatory compliance with each applicable requirement.

• *Comments suggested that the affected population counts for U.S.-flagged vessels regulated under subchapters H and K used in the NPRM were inaccurate and provided updated numbers.* The Coast Guard updated its approach to counting the vessels that will be required to comply with this final rule. After including the public vessels, the Coast Guard finds that the population counts for U.S.-flagged vessels under subchapters K and H are approximately 430 and 131, respectively.

One commenter also stated that the regulation would create substantial costs for small entities in the commercial shipping sector. The Coast Guard has made waivers and equivalencies in § 101.665 available to affected owners and operators. These waivers offer additional flexibility to small entities, regardless of sector, that are not able to meet the full requirements. To further reduce the burden for impacted entities, the Coast Guard has opted for a delayed effective date of 180 days after the rule's publication in the **Federal Register**, extended the compliance deadline for the required Cybersecurity Assessment from 12 months to 24 months after the rule's effective date, and extended the compliance deadline for the Cybersecurity Plan from after the second annual audit of the existing physical security plan to 24 months after the rule's effective date. The Coast Guard is also requesting comment on a potential 2–5-year delay of the implementation periods for U.S.-flagged vessels and any potential costs or benefits the delay may have on small entities. However, beyond these changes to the implementation period and the reduction in cybersecurity drill frequency, the requirements of this final rule remain unchanged.

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

The Chief Counsel for Advocacy of the SBA did not provide comment on the NPRM or the IRFA.

4. A description of and estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This section considers the number of small entities likely to be affected by this final rule. First, we determined which owners of U.S.-flagged vessels, facilities, and OCS facilities in the affected population qualify as small businesses, small not-for-profit organizations, or small governments. Then, we compared reported annual revenues among the identified small entities with annual compliance costs estimated by the Coast Guard.

Number of Small Entities Affected

As a first step, we identified the universe of affected owners and operators of U.S.-flagged vessels, facilities, and OCS facilities using information contained in the Coast Guard's MISLE database.[161] The affected population includes a mix of businesses, not-for-profit organizations, and governments. Because we applied a different method to determine which governments are small governments, the first step was to distinguish Government entities from all other entities in the affected population. To accomplish this, we searched on several keywords to identify and separate the universe of Government entities.[162] From the full population of affected owners (for profit, not-for-profit, and governments), we selected a random sample of U.S.-flagged vessel owners and a separate random sample of facility and OCS facility owners.[163]

For the sample of affected facility and vessel owners that are businesses and not-for-profit organizations, we identified which are likely to be small entities by matching business- and organization-specific information for a random sample with size standards for small businesses published in the SBA's Table of Small Business Size Standards.[164] [165] The SBA defines small

[161] The Coast Guard provided MISLE data to IEc on August 13, 2024.

[162] These keywords included: city, town, borough, state, commonwealth, district, authority, administration, municipality, department, army, port, division, and government. We visually inspect the results of the keyword searches to ensure that the identified entities are governments.

[163] Following the Coast Guard's recommended approach for drawing a random sample, we obtain sample sizes by applying two equations ($S = [(Z-2) \times p \times q] \div (e-2)$, and $S = N \div [1+(N \times (e-2))]$ where S is the sample size, Z=1.96, e= 0.05, p=0.5, q=0.5, and N = the number of vessel or facility owners in MISLE), and selecting the higher value obtained. We then apply random numbers between 0 and 1 to the unique owners identified in MISLE and select S number of owners with the highest random values. We perform this process separately for vessel owners and facility owners.

[164] U.S. Small Business Association (SBA). ''Table of size standards.'' Available at: *https://www.sba.gov/document/support-Table-size-standards* accessed November 14, 2024. Effective March 17, 2023.

businesses in terms of firm revenues or number of employees. Size thresholds of small businesses differ depending on the industry sector, defined in terms of NAICS codes; therefore, the analysis also requires us to identify the relevant NAICS codes for the affected owners of facilities and vessels. This analysis relied on the following steps:

(1) Upload the names and location information of the sampled entities to D&B Hoovers' website and rely on D&B Hoovers' proprietary algorithm to match entities with the information stored in its database; [166]

(2) Collect the primary NAICS code, ownership type,[167] number of employees,[168] and annual revenue information from entities that matched the information in D&B Hoovers' database;

(3) Determine which owners are small businesses and small not-for-profit organizations based on the SBA's definitions of small businesses matched to each NAICS code; [169] [170]

(4) Calculate the proportion of sampled businesses and not-for-profit organizations that are small entities; and

(5) Estimate the number of small businesses or small not-for-profit organization in the population by multiplying the sample proportions by the number of unique affected businesses and organizations in MISLE.

For the sample of government or quasi-governmental organization owners, we applied a different method to determine which are small. Small governmental jurisdictions are defined as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000 (5 U.S.C. 601). The 2020 U.S. Census informed our classification of Government jurisdictions.[171]

Facility and OCS Facility Owners

Coast Guard identified 1,372 affected facility owners in MISLE.[172] Of these, a keyword search identified that 94 are Government entities and the remaining 1,278 are businesses and not-for-profit organizations. We generated a random sample of 384 affected owners, which included 37 of the affected governments also identified using the same keywords.[173] The names and location information of the owners in the sample were uploaded to D&B Hoovers. For the 347 business and not-for-profit organizations included in the sample, the search function returned information for 184 (53 percent) with at least 1 identified NAICS code.[174] Included among the owners that matched with records in D&B Hoovers were 181 businesses and 3 not-for-profit organizations. The 181 businesses categorize into 83 NAICS codes and 1 independent code used for ''Unclassified Establishments.'' [175]

Table 53 reports the number of businesses in the top 10 most frequently occurring classification codes (NAICS and the code for Unclassified Establishments) in the sample, as well as the portion that meet the definition of small business. An additional row summarizes the businesses across the remaining 74 NAICS codes. As presented, 155 of 181 businesses (86 percent) qualify as small based on their revenue or number of employees. Additionally, all 3 not-for-profit organizations are small organizations (100 percent). Under the assumption that all 163 facility owners in the sample for which D&B Hoovers profiles are not available are small businesses or organizations, we estimate that 321 of the 347 sampled facility owners are small entities (93 percent). Table 53 also presents findings for the governments. This analysis identifies that 11 of the 37 sampled government owners are small governments (30 percent).

Applying the percentage of affected small businesses and not-for-profit organizations identified in the sample (93 percent) to the total number of businesses and organizations identified in MISLE (1,278), we estimate that approximately 1,189 small businesses and small not-for-profit organizations may be directly affected by this final rule. Multiplying the percentage of affected small governments in the sample (30 percent) by the total number of governments identified with a keyword search of MISLE data (94), we estimate that approximately 28 small governments may be affected by this final rule. In total, 1,217 small entities that own facilities and OCS facilities may be affected by this final rule.

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[165] To determine whether not-for-profit organizations are small entities, we rely on the self-identified NAICS code reported by each organization to D&B Hoovers and the SBA's small business size standard for that NAICS code. Any organization qualifying as a small business pursuant to SBA's threshold is considered to be ''not dominant in its field'' (15 U.S.C. 632) and is categorized as a small organization. If no NAICS code is available, we assume the organization is small.

[166] This process relies on D&B Hoovers' automated search functions to identify the business profiles associated with a list of businesses, not manual business-by-business searching. This search functionality is described in more detail in D&B Hoovers User Guide (2019, p. 25). You can find this resource at *https://app.dnbhoovers.com/product/wp-content/uploads/2020/10/DB-Hoovers-User-Guide-920.pdf.* The matched data were downloaded from D&B Hoovers on September 2, 2024, accessed via: *https://app.dnbhoovers.com/login.*

[167] D&B Hoovers provides ownership type for the matched entities. For all entities not identified as governments using the keywords presented in footnote 160, this analysis considers all entities marked as ''private,'' ''public,'' or ''partnership'' as businesses. ''Nonprofit'' ownership status is used to identify not-for-profit organizations.

[168] D&B Hoovers contains data fields for both ''employees at single site'' and ''employees at all sites.'' When both numbers are provided, we default to using the ''employees at all sites'' entry to capture the size of the larger parent company. When only the ''employees at single site'' information is available, we use that entry instead.

[169] In some cases, SBA provides a size standard for the NAICS code as well as an ''exeption'' for a sub-set of businesses with specific activity types. This analysis does not consider the ''exeptions'' when classifying businesses and not-for-profit organizations as small.

[170] Revenue data contained in D&B Hoovers is presumed to be reported in 2023 dollars, aligned with the year preceding our download. This dollar year directly matches the year SBA last published its definitions of small businesses therefore we make no adjustments to the information from D&B Hoovers when comparing with SBA's reported thresholds.

[171] 2020 U.S. Census data accessed from: *https://www.census.gov/quickfacts/,* accessed October 21, 2024.

[172] Owners of facilities and OCS facilities are determined using various data fields in MISLE. Owner information is not reported in a standard format. Therefore, considerable data cleaning was necessary to identify unique owner names and location information. This analysis assumes that the sample of facilities with owner information identified is broadly representative of all regulated facility owners.

[173] The sample size of 384 is generated using the procedure described in footnote 161. Because OCS owners represent 1 percent of all facility owners in MISLE, we randomly selected 3 (1 percent of 384) OCS owners and 381 (99 percent of 384) facility owners from the unique owners identified in MISLE.

[174] Information for the identified governments were included in the D&B Hoovers search, but the D&B Hoovers output for these entities is not used in the analysis. Instead, government population data were manually obtained from the U.S. census.

[175] D&B Hoovers uses code 999990 for ''Unclassified Establishments.'' Because SBA does not provide a size standard for this code, we assume all entities with code 999990 are small. For the matched facilities owners, 5 entities are classified with this code in D&B Hoovers.

Table 53: Number and Portion of Small Entities in Random Sample Affected by the Final Rule's Requirements for Facilities and OCS Facilities

NAICS Code	Type of Industry	Size Standard Type	Size Standard (2023 Dollars)	Total Sampled Owners	Number of Sampled Owners Classified as Small	Percent Small
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	Number of employees	200	14	12	86%
488320	Marine Cargo Handling	Revenue	$47 million	9	9	100%
213112	Support Activities for Oil and Gas Operations	Revenue	$47 million	7	4	57%
336611	Ship Building and Repairing	Number of employees	1,300	7	7	100%
493190	Other Warehousing and Storage	Revenue	$36.5 million	6	5	83%
324110	Petroleum Refineries	Number of employees	1,500	6	6	100%
325211	Plastics Material and Resin Manufacturing	Number of employees	1,250	6	4	67%
483211	Inland Water Freight Transportation	Number of employees	1,050	5	5	100%
999990	Unclassified Establishments	Not available	Not available	5	5	100%
221118	Other Electric Power Generation	Number of employees	650	5	2	40%
74 Additional NAICS Codes	Various	Various	Various	111	96	86%
Matched Businesses	**Various**	**Various**	**Various**	**181**	**155**	**86%**
Matched Not-For-Profit Organizations	**Various**	**Various**	**Various**	**3**	**3**	**100%**
Unmatched Business and Organizations				**163**	**163**	**100%**

All Sampled Business and Not-for-Profit Organizations					**347**	**321**	**93%**
All Sampled Governments	**Public Sector**	**Population**	**50,000**		**37**	**11**	**30%**

Notes:

- The first 10 rows include the most frequently occurring classification codes among businesses in the sample of owners that matched in D&B Hoovers.
- NAICS codes and type of industry reflect the 2022 NAICS classification.
- Small businesses and small not-for-profit organizations were identified using the SBA's Table of Small Business Size Standards (March 17, 2023, version).
- The owners considered in this analysis were established from the Coast Guard's MISLE database and classified as small entities based on information obtained from D&B Hoovers and the 2020 U.S. Census.
- See the main text for further analytic details and assumptions.
- Code 999990 is used by D&B Hoovers to identify "Unclassified Establishments." All entities identified by code 999990 are assumed to be small.

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Vessel Owners

Across the categories of U.S.-flagged vessels regulated by the Coast Guard and considered for this rule, MISLE identifies over 10,000 vessels owned by 2,075 unique entities, including 72 government owners and 2,003 business and not-for-profit organization owners. We generated a random sample of 385 affected owners, which included 14 affected governments.[176] The names and location information in the sample were uploaded to D&B Hoovers. For the 371 business and not-for-profit organizations in the sample, the search function returned information for 249 owners (67 percent) with at least 1 identified NAICS code. Included among the owners that matched with records in D&B Hoovers were 244 businesses and 5 not-for-profit organizations. The 244 businesses categorize into 74 NAICS codes and 1 independent code used for ''Unclassified Establishments.[177]

Table 54 reports the number of businesses in the top 10 most frequently occurring classification codes (NAICS and the code for Unclassified Establishments) in the sample, as well as the portion that meet the definition of small business. An additional row summarizes the businesses across the remaining 65 NAICS codes. As presented, 228 of 244 businesses (93 percent) qualify as small based on their revenue or number of employees. Additionally, the 5 not-for-profit organizations include 4 small organizations (80 percent). Under the assumption that all 122 U.S.-flagged vessel owners in the sample for which D&B Hoovers profiles are not available are small entities, we estimate that 354 of the 371 sampled U.S.-flagged vessel owners (95 percent) are small businesses or small not-for-profit organizations. Table 54 additionally reports that our sample of 14 governments includes 2 small governments (14 percent).

Applying the percentage of affected small businesses and not-for-profit organizations identified in the sample (95 percent) to the total number of businesses and organizations identified in MISLE (2,003), we estimate that approximately 1,903 small businesses and small not-for-profit organizations may be directly affected by this final rule. Multiplying the percentage of affected small governments in the sample (14 percent) by the total number of governments identified with a keyword search of MISLE data (72), we estimate that approximately 10 small governments may be affected by this final rule. In total, 1,913 small U.S. entities that own U.S.-flagged vessels may be affected by this final rule.

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[176] The sample size of 385 is obtained by applying the procedure described in footnote 161 and including the one MODU owner identified in MISLE. To ensure that vessel owners of all affected types are represented in the sample, we sampled based on the distribution of owners by vessel type in MISLE: 211 Towing (55 percent of 384), 76 Barge (20 percent), 30 [U.S.-flagged passenger vessels subject to subchapter K] Pax K (8 percent), 25 OSV (7 percent), 21 Sub I (5 percent), 8 Tank (2 percent), 7 Pax H (2 percent), and 6 Pax International Travel (2 percent). Percentages do not sum to 100 due to rounding.

[177] D&B Hoovers uses code 999990 for ''Unclassified Establishments.'' Because SBA does not provide a size standard for this code, we assume all entities with code 999990 are small. For the matched vessel owners, 34 entities are classified with this code in D&B Hoovers.

Table 54: Number and Portion of Small Entities in Random Sample Affected by the Final Rule's Requirements for U.S.-flagged Vessels

NAICS Code	Type of Industry	Size Standard Type	Size Standard (2023 Dollars)	Total Sampled Owners	Number of Sampled Owners Classified as Small	Percent Small
999990	Unclassified Establishments	Not available	Not available	34	34	100%
488330	Navigational Services to Shipping	Revenue	$47 million	25	23	92%
237990	Other Heavy and Civil Engineering Construction	Revenue	$45 million	23	22	96%
483211	Inland Water Freight Transportation	Number of employees	1,050	9	9	100%
488999	All Other Support Activities for Transportation	Revenue	$25 million	8	8	100%
487210	Scenic and Sightseeing Transportation, Water	Revenue	$14 million	8	7	88%
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	Number of employees	100	8	8	100%
483111	Deep Sea Freight Transportation	Number of employees	1,050	7	6	86%
483212	Inland Water Passenger Transportation	Number of employees	550	7	7	100%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	Revenue	$40 million	6	5	83%
65 Additional NAICS Codes	Various	Various	Various	109	99	91%
Matched Businesses	**Various**	**Various**	**Various**	**244**	**228**	**93%**
Matched Not-For-Profit Organizations	**Various**	**Various**	**Various**	**5**	**4**	**80%**
Unmatched Businesses and Organizations				**122**	**122**	**100%**

All Sampled Businesses and Not-for-Profit Organizations					**371**	**354**		**95%**
All Sampled Governments	**Public Sector**	**Population**	**50,000**		**14**	**2**		**14%**

Notes:

- The first 10 rows include the most frequently occurring classification codes among businesses in the sample of owners that matched in D&B Hoovers.
- NAICS codes and type of industry reflect the 2022 NAICS classification.
- Small businesses and small not-for-profit organizations were identified using the SBA's Table of Small Business Size Standards (March 17, 2023, version).
- The owners considered in this analysis were established from the Coast Guard's MISLE database and classified as small entities based on information obtained from D&B Hoovers and the 2020 U.S. Census.
- See the main text for further analytic details and assumptions.
- Code 999990 is used by D&B Hoovers to identify "Unclassified Establishments." All entities identified by code 999990 are assumed to be small.

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Summary

Across the combined 3,447 affected owners of U.S.-flagged vessels, facilities, or OCS facilities, we estimate that 3,130 small entities (91 percent) may be affected, including small businesses, small not-for-profit organizations, and small governments. Because this analysis assumes all owners for which NAICS codes, employment, or revenue information is unmatched in D&B Hoovers are small entities, the projected number of affected small entities may be overestimated.

Costs Relative to Revenues

This section compares the cost of the changes per U.S.-flagged vessel and facility owner with annual revenues of affected small entities. Revenue information is obtained from D&B Hoovers for small businesses and small not-for-profit organizations.[178] For small governments, we use revenue information contained in publicly available annual financial reports for the year 2022. We assume that the findings of this analysis are indicative of the impacts on entities for which revenue information is not readily available.

The RFA does not define a ''significant effect'' in quantitative terms. In its guidance to agencies on how to comply with the RFA, SBA states, ''[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulation.'' SBA also provides a list of options that can be used to determine whether an impact could be significant on a small entity, ''the impact could be significant if the cost of the proposed regulation (a) eliminates more than 10 percent of the businesses' profits; (b) exceeds 1 percent of the gross revenues of the entities in a particular sector or (c) exceeds 5 percent of the labor costs of the entities in the sector.'' [179] Therefore, this analysis considers the 1-percent threshold when analyzing these potential impacts.

Facility and OCS Facility Owners

Assuming that an operator would need to implement each of the provisions required by this final rule, the Coast Guard estimates that the highest single-year costs are incurred in Year 2 of the analysis period. We estimate that the Year 2 cost is $73,320 for an owner or operator with one facility. Each additional facility owned or operated would increase the estimated annual costs by the cost of an additional Cybersecurity Plan, since each facility will require an individual Cybersecurity Plan.[180] Table 55 provides a breakdown of the costs per owner or operator of one facility. The text that follows provides more detail on these cost calculations.

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[178] Revenue data from D&B Hoovers is presumed to be reported in 2023 dollars, the fiscal year preceding the year of download. We deflate these data to 2022 dollars to make the cost estimates using Gross Domestic Product reports from the Bureau of Economic Analysis, available at: *https://apps.bea.gov/iTable/?ReqID=19&step=4&isuri=1&1921=flatfiles.* See Table 1.1.9 of Section 1, accessed July 1, 2024.

[179] U.S. Small Business Administration (SBA). 2017. A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act. Available at: *https://advocacy.sba.gov/2017/08/31/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/.* Pages 18–19, accessed October 21, 2024.

[180] For example, consider an entity that owns four facilities. The estimated cost to that entity in Year 2 is calculated as follows: = $73,320 + (3 × $8,414) = $98,562.

Table 55: Summary of Total Costs of the Final Rule per Owner or Operator of One Facility and OCS Facility (2022 Dollars, 10-year Undiscounted Costs)

Year	Facility Count	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Total
1	1	$4,207	$20,407	$576	$20,100	$4,633	$0	$3,390	$53,313
2	1	$8,414	$20,407	$576	$11,100	$4,633	$24,800	$3,390	$73,320
3	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
4	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
5	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
6	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
7	1	$1,893	$20,407	$576	$11,100	$4,633	$24,800	$3,390	$66,799
8	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
9	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
10	1	$4,207	$20,407	$576	$11,100	$4,633	$0	$3,390	$44,313
Total									**$503,623**

Note: Totals may not sum due to independent rounding.

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To estimate the cost of the Cybersecurity Plan development, resubmission, annual maintenance, and audits for an individual facility or OCS facility owner or operator, we utilize the following estimates: The hour-burden estimates are 100 hours for developing the Cybersecurity Plan (average hour burden), 10 hours for annual maintenance of the Cybersecurity Plan (which will include amendments), 15 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans.

Based on estimates from the Coast Guard's FSP and OCS FSP reviewers at local inspections offices, approximately

10 percent of Plans will need to be revised and resubmitted in the second year, which is consistent with the current resubmission rate for FSPs and OCS FSPs. For renewals of plans after 5 years (occurring in the seventh year of the analysis period), Plans will need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of the analysis, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases, resulting in an upper-bound (high) estimate of per-entity costs. We estimate the time for revision and resubmission to be about half the time to develop the plan itself, or 50 hours in the second year of submission, and 7.5 hours after 5 years (in the seventh year of the analysis period). Because we include the annual Cybersecurity Assessment in the development cost of plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures, we divide the estimated 100 hours to develop plans equally across the first and second years of analysis.

Using the CySO loaded hourly wage of $84.14, we estimate the Cybersecurity Plan related costs by adding the total number of hours to develop, resubmit, maintain, and audit each year and multiplying by the CySO wage. For example, we estimate that owners will incur $8,414 in costs in Year 2 of the analysis period [1 facility × $84.14 CySO wage × (50 hours to develop the Plan + 50 hours to revise and resubmit the Plan) = $8,414]. Table 56 displays the per-entity cost estimates for an owner or operator of one facility over a 10-year period of analysis. For an owner or operator with multiple facilities, we estimate the total costs by multiplying the estimates in table 56 by the number of owned facilities.

Table 56: Cybersecurity Plan-Related Costs per Owner or Operator of a Facility and OCS Facility (2022 Dollars, 10-year Undiscounted Costs)

Year	Facility Count	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	1	$84.14	50	0	0	0	$4,207
2	1	$84.14	50	50	0	0	$8,414
3	1	$84.14	0	0	10	40	$4,207
4	1	$84.14	0	0	10	40	$4,207
5	1	$84.14	0	0	10	40	$4,207
6	1	$84.14	0	0	10	40	$4,207
7	1	$84.14	15	7.5	0	0	$1,893
8	1	$84.14	0	0	10	40	$4,207
9	1	$84.14	0	0	10	40	$4,207
10	1	$84.14	0	0	10	40	$4,207
Total							**$43,963**
Note: Totals may not sum due to independent rounding.							

For drills and exercises, we assume that a CySO on behalf of each owner and operator will develop cybersecurity drills and cybersecurity components to add to existing exercises. This development is expected to take 8 hours for each of the 2 annual drills and 20 hours for an annual exercise. We also include costs for drill and exercise participation for facility or OCS facility employees. Because the Coast Guard is unable to determine which employees at a given facility or OCS facility will be in assigned cybersecurity duties and required to participate in the drills, we assume that 33 percent of all employees will participate. This share of employees is consistent with the estimated share of shoreside employees in the affected population of owners and operators of U.S.-flagged vessels. Coast Guard SMEs believe this is a more reasonable estimate than assuming the entire portion of employees will participate. We obtain the average number of facility employees from a Coast Guard contract that uses D&B Hoovers' database for company employee data. The average number of employees at a facility company is 74. We estimate that the average number of employees that will participate in cybersecurity drills is 24 (74 employees × 0.33). We assume that employees will take 4 hours to participate in each drill and 4 hours to participate in each exercise.

Using the loaded hourly wage for a CySO of $84.14 and the loaded hourly wage for a facility employee of $60.34, we estimate annual costs of approximately $20,407 per facility owner or operator [($84.14 CySO wage × 8 hours × 2 drills) + ($84.14 CySO wage × 20 hours × 1 exercise) + (24 employees × $60.34 facility employee wage × 4 hours × 2 drills) + (24 employees × $60.34 facility employee wage × 4 hours × 1 exercise) = $20,407] as seen in table 55.

For account security measures, we assume that a database administrator on behalf of each owner or operator will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576 ($71.96 database administrator wage × 8 hours = $576), as seen in table 55.

For multifactor authentication, we assume that a facility owner or operator will spend $9,000 in the initial year on

average to implement a multifactor authentication system and spend approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first year costs of approximately $20,100 [$9,000 implementation cost + ($150 support and maintenance costs × 74 average facility company employees)], and subsequent year costs of $11,100 ($150 support and maintenance costs × 74 average facility company employees), as seen in table 55.

For cybersecurity training, we assume that a CySO will take 2 hours each year to develop and manage employee cybersecurity training, and facility employees will take 1 hour to complete the training each year. Using the estimated CySO wage of $84.14 and the estimated facility employee wage of $60.34, we estimate annual training costs of approximately $4,633 [($84.14 × 2 hours) + ($60.34 × 74 facility company employees × 1 hour)], as seen in table 55.

For penetration testing, we estimate costs only in the second and seventh years of analysis since tests are required to be performed in conjunction with Cybersecurity Plan submission and renewal. We assume that facility owners and operators will spend approximately $10,000 per penetration test and an additional $100 per IP address at the organization in order to capture network complexity. We use the total number of company employees multiplied by 2 as a proxy for the number of IP addresses. This is based on suggestions from public commenters stating that networks often include employees with multiple devices, outside industrial personnel accessing the networks, and OT systems that increase the number of IP addresses and the network complexity at a given company. As a result, we estimate second- and seventh-year costs of approximately $24,800 [$10,000 testing cost + ($100 × 148 IP addresses)], as seen in table 55.

Finally, for vulnerability management, we assume that each facility or OCS facility will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden associated with the implementation or use of a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 55.

As demonstrated in table 55, affected entities are expected to incur the highest costs in Year 2 of this final rule. This analysis estimates the cost of the rule in Year 2 per affected small entity, using the information presented in table 55 and adjusting for the number of facilities and OCS facilities owned by the entity as recorded in MISLE. Among the 332 presumed small entities in the sample (including those for which a D&B Hoovers profile was not matched, see table 53), 180 owners (54 percent) are associated with one facility ($73,320 cost in Year 2). The average small entity owns approximately 3 facilities, and the average cost across small entities is $90,148 in Year 2. The small entity in the sample with the highest projected cost owns 31 facilities ($325,740 cost in Year 2).

Table 57 compares the entity-specific Year 2 costs with the annual revenues of 131 small entities in our sample of affected facilities for which revenue information is provided in D&B Hoovers or obtained from 2022 annual financial reports (39 percent of the 332 small entities in our sample).[181] As shown, approximately 56 percent of small entities may incur costs that meet or exceed 1 percent of annual revenue in the second year of this final rule [(17 + 56) ÷ 131 = 56 percent]. The sampled small entity with the highest ratio of cost to revenue is projected to incur costs of 138 percent of its reported annual revenue, although it is possible that revenue data is underreported.

Table 17: Revenue Impact of the Final Rule on Sampled Small Entities Owning Facilities and OCS Facilities

% Revenue Impact	Greatest Annual Cost (Year 2)	
	Sampled Small Facility Owners with Known Revenue	Percentage of Sampled Small Facility Owners with Known Revenue
<1%	58	44%
1-3%	17	13%
>3%	56	43%
Total	**131**	**100%**

U.S.-Flagged Vessel Owners

The costs to owners and operators of U.S.-flagged vessels differ from the costs to owners and operators of facilities and OCS facilities and are more heavily influenced by the number of vessels owned. Table 58 presents the average annual costs per entity, regardless of the number of vessels owned and vessel type, in the first 10 years of rule implementation. The annual cost per entity ranges from $11,202 to $23,894. The data and assumptions underlying these estimates are provided later in this section.

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[181] Entity-specific Year 2 costs account for the number of facilities owned by the entity in question.

Table 58: Summary of Costs of this Final Rule per Owner or Operator of U.S.-flagged Vessels (2022 Dollars, 10-year Undiscounted Costs)

Year	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Total
1	$3,366	$3,029	$576	$9,000	$168	$0	$3,390	$19,529
2	$6,731	$3,029	$576	$0	$168	$10,000	$3,390	$23,894
3	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
4	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
5	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
6	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
7	$1,515	$3,029	$576	$0	$168	$10,000	$3,390	$18,678
8	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
9	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
10	$4,039	$3,029	$576	$0	$168	$0	$3,390	$11,202
Total								**$140,515**

Note: Totals may not sum due to independent rounding.

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Several other categories of costs are dependent on the type and number of vessels owned by each entity. These costs are calibrated to the average number of employees by U.S.-flagged vessel type, as well as a unique weighted hourly wage based on the personnel employed on the U.S.-flagged vessels.[182] Table 59 displays the average number of employees for each U.S.-

[182] The average per-vessel employee counts were taken from manning requirements in the certificates of inspection in MISLE. We averaged the mariner counts listed for each vessel within a subpopulation of vessels, then applied a 1.33 shoreside employee modifier to account for non-mariner employees. The calculation of wage rates across vessel types are described in ''Appendix A: Wages Across Vessel Types.''

flagged vessel type, including shoreside employees, and their unique weighted mean hourly wages. Table 60, which follows, displays the per-vessel costs associated with each type of U.S.-flagged vessel. To calculate the total cost per entity in the population of U.S.-flagged vessels, we add the annual per-vessel costs from table 60, multiplied by the number and types of U.S.-flagged vessels owned, to the per-entity costs presented in table 58.[183]

Table 59: Summary of Employees and Wages by Vessel Type

U.S.-flagged Vessel Type	Number of Employees per Vessel (Includes Shoreside)	Weighted Mean Hourly Wage
MODU	372	$39.60
Subchapter I Vessels	82	$46.36
OSVs	16	$54.92
Subchapter H Passenger Vessels	85	$41.85
Subchapter K Passenger Vessels	35	$45.52
Subchapter M Towing Vessels	13	$51.28
Subchapter D and Combination O&D Tank Vessels	40	$55.94
Subchapter D, O, or I Barges	0	$0.00
Subchapters K and T International Passenger Vessels	27	$44.59

Table 60: Summary of Annual Costs of the Final Rule per U.S.-flagged Vessels Based on Type of Vessel (2022 Dollars, Undiscounted Costs)

Vessel Type	Vessel Count	Multifactor Authentication	Cybersecurity Training	Penetration Testing (Years 2 and 7)	Drills and Exercises	Total
MODU	1	$55,800	$14,731	$74,400	$43,718	$188,649
Subchapter I Vessels	1	$12,300	$3,802	$16,400	$11,126	$43,628
OSVs	1	$2,400	$879	$3,200	$2,636	$9,115
Subchapter H Passenger Vessels	1	$12,750	$3,557	$17,000	$10,546	$43,853
Subchapter K Passenger Vessels	1	$5,250	$1,593	$7,000	$4,916	$18,759
Subchapter M Towing Vessels	1	$1,950	$667	$2,600	$1,846	$7,063
Subchapter D and Combination O&D Tank Vessels	1	$6,000	$2,238	$8,000	$6,713	$22,951
Subchapter D, O, or I Barges	1	$0	$0	$0	$0	$0
Subchapters K and T International Passenger Vessels	1	$4,050	$1,204	$5,400	$3,746	$14,400

[183] For example, consider an entity that owns two subchapter H passenger vessels. The estimated cost to that entity in Year 2 is calculated as follows: (2 × $43,853) + $23,894 = $111,600.

To estimate the cost for an owner or operator of a U.S.-flagged vessel to develop, resubmit, conduct annual maintenance, and audit the Cybersecurity Plan, we use estimates provided earlier in the analysis. The hour-burden estimates are 80 hours for developing the Cybersecurity Plan (average hour burden), 8 hours for annual maintenance of the Cybersecurity Plan (which will include amendments), 12 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans. Based on estimates from Coast Guard VSP reviewers at MSC, approximately 10 percent of Plans will need to be resubmitted in the second year due to revisions that will be needed to the Plans, which is consistent with the current resubmission rate for VSPs. For renewals of plans after 5 years (occurring in the seventh year of the analysis period), plans will need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of the analysis, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases, resulting in an upper-bound (high) estimate of per-entity costs. We estimate the time for revision and resubmission to be about half the time to develop the Plan itself, or 40 hours in the second year of submission, and 6 hours after 5 years (in the seventh year of the analysis period). Because we include the annual cybersecurity assessment in the development cost of Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures, we divide the estimated 80 hours to develop plans equally across the first and second years of analysis.

Using the CySO loaded hourly wage of $84.14, we estimate the Cybersecurity Plan related costs by adding the total number of hours to develop, resubmit, maintain, and audit each year and multiplying by the CySO wage. For example, we estimate that owners and operators will incur approximately $6,731 in costs in Year 2 of the analysis period [$84.14 CySO wage × (40 hours to develop the Plan + 40 hours to revise and resubmit the Plan) = $6,731]. See table 61.

Table 61: Cybersecurity Plan-Related Costs per Owner or Operator of a U.S.-flagged Vessel (2022 Dollars, 10-year Undiscounted Costs)

Year	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	$84.14	40	0	0	0	$3,366
2	$84.14	40	40	0	0	$6,731
3	$84.14	0	0	8	40	$4,039
4	$84.14	0	0	8	40	$4,039
5	$84.14	0	0	8	40	$4,039
6	$84.14	0	0	8	40	$4,039
7	$84.14	12	6	0	0	$1,515
8	$84.14	0	0	8	40	$4,039
9	$84.14	0	0	8	40	$4,039
10	$84.14	0	0	8	40	$4,039
Total						**$39,885**
Note: Totals may not sum due to independent rounding.						

Similarly, we use earlier estimates for the calculation of per-entity costs for drills and exercises, account security measures, multifactor authentication, cybersecurity training, penetration testing, vulnerability management, and resilience.

For drills and exercises, we assume that a CySO on behalf of each owner and operator will develop new cybersecurity drills and cybersecurity components to add to existing physical security exercises. This development is expected to take 8 hours for each of the 2 annual drills and 20 hours for an annual exercise. We also include costs for both drill and exercise participation for all U.S.-flagged vessel employees. We assume that employees will take 4 hours to participate in each drill and 4 hours to participate in each exercise.

Note that the per-employee costs associated with drills and exercises vary depending on the types and number of U.S.-flagged vessels. To determine the number of employees for each U.S.-flagged vessel company, we use data from the certificate of inspection manning requirements in MISLE for each vessel subpopulation. We assume 2 crews and multiply the total number of seafaring crew by 1.33 to account for shoreside staff to obtain an estimate of total company employees per vessel. We then subtract the total number of seafaring crew from the number of total company employees to arrive at the share of employees participating in the cybersecurity drills.[184] As an example, using the estimated CySO wage of $84.14 and the estimated OSV employee wage of $54.92, we estimate annual drills and exercises costs of

[184] For example, the average OSV in the affected population carries 12 seafaring crew per vessel, according to certificate of inspection manning requirements. We multiply this by 1.33 to arrive at 16 total employees per OSV. We then subtract the 12 seafaring crew from the 16 total employees to isolate the 4 shoreside employees per vessel that would need to participate in the cybersecurity drills.

approximately $5,665 [($84.14 × 8 hours × 2 drills) + ($84.14 × 20 hours × 1 exercise) + ($54.92 × 4 average employees per OSV × 4 hours × 2 drills) + ($54.92 × 4 average employees per OSV × 4 hours × 1 exercise)]. Development per-entity costs of $3,029 can be found in table 58, and variable per-vessel costs can be found in table 60.

For account security measures, we assume that a database administrator on behalf of each owner or operator will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576 ($71.96 database administrator wage × 8 hours = $576), as seen in table 58.

For multifactor authentication, we assume that a U.S.-flagged vessel owner or operator will spend $9,000 in the initial year on average to implement a multifactor authentication system and approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first year implementation costs of approximately $9,000 for all owners and operators, with annual costs in Years 2 through 10 depending on the number of employees for each type of U.S.-flagged vessel. For example, we estimate the first-year costs to an owner or operator of one OSV to be approximately $11,400 [$9,000 implementation cost + ($150 support and maintenance costs × 16 average employees per OSV)], and subsequent year costs of $2,400 ($150 support and maintenance costs × 16 average employees per OSV). Per-entity implementation costs of $9,000 can be found in table 58, and variable per-vessel costs can be found in table 60.

For cybersecurity training, we assume that a CySO for each U.S.-flagged vessel owner or operator will take 2 hours each year to develop and manage employee cybersecurity training, and U.S.-flagged vessel employees will take 1 hour to complete the training each year. The per-employee costs associated with training vary depending on the types and number of U.S.-flagged vessels and will be based on the average number of employees per vessel and the associated weighted hourly wage. For example, using the estimated CySO wage of $84.14 and the estimated OSV employee wage of $54.92, we estimate annual training costs of approximately $1,047 [($84.14 × 2 hours) + ($54.92 × 16 average employees per OSV × 1 hour)]. Development per-entity costs of $168 can be found in table 58, and variable per-vessel costs can be found in table 60.

For penetration testing, we estimate costs only in the second and seventh years of analysis, since tests are required to be performed in conjunction with submitting and renewing the Cybersecurity Plan. We assume that U.S.-flagged vessel owners and operators will spend approximately $10,000 per penetration test and an additional $100 per IP address at the organization, to capture network complexity. We utilize the average number of employees per U.S.-flagged vessel multiplied by 2 as a proxy for the number of IP addresses. We do this based on suggestions from public commenters stating that networks often include employees with multiple devices, outside industrial personnel accessing the networks, and OT systems that increase the number of IP addresses and network complexity at a given company. As a result, we estimate second- and seventh-year costs as follows: [$10,000 testing cost + ($100 × average IP addresses per vessel)]. For example, we estimate second- and seventh-year cost of approximately $13,200 for an owner or operator of an OSV [$10,000 testing cost + ($100 × 32 average IP addresses per OSV)]. Initial per-entity costs of $10,000 can be found in table 58, and variable per-vessel costs can be found in table 60.

For vulnerability management, we assume that each U.S.-flagged vessel owner or operator will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden associated with the implementation or use of a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 58. This analysis calculates U.S.-flagged vessel owner-specific annual compliance costs based on the type and number of vessels associated with each small entity in the sample. For the small entities that only own barges, there are no variable costs per vessel. We assume that they will incur only per-company costs related to the Cybersecurity Plan, as well as the development of and participation in drills and exercises. This means that the greatest per-owner costs occur in Year 2.

Our analysis identifies 67 small entities in the sample that fall into this category and presumes that this final rule will cost these entities $9,760 each in Year 2 ($6,731 Cybersecurity Plan related costs + $3,029 drills and exercises costs). For all other small entities that own U.S.-flagged vessels, the costs include a per-owner component as well as per-vessel costs that vary by vessel type. The highest total annual costs per owner also occur in Year 2. Among the 289 sampled small entities in this category, 164 owners (57 percent) are associated with one U.S.-flagged vessel (with an average cost of $38,229 in Year 2). The average small entity in the sample owns 3 U.S.-flagged vessels, and the average cost across all sampled small entities is $43,612 in Year 2. The small entity in the sample with the highest projected costs owns 8 U.S.-flagged vessels (with a cost of $299,214 in Year 2).

Table 62 compares the entity-specific costs in Year 2 with the greatest costs with the annual revenues of 222 small entities in our sample of affected U.S.-flagged vessel owners for which revenue information is provided in D&B Hoovers or through revenue information released by small governments (62 percent of 356 sampled small entities). As shown, 81 percent of small entities in the sample may incur costs that meet or exceed 1 percent of annual revenue in the second year of this final rule [(50 + 130) ÷ 222 = 81 percent]. After removing 1 significant outlier, the small entity in the sample with the highest ratio of cost to revenue is projected to incur costs of 131 percent of its reported annual revenue; although, it is possible that revenue data is underreported.

Table 62: Revenue Impact of the Final Rule on Small Entities Owning U.S.-flagged Vessels

% Revenue Impact	Greatest Annual Cost (Year 2)	
	Sampled Small Vessel Owners with Known Revenue	Percentage of Sampled Small Vessel Owners with Known Revenue
<1%	42	19%
1-3%	50	23%
>3%	130	59%
Total	**222**	**100%**

(*) Components may not add to total due to rounding.

Summary

The analysis above characterizes the revenue impacts on small entities by projecting costs for each affected owner specific to the number and type of U.S.-flagged vessels, as well as the number of facilities and OCS facilities owned, according to data from the Coast Guard. We estimate that 56 percent of small facility and OCS facility owners and 81 percent of small U.S.-flagged vessel owners may incur costs that meet or exceed 1 percent of their annual revenue.

There are two reasons that the estimated compliance costs and, therefore, the impacts on small entities, are likely to be overestimated. First, the cost estimation approach assumes that all owners will incur costs associated with all provisions required in the rule. However, it is highly likely that many affected owners already have invested in some of the cybersecurity measures, absent the rule. Data available to the Coast Guard demonstrate this is the case for many facility owners, although whether those facility owners are small entities is uncertain. Second, some affected owners are unlikely to have IT or remotely accessible OT systems to which this final rule will apply. Those owners will only incur the cost associated with requesting a waiver or equivalence, costs which are likely to be far less than the costs described in this section.

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This rule will call for a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. Section VIII.D., Collection of Information, in the preamble of this final rule, includes the title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden. For a description of all other compliance requirements and their associated costs, please see the preceding analysis of the per-entity costs of the rule.

6. A description of the steps the agency has taken to minimize the significant economic impact of small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The purpose of this rule is to safeguard the MTS against current and emerging threats associated with cybersecurity by adding minimum cybersecurity requirements to 33 CFR part 101. However, rather than making these requirements prescriptive, the Coast Guard has listed minimum performance-based cybersecurity requirements for the MTS. Like the existing requirements in 33 CFR parts 104, 105, and 106, the Coast Guard allows owners and operators the flexibility to determine the best way to implement and comply with these new requirements. This means that, while the Coast Guard may require the implementation of a multifactor authentication system, for example, it is up to the discretion of the impacted owner or operator to determine what shape or form that system may take, and how many resources should be expended to implement it. As a result, many of the cost estimates in this FRFA represent conservative (upper-bound) estimates, as we attempt to capture costs for a wide range of affected owners and operators. Further, the Coast Guard has made waivers and equivalencies available to affected owners and operators who feel they are unable to meet the requirements of this rule, offering additional flexibility to small entities that are not able to meet the full requirements.

In addition to these intentional flexibilities, the Coast Guard made changes in response to public comments on the NPRM that will lessen the economic impact on all affected entities, including small entities. First, we reduced the required frequency of cybersecurity drills from quarterly to twice annually, reducing the overall effort expended on drills. In addition, the Coast Guard extended the implementation period and compliance dates for the cybersecurity requirements in this final rule beyond the 12 to 18 months that we proposed in the NPRM. We revised § 101.650(e)(1) to specify that owners and operators will need to conduct the Cybersecurity Assessment within 24 months of the effective date of this final rule. The Cybersecurity Plan must also be submitted to the Coast Guard for review and approval within 24 months of the effective date of this final rule, rather than during the second annual audit following the effective date, as stated in the NPRM. We revised § 101.655 to reflect this change. By using the same implementation period for each group of regulated entities rather than basing this on the

organization's audit date, the relevant owners and operators will have the same amount of time in which to implement these requirements, and in many cases will have additional time to come into compliance when compared to the NPRM.

Beyond the adopted changes and intentional flexibilities developed into this final rule, the Coast Guard also considered an alternative that would make the penetration testing requirements of this rule optional for small entities. Given the nature of penetration testing, it can often come with a high cost, particularly for small entities with limited resources. Leaving the penetration testing requirements up to owner discretion could allow small entities in the affected population to prioritize different cybersecurity measures that may make more sense for their organization. The decision to undertake penetration testing could be made as a result of thorough risk assessments for each organization, considering its operational environments, risk profile, and pertinent threats. Under this alternative, an owner or operator, or a CySO on their behalf, could determine when a penetration test is warranted, if at all.

Because penetration testing would be optional, this could hypothetically reduce costs for owners and operators for penetration testing down to zero, meaning an estimated cost reduction of $24,800 in the second and seventh years of analysis for an owner or operator of 1 facility or OCS facility. It would also lead to estimated cost reductions in the second and seventh years of $84,400 ($10,000 + $74,400) for owners and operators of a single MODU, $26,400 ($10,000 + $16,400) for owners and operators of a single U.S.-flagged vessel under subchapter I, $13,200 ($10,000 + $3,200) for owners and operators of a single OSV, $27,000 ($10,000 + $17,000) for owners and operators of a single passenger vessel under subchapter H, $17,000 ($10,000 + $7,000) for owners and operators of a single passenger vessel under subchapter K, $12,600 ($10,000 + $2,600) for owners and operators of a single towing vessel under subchapter M, $18,000 ($10,000 + $8,000) for owners and operators of a single tank vessel under subchapter D and a combination of subchapters O&D, and $15,400 ($10,000 + $5,400) for owners and operators of a single international passenger vessel under subchapters K and T. The estimated cost reductions could be higher if ownership of multiple vessels is considered.

Despite the potential for minimizing economic impacts, however, the value of penetration testing for most organizations, including small entities, cannot be overstated. When integrated into a comprehensive cybersecurity strategy, penetration testing can be very effective in identifying vulnerabilities. By fostering a proactive rather than reactive approach in cybersecurity, penetration testing enables organizations to stay ahead of potential threats and better understand how malicious actors can exploit weaknesses in IT and OT systems. This is particularly crucial given the quickly evolving landscape of cyber threats. In addition, because the costs of a potential cyber incident are so high, the Coast Guard must prioritize some level of oversight on provisions that can lessen the risk of a cyber incident. Therefore, we rejected this alternative, despite the potential cost reductions.

It should be noted, however, that according to § 101.665, owners and operators of U.S.-flagged vessels, facilities, and OCS facilities can seek a waiver or an equivalence determination if they are unable to meet any requirements, penetration testing included.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering, and maintaining the data needed, and completing and reviewing the collection.

Title: Cybersecurity Plans.

OMB Control Number: 1625–new.

Summary of Collection of Information: This collection of information is new. The Coast Guard will collect information from the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities under 33 CFR part 101, subpart F. The information collection will be for the submission of Cybersecurity Plans, amendments to Cybersecurity Plans in 33 CFR 101.630, and cyber incident reports in 33 CFR 101.650(g)(1).

Need for Information: The Coast Guard is creating new cybersecurity requirements for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities to mitigate or prevent a cyber incident from occurring. The information we request from industry will be from (1) the development of Cybersecurity Plans, which will include details on implemented drills and exercise, training, and various cybersecurity measures in § 101.650 that might safeguard critical IT and OT systems from cyber incidents; (2) amendments to Cybersecurity Plans; and (3) reporting cyber incidents to the NRC.

Use of Information: The Coast Guard will use this information to determine if vessel and facility owners and operators have cybersecurity measures in place and to ensure that owners and operators are conducting periodic reviews of Cybersecurity Plans and testing their IT and OT systems for adequacy. Additionally, the Coast Guard will ensure vessel and facility owners and operators are reporting cyber incidents to the Coast Guard.

Description of the Respondents: The respondents are owners and operators of U.S.-flagged vessels, facilities, and OCS facilities.

Number of Respondents: The number of respondents will be about 2,075 U.S.-flagged vessel owners and operators and about 1,372 facility and OCS facility owners and operators. We assume that a CySO will be responsible for the reporting and recordkeeping requirements of the rule on behalf of each owner and operator.

Frequency of Response: The number of responses to this rule will vary annually.

Burden of Response: The burden of response will vary for each regulatory requirement.

Estimate of Total Annual Burden: The estimate of annual burden varies based on the year of analysis. For the initial year of analysis, the hour burden for Cybersecurity Plan activities and cyber incident reporting will be about 268,900 hours across the affected population. This is derived from the development of 3,718 facility and OCS facility Cybersecurity Plans for 50 hours each and 2,075 vessel Cybersecurity Plans for 40 hours each [(3,718 × 50) + (2,075 × 40)]. For more information on how these and other burden estimates were developed, see the Regulatory Planning and Review section of this final rule.

For the second year of analysis, the hour burden for Cybersecurity Plan activities and cyber incident reporting will be about 295,820 hours across the affected population. The second year of analysis represents the highest estimated hour burden for all years of analysis. This is derived from the development of 3,718 facility and OCS facility Cybersecurity Plans for 50 hours each, 372 facility and OCS facility Cybersecurity Plans being revised and resubmitted for an additional 50 hours, 2,075 vessel Cybersecurity Plans for 40 hours each, and 208 vessel Cybersecurity Plans being revised and resubmitted for an additional 40 hours [(3,718 × 50) + (372 × 50) + (2,075 × 40) + (208 × 40)].

For the third through the sixth years of analysis, and the eighth through the tenth years of analysis, when Cybersecurity Plans are being maintained and amendments are being developed, the hour burden for Cybersecurity Plan activities and cyber incident reporting will be about 53,780 hours across the affected population. This is derived from the maintenance and amendment of 3,718 facility and OCS facility Cybersecurity Plans for 10 hours each, and the maintenance and amendment of 2,075 vessel Cybersecurity Plans for 8 hours each [(3,718 × 10) + (2,075 × 8)].

For the seventh year of analysis, when Cybersecurity Plans are renewed, the hour burden for Cybersecurity Plan activities and cyber incident reporting will be about 84,708 hours across the affected population. This is derived from the renewal of 3,718 facility and OCS facility Cybersecurity Plans for 15 hours each, 372 facility and OCS facility Cybersecurity Plans being revised and resubmitted for an additional 7.5 hours, 2,075 vessel Cybersecurity Plans being renewed for 12 hours each, and 208 vessel Cybersecurity Plans being revised and resubmitted for an additional 6 hours [(3,718 × 15) + (372 × 7.5) + (2,075 × 12) + (208 × 6)].

This leads to an average annual hour burden total of 102,589 hours over the 10-year period of analysis.

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. OMB has not yet completed its review of this collection. Once OMB completes action on our ICR, we will publish a **Federal Register** notice describing OMB's action.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard and that all categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See United States* v. *Locke,* 529 U.S. 89 (2000). This final rule will expand maritime security requirements under MTSA to expressly address current and emerging cybersecurity risks and safeguard the MTS. In enacting MTSA, Congress articulated a need to address port security threats around the United States while preserving the free flow of interstate and foreign commerce. MTSA's mandatory, comprehensive maritime security regime, founded on this stated interest of facilitating interstate and international maritime commerce, indicates that States and local governments are generally foreclosed from regulating in this field. Particularly with respect to vessels subject to this new subpart F, the Coast Guard's above-noted comprehensive law and regulations will preclude State and local laws. OCS facilities, which do not generally fall under any State or local jurisdiction, are principally subject to Federal law and regulation.

Notwithstanding MTSA's general preemptive effect, States and local governments have traditionally shared certain regulatory jurisdiction with the Federal Government over waterfront facilities. Accordingly, current MTSA regulations make clear that the maritime facility security requirements of 33 CFR part 105 only preempt State or local regulation when the two conflict.[185] Similarly, the cybersecurity requirements of this final rule as they apply to a facility under 33 CFR part 105 will only have preemptive effect over a State or local law or regulation insofar as the two actually conflict (meaning compliance with both requirements is impossible or the State or local requirement frustrates an overriding Federal need for uniformity).

In light of the foregoing analysis, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations or where compliance with both a State and Federal laws is impossible or when a state law stands as an obstacle to the full purpose and objective of Congress, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule will have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. The Unfunded Mandates Reform Act of 1995addresses actions that may result in the expenditure by a State, local, or Tribal Government, in the aggregate, or by the private sector of $100 million (adjusted for inflation) or more in any one year.

[185] 33 CFR 101.112(b).

After adjusting for inflation, this action will result in the expenditure of $176 million or more in any one year, in 2022 dollars. To obtain this inflated value, we use the 2022 and 1995 annual gross domestic product implicit price deflator values of 117.973 and 66.939, respectively. We divide these values to obtain a factor of approximately 1.76, rounded (117.973 ÷ 66.939 = 1.76).[186] Multiplying this factor by the expenditure amount identified in the Unfunded Mandates Reform Act of 1995 gives us our expenditure amount adjusted for inflation (1.76 × 100,000,000 = 176,000,000). Because this rule will result in the expenditure by the private sector of approximately $178,717,861 in undiscounted 2022 dollars in the most cost-heavy year, this action requires an assessment. The RA, prepared in conjunction with this final rule, satisfies the Unfunded Mandates Reform Act of 1995's requirements under 2 U.S.C. 1532. In addition to the estimated impacts, it should be noted that many of the provisions in this rule are intentionally designed to take owner or operator discretion into account, which can help reduce anticipated expenditures. While this rule may require action related to a security measure (implementing multifactor authentication, for example), the method or policy used to achieve compliance with the provision is at the discretion of the impacted owner or operator. This final rule also includes the option for waivers and equivalents, in § 101.665, for any requirements in subpart F. These intentional flexibilities can help reduce expected costs for those in the affected population and allow for more tailored cybersecurity solutions.

G. Taking of Private Property

This final rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

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

I. Protection of Children

We analyzed this final rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This final rule will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because, although it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** portion of this preamble.

This final rule is categorically excluded under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents, notably those of a strictly administrative or procedural nature; and those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations that are editorial or procedural. This final rule involves establishing minimum cybersecurity requirements in Coast Guard regulations such as account security measures, device security measures, governance and training, risk management, supply chain management, resilience, network segmentation, reporting, and physical security. This final rule promotes the Coast Guard's maritime security mission by establishing measures to safeguard the MTS against emerging threats associated with cybersecurity. This final rule also promotes the Coast Guard's marine environmental protection mission by preventing or mitigating marine environmental damage that can ensue due to a cybersecurity incident.

N. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this final rule meets the criteria in 5 U.S.C. 804(2).

List of Subjects

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Waterways.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety,

[186] We use the implicit price deflator for gross domestic product values from the Bureau of Economic Analysis National Income and Product Accounts interactive data tables. See *https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=11#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJDYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJGaXJzdF9ZZWFyIiwiMTk5NSJdLFsiTGFzdF9ZZWFyIiwiMjAyMyJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBll1dfQ==,* accessed August 20, 2024.

Navigation (water), Personally identifiable information, Reporting and recordkeeping requirements, Seamen, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 101 and 160 as follows:

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 is revised to read as follows:

Authority: 46 U.S.C. 70101–70104 and 70124; Executive Order 12656, 3 CFR, 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

■ 2. Amend part 101 by adding subpart F, consisting of §§ 101.600 through 101.670, to read as follows:

Subpart F—Cybersecurity

Sec.

101.600 Purpose.
101.605 Applicability.
101.610 Federalism.
101.615 Definitions.
101.620 Owner or operator.
101.625 Cybersecurity Officer.
101.630 Cybersecurity Plan.
101.635 Drills and exercises.
101.640 Records and documentation.
101.645 Communications.
101.650 Cybersecurity measures.
101.655 Cybersecurity compliance dates.
101.660 Cybersecurity compliance documentation.
101.665 Noncompliance, waivers, and equivalents.
101.670 Severability.

§ 101.600 Purpose.

The purpose of this subpart is to set minimum cybersecurity requirements for U.S.-flagged vessels, facilities, and Outer Continental Shelf (OCS) facilities to safeguard and ensure the security and resilience of the Marine Transportation System (MTS).

§ 101.605 Applicability.

(a) This subpart applies to the owners and operators of U.S.-flagged vessels, facilities, and OCS facilities required to have a security plan under 33 CFR parts 104, 105, and 106.

(b) This subpart does not apply to any foreign-flagged vessels subject to 33 CFR part 104.

§ 101.610 Federalism.

Consistent with § 101.112(b), with respect to a facility regulated under 33 CFR part 105 to which this subpart applies, the regulations in this subpart have preemptive effect over a State or local law or regulation insofar as the State or local law or regulation applicable to the facility conflicts with these regulations, either by actually conflicting or by frustrating an overriding Federal need for uniformity.

§ 101.615 Definitions.

Unless otherwise specified, as used in this subpart:

Approved list means an owner or operator's authoritative catalog for products that meet cybersecurity requirements.

Backup means a copy of physical or virtual files or databases stored separately for preservation and recovery. It may also refer to the process of creating a copy.

Credentials means a set of data attributes that uniquely identifies a system entity such as a person, an organization, a service, or a device, and attests to one's right to access to a particular system.

Critical Information Technology (IT) or Operational Technology (OT) systems means any Information Technology (IT) or Operational Technology (OT) system used by the vessel, facility, or OCS facility that, if compromised or exploited, could result in a transportation security incident (TSI), as determined by the Cybersecurity Officer (CySO) in the Cybersecurity Plan. Critical IT or OT systems include those business support services that, if compromised or exploited, could result in a TSI. This term includes systems whose ownership, operation, maintenance, or control is delegated wholly or in part to any other party.

Cyber incident means an occurrence that actually jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system, or actually jeopardizes, without lawful authority, an information system.

Cyber Incident Response Plan means a set of predetermined and documented procedures to respond to a cyber incident. It is a document that gives the owner or operator or a designated CySO instructions on how to respond to a cyber incident and pre-identifies key roles, responsibilities, and decision-makers.

Cyber threat means an action, not protected by the First Amendment to the Constitution of the United States, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that is stored on, processed by, or transiting an information system. The term ''cyber threat'' does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement.

Cybersecurity Assessment means the appraisal of the risks facing an entity, asset, system, or network, organizational operations, individuals, geographic area, other organizations, or society, and includes identification of relevant vulnerabilities and threats and determining the extent to which adverse circumstances or events could result in operational disruption and other harmful consequences.

Cybersecurity Officer, or CySO, means the person designated as responsible for the development, implementation, and maintenance of the cybersecurity portions of the Vessel Security Plan (VSP), Facility Security Plan (FSP), or Outer Continental Shelf (OCS) FSP, and for liaison with the Captain of the Port (COTP) and Company, Vessel, and Facility Security Officers. The owner or operator may designate an alternate CySO(s) to assist with the duties and responsibilities of the CySO, including during periods when the CySO is on leave, unavailable, or unable to perform their duties. Hereafter, ''CySO'' will refer to both the CySO and the alternate CySO(s), as applicable.

Cybersecurity Plan means a plan developed as a part of the VSP, FSP, or OCS FSP to ensure application and implementation of cybersecurity measures designed to protect the owners' or operators' systems and equipment, as required by this part. A Cybersecurity Plan is either included in a VSP, FSP, or OCS FSP; as an annex to a VSP, FSP, or OCS FSP; provided in a separate submission from the VSP, FSP, or OCS FSP; or addressed through an Alternative Security Program.

Cybersecurity risk means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. It does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement.

Cybersecurity vulnerability means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control.

Encryption means any procedure used in cryptography to convert plain text into cipher text to prevent anyone but the intended recipient from reading that data.

Executable code means any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by such computer to execute instructions.

Exploitable channel means any information channel (such as a portable media device and other hardware) that allows for the violation of the security policy governing the information system and is usable or detectable by subjects external to the trusted user.

Firmware means computer programs (which are stored in and executed by computer hardware) and associated data (which is also stored in the hardware) that may be dynamically written or modified during execution.

Hardware means, collectively, the equipment that makes up physical parts of a computer, including its electronic circuitry, together with keyboards, readers, scanners, and printers.

Human-Machine Interface, or HMI, means the hardware or software through which an operator interacts with a controller for industrial systems. An HMI can range from a physical control panel with buttons and indicator lights to an industrial personal computer with a color graphics display running dedicated HMI software.

Information system means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software data, applications, communications, and people. It includes the application of IT, OT, or a combination of both.

Information Technology, or IT, means any equipment or interconnected system or subsystem of equipment, used in the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

Known Exploited Vulnerability, or KEV, means a computer vulnerability that has been exploited in the past.

Log means a record of the events occurring within an organization's systems and networks.

Multifactor authentication means a layered approach to securing data and applications for a system that requires users to present more than one distinct authentication factor for successful authentication. Multifactor authentication can be performed using a multifactor authenticator or by a combination of authenticators that provide different factors. The three authentication factors are something you know, something you have, and something you are.

Network means information system(s) implemented with a collection of interconnected components. A network is a collection of computers, servers, mainframes, network devices, peripherals, or other devices connected to allow data sharing. A network consists of two or more computers that are linked in order to share resources, exchange files, or allow electronic communications.

Network map means a visual representation of internal network topologies and components.

Network segmentation means a physical or virtual architectural approach that divides a network into multiple segments, each acting as its own subnetwork, to provide additional security and control that can help prevent or minimize the impact of a cyber incident.

Operational Technology, or OT, means programmable systems or devices that interact with the physical environment (or manage devices that interact with the physical environment). These systems or devices detect or cause a change through the monitoring or control of devices, processes, and events.

Patching means updating software and operating systems to address cybersecurity vulnerabilities within a program or product.

Penetration test means a test of the security of a computer system or software application by attempting to compromise its security and the security of an underlying operating system and network component configurations.

Principle of least privilege means that an individual should be given only those privileges that are needed to complete a task. Further, the individual's function, not identity, should control the assignment of privileges.

Privileged user means a user who is authorized (and, therefore, trusted) to perform security functions that ordinary users are not authorized to perform.

Reportable cyber incident means an incident that leads to or, if still under investigation, could reasonably lead to any of the following: Substantial loss of confidentiality, integrity, or availability of a covered information system, network, or OT system; Disruption or significant adverse impact on the reporting entity's ability to engage in business operations or deliver goods or services, including those that have a potential for significant impact on public health or safety or may cause serious injury or death; Disclosure or unauthorized access directly or indirectly of nonpublic personal information of a significant number of individuals; Other potential operational disruption to critical infrastructure systems or assets; or Incidents that otherwise may lead to a transportation security incident as defined in 33 CFR 101.105.

Risk means a measure of the extent to which an entity is threatened by a potential circumstance or event, and typically is a function of: The adverse impact, or magnitude of harm, that would arise if the circumstance or event occurs; and the likelihood of occurrence.

Software means a set of instructions, data, or programs used to operate a computer and execute specific tasks.

Supply chain means a system of organizations, people, activities, information, and resources for creating computer products and offering IT services to their customers.

Threat means any circumstance or event with the potential to adversely impact organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, or the Nation through an information system through unauthorized access, destruction, disclosure, modification of information, or denial of service.

Vulnerability means a characteristic or specific weakness that renders an organization or asset (such as information or an information system) open to exploitation by a given threat or susceptible to a given hazard.

Vulnerability scan means a technique used to identify hosts or host attributes and associated vulnerabilities.

§ 101.620 Owner or operator.

(a) Each owner or operator of a U.S.-flagged vessel, facility, or OCS facility is responsible for compliance with the requirements of this subpart.

(b) For each U.S.-flagged vessel, facility, or OCS facility, the owner or operator must—

(1) Ensure a Cybersecurity Plan is developed, approved, and maintained;

(2) Define in Section 1 of the Cybersecurity Plan the cybersecurity organizational structure and identify each person exercising cybersecurity duties and responsibilities within that structure, with the support needed to fulfill those obligations;

(3) Designate, in writing, by name and by title, a Cybersecurity Officer (CySO) who is accessible to the Coast Guard 24 hours a day, 7 days a week, and identify how the CySO can be contacted at any time;

(4) Ensure that cybersecurity exercises, audits, and inspections, as well as the Cybersecurity Assessment, are conducted as required by this part and in accordance with the Cybersecurity Plan (see § 101.625(d)(1), (3), (6) and (7));

(5) Ensure that the U.S.-flagged vessel, facility, or OCS facility operates in

compliance with the approved Cybersecurity Plan;

(6) Ensure the development, approval, and execution of the Cyber Incident Response Plan; and

(7) For entities that have not reported to the Coast Guard pursuant to, or are not subject to, 33 CFR 6.16–1, ensure all reportable cyber incidents are reported to the National Response Center (NRC).

§ 101.625 Cybersecurity Officer.

(a) *Other duties.* The Cybersecurity Officer (CySO) may serve in other roles or positions and may perform other duties within the owner's or operator's organization (U.S.-flagged vessel, facility, or OCS facility), provided the person is able to perform the duties and responsibilities required of the CySO by this part.

(b) *Serving as CySO for Multiple Vessels, Facilities, or OCS Facilities.* The same person may serve as the CySO for more than one U.S.-flagged vessel, facility, or OCS facility. If a person serves as the CySO for more than one U.S.-flagged vessel, facility, or OCS facility, the name of each U.S.-flagged vessel, facility, or OCS facility for which that person is the CySO must be listed in the Cybersecurity Plan of each U.S.-flagged vessel, facility, or OCS facility for which that person is the CySO.

(c) *Assigning Duties Permitted.* The CySO may assign security duties to other U.S.-flagged vessel, facility, or OCS facility personnel; however, the CySO retains ultimate responsibility for these duties.

(d) *Responsibilities.* For each U.S.-flagged vessel, facility, or OCS facility for which they are designated, the CySO must—

(1) Ensure that the Cybersecurity Assessment is conducted as required by this part;

(2) Ensure the cybersecurity measures in the Cybersecurity Plan are developed, implemented, and operating as intended;

(3) Ensure that an annual audit of the Cybersecurity Plan and its implementation is conducted and, if necessary, ensure that the Cybersecurity Plan is updated;

(4) Ensure the Cyber Incident Response Plan is executed and exercised;

(5) Ensure the Cybersecurity Plan is exercised in accordance with § 101.635(c);

(6) Arrange for cybersecurity inspections, which may be conducted as their own inspections, or in conjunction with any scheduled Coast Guard inspection of a U.S.-flagged vessel, facility, or OCS facility;

(7) Ensure the prompt correction of problems identified by exercises, audits, or inspections;

(8) Enhance the cybersecurity awareness and vigilance of personnel;

(9) Ensure adequate cybersecurity training of personnel;

(10) Ensure all reportable cyber incidents are recorded and reported to the owner or operator;

(11) Ensure that records required by this part are maintained in accordance with § 101.640;

(12) Ensure any reports as required by this part have been prepared and submitted;

(13) Ensure that the Cybersecurity Plan, as well as proposed amendments to cybersecurity measures included in the Plan, are submitted for approval to the cognizant COTP or the Officer in Charge, Marine Inspections (OCMI) for facilities or OCS facilities, or to the Marine Safety Center (MSC) for U.S.-flagged vessels, prior to amending the Cybersecurity Plan, in accordance with § 101.630;

(14) Ensure relevant security and management personnel are briefed regarding changes in cybersecurity conditions on board the U.S.-flagged vessel, facility, or OCS facility; and

(15) Ensure identification and mitigation of all KEVs in critical IT or OT systems, without delay.

(e) *Qualifications.* The CySO must have general knowledge, through training, education, or equivalent job experience, in the following:

(1) General vessel, facility, or OCS facility operations and conditions;

(2) General cybersecurity guidance and best practices;

(3) The vessel, facility, or OCS facility's Cyber Incident Response Plan;

(4) The vessel, facility, or OCS facility's Cybersecurity Plan;

(5) Cybersecurity equipment and systems;

(6) Methods of conducting cybersecurity audits, inspections, control, and monitoring techniques;

(7) Relevant laws and regulations pertaining to cybersecurity;

(8) Instruction techniques for cybersecurity training and education;

(9) Handling of Sensitive Security Information and security related communications;

(10) Current cybersecurity threat patterns and KEVs;

(11) Recognizing characteristics and behavioral patterns of persons who are likely to threaten security; and

(12) Conducting and assessing cybersecurity drills and exercises.

§ 101.630 Cybersecurity Plan.

(a) *General.* The CySO must develop, implement, and verify a Cybersecurity Plan for U.S.-flagged vessels, facilities, or OCS facilities. The Cybersecurity Plan must reflect all cybersecurity measures required in this subpart, as appropriate, to mitigate risks identified during the Cybersecurity Assessment. The Plan must describe in detail how the requirements of subpart F will be met. The Cybersecurity Plan may be included in a VSP, FSP, or an OCS FSP; as an annex to the VSP, FSP, or OCS FSP; as part of an approved Alternative Security Program; or may be provided in a separate submission from the VSP, FSP, or OCS FSP.

(b) *Protecting sensitive security information.* The Cybersecurity Plan is sensitive security information and must be protected in accordance with 49 CFR part 1520.

(c) *Format.* The owner or operator must ensure that the Cybersecurity Plan consists of the individual sections listed in this paragraph. If the Cybersecurity Plan does not follow the order as it appears on the list, the owner or operator must ensure that the Plan contains an index identifying the location of each of the following sections:

(1) Cybersecurity organization and identity of the CySO;

(2) Personnel training;

(3) Drills and exercises;

(4) Records and documentation;

(5) Communications;

(6) Cybersecurity systems and equipment, with associated maintenance;

(7) Cybersecurity measures for access control, including the computer, IT, and OT access areas;

(8) Physical security controls for IT and OT systems;

(9) Cybersecurity measures for monitoring;

(10) Audits and amendments to the Cybersecurity Plan;

(11) Reports of all cybersecurity audits and inspections, to include documentation of resolution or mitigation of all identified vulnerabilities;

(12) Documentation of all identified, unresolved vulnerabilities, to include those that are intentionally unresolved due to owner or operator risk acceptance;

(13) Cyber incident reporting procedures in accordance with part 101 of this subchapter; and

(14) Cybersecurity Assessment.

(d) *Submission and approval.* Each owner or operator must submit one copy of their Cybersecurity Plan for review and approval to the cognizant COTP or the OCMI for a facility or OCS facility, or to the MSC for a U.S.-flagged vessel.

(1) The COTP, OCMI, or MSC will evaluate each submission for compliance with this part, and either—

(i) Approve the Cybersecurity Plan and return a letter to the owner or operator indicating approval and any conditional approval;

(ii) Require additional information or revisions to the Cybersecurity Plan and return a copy to the owner or operator with a brief description of the required revisions or additional information; or

(iii) Disapprove the Cybersecurity Plan and return a copy to the owner or operator with a brief statement of the reasons for disapproval.

(iv) If the cognizant COTP, OCMI, or MSC requires additional time to review the Plan, they may return a written acknowledgement to the owner or operator stating that the Coast Guard will review the Cybersecurity Plan submitted for approval, and that the U.S.-flagged vessel, facility, or OCS facility may continue to operate as long as it remains in compliance with the submitted Cybersecurity Plan.

(2) Owners or operators submitting one Cybersecurity Plan to cover two or more U.S.-flagged vessels, facilities, or OCS facilities of similar operations must ensure the Plan addresses the specific cybersecurity risks for each U.S.-flagged vessel, facility, or OCS facility.

(3) A Plan that is approved by the COTP, OCMI, or MSC is valid for 5 years from the date of its approval.

(e) *Amendments to the Cybersecurity Plan.* (1) Amendments to a Coast Guard-approved Cybersecurity Plan must be initiated by either—

(i) The owner or operator or the CySO; or

(ii) When the COTP, OCMI, or MSC finds that the Cybersecurity Plan no longer meets the requirements in this part, the Plan will be returned to the owner or operator with a letter explaining why the Plan no longer meets the requirements and requires amendment. The owner or operator will have at least 60 days to submit its proposed amendments. Until the amendments are approved, the owner or operator must ensure temporary cybersecurity measures are implemented to the satisfaction of the Coast Guard.

(2) Proposed amendments to the Cybersecurity Plan must be sent to the Coast Guard at least 30 days before the proposed amendment's effective date. The Coast Guard will approve or disapprove the proposed amendment in accordance with this part.

(i) Nothing in this section should be construed as limiting the owner or operator of the U.S.-flagged vessel, facility, or OCS facility from the timely implementation of such additional security measures not enumerated in the approved VSP, FSP, or OCS FSP as necessary to address exigent security situations.

(ii) In such cases, the owner or operator must notify the cognizant COTP for a facility or OCS facility, or the MSC for U.S.-flagged vessels, by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place.

(3) If the owner or operator has changed, the CySO must amend the Cybersecurity Plan as soon as reasonably practicable in light of the individual circumstances, but, in any case, not longer than 96 hours, to include the name and contact information of the new owner or operator and submit the affected portion of the Plan for review and approval in accordance with this part.

(4) If the CySO has changed, the Coast Guard must be notified as soon as reasonably practicable in light of the individual circumstances, but, in any case, not longer than 96 hours, and the affected portion of the Cybersecurity Plan must be amended and submitted to the Coast Guard for review and approval in accordance with this part as soon as reasonably practicable in light of the individual circumstances, but, in any case, not longer than 96 hours.

(f) *Audits.* (1) The CySO must ensure that an audit of the Cybersecurity Plan and its implementation is performed annually, beginning no later than 1 year from the initial date of approval. The CySO must attach a report to the Plan certifying that the Plan meets the applicable requirements of this subpart.

(2) In addition to the annual audit, the CySO must ensure that an audit of the Cybersecurity Plan occurs if there is a change in the owner or operator of the U.S.-flagged vessel, facility, or OCS facility, or if there have been modifications to the cybersecurity measures, including, but not limited to, physical access, incident response procedures, security measures, or operations.

(3) Additional audits of the Cybersecurity Plan as a result of modifications to the U.S.-flagged vessel, facility, or OCS facility, or because of changes to the cybersecurity measures in accordance with paragraph (f)(2) of this section, may be limited to those sections of the Plan affected by the modifications.

(4) Personnel conducting internal audits of the cybersecurity measures specified in the Plan or evaluating its implementation must—

(i) Have knowledge of methods of conducting audits and inspections, as well as access control and monitoring techniques;

(ii) Not have regularly assigned cybersecurity duties for the U.S.-flagged vessel, facility, or OCS facility being audited; and

(iii) Be independent of any cybersecurity measures being audited.

(5) If the results of an audit require amending the Cybersecurity Plan, the CySO must submit, in accordance with this part, the amendments to the Coast Guard for review and approval no later than 30 days after completion of the audit.

§ 101.635 Drills and exercises.

(a) *General.* (1) Drills and exercises must be used to test the proficiency of the U.S.-flagged vessel, facility, and OCS facility personnel in assigned cybersecurity duties and the effective implementation of the VSP, FSP, OCS FSP, and Cybersecurity Plan. The drills and exercises must enable the CySO to identify any related cybersecurity deficiencies that need to be addressed.

(2) The drill or exercise requirements specified in this section may be satisfied with the implementation of cybersecurity measures required by the VSP, FSP, OCS FSP, and Cybersecurity Plan as the result of a cyber incident, as long as the U.S.-flagged vessel, facility, or OCS facility achieves and documents attainment of drill and exercise goals for the cognizant COTP.

(b) *Drills.* (1) The CySO must ensure that cybersecurity drills are conducted at least twice each calendar year. Cybersecurity drills may be held in conjunction with other security or non-security drills, as required by 33 CFR 104.230, 105.220, or 106.225, where appropriate.

(2) Drills must test individual elements of the Cybersecurity Plan, including responses to cybersecurity threats and incidents. Cybersecurity drills must take into account the types of operations of the U.S.-flagged vessel, facility, or OCS facility; changes to the U.S.-flagged vessel, facility, or OCS facility personnel; the type of vessel a facility is serving; and other relevant circumstances.

(3) If a vessel is moored at a facility on a date a facility has planned to conduct any drills, the facility cannot require the vessel or vessel personnel to be a part of or participate in the facility's scheduled drill.

(c) *Exercises.* (1) Exercises must be conducted at least once each calendar

year, with no more than 18 months between exercises.

(2) Exercises may be—

(i) Full-scale or live;

(ii) Tabletop simulation;

(iii) Combined with other appropriate exercises as required by 33 CFR 104.230, 105.220, or 106.225; or

(iv) A combination of the elements in paragraphs (c)(2)(i) through (iii) of this section.

(3) Exercises may be vessel-, facility-, or OCS facility-specific, or part of a cooperative exercise program to exercise applicable vessel, facility, and OCS facility Cybersecurity Plans or comprehensive port exercises.

(4) Each exercise must test communication and notification procedures and elements of coordination, resource availability, and response.

(5) Exercises are a full test of the cybersecurity program and must include the substantial and active participation of the CySO(s).

(6) If any corrective action identified during an exercise is needed, it must be addressed and documented as soon as possible.

§ 101.640 Records and documentation.

All records, reports, and other documents mentioned in this subpart must be created and maintained in accordance with 33 CFR 104.235 for U.S.-flagged vessels, 105.225 for facilities, and 106.230 for OCS facilities. At a minimum, the records must be created for the following activities: training, drills, exercises, cybersecurity threats, reportable cyber incidents, and audits of the Cybersecurity Plan.

§ 101.645 Communications.

(a) The CySO must have a means to effectively notify owners or operators and personnel of a U.S.-flagged vessel, facility, or OCS facility of changes in cybersecurity conditions at the U.S.-flagged vessel, facility, and OCS facility and document these means in Section 5 of the Cybersecurity Plan.

(b) Communication systems and procedures must allow effective and continuous communications between U.S.-flagged vessel, facility, and OCS facility security personnel, vessels interfacing with a facility or an OCS facility, the cognizant COTP, and national and local authorities with security responsibilities.

§ 101.650 Cybersecurity measures.

(a) *Account security measures.* Each owner or operator of a U.S.-flagged vessel, facility, or OCS facility must ensure, at a minimum, the following account security measures are in place and documented in Section 7 of the Cybersecurity Plan:

(1) Automatic account lockout after repeated failed login attempts must be enabled on all password-protected IT systems;

(2) Default passwords must be changed before using any IT or OT systems. When changing default passwords is not feasible, appropriate compensating security controls must be implemented and documented;

(3) A minimum password strength must be maintained on all IT and OT systems that are technically capable of password protection;

(4) Multifactor authentication must be implemented on password-protected IT and remotely accessible OT systems. When multifactor authentication is not feasible, appropriate compensating security controls must be implemented and documented;

(5) The principle of least privilege must be applied to administrator or otherwise privileged accounts on both IT and OT systems;

(6) The owner or operator must ensure that users maintain separate credentials on critical IT and OT systems; and

(7) The owner or operator must ensure that user credentials are removed or revoked when a user leaves the organization.

(b) *Device security measures.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following device security measures are in place, addressed in Section 6 of the Cybersecurity Plan, and made available to the Coast Guard upon request:

(1) Develop and maintain a list of approved hardware, firmware, and software that may be installed on IT or OT systems. Any hardware, firmware, and software installed on IT and OT systems must be on the owner- or operator-approved list;

(2) Ensure applications running executable code are disabled by default on critical IT and OT systems;

(3) Maintain an accurate inventory of network-connected systems, including designation of critical IT and OT systems; and

(4) Develop and maintain accurate documentation identifying the network map and OT device configuration information.

(c) *Data security measures.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following data security measures are in place and documented in Section 4 of the Cybersecurity Plan:

(1) Logs must be securely captured, stored, and protected so that they are accessible only by privileged users; and

(2) Effective encryption must be deployed to maintain confidentiality of sensitive data and integrity of IT and OT traffic, when technically feasible.

(d) *Cybersecurity training for personnel.* The training program to address requirements under this paragraph must be documented in Sections 2 and 4 of the Cybersecurity Plan.

(1) All personnel with access to the IT or OT systems, including contractors, whether part-time, full-time, temporary, or permanent, must have cybersecurity training in the following topics:

(i) Relevant provisions of the Cybersecurity Plan;

(ii) Recognition and detection of cybersecurity threats and all types of cyber incidents;

(iii) Techniques used to circumvent cybersecurity measures;

(iv) Procedures for reporting a cyber incident to the CySO; and

(v) OT-specific cybersecurity training for all personnel whose duties include using OT.

(2) Key personnel with access to the IT or remotely accessible OT systems, including contractors, whether part-time, full-time, temporary, or permanent, must also have cybersecurity training in the following additional topics:

(i) Understanding their roles and responsibilities during a cyber incident and response procedure; and

(ii) Maintaining current knowledge of changing cybersecurity threats and countermeasures.

(3) When personnel must access IT or OT systems but are unable to receive cybersecurity training as specified in paragraphs (d)(1) and (2) of this section, they must be accompanied or monitored by a person who has completed the training specified in paragraphs (d)(1) and (2) of this section.

(4) All personnel must complete the training specified in paragraphs (d)(1)(ii) through (v) of this section by January 12, 2026, and annually thereafter. Key personnel must complete the training specified in paragraph (d)(2) of this section by January 12, 2026, and annually thereafter, or more frequently as needed. Training for new personnel not in place at the time of the effective date of this rule must be completed within 5 days of gaining system access, but no later than within 30 days of hiring, and annually thereafter. Training for personnel on new IT or OT systems not in place at the time of the effective date of this rule must be completed within 5 days of system access, and

annually thereafter. All personnel must complete the training specified in paragraph (d)(1)(i) within 60 days of receiving approval of the Cybersecurity Plan. The training must be documented and maintained in the owner's or operator's records in accordance with 33 CFR 104.235 for U.S.-flagged vessels, 105.225 for facilities, and 106.230 for OCS facilities.

(e) *Risk management.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following measures for risk management are in place and documented in Sections 11 and 12 of the Cybersecurity Plan:

(1) *Cybersecurity Assessment.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure completion of a Cybersecurity Assessment that addresses each covered U.S.-flagged vessel, facility, and OCS facility. A Cybersecurity Assessment must be conducted no later than July 16, 2027, and annually thereafter. However, the Cybersecurity Assessment must be conducted sooner than annually if there is a change in ownership of a U.S.-flagged vessel, facility, or OCS facility. In conducting the Cybersecurity Assessment, the owner or operator must—

(i) Analyze all networks to identify vulnerabilities to critical IT and OT systems and the risk posed by each digital asset;

(ii) Validate the Cybersecurity Plan;

(iii) Document recommendations and resolutions in the Vessel Security Assessment (VSA), Facility Security Assessment (FSA), or OCS FSA, in accordance with 33 CFR 104.305, 105.305, and 106.305;

(iv) Document and ensure patching or implementing of documented compensating controls for all KEVs in critical IT or OT systems, without delay; and

(v) Incorporate recommendations and resolutions from paragraph (e)(1)(iii) of this section into the Cybersecurity Plan through an amendment, in accordance with § 101.630(e).

(2) *Penetration testing.* In conjunction with Cybersecurity Plan renewal, the owner, operator, or designated CySO must ensure that a penetration test has been completed. Following the penetration test, a letter certifying that the test was conducted, as well as all identified vulnerabilities, must be included in the VSA, FSA, or OCS FSA, in accordance with 33 CFR 104.305, 105.305, and 106.305.

(3) *Routine system maintenance.* Each owner or operator or a designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following measures for routine system maintenance are in place and documented in Section 6 of the Cybersecurity Plan:

(i) Ensure patching or implementation of documented compensating controls for all KEVs in critical IT or OT systems, without delay;

(ii) Maintain a method to receive and act on publicly submitted vulnerabilities;

(iii) Maintain a method to share threat and vulnerability information with external stakeholders;

(iv) Ensure there are no exploitable channels directly exposed to internet-accessible systems;

(v) Ensure no OT is connected to the publicly accessible internet unless explicitly required for operation, and verify that, for any remotely accessible OT system, there is a documented justification; and

(vi) Conduct vulnerability scans as specified in the Cybersecurity Plan.

(f) *Supply chain.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following supply-chain measures are in place and documented in Section 4 of the Cybersecurity Plan:

(1) Consider cybersecurity capability as criteria for evaluation to procure IT and OT systems or services;

(2) Establish a process through which all IT and OT vendors or service providers notify the owner or operator or designated CySO of any cybersecurity vulnerabilities or reportable cyber incidents, without delay; and

(3) Monitor and document all third-party remote connections to detect cyber incidents.

(g) *Resilience.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following measures for resilience are in place and documented in Sections 3 and 9 of the Cybersecurity Plan:

(1) For entities that have not reported to the Coast Guard pursuant to, or not subject to, 33 CFR 6.16–1, report reportable cyber incidents to the NRC without delay;

(2) In addition to other plans mentioned in this subpart, develop, implement, maintain, and exercise the Cyber Incident Response Plan;

(3) Periodically validate the effectiveness of the Cybersecurity Plan through annual exercises, annual reviews of incident response cases, or post-cyber incident review, as determined by the owner or operator; and

(4) Perform backup of critical IT and OT systems, with those backups being sufficiently protected and tested frequently.

(h) *Network segmentation.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following measures for network segmentation are in place and documented in Sections 7 and 8 of the Cybersecurity Plan:

(1) Implement segmentation between IT and OT networks; and

(2) Verify that all connections between IT and OT systems are logged and monitored for suspicious activity, breaches of security, TSIs, unauthorized access, and cyber incidents.

(i) *Physical security.* Each owner, operator, or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure the following measures for physical security are in place and documented in Sections 7 and 8 of the Cybersecurity Plan:

(1) In addition to any other requirements in this part, limit physical access to OT and related IT equipment to only authorized personnel, and confirm that all HMIs and other hardware are secured, monitored, and logged for personnel access; and

(2) Ensure unauthorized media and hardware are not connected to IT and OT infrastructure, including blocking, disabling, or removing unused physical access ports, and establishing procedures for granting access on a by-exception basis.

§ 101.655 Cybersecurity compliance dates.

All Cybersecurity Plans mentioned in this subpart must be submitted to the Coast Guard for review and approval no later than July 16, 2027, according to 33 CFR 104.410 for U.S.-flagged vessels, 33 CFR 105.410 for facilities, or 33 CFR 106.410 for OCS facilities.

§ 101.660 Cybersecurity compliance documentation.

Each owner or operator must ensure that the cybersecurity portion of their Plan and penetration test results are available to the Coast Guard upon request. The Alternative Security Program provisions apply to cybersecurity compliance documentation and are addressed in 33 CFR 104.140 for vessels, 33 CFR 105.140 for facilities, and 33 CFR 106.135 for OCS facilities.

§ 101.665 Noncompliance, waivers, and equivalents.

An owner or operator, after completion of the required Cybersecurity Assessment, may seek a waiver or an equivalence determination for the requirements in subpart F using the standards and submission

procedures applicable to a U.S.-flagged vessel, facility, or OCS facility as outlined in 33 CFR 101.130, 104.130, 104.135, 105.130, 105.135, 106.125, or 106.130. If an owner or operator must temporarily deviate from the requirements in this part, they must notify the cognizant COTP for facilities or OCS facilities, or the MSC for U.S.-flagged vessels, and may request temporary permission to continue to operate under the provisions as outlined in 33 CFR 104.125, 105.125, or 106.120.

§ 101.670 Severability.

Any provision of this subpart held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 3. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 70001–70003, 70034, and Chapter 701; DHS Delegation 00170.1, Revision No. 01.4. Subpart C is also issued under the authority of 46 U.S.C. 3715 and 46 U.S.C. 70011.

■ 4. Amend § 160.202 by revising the definition for Hazardous condition to read as follows:

§ 160.202 Definitions.

* * * * *

Hazardous condition means any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, cyber incident, injury or illness of a person aboard, or manning-shortage.

* * * * *

Dated: January 8, 2025.

Linda Fagan,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 2025–00708 Filed 1–13–25; 4:15 pm]

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Part V

Commodity Futures Trading Commission

Internal Revenue Service

Department of the Treasury

19 CFR Parts 10, 24, 113, et al.

Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to Textile and Apparel Goods, Automotive Goods, and Other USMCA Provisions; Final Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 113, 123, 141, 144, 163, 174, and 182

[USCBP–2024–0017; CBP Dec. 24–18]

RIN 1685–AA00 (Formerly RIN 1515–AE65)

Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to Textile and Apparel Goods, Automotive Goods, and Other USMCA Provisions

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the U.S. Customs and Border Protection (CBP) regulations to add implementing regulations for the preferential tariff treatment and related customs provisions of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) with respect to general definitions, drawback and duty-deferral programs, textile and apparel goods, and automotive goods. This document also amends the regulations to implement the temporary admission of goods, to delineate recordkeeping and protest requirements, to clarify the fee provisions, and to make conforming amendments, including technical corrections to other laws as required by statute.

DATES: This interim final rule is effective on March 18, 2025. However, compliance with the labor value content certification, steel purchasing certification, and aluminum purchasing certification provisions in §§ 182.95, 182.96, and 182.97 will only be required for those vehicle certifications submitted to CBP on or after May 19, 2025. Comments regarding this interim final rule must be received by March 18, 2025.

ADDRESSES: Please submit comments, identified by *docket number* USCBP–2024–0017, by the following method:

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

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: *Operational Aspects and Audit Aspects:* Raymond J. Irizarry, Director, Textiles and Trade Agreements Division, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, (202) 945–7236 or *FTA@cbp.dhs.gov*.

Legal Aspects: Yuliya A. Gulis, Director, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, (202) 325–0042 or *yuliya.a.gulis@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

II. Background

On November 30, 2018, the ''Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Protocol) was signed to replace the North American Free Trade Agreement (NAFTA). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA) [1] is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the ''Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Amended Protocol), which the Office of the United States Trade Representative (USTR) signed on December 10, 2019.

Pursuant to section 106 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4205) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the United States approved and implemented the USMCA through the enactment of the United States—Mexico—Canada Agreement Implementation Act (USMCA Implementation Act), Pub. L. 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), on January 29, 2020. Section 103(a)(1)(B) of the USMCA Implementation Act (19 U.S.C. 4513(b)(1)) provides the authority for new or amended regulations to be issued to implement the USMCA, as of the date of its entry into force.

Mexico, Canada, and the United States certified their preparedness to implement the USMCA on December 12, 2019, March 13, 2020, and April 24, 2020, respectively. As a result, pursuant to paragraph 2 of the Protocol, which provides that the USMCA will take effect on the first day of the third month after the last signatory party provides written notification of the completion of its domestic procedures required for entry into force, the USMCA entered into force on July 1, 2020.

Subsequent to the USMCA's entry into force date, on December 27, 2020, the Consolidated Appropriations Act, 2021 (Appropriations Act), Pub. L. 116–260, was enacted with Title VI of the Act containing technical corrections to the USMCA Implementation Act. All of the changes contained within Title VI of the Appropriations Act are retroactively effective on July 1, 2020, the USMCA's entry into force date. *See* sections 601(h) and 602(g) of Title VI of the Appropriations Act. These changes included amending section 202 of the USMCA Implementation Act (19 U.S.C. 4531) to prohibit non-originating goods used in production processes within foreign trade zones (FTZs) from qualifying as originating goods under the USMCA. *See* section 601(b) of Title VI of the Appropriations Act. Additionally, section 601(e) of Title VI of the Appropriations Act amended 19 U.S.C. 1520(d) to allow the refund of merchandise processing fees for USMCA post-importation claims. The Appropriations Act also included technical corrections to other laws. These other laws, such as the African Growth and Opportunity Act and the Caribbean Basin Economic Recovery Act, implemented the relevant trade preference programs using the NAFTA

[1] The Agreement Between the United States of America, the United Mexican States, and Canada is the official name of the USMCA treaty. Please be aware that, in other contexts, the same document is also referred to as the United States-Mexico-Canada Agreement.

rules of origin. With the repeal of the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), section 602(a) and (b) of Title VI of the Appropriations Act amended these other laws to include the USMCA rules of origin.

Pursuant to USMCA Article 5.16, the United States, Mexico, and Canada trilaterally negotiated and agreed to Uniform Regulations. The USMCA Free Trade Commission adopted the Uniform Regulations in its Decision No.1, effective as of the date of entry into force of the USMCA. Annex I to that decision includes: [2]

- The Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapter 4 (Rules of Origin) and Related Provisions in Chapter 6 (Textile and Apparel Goods) of the Agreement Between the United States of America, the United Mexican States, and Canada (Uniform Regulations regarding Rules of Origin), and
- The Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapters 5 (Origin Procedures), 6 (Textile and Apparel Goods), and 7 (Customs Administration and Trade Facilitation) of the Agreement Between the United States of America, the United Mexican States, and Canada (Uniform Regulations regarding Origin Procedures).

In accordance with USMCA Article 5.16, modifications or additions to the Uniform Regulations shall be considered regularly by the USMCA Parties to reduce their complexity and to ensure better compliance. To this end, further iterations of the Uniform Regulations may be negotiated. Part 182 of title 19 of the Code of Federal Regulations (CFR) (19 CFR part 182) contains the Uniform Regulations regarding Chapter 4 Rules of Origin and related provisions of Chapter 6 in Appendix A. The Uniform Regulations for Chapter 5, remaining provisions of Chapter 6, and Chapter 7 regarding Origin Procedures are incorporated in title 19 of the CFR, including 19 CFR part 182, as appropriate for U.S. administrative processes and procedures. Part 182 of title 19 of the CFR will be amended through subsequent rulemaking to reflect future changes to both sets of the Uniform Regulations, as needed.

The USMCA superseded NAFTA and its related provisions on the date that USMCA entered into force. *See* Protocol, paragraph 1. Section 601 of the USMCA Implementation Act repealed the NAFTA Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (19 U.S.C. 3301), as of the date that the USMCA entered into force. The NAFTA provisions set forth in part 181 of title 19 of the CFR (19 CFR part 181) and in General Note 12, Harmonized Tariff Schedule of the United States (HTSUS), continue to apply to goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020.

Claims for preferential treatment under the USMCA may be made as of July 1, 2020. On July 1, 2020, CBP published an interim final rule (IFR), entitled ''Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Uniform Regulations Regarding Rules of Origin,'' (CBP Dec. 20–11) in the **Federal Register** (85 FR 39690), amending part 181 and adding a new part 182 containing several USMCA provisions, including the Uniform Regulations regarding Rules of Origin as Appendix A of part 182 to title 19 of the CFR (19 CFR part 182), which was trilaterally agreed upon by the United States, Mexico, and Canada. CBP later published an IFR on July 6, 2021, entitled, ''Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to the Marking Rules, Tariff-rate Quotas, and Other USMCA Provisions,'' (CBP Dec. 21–10) in the **Federal Register** (86 FR 35566), which was effective on July 1, 2021. The IFR amended part 182 to implement USMCA Chapters 1, 2, 5, and 7 related to general definitions, confidentiality, import requirements, export requirements, post-importation duty refund claims, a portion of the drawback and duty-deferral programs, general verifications and determinations of origin, commercial samples, goods re-entered after repair or alteration in Canada or Mexico, and penalties. It also amended several other parts of title 19 of the CFR necessary to implement the USMCA. In addition to those regulations and the regulations set forth in this document, persons intending to make USMCA preference claims may refer to the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA* for further guidance. The United States International Trade Commission has modified the HTSUS to include the addition of General Note 11, incorporating the USMCA rules of origin for preference purposes, and the insertion of the special program indicator ''S'' or ''S+'' for the USMCA in the HTSUS ''special'' rate of duty subcolumn.[3]

A. The Customs Related USMCA Provisions

The USMCA is composed of 34 chapters along with additional side letters. CBP is responsible for administering the customs related provisions contained within Chapters 1 (Initial Provisions and General Definitions), 2 (National Treatment and Market Access for Goods), 4 (Rules of Origin), 5 (Origin Procedures), 6 (Textile and Apparel Goods) and 7 (Customs Administration and Trade Facilitation) of the USMCA and, pursuant to Article 5.16 of the USMCA, the Uniform Regulations regarding Rules of Origin as well as the Uniform Regulations regarding Origin Procedures. This IFR amends the CBP regulations to implement remaining customs related USMCA provisions that CBP is responsible for administering, as described below.

Chapter 1 of the USMCA contains the general definitions and country-specific definitions applicable to the USMCA, unless otherwise provided.

Chapter 2 of the USMCA sets forth the national treatment and market access provisions. Unless otherwise provided, each USMCA country shall apply a customs duty on an originating good in accordance with its Schedule in Annex 2–B (Tariff Commitments) of Chapter 2 of the USMCA. *See* Article 2.4 of the USMCA. USMCA Chapter 2 also contains the drawback and duty-deferral program provisions (Article 2.5) and the temporary admission of goods provisions (Article 2.7).

USMCA Chapter 4 contains the general rules of origin for preferential tariff treatment. Annex 4–B contains the product-specific rules of origin. Specifically, the Appendix to Annex 4–B of Chapter 4 of the USMCA sets forth the provisions related to the product-specific rules of origin for automotive goods. *See* USMCA Article 4.10. USMCA Appendix to Annex 4–B includes the automotive good-specific definitions (Article 1); the averaging provisions for purposes of calculating the regional value content of a passenger vehicle, light truck, heavy truck, or automotive good (Article 5); the steel purchasing and aluminum purchasing requirements (Article 6); the labor value content requirements (Article 7); and

[2] Available at: *https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/free-trade-commission-decisions/usmca-free-trade-commission-decision-no-1.*

[3] The S+ indicator is used for certain agricultural goods and textile tariff preference levels (TPLs).

the provisions related to the transition period during which a qualifying passenger vehicle, light truck, or heavy truck may be originating under the USMCA pursuant to an alternative staging regime (Article 8).

Chapter 5 of the USMCA sets forth the origin procedures. This includes the recordkeeping requirements for importers, exporters, and producers (Article 5.8); the general origin verification requirements and procedures (Article 5.9); determinations of origin (Article 5.10); advance rulings relating to origin (Article 5.14); and the review and appeal of determinations of origin and advance rulings (Article 5.15).

Chapter 6 includes the product-specific rules of origin specific to textiles and apparel goods. Except as specifically provided for in USMCA Chapter 6, USMCA Chapters 4 (Rules of Origin) and 5 (Origin Procedures) apply to textile and apparel goods as well. *See* USMCA Article 6.1. Chapter 6 contains the textile and apparel goods site visit verification provisions (Article 6.6), and the determination of origin provisions (Article 6.7). Annex 6–A of Chapter 6 of the USMCA sets forth the special provisions applicable to certain textile and apparel goods. *See* USMCA Article 6.3. Section C of Annex 6–A sets forth the tariff preference level provisions related to preferential tariff treatment for non-originating goods of another USMCA country, including the requirements and applicable procedures. USMCA Annex 6–B contains the schedule of conversion factors that apply to tariff preference levels.

USMCA Chapter 7 sets forth provisions related to customs administration and trade facilitation, specifically provisions on advance rulings (Article 7.5) and on review and appeal of customs determinations (Article 7.15).

The Chapters 1, 2, 4, 5, 6, and 7 provisions discussed above are reflected in this IFR. CBP is soliciting public comments in this document. CBP will address any public comments received from the IFRs implementing the USMCA in a final rule published in the **Federal Register**. Additionally, future trilateral negotiations on the Uniform Regulations may result in additional provisions that will be included in a future rulemaking process at a later date.

B. Textiles and Apparel Goods

Under the USMCA, a textile or apparel good is defined as a good classified in Harmonized System (HS) subheading 4202.12, 4202.22, 4202.32, or 4202.92 (luggage, handbags and similar articles with an outer surface of textile materials); headings 50.04 through 50.07, 51.04 through 51.13, 52.04 through 52.12, 53.03 through 53.11; Chapters 54 through 63; heading 66.01 (umbrellas) or heading 70.19 (yarns and fabrics of glass fiber); subheading 9404.90 (articles of bedding and similar furnishing); or heading 96.19 (babies diapers and other sanitary textile articles). *See* USMCA Article 1.5. Chapter 6 of the USMCA contains the provisions that apply only to the treatment of textile and apparel goods. Unless otherwise noted, the provisions in USMCA Chapter 6 are additional requirements, with the rules of origin in USMCA Chapter 4 and the origin procedures in USMCA Chapter 5 also applying to textile and apparel goods.

Tariff Preference Levels (TPLs)

USMCA Chapter 6 contains special provisions in Annex 6–A allowing specified quantities of certain textile and apparel goods, which do not meet the rules of origin in General Note 11, HTSUS, or the Uniform Regulations regarding Rules of Origin, to claim USMCA preferential tariff treatment because the goods undergo significant processing in one or more USMCA countries. *See* USMCA Article 6.3. Specifically, Section C of Annex 6–A sets the tariff preference levels (TPLs). TPLs require that each USMCA country apply the preferential tariff treatment applicable to originating goods (as set out in the goods' schedule in USMCA Annex 2–B (Tariff Commitments)) for certain non-originating apparel goods of Chapters 61 and 62, HTSUS, and textile and apparel goods, other than wadding, of heading 9619, HTSUS; certain non-originating cotton or man-made fiber fabrics and textile goods, and certain goods of subheading 9404.90, HTSUS; and certain non-originating cotton or man-made fiber spun yarn, up to the annual quantities specified in the appendices to Annex 6–A, in the square meter equivalent measurement (SME) indicated. The SME is a unit of measurement that results from the application of the conversion factors set out in Annex 6–B, to a primary unit of measure such as a unit, dozen, or kilogram and is used in the appendices to Annex 6–A to determine the annual quantities of each specified textile and apparel good that is eligible for USMCA preferential tariff treatment under the TPLs. *See* USMCA Annex 6–A, Section A.

A USMCA country will manage each TPL on a first-come, first-served basis, and will calculate the quantity of goods that enter under a TPL on the basis of its imports. *See* USMCA Annex 6–A, Section C. When imports exceed the established annual quantitative levels, the imported goods are subject to most-favored nation (MFN) rates of duty. An importer may make a claim for preferential tariff treatment of a good under a TPL for at least one year after the good is imported, if the annual quantitative limit has not been reached and other TPL requirements are met. Goods imported under TPLs are exempt from merchandise processing fees.

Pursuant to section 103(c)(1) of the USMCA Implementation Act (19 U.S.C. 4513(c)), which grants the President proclamation authority to take the actions necessary to apply USMCA Article 6.3 and Annex 6–A, the special classification provisions in Subchapter XXIII of Chapter 98 of the HTSUS have been modified to insert U.S. Note 11 containing the Mexican and Canadian textile and apparel goods, with the SME indicated, that are eligible for special tariff treatment subject to the TPLs. Additionally, the HTSUS was modified to include the insertion of the special program indicator ''S+'' in the HTSUS ''special'' rate of duty subcolumn. The special program indicator ''S+'' is used when the HTSUS provides different preferential tariff treatment to each of the USMCA countries such as with TPLs.

As goods subject to TPLs are not originating goods, the certification of origin requirement does not apply for textile or apparel goods subject to a TPL claiming USMCA preferential tariff treatment. Instead, pursuant to USMCA Annex 6–A, Section C, the USMCA country where the good is being imported may require a document issued by the competent authority of a USMCA country, such as a certificate of eligibility, to provide information demonstrating that the good qualifies for duty-free treatment under a TPL, to track allocation and use of a TPL, or as a condition to grant duty-free treatment to the good under a TPL. Each USMCA country must notify the other USMCA countries if it requires a certificate of eligibility or other documentation. CBP has determined that TPLs under the USMCA will be administered using a certificate of eligibility. Thus, CBP is adding the TPL requirements, including the requirements for the certificate of eligibility, to 19 CFR part 182, subpart H.

The USMCA provisions related to claims for preferential tariff treatment generally apply, with the exception of the certification of origin requirement, to textile or apparel goods subject to TPLs, including the general verification requirements under USMCA Article 5.9

and the textile and apparel goods-specific verification provisions in USMCA Article 6.6. *See* USMCA Annex 6–A, Section C.

Textile and Apparel Good Verifications

Pursuant to USMCA Article 5.9, a USMCA country may conduct a verification to determine whether a good qualifies for preferential tariff treatment by one or more of the following means: a written request or questionnaire issued to the importer, exporter, or producer; a verification visit to the premises of the exporter or producer; for a textile or apparel good, the procedures set out in USMCA Article 6.6; or any other procedure as may be decided by the USMCA countries.

Accordingly, the USMCA provides a USMCA country with the discretion to conduct a textile or apparel good verification either pursuant to the general verification procedures set forth in USMCA Article 5.9 or pursuant to a site visit under USMCA Article 6.6. A verification under USMCA Article 5.9 is conducted to verify whether a good qualifies for preferential tariff treatment. A site visit under USMCA Article 6.6 (hereinafter referred to as a ''site visit'') may only be conducted to verify textile and apparel goods. A USMCA country may perform a site visit of an exporter or producer to verify whether a textile or apparel good qualifies for USMCA preferential tariff treatment or to verify whether customs offenses with regard to a textile or apparel good are occurring or have occurred. Consequently, under USMCA Article 6.6.3, during a site visit, a USMCA country may request access to records and facilities relevant to the claim for preferential tariff treatment or records and facilities relevant to the customs offenses being verified.

USMCA Article 1.5 defines a customs offense to mean any act committed for the purpose of, or having the effect of, avoiding a USMCA country's laws or regulations pertaining to the provisions of the USMCA governing importations or exportations of goods between, or transit of goods through, the territories of the USMCA countries, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, transshipment, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods.

A site visit's procedures and processes differ significantly from a verification visit under USMCA Article 5.9. Prior to conducting a site visit in a USMCA country, the USMCA country conducting the site visit is not required to notify the exporter or producer whose premises are going to be visited. The USMCA country conducting the site visit, however, must notify the USMCA country where the site visit will occur (the ''host USMCA country''). USMCA Article 6.6 sets forth the requirements and specific information that the USMCA country that is seeking to conduct the site visit with respect to a textile or apparel good must provide to the host USMCA country, not later than 20 days prior to the date of the first visit to an exporter or producer. This information exchange between the USMCA countries is governed by the confidentiality provisions in USMCA Article 5.12 to ensure that information is treated as confidential when it is designated as confidential or is confidential under the receiving USMCA country's laws.[4] *See* USMCA Articles 5.12 and 6.9. Additionally, in accordance with USMCA Article 6.6.7(c), the USMCA countries will limit communication regarding the site visit to relevant government officials and not inform any person outside the government of the host USMCA country in advance of the site visit or provide any other information not publicly available that could undermine the effectiveness of the site visit.

The USMCA country conducting the site visit is required to request permission in order to access the relevant records or facilities from the exporter, producer, or a person having capacity to consent on behalf of the exporter or producer, either prior to the site visit, if this would not undermine the effectiveness of the site visit, or at the time of the site visit. *See* USMCA Article 6.6.7(d). Pursuant to the Uniform Regulations regarding Origin Procedures, the USMCA country performing the site visit would inform the person from whom it is requesting permission, at the time of the request for permission, of the legal authority for the visit, the specific purpose of the visit, and the names and titles of the officials performing the visit. Pursuant to USMCA Article 6.6.7(e), if permission is denied or access to the records or facilities is denied, the site visit will not occur. If the exporter, producer, or person having capacity to consent on behalf of the exporter or producer is not able to receive the USMCA country officials to carry out the site visit, the site visit will be conducted on the following business day unless the USMCA country conducting the site visit agrees otherwise, or there is a valid reason that the site visit cannot occur at that time. An unsubstantiated reason or a reason that the USMCA country conducting the site visit does not deem acceptable may result in the consent for the site visit to be deemed denied, though the USMCA country conducting the site visit should give consideration to any reasonable alternative proposed dates. *See* USMCA Article 6.6.7(e).

On completion of a site visit, the USMCA country performing the site visit will, upon request of the host USMCA country or the exporter or producer, provide its relevant findings of the results of the site visit. *See* USMCA Article 6.6.8. Pursuant to USMCA Article 6.7, a USMCA country may deny a claim for preferential tariff treatment for a textile or apparel good for the reasons listed in USMCA Article 5.10; or, if pursuant to a site visit, the USMCA country has not received sufficient information to determine that the textile or apparel good qualifies for preferential tariff treatment; or, if the USMCA country is unable to conduct the site visit as access or permission for a site visit is denied, the USMCA country officials are prevented from completing the site visit, or the exporter or producer does not provide access to the relevant records or facilities during a site visit.

Under USMCA Article 6.6.11, if verifications of identical textile or apparel goods indicate a pattern of conduct by an exporter or producer of making false or unsupported representations that a good imported into the USMCA country qualifies for preferential tariff treatment, the USMCA country may withhold preferential treatment for identical textile or apparel goods imported, exported, or produced by that person until it is demonstrated to the USMCA country that the identical goods qualify for preferential tariff treatment.

Section 207(a)(2) of the USMCA Implementation Act (19 U.S.C. 4533(a)(2)) provides the Secretary of the Treasury authority to conduct a USMCA Article 6.6 site visit to verify whether the textile or apparel good qualifies for preferential tariff treatment under the USMCA or whether customs offenses are occurring or have occurred with respect to the good. Section 207(b) of

[4] The exchange of information between USMCA countries is governed by 19 U.S.C. 1628. *See also* 19 CFR 182.2(b) for the USMCA confidentiality regulations setting forth the legally permitted disclosures that allow CBP to share the confidential information it receives from the public, including the disclosures CBP is authorized to make to other USMCA countries. Please also refer to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to the Marking Rules, Tariff-rate Quotas, and Other USMCA Provisions interim final rule (86 FR 35566), published in the **Federal Register** on July 6, 2021, for additional information regarding confidential information and the USMCA.

the USMCA Implementation Act (19 U.S.C. 4533(b)(1)) sets forth the basis for issuing a negative determination of origin. Specifically, section 207(b)(1)(B)(iv) of the USMCA Implementation Act provides that, for a Chapter 6 site visit, a negative determination is a determination by the Secretary that access or permission for a site visit is denied; U.S. officials are prevented from completing a site visit on the proposed date and the exporter or producer does not provide an acceptable alternative date for the site visit; or the exporter or producer does not provide access to relevant documents or facilities during a site visit. Upon making a negative determination of origin, the Secretary may deny preferential tariff treatment under the USMCA. *See* 19 U.S.C. 4533(c)(1). The Secretary also may withhold preferential tariff treatment for identical goods based on a pattern of conduct. *See* section 207(c)(2) of the USMCA Implementation Act (19 U.S.C. 4533(c)(2)).

To address the specific requirements and procedures for filing a claim for USMCA preferential tariff treatment for a textile or apparel good subject to a TPL and to set forth the procedures related to USMCA Article 6.6 site visits, CBP has included a separate subpart H, *Textile and Apparel Goods,* in part 182 of title 19 of the CFR, that applies only to textile and apparel goods.

C. Automotive Goods

An automotive good is defined as either a covered vehicle (a passenger vehicle, light truck, or heavy truck), or a part, component, or material listed in Tables A.1, A.2, B, C, D, E, F, or G of the Appendix to Annex 4–B of the USMCA (also referred to as the ''Automotive Appendix''). *See* section 202A(a)(4) and (a)(7) of the USMCA Implementation Act (19 U.S.C. 4532(a)(4) and (a)(7)). The definitions of passenger vehicle, light truck, and heavy truck are contained in the USMCA Automotive Appendix. In addition to the general rules of origin set forth in USMCA Chapter 4, the USMCA contains numerous product-specific rules of origin for automotive goods and additional provisions. These product-specific rules of origin and additional requirements are contained in the USMCA Automotive Appendix, including higher regional value content (RVC) thresholds than those in NAFTA, labor value content (LVC) requirement, steel purchasing requirement, and aluminum purchasing requirement. *See* USMCA Article 4.10 and Appendix to Annex 4–B. The importer, exporter, or producer who completes the certification of origin for a covered vehicle is certifying that the covered vehicle is an originating good that has complied with all the product-specific rules of origin, including the LVC, steel purchasing, and aluminum purchasing requirements.

Section 202A of the USMCA Implementation Act (19 U.S.C. 4532) sets forth the special rules for automotive goods, including definitions specific to automotive goods, the vehicle certification requirements for covered vehicles, the alternative staging regime provisions, the administration of the high-wage components of the LVC requirement by the Department of Labor (DOL), and the extra procedures for verification of the LVC requirement. Covered vehicles imported into the United States are only eligible for USMCA preferential tariff treatment if the producer of the covered vehicle (passenger vehicles, light trucks, and heavy trucks) submits three properly filed vehicle certifications to CBP. These vehicle certifications are the LVC certification, steel purchasing certification, and aluminum purchasing certification.

The product-specific rules of origin for automotive goods are set forth in General Note 11, HTSUS, Appendix A to part 182 of title 19 of the CFR (containing the Uniform Regulations regarding Rules of Origin), and the USMCA Automotive Appendix. To address the specific additional requirements and procedures applicable to claims for USMCA preferential tariff treatment for covered vehicles, CBP has included subpart I, *Automotive Goods,* in part 182 of title 19 of the CFR.

Steel Purchasing and Aluminum Purchasing Requirements

USMCA Article 6 of the Automotive Appendix sets forth the steel purchasing and aluminum purchasing requirements. In addition to the other product-specific rules of origin and requirements in USMCA Chapter 4, a covered vehicle imported into the United States is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets both the steel purchasing and the aluminum purchasing requirements, as set forth in USMCA Article 6 of the Automotive Appendix, section 17 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(v), HTSUS, or, if the producer is subject to an alternative staging regime, as set forth in USMCA Articles 6 and 8 of the Automotive Appendix, section 19 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(viii), HTSUS.

Generally, subject to certain exceptions and conditions, the steel purchasing and aluminum purchasing requirements provide that a passenger vehicle, light truck, or heavy truck is originating under the USMCA only if, during the calculation period specified, at least 70 percent, by value, of the vehicle producer's purchases, at the corporate level in the territories of one or more of the USMCA countries, of steel are of originating goods, and at least 70 percent, by value, of the vehicle producer's purchases at the corporate level in the territories of one or more of the USMCA countries of aluminum are of originating goods. *See* USMCA Article 6 of the Automotive Appendix and section 17(1) of the Uniform Regulations regarding Rules of Origin. In order to facilitate implementation of the steel and aluminum purchasing requirements in accordance with USMCA Article 6.3 of the Automotive Appendix, Table S of the Uniform Regulations regarding Rules of Origin contains the HS subheadings for the steel and aluminum, including structural steel or aluminum goods used in the production of covered vehicles, that are subject to the USMCA steel purchasing and aluminum purchasing requirements.

For purposes of determining whether the producer of a covered vehicle has met the steel purchasing and aluminum purchasing requirements, the producer may calculate the purchases of this steel and aluminum on the basis of the categories set forth in section 17(9) of the Uniform Regulations regarding Rules of Origin. The applicable calculation periods, over which the producer of a covered vehicle may calculate the purchases of steel or aluminum, are provided for in sections 16(4), 16(5) and 17(7) of the Uniform Regulations regarding Rules of Origin. The producer of a covered vehicle may choose different calculation periods for its steel purchasing calculation and its aluminum purchasing calculation. *See* section 17(10) of the Uniform Regulations regarding Rules of Origin.

A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle provides a properly filed certification to CBP that the producer meets its steel purchasing and aluminum purchasing requirements, and the producer has information on record to support the calculations relied on for the certification. *See* section 202A(c)(2)(A) of the USMCA Implementation Act (19 U.S.C. 4532(c)(2)(A)). The producer of a covered vehicle is required to provide both a steel purchasing certification and

an aluminum purchasing certification to CBP. CBP must ensure that both the steel purchasing certification and the aluminum purchasing certification do not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(2)(B)(i). Section 202A(c)(2)(C) of the USMCA Implementation Act (19 U.S.C. 4532(c)(2)(C)) authorizes the Secretary of the Treasury to prescribe regulations for a producer of a covered vehicle to certify that it meets the steel purchasing and aluminum purchasing requirements to qualify for USMCA preferential tariff treatment. Accordingly, CBP is adding regulations to 19 CFR part 182, subpart I, setting forth the steel purchasing and aluminum purchasing requirements, and the requirements and procedures for submission of the steel purchasing certification and the aluminum purchasing certification.

LVC Requirement

USMCA Article 7 of the Automotive Appendix sets forth the LVC requirement. In addition to the other product-specific rules of origin and requirements in USMCA Chapter 4, a covered vehicle imported into the United States is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets the LVC requirement, as set forth in USMCA Article 7 of the Automotive Appendix, section 18 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(vi), HTSUS, or, if the producer is subject to an alternative staging regime, as set forth in USMCA Articles 7 and 8 of the Automotive Appendix, section 19 of the Uniform Regulations regarding Rules of Origin, and General Note 11(k)(viii), HTSUS. The applicable calculation periods, over which the producer of a covered vehicle may calculate the LVC, are provided for in sections 16(4), 16(5), and 18(19) (note only the calculation periods in section 18(19) are referenced in the DOL interim regulations at 29 CFR part 810) of the Uniform Regulations regarding Rules of Origin.

The LVC requirement is administered by both CBP and DOL. Section 202A of the USMCA Implementation Act (19 U.S.C. 4532) prescribes CBP's and DOL's roles in implementing and administering the LVC requirement. Each agency has distinct areas of responsibility and CBP will work in conjunction with DOL to review the LVC certification and to perform verifications of covered vehicles that involve the LVC requirement. Pursuant to section 202A of the USMCA Implementation Act (19 U.S.C. 4532), DOL is responsible for implementing and administering the high-wage components of the LVC requirement, which include the wage components of the high-wage material and manufacturing expenditures, the high-wage technology expenditures, and the high-wage assembly expenditures. CBP is responsible for determining whether a covered vehicle meets the LVC requirement generally, based on DOL's high-wage components analysis and CBP's analysis of the valuation and other components of the LVC calculation. CBP is solely responsible for determining whether a covered vehicle is an originating good qualifying for USMCA preferential tariff treatment. The DOL regulations that set forth the high-wage components of the LVC requirement and the applicable procedures are contained in 29 CFR part 810. The DOL and CBP regulations, including the requirements and procedures, are intended to operate in conjunction with each other in accordance with 19 U.S.C. 4532(c)(1) and (e). CBP's and DOL's roles in the implementation and the administration of the LVC requirement are described in more detail below.

A covered vehicle is only eligible for USMCA preferential tariff treatment if the producer of the covered vehicle provides a properly filed certification to CBP that the production of covered vehicles by the producer meets the LVC requirement, and the producer has information on record to support those calculations. *See* section 202A(c)(1)(A) of the USMCA Implementation Act (19 U.S.C. 4532(c)(1)(A)). For purposes of determining whether a covered vehicle meets the LVC requirement, the producer of the covered vehicle must calculate the LVC requirement pursuant to General Note 11(k)(vi), HTSUS, section 18 of the Uniform Regulations regarding Rules of Origin, the requirements for the high-wage components of the LVC requirement set forth in the DOL regulations at 29 CFR part 810, and these regulations.

The USMCA Implementation Act also sets forth CBP's and DOL's responsibilities with respect to the review of the LVC certification. The Secretary of Labor, in consultation with the Commissioner of CBP, must ensure that the LVC certification does not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B)(i). Consistent with the USMCA Implementation Act and the DOL regulations, DOL's role in the LVC certification is limited to reviewing the high-wage components of the LVC certification for omissions or errors. Section 202A(c)(1)(C) of the USMCA Implementation Act (19 U.S.C. 4532(c)(1)(C)) authorizes the Secretary of the Treasury, in consultation with the Secretary of Labor, to prescribe regulations for a producer of a covered vehicle to certify that it meets the LVC requirement to qualify for USMCA preferential tariff treatment. On July 1, 2020, DOL promulgated its USMCA implementing regulations in an IFR published in the **Federal Register** (85 FR 39782), entitled ''High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act,'' which added a new part 810 to title 29 of the CFR to address the requirements and establish procedures for vehicle producers to follow concerning the high-wage components of the LVC requirement. In this document, CBP is adding regulations to 19 CFR part 182, subpart I, setting forth the LVC requirement, and the requirements and procedures for submission of the LVC certification to CBP.

Alternative Staging Regime

The USMCA includes a standard staging regime for automotive good requirements to allow for a period of transition to lessen the burden on vehicle producers and grant them more time to meet the new requirements. Additionally, the USMCA Automotive Appendix includes provisions allowing vehicle producers to request an alternative staging regime to facilitate a longer period of transition to ensure that future production is able to meet the new requirements of the USMCA. The alternative staging regime differs from the standard staging regime by providing the vehicle producer with additional time, different phase-ins for certain product-specific rules of origin for automotive goods, and different threshold requirements.

While an alternative staging regime provides an alternative to certain product-specific rules of origin requirements for covered vehicles, it does not replace any other USMCA rules of origin or provisions of general applicability for covered vehicles claiming USMCA preferential tariff treatment. Specifically, USMCA Article 8 of the Automotive Appendix states that each USMCA country will provide that, for a period ending no later than five years after entry into force (July 1, 2025) or any other period provided for in the producer's approved alternative staging regime for passenger vehicles or light trucks and for a period ending no later than seven years after entry into force (July 1, 2027) for heavy trucks, covered vehicles may be originating

under the USMCA pursuant to an alternative staging regime. An alternative staging regime is the application of the less stringent requirements of USMCA Article 8 of the Automotive Appendix to the production of covered vehicles for the duration of the alternative staging regime period to allow producers of such vehicles to bring production into full compliance with the more stringent requirements of USMCA Articles 2 through 7 of the Automotive Appendix. *See* 19 U.S.C. 4532(a)(1). As provided in USMCA Article 8.6 of the Automotive Appendix, a rule of origin applicable to a covered vehicle as a result of an alternative staging regime applies in place of any other rule of origin for that good.

Pursuant to General Note 11(k)(viii), HTSUS, including as may be further provided for in subchapter XXIII of chapter 99 of the HTSUS, and the Uniform Regulations regarding Rules of Origin, a covered vehicle may be originating pursuant to an alternative staging regime. Section 202A(d) of the USMCA Implementation Act (19 U.S.C. 4532(d)) sets forth the U.S. alternative staging regime. USTR, in consultation with the Interagency Committee on Trade in Automotive Goods established in Executive Order 13908 (February 28, 2020) (''Interagency Committee''), has the authority to set the alternative staging regime requirements, procedures, and criteria to submit petitions to use an alternative staging regime, as well as to review petitions to use an alternative staging regime, approve an alternative staging regime, approve requests for modifications of the petitions, as necessary, and make determinations that a vehicle producer subject to the alternative staging regime failed to meet the requirements of the alternative staging regime.

In accordance with 19 U.S.C. 4532(d)(1), on April 21, 2020, USTR published a notice in the **Federal Register** (85 FR 22238), entitled ''Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks To Use the Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods,'' providing guidance to vehicle producers seeking to request an alternative staging regime for the USMCA rules of origin for automotive goods. The **Federal Register** notice specified the vehicle producers that are eligible to petition for an alternative staging regime and the requirements that vehicle producers must comply with during and after the alternative staging regime.

CBP may deny USMCA preferential tariff treatment for claims where vehicle producers fail to meet the standard automotive good requirements without an authorized alternative staging regime, or a determination has been made that the producer fails to meet the requirements of the alternative staging regime as outlined by USTR in the **Federal Register** notice. An alternative staging regime for a passenger vehicle or light truck is valid for five years (in contrast to seven years for heavy trucks) after the USMCA's entry into force unless the vehicle producer requests a longer period and that longer period is accepted by USTR. In accordance with 19 U.S.C. 4532(d)(3)(B), USTR will maintain a public list of the names of vehicle producers it has authorized to use an alternative staging regime. If USTR subsequently determines pursuant to 19 U.S.C. 4532(d)(5) that a producer failed to meet the requirements of its alternative staging regime, USTR may remove the producer's name from the public list. In that instance, the producer's vehicles will no longer be eligible for USMCA preferential tariff treatment pursuant to the previously approved alternative staging regime and notwithstanding the finality of a liquidation of an entry, the importer of any covered vehicle of that producer will be liable for the duties, taxes, and fees that would have been applicable to that vehicle if USMCA preferential tariff treatment pursuant to the alternative staging regime had not been applied plus interest assessed on or after the date of entry and before the date of the USTR determination. *See* 19 U.S.C. 4532(d)(5)(A). After expiration of the alternative staging period, all claims for USMCA preferential tariff treatment for covered vehicles must meet the rules of origin set forth in USMCA Articles 2 through 7 of the Automotive Appendix.

Recordkeeping

As explained in more detail below in section III.D. of this IFR, section 206(a) of the USMCA Implementation Act amended 19 U.S.C. 1508 to implement the USMCA recordkeeping requirements. Certain amendments apply only to covered vehicles. Pursuant to section 206(a) of the USMCA Implementation Act (19 U.S.C. 1508(b)(4)(B)), any vehicle producer whose goods are the subject of a claim for USMCA preferential tariff treatment must make, keep, and pursuant to the rules and regulations promulgated by the Secretary of the Treasury and Secretary of Labor, render for examination and inspection records and supporting documents related to the LVC, steel purchasing, and aluminum purchasing requirements. The vehicle producer must retain these records and supporting documents for a period of at least five years after the date of filing of the vehicle certifications and render them for examination and inspection upon request. *See* 19 U.S.C. 1508(b)(5)(C)(ii). The DOL recordkeeping requirements related to the high-wage components for the LVC requirement for vehicle producers are located at 29 CFR part 810.

Any importer who claims USMCA preferential tariff treatment for a good imported into the United States must make, keep, and, pursuant to the rules and regulations prescribed by the Secretary of the Treasury and the Secretary of Labor, render for examination and inspection the records and supporting documentation related to the importation, all records and supporting documents related to the origin of the good if the importer completed the certification of origin, and the transshipment records. *See* 19 U.S.C. 1508(b)(4)(A). Since the vehicle certifications and any records and supporting documents related to the LVC, steel purchasing, and aluminum purchasing certifications are records related to the origin of the good under 19 U.S.C. 1508(b)(4)(A)(ii), an importer is only required to make, keep, and render for examination and inspection these records if the importer completed the certification of origin. The DOL recordkeeping requirements, related to the high-wage components of the LVC requirement, for importers making a claim for USMCA preferential tariff treatment for covered vehicles, are located at 29 CFR part 810.

Verifications

A USMCA country may conduct a verification of a covered vehicle pursuant to the general verification means, requirements, and procedures set forth in USMCA Article 5.9. Pursuant to section 202A(e)(1) of the USMCA Implementation Act (19 U.S.C. 4532(e)(1)), as part of a general verification conducted under USMCA Article 5.9 (19 U.S.C. 4533), the Secretary of the Treasury, in conjunction with the Secretary of Labor, may conduct a verification of whether a covered vehicle complies with the LVC requirement. The USMCA Implementation Act specifies the role of CBP and the role of DOL in a verification of a covered vehicle. DOL, in cooperation with the Secretary of the Treasury, will participate in any verification of the LVC requirement by verifying whether the production of covered vehicles by a producer meets the high-wage components of the LVC requirement, including the wage component of the high-wage material

and manufacturing expenditures, the high-wage technology expenditures, and the high-wage assembly expenditures. *See* 19 U.S.C. 4532(e)(2). During a verification of a covered vehicle involving the LVC requirement, the Secretary of the Treasury will verify the components of the LVC requirement not covered by DOL and determine whether the producer has met the LVC requirement. *See* 19 U.S.C. 4532(e)(3). The USMCA Implementation Act also specifies the actions that DOL will take during a verification and the nature of the information that may be requested. *See* 19 U.S.C. 4532(e)(4). In accordance with these requirements, CBP is adding verification requirements and procedures to the regulations in 19 CFR part 182, subpart I, addressing verifications of covered vehicles involving the LVC requirement. These verification requirements will apply in addition to the general verification regulations in 19 CFR part 182, subpart G. Furthermore, the DOL regulations at 29 CFR part 810 set forth the parameters, requirements, and procedures for DOL's verification of the high-wage component of the LVC requirement.

III. Amendments to the Regulations

Pursuant to section 210(a) of the USMCA Implementation Act (19 U.S.C. 4535(a)), the Secretary of the Treasury has the authority to prescribe regulations as needed to implement the USMCA. Pursuant to this authority, this IFR codifies numerous key USMCA provisions implementing the USMCA for the United States. This IFR promulgates CBP regulations to implement the USMCA requirements and procedures trilaterally agreed to by the USMCA countries under the USMCA, the Uniform Regulations regarding the Rules of Origin, and the Uniform Regulations regarding Origin Procedures. Specifically, this IFR amends existing provisions and adds new provisions to the CBP regulations to implement the additional USMCA Chapter 1 general definitions; the remaining USMCA Chapter 2 drawback and duty-deferral program provisions; the USMCA Article 2.7 temporary admission of goods provisions; the USMCA Chapter 4 product-specific rules of origin for automotive goods; the USMCA Article 5.8 recordkeeping requirements for importers, exporters, and producers; the USMCA general origin verification requirements and procedures; the USMCA Article 5.10 determination of origin provisions; the USMCA Article 5.14 advance rulings requirements; the USMCA Article 5.15 review and appeal of determinations of origin and advance rulings provisions; the USMCA Chapter 6 product-specific rules of origin for textiles and apparel goods; and the USMCA Chapter 7 provisions related to customs administration and trade facilitation.

In order to provide transparency and facilitate their use, the majority of the USMCA implementing regulations are set forth in part 182 of title 19 of the CFR, entitled the *United States-Mexico-Canada Agreement*. Part 182 sets forth the USMCA preferential tariff treatment and other customs related provisions. This IFR amends part 182 to add regulations implementing remaining portions of USMCA Chapters 1, 2, 4, 5, and 6, as discussed above, to the existing part 182 regulatory framework. Additionally, this IFR makes amendments to other parts of title 19 of the CFR, including parts 10, 24, 113, 123, 141, 144, 163, and 174, to implement relevant provisions in USMCA Chapters 2, 5, 6, and 7.

All of the regulatory amendments made in this document implement the USMCA, the Uniform Regulations regarding Rules of Origin, and the Uniform Regulations regarding Origin Procedures, as trilaterally agreed to by the United States, Mexico, and Canada, into the CBP regulations. These regulatory amendments are also consistent with the USMCA Implementation Act (19 U.S.C. Chapter 29). The United States adopted the USMCA through the enactment of the USMCA Implementation Act, which provides CBP with the statutory authority to promulgate these additional USMCA implementing regulations appropriate to carry out the actions required by or authorized under the USMCA Implementation Act or proposed in the Statement of Administrative Action approved under 19 U.S.C. 4511(a)(2) to implement the USMCA, as required by Section 103(b)(1) of the USMCA Implementation Act (19 U.S.C. 4513(b)(1)).

A. Part 10

1. Section 10.31

Section 10.31 sets forth the temporary importations under bond (TIB) provisions for articles brought into the United States temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, HTSUS. Paragraph (f) of § 10.31 provides exceptions to the general rule that for temporary importations, a bond is required in an amount equal to double the duties and fees (or a larger amount as required by the Center of Excellence and Expertise (Center) director), which it is estimated the articles would accrue had all the articles covered by the entry been entered under an ordinary consumption entry.

USMCA Article 2.7, *Temporary Admission of Goods,* provides that each USMCA country must grant duty-free temporary admission for: (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry; (b) a good intended for display or demonstration, including its component parts, ancillary apparatus and accessories; (c) commercial samples and advertising films and recordings; and (d) a good admitted for sports purposes, admitted from the territory of another USMCA country, regardless of its origin. *See* USMCA Article 2.7.1. Under USMCA Article 2.7.2, a USMCA country may condition the duty-free temporary admission of the above-mentioned goods on certain requirements. Under Article 2.7.2(d) of the USMCA, a USMCA country may also condition the duty-free temporary admission of one of the above-mentioned goods on the requirement that the good be accompanied by security in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or importation, and releasable on exportation of the good. Section 10.31(f) currently provides that ''the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry.'' Section 10.31(f) applies this 110 percent limitation to the goods listed in USMCA Article 2.7.1(a) through (d) when the goods are originating and applies to the goods listed in USMCA Article 2.7.1(a) and (c) when the goods are non-originating. Thus, CBP is adding a new last sentence to 19 CFR 10.31(f) to clarify that this 110 percent limitation also applies to the goods listed in USMCA Article 2.7.1(b) and (d) when the goods are non-originating. The new last sentence reads: ''In the case of articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a national of Canada or Mexico, the bond shall be without surety or cash deposit in an amount equal to 110 percent of the estimated duties and fees determined at the time of entry, if the entered article is not originating, within the meaning of General Notes 11 and 12, HTSUS, in the country of which the importer is a national.''

Pursuant to USMCA Article 2.7.2(a), another requirement that a USMCA country may condition the duty-free temporary admission of a good on is the good being imported by a national of another USMCA country who seeks temporary entry. Article 1.5 (Section B) of USMCA Chapter 1 defines ''a national of the United States'' as defined in the *Immigration and Nationality Act.* Additionally, a bond for customs duties must not be required for an originating good. *See* USMCA Article 2.7.2(d).

In accordance with these requirements, § 10.31(f) allows for the duty-free temporary importation of the remaining above-mentioned articles without a bond if the articles qualify as originating. Section 10.31(f) currently states that, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada or Mexico and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is an originating good. For this purpose, an originating good is defined as originating within the meaning of certain general notes of the HTSUS listed in § 10.31(f), in the country of which the importer is a resident.

In accordance with USMCA Article 2.7.2(a), CBP is revising the sixth sentence of 19 CFR 10.31(f) to require that the article being brought into the United States be brought in by a national of Canada or Mexico, as opposed to a resident of Canada or Mexico, to qualify as originating goods. Additionally, CBP is revising the sixth sentence of 19 CFR 10.31(f) to add General Note 11, HTSUS, to the list of applicable general notes.

Finally, CBP is revising 19 CFR 10.31(f) to clarify the general rule that, for temporary importations, a bond is required in an amount equal to double the duties and fees (or a larger amount as required by the Center of Excellence and Expertise (Center) director), which it is estimated the articles would accrue had all the articles covered by the entry been entered under an ordinary consumption entry. Fees and duties are distinct and are covered by separate articles in the General Agreement on Tariffs and Trade (GATT). Thus, CBP is revising the language in 19 CFR 10.31(f) from ''duties, including fees'' in both instances where it is referenced to ''duties and fees'' to clarify that fees are not included in duties.

2. Section 10.36a

Section 10.36a sets forth the provisions for the temporary importation of vehicles, pleasure boats, and aircraft brought into the United States by an operator for repair or alteration. Specifically, § 10.36a currently defines the phrase ''for repair or alteration'' with a reference to §§ 10.8, 10.490, 10.570, and 181.64 of title 19 of the CFR. The definition of ''repairs or alterations'' in §§ 10.490, 10.570, and 181.64 of title 19 of the CFR provides that ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. This definition of ''repairs or alterations'' is included in 19 CFR 182.112, which contains the rules that apply for purposes of obtaining duty-free treatment of goods returned after repair or alteration in Canada or Mexico under the USMCA. CBP has decided that, rather than adding additional cross-references in § 10.36a to § 182.112 and the other relevant FTA regulations, CBP will add the definition of ''repair or alteration'' to § 10.36a to make it more transparent to the public. Thus, CBP is revising § 10.36a to remove the cross-references and to add the text of the definition of ''repairs or alterations.''

3. Section 10.41a

Pursuant to section 322(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1322(a)), vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to the extent that such terms and conditions are prescribed in regulations or instructions. Sections 10.41, 10.41a, and 10.41b of title 19 of the CFR set forth the qualifications for designating instruments of international traffic (IITs) and the conditions under which they may be released without entry or the payment of duty. Section 10.41a(a)(1) designates lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic as ''instruments of international traffic.'' The Commissioner of CBP is also authorized, under § 10.41a(a)(1), to designate additional articles or classes of articles as instruments of international traffic. CBP has repeatedly held that to qualify as an instrument of international traffic, the article must be a substantial container or holder.

A container that is designated as an instrument of international traffic is deemed to remain in international traffic provided that the container exits the United States within 365 days of the date it was admitted. *See* 19 CFR 10.41a(g)(1). When such a container does not exit the United States within 365 days of the date on which it is admitted, it shall be considered to have been removed from international traffic and an entry for consumption must be made. *See* 19 CFR 10.41a(g)(3).

Currently, § 10.41a(g) does not allow for an extension beyond the prescribed 365-day time period. Any instrument of international traffic that remains in the United States for a period exceeding 365 days triggers the entry requirement imposed by § 10.41a(g)(3). However, USMCA Article 2.7.11 specifically requires that each USMCA country must extend the timeframe for temporary admission of a shipping container or other substantial holder beyond the period initially fixed at the request of the person concerned. Accordingly, CBP is revising 19 CFR 10.41a(g)(1) to allow CBP to grant an extension and permit the IIT container to remain in international traffic beyond the 365-day time period, at the request of the person who filed the application for release under § 10.41a(a)(1), when the container is designated as an instrument of international traffic and was admitted from Canada or Mexico. The request for extension should be submitted to CBP in the Automated Commercial Environment (ACE), prior to the end of the 365-day time period. The request must contain the container number, last arrival date, intended departure date, and the reason for delay in removing the container or holder from the United States. CBP will notify the individual who filed the application for release of the details of the extension in ACE.

CBP is also amending paragraph (g)(3) to clarify that a container that does not exit the United States by the date the extension expires shall be treated the same as a container, without an extension, that does not exit the United States within the prescribed 365-day time period. A container that is designated as an instrument of international traffic and granted an extension under paragraph (g)(1) will be considered to have been removed from international traffic and an entry for consumption must be made if the container does not exit the United States prior to the date of expiration of the extension granted.

4. Section 10.301

Subpart G of part 10 sets forth the provisions related to the United States-Canada Free Trade Agreement. Specifically, § 10.301 provides the scope and applicability of the United States-Canada Free Trade Agreement, including that the United States and Canada agreed to suspend operation of the Agreement from January 1, 1994. This suspension date was to coincide with the entry into force of NAFTA. With the simultaneous repeal of NAFTA (*see* section 601 of the USMCA Implementation Act) and the entry into force of the USMCA as of July 1, 2020, the United States and Canada have agreed to continue suspending operation of the United States-Canada Free Agreement.

Section 501(c) of the United States-Canada Free Trade Agreement Implementation Act of 1988 (Pub. L. 100–449; 19 U.S.C. 2112 note) sets forth the termination or suspension provisions of the United States-Canada Free Trade Agreement. In section 602 of the USMCA Implementation Act, Congress amended section 501(c)(3) of the United States-Canada Free Trade Agreement Implementation Act of 1988 to state that the United States and Canada agreed to suspend the operation of the United States-Canada Free Trade Agreement by reason of the entry into force of the USMCA until such time as the suspension of the United States-Canada Free-Trade Agreement may be terminated. Accordingly, CBP is revising 19 CFR 10.301 to add a reference to the USMCA to indicate that the United States-Canada Free Trade Agreement continues to remain suspended with the entry into force of the USMCA and to provide the public with the relevant citation to the USMCA regulations in part 182.

5. Technical Corrections in Part 10

The implementing legislation for the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Economic Recovery Act (CBERA), as amended by the United States-Caribbean Basin Trade Partnership Act (CBTPA), trade preference programs contained the NAFTA rules of origin. *See* 19 U.S.C. 3721 and 19 U.S.C. 2702. Accordingly, the implementing regulations for these programs in part 10 of title 19 of the CFR, which followed the statutory language, contain numerous references to NAFTA. Subpart D of part 10 sets forth the textile and apparel articles under the AGOA provisions (*see* 19 CFR 10.211–10.217) and subpart E of part 10 contains the textile and apparel articles and the non-textile articles under the CBTPA provisions (*see* 19 CFR 10.221–10.237).

As stated above, on July 1, 2020, section 601 of the USMCA Implementation Act repealed the NAFTA Implementation Act and references to NAFTA became outdated. On December 27, 2020, section 602 of Title VI of the Appropriations Act set forth technical corrections to other laws, including AGOA and CBERA (as amended by CBTPA), which replaced the outdated references to NAFTA with references to the USMCA. *See* section 602(a) and (b) of Title VI of the Appropriations Act. These technical corrections are retroactively effective on July 1, 2020, the USMCA's entry into force date. *See* section 602(g) of Title VI of the Appropriations Act. Accordingly, CBP is amending §§ 10.212(l), 10.213(a)(8), 10.214(b), 10.214(c)(12), 10.222, 10.223(a)(7), 10.224(c)(12), 10.232, 10.233(b), and 10.237(b), which include various references to NAFTA (*e.g.,* definitions for ''NAFTA'' in §§ 10.212, 10.222, and 10.232), to include accurate references to the USMCA in accordance with the technical corrections made to 19 U.S.C. 3721 and 19 U.S.C. 2702.

B. Part 24

1. Section 24.23

Section 24.23 provides the terms and conditions for merchandise processing fees. Paragraph (c) contains the exemptions. Specifically, paragraph (c)(3) states that the ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2) will not apply to goods originating in Canada or Mexico under NAFTA within the meaning of General Note 12, HTSUS.

The USMCA also provides a merchandise processing fee exemption. USMCA Article 2.16.3 states that no USMCA country shall adopt or maintain a customs user fee on an originating good, with footnote 3 further clarifying that this commitment only applies to the United States with respect to the merchandise processing fee. In accordance with this commitment, section 203 of the USMCA Implementation Act amended section 13031(b)(10)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(10)(B)) to specify that no fee for the processing of merchandise may be charged for goods that qualify as originating goods under 19 U.S.C. 4531 or that qualify for duty-free treatment under USMCA Annex 6–A.

Accordingly, CBP is revising 19 CFR 24.23(c)(3) to clarify that originating goods and textile or apparel goods subject to a TPL, for which a claim for preferential tariff treatment under the USMCA is made, are also exempt from the merchandise processing fees. When the importer makes a claim for USMCA preferential tariff treatment, the ad valorem, surcharge, and specific fees provided for under § 24.23(b)(1) and (b)(2) do not apply to goods originating under the USMCA within the meaning of General Note 11, HTSUS (*see also* 19 U.S.C. 4531), or to textile or apparel goods subject to a TPL that qualify for preferential tariff treatment under § 182.82 (*see also* Annex 6–A of the USMCA), that are entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

2. Section 24.36

Section 24.36 sets forth the procedures and conditions under which a refund of excessive duties, taxes, fees, or interest will be due when discovered upon, or prior to, liquidation or reliquidation of an entry or reconciliation. Paragraph (a)(1) provides that the refund shall include interest on the excess money deposited with CBP and the dates that such interest shall start to accrue, including for proper claims filed under 19 U.S.C. 1520(d) and subpart D of part 181. Since the statutory authority for this regulation, 19 U.S.C. 1505, allows for interest on excess moneys to accrue for claims made under 19 U.S.C. 1520(d), CBP is removing the specific reference to subpart D of part 181. The addition of the cross-reference to subpart D of part 181, which contains the NAFTA post-importation claim provisions, unintentionally limited § 24.36 to apply only to NAFTA post-importation claims when 19 U.S.C. 1505 allows for interest on refunds on 19 U.S.C. 1520(d) claims.

C. Part 123

Section 123.0

Part 123 contains the special regulations pertaining to CBP procedures at the Canadian and Mexican borders including provisions governing reports of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival. Section 123.0 sets forth the scope of part 123 and provides the relevant cross-references to the other applicable parts of title 19 of the CFR that address CBP procedures for

Canadian and Mexican goods. Accordingly, CBP is revising § 123.0 to add the applicable cross-reference to the USMCA regulations in part 182.

D. Part 163

Part 163, *Recordkeeping,* sets forth the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records. Pursuant to section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508(a)), any owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise into the customs territory of the United States, files a drawback claim, transports or stores merchandise carried or held under bond, or knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States, or an agent of any of these parties, or a person whose activities require the filing of a declaration or entry or both, must make, keep, and render for examination and inspection certain records. The USMCA recordkeeping requirements are set forth in USMCA Article 5.8 and the Uniform Regulations regarding Origin Procedures. USMCA Article 5.8.1 provides the types of records that importers must maintain and the retention periods while Article 5.8.2 includes a list of records applicable exporters and producers must maintain and the retention periods. To implement these USMCA recordkeeping requirements, section 206 of the USMCA Implementation Act amended 19 U.S.C. 1508(b) and (e)(1) to add the recordkeeping requirements and penalty provisions that apply to USMCA exports and imports.

CBP is amending part 163, as applicable, to include these recordkeeping requirements. Also, as noted in the scope of part 163, § 163.0, which was previously amended in a prior rulemaking, additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the USMCA are contained in part 182. If the importer, exporter, or producer who is required to maintain records pursuant to parts 163 and 182 does not maintain, or denies access to, the records or documentation required under 19 U.S.C. 1508, CBP may deny USMCA preferential tariff treatment. Failure to comply with these recordkeeping requirements by U.S. importers, exporters, or producers may result in the imposition of penalties under 19 U.S.C. 1508(e)(1).

1. Exporter and Producer Recordkeeping Responsibilities

In accordance with 19 U.S.C. 1508(a), the part 163 recordkeeping provisions generally do not apply to exporters and producers, with a few notable exceptions. These exceptions are set forth in § 163.2(c) and include applicable NAFTA exporters and USMCA exporters and producers. CBP, in a prior rulemaking, amended § 163.2(c)(2) to add USMCA exporters and producers who complete a certification of origin, or USMCA producers who provide a written representation, for a good exported from the United States to Canada or Mexico, to the list of persons required to maintain records in accordance with part 163. Accordingly, U.S. USMCA exporters and producers must maintain the required records pursuant to the requisite retention periods in part 163 and in the prescribed format as described in § 163.5. An exporter or producer who completes a certification of origin or a producer that provides a written representation must maintain all records necessary to demonstrate that the good is originating, including the records specified in USMCA Article 5.8.2(a), (b), and (c), for five years after the date on which the certification of origin was completed. *See also* 19 U.S.C. 1508(b)(2). To implement this USMCA requirement, CBP, in a prior rulemaking, added 19 CFR 182.21(c) requiring U.S. exporters or producers exporting from the United States to Canada or Mexico to maintain these records.

Additionally, in accordance with 19 U.S.C. 1508(b), CBP has promulgated recordkeeping requirements on foreign exporters and producers whose goods are imported into the United States under the USMCA. It is important to note that these requirements are set forth in 19 CFR part 182, not part 163, because the requirements are imposed on foreign exporters and producers whose goods are imported into the United States, and not on the U.S. exporters and producers covered by part 163. *See* 19 CFR 163.2(c)(2). These additional provisions concerning records maintenance and examination applicable to exporters and producers under the USMCA include 19 CFR 182.73(a)(2) and 182.74(c), which require exporters and producers subject to a verification to make the records available for inspection by a CBP official during the verification, 19 CFR part 182, subpart H, which requires that exporters and producers subject to a USMCA Article 6.6 site visit make certain records available, and 19 CFR part 182, subpart I, which establishes additional recordkeeping requirements for producers of covered vehicles whose vehicles are imported into the United States in accordance with 19 U.S.C. 1508(b)(4)(B), including the requirement in § 182.103 for vehicle exporters and producers to maintain records.

2. Importer Recordkeeping Responsibilities

USMCA Article 5.8.1 requires that an importer making a claim for USMCA preferential tariff treatment maintain certain records for a period of no less than five years from the date of importation of the good. In accordance with USMCA Article 5.8.1, 19 U.S.C. 1508(b)(4)(A) requires that any importer who claims preferential tariff treatment under the USMCA for a good imported into the United States must make, keep, and, pursuant to the regulations prescribed by the Secretary of the Treasury and the Secretary of Labor, render for examination and inspection: the records and supporting documentation related to the importation; all records and supporting documents related to the origin of the good, if the importer completed the certification of origin; and records and supporting documents related to transshipment.

To implement this USMCA requirement, CBP, in a prior rulemaking, added these importer recordkeeping requirements to 19 CFR 182.15. CBP also added 19 CFR 182.73(a)(2), which requires importers subject to a verification to make the records available for inspection by a CBP official during the verification. Importers making a claim for USMCA preferential tariff treatment for covered vehicles imported into the United States must meet the additional recordkeeping requirements set forth in subpart I of part 182, as described in more detail in section III.F., *Subpart I—Automotive Goods,* of this IFR, and must maintain any records related to the high-wage component of the LVC requirement as required by DOL pursuant to 29 CFR part 810. In accordance with 19 U.S.C. 1508(b)(4)(A)(ii), CBP's additional recordkeeping responsibilities for importers of covered vehicles are dependent on whether the importer completed the certification of origin. Specifically, as provided in § 182.104, importers who complete the certification of origin must maintain the vehicle certifications and all the records and supporting documents related to whether the covered vehicle is originating under the LVC, steel purchasing, and aluminum purchasing requirements while an importer who

claims USMCA preferential tariff treatment for a covered vehicle based on a certification of origin completed by the exporter or producer must only maintain the records and supporting documents related to the vehicle certifications that are in the importer's possession.

CBP is amending part 163, as described below, to implement the recordkeeping requirements contained in 19 U.S.C. 1508(b)(4)(A), USMCA Article 5.8, the Uniform Regulations regarding Origin Procedures, and 19 CFR part 182.

a. Section 163.1

Pursuant to § 163.2(a), all importers must maintain, produce, and make the records available for inspection and examination as required under part 163. Section 163.1(a)(1) defines the terms ''records,'' for purposes of part 163, as any information made or normally kept in the ordinary course of business that pertains to any activity listed in § 163.1(a)(2). The term ''records'' includes any information required for the entry of merchandise (the (a)(1)(A) list) and other information pertaining to, or from which is derived, any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in § 163.1(a)(2). Thus, CBP is amending § 163.1(a)(2) to redesignate paragraph (xviii) as (xix) and add a new paragraph (xviii) to include USMCA records in the list of activities. Specifically, the new paragraph (xviii) will provide for the maintenance of any documentation in support of a claim for preferential tariff treatment under the USMCA pursuant to part 182, including the certification of origin. These records must be maintained by the importer pursuant to § 163.2(a) and the U.S. exporter or producer pursuant to § 163.2(c)(2). Vehicle certifications are not specified in § 163.1(a)(2)(xviii) because, as explained above, the importer is not required to maintain the vehicle certifications and supporting documentation in all instances. Instead, the specific requirements for importers of covered vehicles are addressed by adding 19 CFR 182.104.

b. Section 163.7

Section 163.7 describes the parties to whom CBP may issue a summons to appear and produce records or to give relevant testimony under oath or both, during the course of an investigation, audit, or other inquiry. This includes, among others, importers and any person who exported merchandise or knowingly caused merchandise to be exported to a NAFTA country. CBP is revising § 163.7(a)(2) to add any person who exported merchandise, or knowingly caused merchandise to be exported, to a USMCA country.

c. Appendix to Part 163—Interim (a)(1)(A) List

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production of records, within a reasonable time after demand by CBP if such record is required by law or regulation for the entry of the merchandise, whether or not CBP required its presentation at the time of entry. Pursuant to 19 U.S.C. 1509(e), CBP is required to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509(a)(1)(A)). This list is commonly referred to as ''the (a)(1)(A) list.'' CBP is amending section IV of the appendix to part 163 (the (a)(1)(A) list) to add the USMCA documents to the list of records or information required for the entry of merchandise. Accordingly, CBP is adding a reference to 19 CFR 182.13, which sets forth the USMCA importer's obligations, to the (a)(1)(A) list to indicate that USMCA records that the importer may have in support of a USMCA claim for preferential tariff treatment, including the certification of origin, are required entry documents. Vehicle certifications are not included in the (a)(1)(A) list because, as explained above, the importer is not required to maintain the vehicle certifications and supporting documentation in all instances. CBP is also revising the § 10.307 listing in the (a)(1)(A) list to clarify that the United States-Canada Free Trade Agreement (CFTA) provisions continue to be suspended while USMCA remains in effect.

E. Part 174

Part 174, *Protests,* sets forth the general protest procedures pursuant to 19 U.S.C. 1514 for the administrative review of decisions of the port director and Center director. This part contains the requirements for the filing of protests, amendments of protests, review of protests, requests for accelerated disposition, and provisions dealing with further administrative review. Pursuant to 19 U.S.C. 1514(c)(3), a protest of a decision must be filed with CBP within 180 days after the date of liquidation or reliquidation, or if such a date is inapplicable, the date of the decision as to which protest is made.

In extending the protest rights under part 174 to USMCA importers and qualifying exporters or producers, CBP is fulfilling its USMCA commitments under Articles 5.15.1 and 7.15. Article 5.15.1 of the USMCA requires each USMCA country to grant substantially the same rights of review and appeal for determinations of origin to exporters and producers who completed a certification of origin as are granted to importers in its territory. Accordingly, an importer, or a qualified exporter or producer, may file a protest to contest a denial of USMCA preferential tariff treatment of a claim made at entry or a denial of a USMCA post-importation claim. Pursuant to 19 CFR 174.21, the Center director generally must review and act on a protest within two years from the date the protest was filed. If the protest is allowed in whole or in part, the goods will be eligible for USMCA preferential tariff treatment and CBP will refund the duties in accordance with § 174.29.

Article 7.15 of the USMCA addresses the review and appeal of customs determinations. Article 7.15 provides, in part, that the USMCA country must provide the protesting party its decision in the review or appeal in writing and include the reasons for the decision. Article 7.15 also requires that each USMCA country ensure that any person to whom a customs administration issues a determination has access to an administrative appeal or review by an administrative authority higher than or independent of the employee or office that issued the determination, and access to a quasi-judicial or judicial review or appeal made at the final level of administrative review. In accordance with Article 7.15, if the protest is denied, CBP will issue a notice of denial of a protest to any person filing a protest or his/her agent, with the exception of those in which accelerated disposition was requested and no action has been taken within 30 days. The notice of denial will include a statement of the reasons for the denial and a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under 19 U.S.C. 1514. *See* 19 CFR 174.30. Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action with the United States Court of International Trade in accordance with 28 U.S.C. 2632. *See* 19 CFR 174.31.

1. Section 174.12

Section 174.12 sets forth the procedures for filing a protest.

Specifically, paragraph (a) states who may file a protest, including the importer, consignee, or their surety, any person paying or receiving a refund of any charge or exaction, any person seeking entry or delivery, any person filing for drawback, and any of these persons' authorized agents. USMCA Article 5.15.1 requires each USMCA country to grant substantially the same rights of review and appeal of determinations of origin to USMCA exporters and producers, who have completed a certification of origin for a good that is the subject of the determination of origin, as it provides to its importers.

Pursuant to 19 U.S.C. 1514(c)(2)(E), any USMCA exporter or producer of merchandise subject to a determination of origin as provided for under 19 U.S.C. 4531 may file a protest, if the exporter or producer completed and signed the certification of origin. Accordingly, CBP is amending § 174.12 by redesignating paragraph (a)(6) as paragraph (a)(7) and by adding a new paragraph (a)(6) stating that, with respect to a determination of origin under subpart G of part 182, any exporter or producer of the merchandise subject to the determination, who completed and signed the USMCA certification of origin, may file a protest. CBP is also amending the redesignated paragraph (a)(7) to allow any authorized agent of the exporter or producer described in paragraph (a)(6) to file a protest on their behalf, subject to the provisions of § 174.3.

While CBP will issue a determination of origin to USMCA exporters and producers of textile or apparel goods subject to TPLs, as explained in more detail in section III.F., *Subpart H-Textile and Apparel Goods,* of this IFR, as required under § 182.75(b), these exporters and producers may not file a protest of this determination of origin under part 174, unless the exporter or producer is also acting as the importer of record. As explained above, pursuant to 19 U.S.C. 1514(c)(2)(E), any USMCA exporter or producer of merchandise subject to a determination of origin as provided for under 19 U.S.C. 4531 may file a protest if the exporter or producer completed and signed the certification of origin. Since goods subject to TPLs are not originating goods, the certification of origin requirement does not apply to textile or apparel goods subject to a TPL claiming USMCA preferential tariff treatment. Accordingly, CBP has no statutory authority to allow these exporters or producers to file a protest under part 174.

Additionally, it is important to note that while USMCA exporters and producers may, to the extent described above, file a protest of a determination of origin, USMCA exporters and producers may not file a protest of a marking determination under the USMCA, unless the exporter or producer is also acting as the importer of record. As noted in the scope of part 174 (19 CFR 174.0), Canadian and Mexican exporters and producers seeking administrative review and appeal of adverse marking decisions under NAFTA had the right to appeal and such rights were set forth in part 181. These specific rights of review and appeal for marking determinations were explicitly contained in Article 510 of NAFTA. However, the USMCA does not provide any such rights. Section 209 of the USMCA Implementation Act struck the language from subsection (k) of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304(k)), that provided these specific petition rights, such as adverse marking decisions, for NAFTA exporters and producers. Thus, these specific rights and procedures are not provided for under the USMCA or the USMCA Implementation Act, or the relevant statutory or regulatory authority for protests in 19 U.S.C. 1514 and 19 CFR part 174. Accordingly, Canadian and Mexican exporters and producers may not request administrative review of and appeal of marking decisions under the USMCA.

2. Section 174.13

Section 174.13 sets forth the required contents of a protest. Paragraph (a)(9) currently requires the protestant to include a declaration as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback. CBP is revising § 174.13(a)(9) to remove the references to the certificate of delivery and the certificate of manufacture and delivery because these certificates were eliminated by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122, February 24, 2016). Accordingly, paragraph (a)(9) will only require a declaration as to whether the entry is the subject of drawback or if there is the ability for a party to make such entry the subject of drawback. CBP is also updating the list of cross-references in § 174.13(a)(9) to include the USMCA drawback provision, § 182.50, and the relevant part 190, *Modernized Drawback,* provision, § 190.81.

3. Section 174.15

Section 174.15 provides for the consolidation of separate protests relating to the same category of merchandise covered by an entry filed by different parties. Pursuant to 19 U.S.C. 1514(c)(1), only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. Separate protests filed by different parties with respect to any one category of merchandise or with respect to a USMCA determination of origin under 19 U.S.C. 4531 are deemed to be part of a single protest. *See* 19 U.S.C. 1514(c)(1). Section 174.15(b) addresses the consolidation of multiple protests concerning a determination of origin for NAFTA transactions, if a NAFTA exporter or producer files one of the protests. In accordance with 19 U.S.C. 1514(c)(1), CBP is revising § 174.15(b) to include determinations of origin for USMCA transactions, if a USMCA exporter or producer described in § 174.12(a)(6) files one of the protests. Paragraph (b)(1) of § 174.15 covers USMCA transactions where all the interested parties who filed protests specifically submit written requests for consolidation. In these instances, all the interested parties are deemed to have waived their rights to confidentiality under § 182.2. Paragraph (b)(2) covers USMCA transactions where no such written requests for consolidation are submitted. In these instances, the interested parties are not deemed to have waived their rights to confidentiality under § 182.2. A separate notice of the decision will be issued to each interested party and must adhere to the USMCA confidentiality provisions set forth in § 182.2.

4. Section 174.22

Pursuant to 19 U.S.C. 1515(a), unless a request for an accelerated disposition of a protest is filed, CBP must review the protest and allow or deny the protest in whole or in part within two years from the date the protest is filed. Subsection (b) of 19 U.S.C. 1515 allows for a request for accelerated disposition of a protest to be submitted to CBP at any time concurrent with or following the filing of the protest, in accordance with 19 U.S.C. 1514. Section 174.22 of title 19 of the CFR sets forth the procedure for filing a request for an accelerated disposition of a protest.

Section 202A(e)(6)(A) of the USMCA Implementation Act (19 U.S.C. 4532(e)(6)(A)) provides that when a protest of a decision regarding the eligibility for USMCA preferential tariff

treatment of a covered vehicle relates to DOL's analysis of the high-wage components of the LVC requirement, the Secretary of Labor will conduct an administrative review of the portion of the decision relating to such requirements and provide the results of that review to the CBP Commissioner. The DOL regulations at 29 CFR part 810 contain the administrative review procedures of DOL's initial analysis when notified by CBP of a protest involving DOL's analysis of the high-wage components of the LVC requirement. Pursuant to 29 CFR part 810, DOL will strive to issue a decision within one year from the date that it receives the notice of protest from CBP and will provide a determination containing the results of the administrative review to CBP.

Section 202A(e)(6)(B) of the USMCA Implementation Act (19 U.S.C. 4532(e)(6)(B)) explicitly states that an importer may not request accelerated disposition under 19 U.S.C. 1515 of a protest against a decision related to the DOL's analysis of the high-wage components for a covered vehicle's LVC requirement. Accordingly, CBP is revising 19 CFR 174.22(a) to limit the availability of the accelerated disposition of a protest. CBP is adding a sentence to § 174.22(a) stating that the accelerated disposition of a protest is not available for protests involving eligibility for USMCA preferential tariff treatment of a covered vehicle if the protest relates to the DOL's analysis of the high-wage components of the LVC requirement as described in 19 CFR part 182, subpart I, and 29 CFR part 810.

5. Section 174.29

Section 174.29 provides the conditions under which CBP allows or denies protests and describes the process through which the Center director will remit or refund any duties, charge, or exaction found to be collected in excess if the protest is allowed. Specifically, § 174.29 states that if a protest filed by an exporter or producer related to a NAFTA determination of origin is allowed in whole or in part, any monies found to have been collected in excess shall be refunded to the party who paid the monies even if such party did not file an appropriate and timely protest. CBP is revising this language to add a cross-reference to § 174.12(a)(6), which applies to protests filed by a qualified exporter or producer with respect to a USMCA determination of origin.

F. Part 182

Part 182, *United States-Mexico-Canada Agreement,* implements the duty preference and related customs provisions applicable to goods imported under the USMCA. CBP is amending part 182 of title 19 of the CFR (19 CFR part 182) to promulgate additional remaining USMCA implementing regulations related to USMCA Chapters 1, 2, 4, 5, and 6. Currently, part 182 contains a significant portion of the USMCA implementing regulations and a framework for the remaining subparts. The existing part 182 substantive provisions include Subpart A (General Provisions), which contains the scope, general definitions, and confidentiality provisions, Subparts B (Import Requirements), C (Export Requirements), D (Post-Importation Duty Refund Claims), numerous substantive provisions related to drawback in subpart E (Restrictions on Drawback and Duty-Deferral Programs), F (Rules of origin), G (Origin Verifications and Determinations), J (Commercial Samples and Goods Returned after Repair or Alteration), K (Penalties), and Appendix A, which contains the Uniform Regulations regarding Rules of Origin, which were trilaterally agreed upon by the United States, Mexico, and Canada.

This document amends part 182 to revise § 182.0 (Scope) and subpart G (Origin Verifications and Determinations), and to add general definitions in § 182.1, additional drawback and duty-deferral provisions in Subpart E (Restrictions on Drawback and Duty-Deferral Programs), and implementing regulations in subparts H (Textile and Apparel Goods) and I (Automotive Goods).

Subpart A—General Provisions

1. Scope

Section 182.0 contains the scope of part 182. Part 182 implements the duty preference and related customs provisions applicable to imported and exported goods under the USMCA. While § 182.0 was added in a prior rulemaking, CBP is revising the section to provide the relevant cross-references to the other parts of the CBP regulations that apply to the USMCA. Accordingly, CBP is adding a new sentence to § 182.0 to clarify that additional provisions applicable to the USMCA are contained in parts 10, 24, 163, 174, and 177 of title 19 of the CFR.

In addition to the CBP regulations in parts 10, 24, 163, and 174 that are being amended in this document, CBP is also including a cross-reference to part 177. Part 177, *Administrative Rulings,* allows CBP to issue rulings to importers and other interested parties. Applying the advance ruling requirements and procedures in part 177 of title 19 of the CFR (19 CFR part 177) to all advance rulings related to USMCA transactions fulfills CBP's commitment under USMCA Article 7.5 requiring each USMCA country to issue written advance rulings, prior to the importation of a good into its territory, regarding the treatment the good will receive at the time of importation. While no amendments to part 177 are necessary to implement USMCA Articles 5.14 and 7.5, CBP is including the cross-reference to part 177 in § 182.0 to clarify that part 177 applies to advance rulings related to USMCA transactions. CBP believes this clarification is needed since § 177.0 specifically excludes advance rulings related to NAFTA transactions from the scope of part 177. CBP wishes to further clarify that while producers are not explicitly granted the right to request a ruling pursuant to § 177.1(c), CBP considers a Canadian or Mexican producer of a good imported into the United States under the USMCA, a Canadian or Mexican producer of a material that is used in the production of a good imported into the United States under the USMCA, and a Canadian or Mexican exporter of a material used in the production of a good under the USMCA to be persons with a direct and demonstrable interest who have the right to request a ruling pursuant to § 177.1(c), in accordance with USMCA Article 7.5.2. Please note that CBP publishes its advance rulings on the Customs Rulings Online Search System (CROSS), available on the publicly accessible website, *https://rulings.cbp.gov/home.*

2. Definitions

Section 182.1 sets forth the general definitions applicable to part 182. Chapter 1 of the USMCA sets forth the general and country-specific definitions to be applied throughout the USMCA, unless otherwise noted. Since § 182.1 contains the definitions of the common terms that are used in multiple places in part 182, it includes definitions from 19 U.S.C. 4502, several Chapters of the USMCA, and the Uniform Regulations regarding Rules of Origin set forth in Appendix A to part 182. General definitions containing references to specific HTSUS subheadings, if these subheadings were trilaterally negotiated and agreed upon under the USMCA, contain additional language clarifying that the subheadings that apply are those HTSUS subheadings that were in effect on July 1, 2020, the date that the USMCA entered into force. Additional definitions that are not common terms throughout part 182 and are applicable

only to the Uniform Regulations regarding Rules of Origin are set forth in Appendix A to part 182.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

Subpart E of part 182 (19 CFR 182.41–182.55) sets forth the provisions regarding drawback claims and duty-deferral programs, as provided for under Article 2.5 of the USMCA, and applies to any good that is a ''good subject to USMCA drawback'' within the meaning of 19 U.S.C. 4534. Drawback, as generally provided for in section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), is the refund or remission, in whole or in part, of certain duties, taxes, and fees imposed and paid under Federal law upon entry or importation. Article 1.5 of the USMCA defines a ''duty deferral program'' to include measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, ''maquiladoras,'' and inward processing programs.

The requirements and procedures set forth in subpart E for USMCA drawback are in addition to the general definitions, requirements, and procedures for drawback claims set forth in part 190 of title 19 of the CFR, unless otherwise specified. Further, the requirements and procedures of subpart E are also in addition to those for manipulation, manufacturing, and smelting and refining warehouses contained in parts 19 and 144, for FTZs under part 146, and for temporary importations under bond in part 10.

CBP previously promulgated a significant portion of the USMCA implementing regulations for drawback and duty-deferral programs in subpart E of part 182 of title 19 of the CFR. Sections 182.41, 182.46, 182.49, 182.51, 182.52, and 182.54 in subpart E are unchanged from the prior rulemaking. In this document, CBP is revising § 182.42(c) to provide clarification regarding the USMCA requirements. The other specific regulatory amendments provided for in this document are, for the most part, the result of subsequent policy determinations and supplement the provisions in subpart E that were added in the prior rulemaking. Accordingly, CBP is also revising §§ 182.43, 182.45(c), 182.47, as appropriate, revising § 182.50(b), which was reserved in the prior rulemaking, and adding a new § 182.44(h) and (i). CBP is also adding §§ 182.48, *Person entitled to receive drawback,* and 182.53, *Collection and waiver or reduction of duty under duty-deferral programs,* to subpart E, which were not previously reserved in the prior rulemaking. Sections 182.48 and 182.53 generally follow the corresponding regulation in part 181, with some conforming and nomenclature changes made. However, with respect to the FTZ provisions in § 182.53, it should be noted that the USMCA Implementation Act did not include an exception to the rules of origin for goods produced in an FTZ, which was included for NAFTA in section 202 of the NAFTA Implementation Act and prevented a claim of U.S. origin on non-originating materials used in the production of a good when those goods are produced in an FTZ. This exception was enacted in subsequent legislation, the Appropriations Act, which was retroactive to July 1, 2020. Section 601(b) of Title VI of the Appropriations Act amended section 202 of the USMCA Implementation Act (19 U.S.C. 4531(c)(3)) to prohibit, under USMCA, producers from using non-originating materials in an FTZ manufacturing to claim U.S. origin.

Finally, CBP is adding a new section to subpart E, which was also not previously reserved in the prior rulemaking and for which there is no corresponding regulation in part 181. Section 182.55, *Goods exported from duty-deferral programs that are not subject to USMCA drawback within the meaning of 19 U.S.C. 4534,* is being added to subpart E to provide clarity regarding the timing of claims for when the importer or its agent is claiming that a good is not subject to USMCA drawback within the meaning of 19 U.S.C. 4534.

Subpart G—Origin Verifications and Determinations

Subpart G of part 182 (19 CFR 182.71–182.76) contains the general USMCA verification and determination of origin provisions. These regulations were promulgated during a prior rulemaking. CBP is amending certain sections of subpart G in this document to add the relevant cross-references for textile and apparel goods and for automotive goods.

Section 182.71 contains the applicability provision for subpart G. CBP is adding two sentences to § 182.71 to clarify that there are additional verification requirements and procedures applicable to automotive goods in subpart I and alternative verification means and procedures for textile and apparel goods in § 182.83 of subpart H.

Section 182.75 sets forth the determination of origin provisions. Specifically, § 182.75(c) contains the provisions that apply to negative determinations of origin when CBP intends to deny USMCA preferential tariff treatment. Paragraph (c)(2) contains the reasons that CBP may deny USMCA preferential tariff treatment as set forth in USMCA Article 5.10.2. CBP is amending § 182.75(c)(2) to reflect the application of the USMCA Article 5.10.2 reasons for denial related to textile and apparel goods and automotive goods to ensure that paragraph (c)(2) contains a comprehensive list of the reasons for denial with the appropriate cross-references.

Section 182.75(c)(4) describes when CBP will issue a negative determination of origin and the determination of origin contents. Currently, § 182.75(c)(4) states that, in addition to the contents of the determination of origin set forth in § 182.75(a), unless CBP determines that there is a pattern of conduct of false or unsupported representations pursuant to § 182.76, a negative determination of origin will provide the exporter or producer with the information necessary to file a protest as provided for in 19 U.S.C. 1514(e) and part 174. CBP is revising § 182.75(c)(4) to remove the language ''unless CBP determines that a pattern of conduct of false or unsupported representations pursuant to § 182.76'' to fulfill our commitment to USMCA Article 7.15. As stated above, Article 7.15 of the USMCA addresses the review and appeal of customs determinations. Article 7.15.2 provides, in part, that the USMCA country must provide each person to whom it issues an administrative determination with access to information on how to request reviews and appeals. Thus, to fulfill this USMCA commitment, CBP must provide all exporters and producers, who are issued a negative determination of origin, with the information necessary to file a protest. In practice, CBP has already been providing all importers, exporters, and producers issued a negative determination of origin with this information necessary to file a protest since the USMCA entered into force.

It is important to note that, as discussed above, while CBP will issue a determination of origin to USMCA exporters and producers of textile or apparel goods subject to TPLs as required under § 182.75(b), these exporters and producers may not file a protest of this determination of origin under part 174, in accordance with 19 U.S.C. 1514(c)(2)(E), unless the exporter or producer is also acting as the importer of record. Accordingly, since 19 U.S.C. 1514(e) only authorizes CBP to disclose the entry information necessary to file a protest to the exporters or producers referred to in 19 U.S.C. 1514(c)(2)(E), CBP will not

provide exporters or producers of textile or apparel goods subject to TPLs with the information necessary to file a protest when issuing a negative determination under § 182.75(c)(4).

Subpart H—Textile and Apparel Goods

Subpart H of part 182 (19 CFR 182.81–182.83) contains the USMCA textile and apparel good provisions, as provided for in USMCA Chapter 6, including the TPL provisions and the site visit provisions. The applicable definitions, including the definition of a textile or apparel good, are set forth in § 182.1, which is the general definitions section of part 182.

1. Tariff Preference Level

A TPL is defined in § 182.1 to mean a quantitative limit for certain non-originating textile or apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in § 182.82. Section 182.82, *Claim for preferential tariff treatment under tariff preference level,* contains the TPL requirements and procedures. These regulations are in accordance with USMCA Annex 6–A, which as explained in detail above in Section II.B. of this IFR, governs the USMCA preferential tariff treatment of eligible non-originating textile or apparel goods subject to a TPL. As these goods are non-originating, the rules of origin set forth in General Note 11, HTSUS, and Appendix A to part 182 do not apply.

While a claim for USMCA preferential tariff treatment is typically made pursuant to § 182.11(b), a claim for preferential tariff treatment for textile or apparel goods subject to a TPL is made pursuant to § 182.82. Paragraph (a) of § 182.82, *Basis of claim,* sets forth the requirements that must be met for an importer to make a claim for USMCA preferential tariff treatment, including an exemption from the merchandise processing fee, for textile or apparel goods subject to a TPL, including that the goods be eligible for a TPL claim, that the annual quantitative limit has not been reached for the subject TPL, and that the claim is based on a certificate of eligibility. Paragraph (b), *Goods eligible for TPL claims,* lists the specific types of textile or apparel goods that are eligible for TPLs. These eligible goods and the quantitative limits that are eligible for TPLs are contained in U.S. Note 11, Subchapter XXIII, Chapter 98, HTSUS. Paragraph (c), *Making a TPL claim,* provides the procedure that an importer must follow to properly file a claim for USMCA preferential tariff treatment. A TPL claim must be filed as an entry type ''02'' as it is subject to quantitative restraints.

As a TPL claim is for non-originating textile or apparel goods, an importer who makes a claim for preferential tariff treatment, pursuant to § 182.82(c), is not required to submit a certification of origin, as otherwise required under § 182.12. Instead, an importer who makes a claim for preferential tariff treatment subject to a TPL, pursuant to § 182.82(c), must submit, at the request of CBP, a certificate of eligibility issued by an authorized official of the government of Mexico or Canada. The number assigned to the certificate of eligibility is required to be submitted to CBP when the TPL claim is filed in accordance with the procedures in paragraph (c). Paragraph (d), *Certificate of eligibility,* sets forth the requirements and procedures for submitting the certificate of eligibility.

Pursuant to USMCA Annex 6–A, Section C, an importer may make a claim for preferential tariff treatment of a good under a TPL at least one year after the good is imported, if the annual quantitative limit has not been reached and the other TPL requirements are met. While post-importation claims for USMCA preferential tariff treatment are otherwise filed in accordance with 19 U.S.C. 1520(d) and subpart D of part 182, post-importation claims for preferential tariff treatment for textile or apparel goods subject to a TPL are not. Under 19 U.S.C. 1520(d), CBP may reliquidate an entry to refund any excess duties paid at importation on a good qualifying for preferential tariff treatment under the rules of origin for certain enumerated trade agreements for which a claim for preferential tariff treatment was not filed at importation. Since goods that qualify for preferential tariff treatment subject to a TPL do not qualify as originating under the rules of origin, there is no statutory authority to apply 19 U.S.C. 1520(d) to these claims. Accordingly, paragraph (e), *Post-importation claims,* sets forth the right to make a post-importation claim for preferential tariff treatment within one year after the date of importation of the good pursuant to the filing procedures created for these post-importation claims in paragraph (e)(2). The post-importation claim must be filed with a certificate of eligibility dated the same calendar year that the textile or apparel goods were imported. Post-importation claims will not be granted if the quantitative limits for the subject TPL for the year the entry summary, or equivalent documentation, is accepted by CBP, have already been reached.

An importer making a TPL claim for USMCA preferential tariff treatment under § 182.82(c) must adhere to the recordkeeping requirements in § 182.15 and part 163. Section 182.15, *Maintenance of records,* requires an importer claiming USMCA preferential tariff treatment to maintain all records and documents that demonstrate that the good qualifies for preferential tariff treatment, for a minimum of five years from the date of importation of the good. For a TPL claim, these records and documents would include a copy of the certificate of eligibility.

Paragraph (f), *Denial of preferential tariff treatment,* sets forth the circumstances when CBP may deny preferential tariff treatment that are only applicable to TPLs. Additional reasons CBP may deny preference are set forth in § 182.75(c)(2). Paragraph (g), *Verifications,* notes that CBP will conduct verifications of goods subject to TPLs using the same verification means and procedures that CBP has the discretion to utilize for all textile and apparel goods. Specifically, CBP has the discretion to choose to conduct a verification of textile or apparel goods subject to TPLs pursuant to either the general verification means and procedures set forth in part 182, subpart G, or pursuant to the site visit procedures in § 182.83 of subpart H.

2. Textile and Apparel Goods Verification Procedures

Section 182.83, *Verifications of textile and apparel goods,* contains the requirements and procedures for a textile or apparel good verification conducted pursuant to a USMCA Article 6.6 site visit. As described in more detail above in Section II.B. of this IFR, for textile and apparel goods, CBP has two alternative means of conducting a verification. CBP may conduct a verification for purposes of determining whether a textile and apparel good qualifies for preferential tariff treatment using the USMCA Article 5.9 general verification means described in § 182.72(a) and the procedures set forth in subpart G of part 182. Alternatively, as described in § 182.83(a), CBP may conduct a site visit to the premises of the exporter or producer of textile or apparel goods in Mexico or Canada for the purpose of determining that a textile or apparel good qualifies for preferential tariff treatment or that customs offenses with regard to a textile or apparel good are occurring or have occurred. The term ''customs offenses'' is defined in § 182.1, which provides the general definitions that are applicable to part 182. Paragraph (b) of § 182.83, *Verification of a material during a site visit,* allows for the verification of a material, that is used in the production

of a textile or apparel good, during a site visit.

Paragraph (c), *Site visit procedures,* sets forth the site visit procedures applicable to the exporter or producer in Mexico or Canada whose premises CBP is going to visit during the site visit. Pursuant to USMCA Article 6.6, while CBP must notify the Canadian or Mexican customs administration of CBP's intention to conduct the visit prior to conducting a site visit in Canada or Mexico, CBP is not required to notify the exporter or producer whose premises are going to be visited prior to conducting the site visit if doing so will undermine the effectiveness of the verification. Paragraph (c) provides the consent requirements for the site visit, what happens when the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer is not able to receive CBP on the initial date of the site visit, and the records and facilities that CBP may request access to during the site visit.

Paragraph (d), *Right to request report of the site visit,* provides the circumstances under which the exporter or producer may request that CBP send its relevant findings from the written report of the results of the site visit upon completion of the site visit. Paragraph (e), *Denial of preferential tariff treatment,* states the reasons that CBP may deny preferential tariff treatment to any textile or apparel good imported or produced by the person that is the subject of the verification.

Paragraph (f), *Intent to deny and determination of origin,* states that, after CBP has completed a site visit pursuant to § 182.83, CBP will issue a determination of origin in accordance with the requirements and procedures set forth in § 182.75, with the exception of § 182.75(c)(1). CBP is extending the notification of the intent to deny to more parties than is required under USMCA Article 6.6.9. Specifically, in accordance with § 182.75(c)(3), CBP will send an intent to deny to the importer, and the exporter or producer who is subject to the verification and either completed the certification of origin or provided information directly to CBP during the verification, subject to the confidentiality provisions in § 182.2. By cross-referencing the procedures set forth in § 182.75 in subpart H, including the intent to deny, CBP is ensuring that consistent determination of origin procedures and notifications are applied to all textile and apparel good verifications regardless of whether CBP chooses to conduct the verification pursuant to the USMCA Article 5.9 general verification procedures in subpart G or the site visit procedures in § 182.83. Paragraph (g), *Pattern of conduct for textile or apparel goods,* provides that CBP may withhold preferential tariff treatment to identical textile or apparel goods imported or produced by an exporter or producer when CBP determines that a pattern of conduct of false or unsupported representations exists.

Subpart I—Automotive Goods

Subpart I of part 182 (19 CFR 182.91–182.107) contains the USMCA automotive good provisions, as provided for in USMCA Chapter 4 and the Uniform Regulations regarding Rules of Origin. The applicable definitions, including the definitions of automotive good, covered vehicle, passenger vehicle, light truck, and heavy truck, are set forth in § 182.1, which is the general definitions section of part 182. Subpart I of part 182 applies to all automotive goods, including new and used covered vehicles, entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. As noted in the applicability section of subpart I, § 182.91, covered vehicles claiming USMCA preferential tariff treatment must also meet the applicable requirements and follow the applicable procedures contained throughout part 182.

An importer may only make a claim for USMCA preferential tariff treatment if the covered vehicle complies with the USMCA rules of origin, including the product-specific rules of origin, and the additional requirements and procedures set forth in subpart I. Section 182.92, *Claim for preferential tariff treatment for covered vehicles,* specifies additional requirements that a covered vehicle must meet to make a claim for USMCA preferential tariff treatment, including the LVC requirement in § 182.93, the steel purchasing and aluminum purchasing requirements in § 182.94, and certifications attesting that the vehicle producer has complied with the LVC, steel purchasing, and aluminum purchasing certification requirements under §§ 182.95, 182.96, and 182.97. When making a claim for preferential tariff treatment under § 182.11(b) or § 182.32, an importer must also submit the unique identifier assigned by CBP for each of the LVC, steel purchasing, and aluminum purchasing certifications that form the basis for the covered vehicle's eligibility for preferential tariff treatment. These unique identifiers provide CBP with the ability to link the importation of the covered vehicle to the specific vehicle certifications that form the basis for the covered vehicle's eligibility for preferential tariff treatment and to demonstrate compliance with the vehicle certification requirements.

1. LVC, Steel Purchasing, and Aluminum Purchasing Requirements and Certifications

Sections 182.93, *Labor value content (LVC) requirement,* and 182.94, *Steel purchasing and aluminum purchasing requirements,* specify the requirements that must be met in General Note 11, HTSUS, and Appendix A to part 182, the applicable requirements if the producer is subject to an alternative staging regime, the calculation methods, and the choice of calculation periods. With respect to the LVC requirement, DOL is responsible for implementing and administering the high-wage components of the LVC requirement. The DOL regulations are contained in 29 CFR part 810. The producer of a covered vehicle must use the rules set forth in the DOL regulations, including for high-wage material and manufacturing expenditures, high-wage technology expenditures, and high-wage assembly expenditures, to properly calculate and determine the high-wage components of the LVC requirement. CBP determines whether a covered vehicle meets the LVC requirement generally based on an analysis of the high-wage components by DOL and CBP's determination of the components of the LVC requirement not governed by DOL, including the valuation and other components of the LVC calculation. CBP has sole authority to determine whether a covered vehicle qualifies for USMCA preferential tariff treatment.

Sections 182.95, *Labor value content (LVC) certification,* 182.96, *Steel purchasing certification,* and 182.97, *Aluminum purchasing certification,* contain the respective vehicle certification provisions. A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the LVC requirement, as described in § 182.93, the steel purchasing requirement, as described in § 182.94, and the aluminum purchasing requirement, as described in § 182.94. Unless specifically exempt under an alternative staging regime, all three vehicle certifications must be submitted to CBP and considered properly filed for a covered vehicle to qualify for USMCA preferential tariff treatment. The producer of the covered vehicle must have information in its possession that proves the accuracy of the calculations relied on for the certifications.

Paragraph (c) of §§ 182.95, 182.96, and 182.97 contains the data elements for each of the vehicle certifications. With respect to § 182.95(c)(1), CBP wishes to clarify that the alternative unique identification number of the producer's choosing must be a publicly available identifier, such as the examples provided in § 182.95(c)(1) and may not be an identification number generated internally by the producer's organization, such as a business partner ID or supplier code.

CBP has added several data elements in §§ 182.95(c), 182.96(c), and 182.97(c), in addition to the list of data elements contained in the U.S. Implementing Instructions issued on June 30, 2020 (and in the DOL regulations at 29 CFR part 810), for each of the vehicle certifications to ensure that CBP has all the information needed to establish that the producer meets the LVC, steel purchasing, and aluminum purchasing requirements. The data elements that have been added to the CBP regulations for the steel purchasing and aluminum purchasing certifications are: any Manufacturers Identification Code (MID), Federal Employer Identification Number (EIN), or Importer of Record number (IOR) associated with the producer; the vehicle category for which the steel or aluminum purchases are calculated, as specified in section 17(9) of Appendix A to part 182; and the name and address for each steel or aluminum producer, service center, or distributor relied upon in calculating the total value of purchases of steel or aluminum that qualify as originating goods and any MID, EIN, or IOR numbers associated with those entities. These enumerated data elements are necessary to clarify information in the certifications and consist of information that the certifier, who is completing the vehicle certification, must already have to certify compliance with the steel purchasing and aluminum purchasing requirements. CBP has also added LVC certification data elements to further align the LVC certification with the steel purchasing and aluminum purchasing requirements, to clarify information in the certification, and to collect information that the vehicle producer already has when making the underlying LVC calculation. The added LVC certification data elements are: the name, title, and contact information of the certifier (the person completing the LVC certification); the LVC calculation used to determine that the production of the covered vehicles meets the LVC requirement in General Note 11(k)(vi), HTSUS, 19 CFR 182.93(c), and Appendix A to part 182 including the resulting LVC percentage; and the authorized certifier's signature, date signed, and certifying statement. An LVC certification submitted to CBP must include all the information in § 182.95(c) and the DOL regulations at 29 CFR part 810.

Any vehicle certification submitted to CBP pursuant to § 182.95(f), 182.96(f), or 182.97(f) on or after the delayed compliance date of May 19, 2025 must contain the full list of data elements in § 182.95(c), 182.96(c), or 182.97(c) and the DOL regulations at 29 CFR part 810, with vehicle certifications for covered vehicles subject to an exemption or different requirements under an alternative staging regime required to comply with the requirements set forth in § 182.95(b), 182.96(b), or 182.97(b), and § 182.106(c). Revised vehicle certifications resubmitted to CBP under the procedures set forth in § 182.95(i), 182.96(i), or 182.97(i), which were initially submitted to CBP prior to the IFR's delayed compliance date, are not required to contain the full list of data elements. Furthermore, vehicle producers are not required to request a modification of a properly filed certification submitted prior to the IFR's delayed compliance date, under § 182.95(k), 182.96(k), or 182.97(k), solely due to the absence of the full list of data elements in § 182.95(c), 182.96(c), or 182.97(c). However, any new, modified vehicle certification that the producer submits to CBP on or after the IFR's delayed compliance date, pursuant to § 182.95(k), 182.96(k), or 182.97(k), must include all the data elements in § 182.95(c), 182.96(c), or 182.97(c) for the entirety of the certification period, with vehicle certifications for covered vehicles subject to an exemption or different requirements under an alternative staging regime required to comply with the requirements set forth in § 182.95(b), 182.96(b), or 182.97(b) and § 182.106(c). Please see below for additional information regarding the resubmission and modification process.

In order to grant the trade additional time to adjust its business practices to comply with the new USMCA automotive good requirements, CBP, in accordance with its USMCA Phase I Implementation Policy, allowed vehicle producers until December 31, 2020 to submit the required vehicle certifications needed to receive preferential tariff treatment beginning July 1, 2020. However, following this initial submission, the submission date for vehicle certifications is based on each producer's chosen calculation period(s) under § 182.93(d) and (e) or § 182.94(c) and (d). Pursuant to §§ 182.95(f), 182.96(f), and 182.97(f), for any vehicle certification submitted to CBP on or after the delayed compliance date of May 19, 2025, the producer of the covered vehicle must submit the LVC, steel purchasing, and aluminum purchasing certifications to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period. Vehicle certifications submitted to CBP prior to the IFR's delayed compliance date are not required to comply with the 90-day submission requirement. The IFR's delayed compliance date allows vehicle producers sufficient time to timely submit the vehicle certifications at least 90 days prior to the beginning of the certification period and to include the additional required data elements.

It is important to note that the calculation period does not necessarily align with the certification period. The calculation period is the period over which the LVC requirement was calculated or the qualifying steel or aluminum purchases were made for a given vehicle category. In contrast, the certification period is the period over which the vehicle certification is effective for the vehicles produced (or exported, if applicable) within that period for a given vehicle category. Since the certification period determines which vehicles are eligible for USMCA preferential tariff treatment, the certification period is the relevant period for determining when the vehicle producer must submit the vehicle certification. Different certification periods are applicable depending on the calculation period that the vehicle producer selects to calculate the LVC, steel purchasing, and aluminum purchasing requirements for U.S. imports. The producer may select from several different calculation periods, such as the previous fiscal year of the producer, previous calendar year, and the other calculation periods set forth in § 182.93(d) and (e) or § 182.94(c) and (d). If the producer relies on a calculation period based on its fiscal year, the producer must indicate in the vehicle certification that the calculation period corresponds to its fiscal year. A vehicle producer may choose different calculation periods for its LVC calculation, its steel purchasing calculation and its aluminum purchasing calculation. Paragraph (j) of §§ 182.95, 182.96, and 182.97 sets forth the applicable certification periods based on the calculation period that the producer chooses.

The producer of the covered vehicle must submit the LVC, steel purchasing, and aluminum purchasing certifications

to CBP through an authorized electronic data interchange system or other specified means. *See* §§ 182.95(f), 182.96(f), and 182.97(f). Details on how to submit the certifications can be found at the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA and https://trade.cbp.gov/USMCA/s/.* Currently, vehicle producers can file vehicle certifications through a portal on the CBP website at *https://trade.cbp.gov/USMCA/s/automotive-certification-request.* If the USMCA portal is down, certifications can be emailed to *USMCAautoRoO@cbp.dhs.gov.* CBP will notify the public on our website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA* and *https://trade.cbp.gov/USMCA/s/,* and update the regulations, as needed, if the means of submission are updated at a later date.

After the producer submits the LVC, steel purchasing, and aluminum purchasing certification(s) to CBP, the certification(s) will be reviewed for omissions and errors. An omission would include, for example, the vehicle producer failing to include with its vehicle certification one of the data elements listed in § 182.95(c), 182.96(c), or 182.97(c). An error would include, for example, a vehicle certification that is based on the wrong type of information, such as calculating the producer's purchases of steel over a calculation period not provided for in § 182.94(c) and (d). For the LVC certification, in accordance with 19 U.S.C. 4532(c)(1)(B)(i), the Secretary of Labor, in consultation with the Commissioner of CBP, will ensure that the LVC certification does not contain omissions or errors before the certification is considered properly filed. CBP is solely responsible for ensuring that the steel purchasing and aluminum purchasing certifications do not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(2)(B)(i).

Paragraph (g) of §§ 182.95, 182.96, and 182.97 details the review process for omissions and errors. If the vehicle certification is determined to be properly filed, the certification is effective for the certification period specified in paragraph (j). Upon receipt of a notification that an omission or error was discovered, the producer will have five business days to submit to CBP a revised vehicle certification, correcting the error or omission that CBP or DOL discovered or providing an explanation of why the producer believes that the certification contains no omissions or errors. The submission of this revised certification is an opportunity for the producer to correct the discovered error or omission or provide an explanation before a determination is made regarding whether the certification is properly filed. If the revised certification contains an omission or error or if no revised certification is submitted within the prescribed timeframe, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

While the vehicle certification is being reviewed for omissions and errors, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 for such covered vehicles until the producer has received notice from CBP that the certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed. As described in the U.S. Implementing Instructions, at this time, the review process for omissions and errors may take up to 120 days. Consequently, this provision facilitates trade by allowing importers to make claims for USMCA preferential tariff treatment while CBP and DOL, if applicable, are still reviewing the vehicle certification(s). If the producer receives notice that a certification has not been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle, of that determination within 30 days of receipt of the CBP notice. *See* 19 CFR 182.95(h), 182.96(h), and 182.97(h). If a vehicle certification is not properly filed, an importer, upon receipt of notification from the producer, must promptly and voluntarily correct any claims for covered vehicles for which that vehicle certification formed the basis for the vehicle's eligibility for preferential tariff treatment, pay any duties that may be due, and submit the required statement pursuant to § 182.11(c).

Within 10 business days of receiving the notification from CBP that the vehicle certification was determined to be not properly filed under paragraph (g), the producer may resubmit the certification in accordance with §§ 182.95(i), 182.96(i), and 182.97(i). This resubmission process allows the vehicle producer, after the initial vehicle certification was determined to be not properly filed, to submit a new vehicle certification for the same category and same calculation period. This new certification would undergo the same review for omissions and errors process that the initial certification underwent, as described in paragraph (g). The producer may resubmit a vehicle certification under §§ 182.95(i), 182.96(i), and 182.97(i) for the same category and same calculation period up to two times per certification period. During the resubmission period, after the vehicle certification has been determined to not be properly filed, an importer does not have a reasonable basis for claiming that the covered vehicle meets the product-specific rules of origin, and thus, an importer should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32. The importer may only submit a claim for USMCA preferential tariff treatment after the producer receives notice that the resubmitted certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed. An importer may make a post-importation claim, if it qualifies, under § 182.32, for covered vehicles entered for consumption, or withdrawn from warehouse for consumption, during the vehicle certification resubmission period when the certifications that form the basis for the covered vehicle's eligibility for preferential tariff treatment have subsequently been determined to be properly filed.

During the certification period, if there are any material changes to the information contained in the vehicle certification that would affect its validity, for example, changes to the vehicle certification period, vehicle category chosen, or the calculation period of LVC requirement and/or steel or aluminum purchases, the producer must request a modification of the properly filed certification pursuant to § 182.95(k), 182.96(k), or 182.97(k). This modification process, as described in paragraph (k), only applies to vehicle certifications that have been previously considered properly filed. If CBP determines that the new, modified certification is properly filed under paragraph (g) or (i), the new certification supersedes the former certification and the new certification is effective for the certification period specified in paragraph (j). Accordingly, the new, modified vehicle certification that the producer submits to CBP must include all the applicable information in §§ 182.95(c), 182.96(c), and 182.97(c) for the entirety of the certification period and should not be limited to the modification. Additionally, the producer must submit a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity

of the certification. Within 30 days of receiving notice that the new certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

Section 182.98, *Appeal of the determination that LVC, steel purchasing, or aluminum purchasing certification is not properly filed,* sets forth the appeals process, following the review of the second resubmission of the vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2), for the vehicle producer to appeal a determination that the LVC, steel purchasing, or aluminum purchasing certification is not properly filed. While CBP believes that it is unlikely that a vehicle producer will need to resubmit a vehicle certification twice and file an appeal, CBP is establishing this appeals process, pursuant to its general USMCA rulemaking authority in 19 U.S.C. 4535(a), to provide a recourse for appeal and a means for a vehicle producer to submit arguments to CBP explaining why it believes the vehicle certification should be considered properly filed. Once it has been determined that a vehicle certification has not been properly filed, the covered vehicle is not considered an originating good under the USMCA, and the importer may not make a claim for USMCA preferential tariff treatment. Given that the appeal of a determination that a vehicle certification is not properly filed is not a matter subject to protest under 19 U.S.C. 1514(a)(1) through (a)(7), neither the vehicle producer nor the importer may file a protest under 19 U.S.C. 1514 or part 174, if a claim for USMCA preferential tariff treatment of the covered vehicle has not yet been made when the determination is made. Since there is no existing recourse enabling the vehicle producer or the importer to appeal a determination that the vehicle certification is not properly filed in this scenario, CBP has established this new appeals process, which is limited to vehicle certifications. Section 182.98 contains the scope of the appeal, the procedures, and the applicable timelines. The appeal cannot be filed until both opportunities for resubmission of a vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2) have been completed. When an appeal involves DOL's review of the LVC certification for omissions and errors, CBP will coordinate with DOL regarding the appeal, as necessary. An importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 for covered vehicles until the producer has received notice that the certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed. At that time, if the vehicle certifications have been determined to be properly filed, the importer may make a post-importation claim, if it qualifies, under § 182.32.

2. Motor Vehicle Averaging

For the purpose of calculating the RVC or LVC of a covered vehicle, the producer of the vehicle may elect to average the RVC or LVC calculation. These averaging elections are described in § 182.100, *Motor vehicle averaging elections.* To elect RVC averaging, the producer must comply with all the RVC averaging provisions set forth in section 16 of Appendix A of part 182, including the averaging categories and averaging periods. To elect LVC averaging, the vehicle producer must comply with all the LVC averaging provisions set forth in section 18 of Appendix A of part 182, including the averaging categories. The LVC averaging periods are set forth in § 182.93(d) and (e). A producer who elects to average its RVC or LVC calculation must separately average covered vehicles that are subject to an alternative staging regime. The producer may not average its RVC or LVC across covered vehicles that are subject to an alternative staging regime and covered vehicles that are not subject to an alternative staging regime.

When filing an RVC averaging election, the averaging election must include the required data elements in § 182.100(d). CBP is discontinuing use of the motor vehicle averaging election form, CBP Form 447, which was required when filing an RVC averaging election under NAFTA, and instead allowing the RVC averaging election data elements to be provided to CBP in a free format. The LVC averaging election is a new election under USMCA. When filing an LVC averaging election, the averaging election must include the required data elements in § 182.100(e). Pursuant to § 182.100(f), a vehicle producer who files an RVC or LVC averaging election must submit, at the request of CBP, a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made.

A producer of a covered vehicle who elects to average its RVC or LVC calculation must file an averaging election with CBP pursuant to § 182.100(c) at least 10 days before the first day of the producer's fiscal year during which the vehicles will be exported, or such shorter period as CBP may accept. The producer may request a shorter period by contacting CBP via email. Details on how to submit the averaging elections can be found at the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA and https://trade.cbp.gov/USMCA/s/.* Currently, vehicle producers can file the RVC or LVC averaging elections through a portal on the CBP website at *https://trade.cbp.gov/USMCA/s/automotive-certification-request.* If the USMCA portal is down, the averaging elections can be emailed to *USMCAautoRoO@cbp.dhs.gov.* CBP will notify the public on our website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA, https://trade.cbp.gov/USMCA/s/,* and update the regulations, as needed, if the means of submission are updated at a later date.

Section 182.101, *Averaging for other automotive goods,* provides the applicable provisions in Appendix A of part 182 governing the averaging of automotive parts and other vehicles. This regulation clarifies that the producer is not required to file an RVC averaging election when averaging the RVC of these automotive goods.

3. Required Year-End Reconciliation

Section 16(9) and section 17(11) of the Uniform Regulations regarding Rules of Origin, contained in Appendix A of part 182, require a year-end analysis of the actual costs of the RVC if the producer calculated the RVC based on estimated costs, and a year-end analysis of the actual purchases of steel or aluminum made over the calculation period if the producer calculated the steel or aluminum purchases on the basis of estimates. Depending on the certification period that a vehicle producer chooses, the vehicle certification may be based in whole or in part on projected costs or projected purchases. Section 182.102, *Required year-end reconciliation to actual costs when estimated costs or purchases used,* requires the producer of a covered vehicle, who has calculated the RVC or LVC of its vehicles or its steel or aluminum purchases on the basis of estimates, to conduct a reconciliation at the end of the producer's fiscal year to the actual costs incurred or the actual purchases made. CBP has added the LVC year-end reconciliation requirement to ensure that the producer has met all the applicable USMCA requirements during that period with actual, not projected, costs. Therefore, this year-end reconciliation is required

irrespective of whether the producer filed an averaging election pursuant to § 182.100. If, based on the year-end reconciliation performed, the covered vehicle does not satisfy the RVC or LVC requirement on the basis of the actual costs, or the steel or aluminum purchasing requirement on the basis of the actual purchases, the producer must make the notifications contained in paragraph (b) that the vehicle is a non-originating good. In addition to the notifications required pursuant to sections 16(9) and 17(11) of Appendix A of part 182, CBP is also requiring the producer to notify CBP to ensure that CBP is aware that the producer did not meet the USMCA requirements for preferential tariff treatment.

4. Recordkeeping Requirements

Pursuant to section 206(a) of the USMCA Implementation Act (19 U.S.C. 1508(b)(4)(B)), any vehicle producer whose goods are the subject of a claim for USMCA preferential tariff treatment must make, keep, and pursuant to the rules and regulations promulgated by the Secretary of the Treasury and Secretary of Labor, render for examination and inspection records and supporting documents related to the LVC, steel purchasing, and aluminum purchasing requirements. Section 182.103, *Producer and exporter recordkeeping responsibilities for records relating to LVC, steel purchasing, and aluminum purchasing requirements,* sets forth the producer of the covered vehicle's recordkeeping responsibilities and the exporter who completed the certification of origin's recordkeeping responsibilities. The vehicle producer must make and keep, for a minimum of five years from the date that the vehicle certifications were submitted to CBP, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and all records and supporting documents necessary to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. CBP encourages vehicle producers subject to an alternative staging regime to keep these records and supporting documentation for longer than the minimum five years required to demonstrate compliance with the LVC, steel purchasing and aluminum purchasing requirements should USTR later make a determination that the vehicle producer failed to meet the requirements for the alternative staging regime under 19 U.S.C. 4532(d)(5). The vehicle producer must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810. The records must be capable of being retrieved upon lawful request and must be produced to CBP or DOL upon request.

Pursuant to § 182.103(b), an exporter who completed the certification of origin for a covered vehicle must keep, for a minimum of five years from the date that the certification of origin was completed, the LVC certification, steel purchasing certification, aluminum purchasing certification, and all records and supporting documents to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The exporter must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810. The records must be capable of being retrieved upon lawful request and must be produced to CBP or DOL upon request.

CBP may deny USMCA preferential tariff treatment, as described in § 182.107, when vehicle producers or exporters do not meet these recordkeeping requirements.

Section 182.104, *Importer's responsibility to maintain records relating to LVC, steel purchasing, and aluminum purchasing requirements,* contains the importer of a covered vehicle's recordkeeping responsibilities. All importers claiming USMCA preferential tariff treatment, including importers of covered vehicles, are required to comply with the recordkeeping requirements in 19 CFR parts 163 and 182, and must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810. The extent of the importer's additional recordkeeping responsibilities for covered vehicles is contingent on whether the importer completed the certification of origin. If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the exporter or producer, the importer must maintain, for a minimum of five years from the date of importation of the covered vehicle, any records and supporting documents in the importer's possession relating to the vehicle certifications. If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the importer, the importer must maintain, in accordance with 19 U.S.C. 1508(b)(4)(A), for a minimum of five years from the date of importation of the covered vehicle, the vehicle certifications, and all records and supporting documents necessary to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. These records must be maintained by importers as provided in § 163.5 and produced to CBP or DOL upon request. CBP encourages all importers who import vehicles subject to an alternative staging regime to keep the records and supporting documentation for longer than the minimum five years required to demonstrate compliance with the LVC, steel purchasing and aluminum purchasing requirements. These records and supporting documents will be valuable should USTR later make a determination that the vehicle producer failed to meet the requirements for the alternative staging regime under 19 U.S.C. 4532(d)(5).

5. Verifications

CBP will initiate and conduct verifications of automotive goods in accordance with the general verification and determination of origin provisions in subpart G of part 182. Section 182.105, *Verification of automotive goods,* contains additional verification provisions that are applicable for automotive good verifications, including when a verification involves the LVC requirement. CBP will conduct a verification of a covered vehicle involving the high-wage components of the LVC requirement in conjunction with DOL. Accordingly, the provisions in § 182.105 set forth DOL's and CBP's roles in the verification, the additional requirements that the importer, exporter, or producer must comply with, and any added procedures necessitated by DOL's involvement in the verification.

CBP will initiate all verifications of covered vehicles pursuant to the verification means in § 182.72(a), including a request for information, a questionnaire, and/or a verification visit. When CBP initiates a verification of a covered vehicle and the verification involves whether the covered vehicle meets the LVC requirement, CBP will notify the producer of the covered vehicle that CBP has initiated a verification of the covered vehicle and advise the producer whether the verification involves the high-wage components of the LVC requirement, necessitating DOL's involvement. DOL is responsible, pursuant to 19 U.S.C. 4532(e) and the DOL requirements and procedures in 29 CFR part 810, for conducting the verification of the high-wage components of the LVC requirement and determining whether the covered vehicle meets the high-wage components of the LVC requirement.

CBP is responsible for verifying all other aspects of the LVC requirement, and is ultimately responsible for determining whether the covered vehicle meets the LVC requirement, the requirements in 19 CFR part 182, and whether the covered vehicle qualifies for USMCA preferential treatment.

During a verification of a covered vehicle, the importer, exporter, and producer must provide all records requested by CBP or DOL and make these records available for inspection by the appropriate CBP or DOL official as provided for in § 182.105(c). As stated in § 182.105(b), CBP or DOL also may conduct a verification of a part, component, or material that is used in the production of a covered vehicle. During the verification of such a part, component, or material, the producer of the part, component, or material must provide CBP or DOL with all the records requested and make these records available for inspection by the appropriate CBP or DOL official, and failure to do so may result in a determination that the part, component, or material is non-originating.

CBP will determine whether the covered vehicle meets the LVC requirement and qualifies for USMCA preferential tariff treatment based in part on DOL's determination on whether the covered vehicle complied with the high-wage components of the LVC requirement, and DOL's verification findings and analysis. CBP will then issue a determination of origin to the qualifying parties pursuant to § 182.75. An importer, exporter, or producer, who has the right to file a protest pursuant to § 174.12(a)(6), may protest a CBP determination of origin under 19 U.S.C. 1514 and part 174. When a protest involves DOL's analysis of the high-wage components of the LVC requirement, CBP will coordinate with DOL regarding the review of the protest. DOL is responsible, pursuant to 19 U.S.C. 4532(e)(6)(A), for conducting an administrative review of its initial analysis pursuant to its administrative review procedures in the DOL's regulations at 29 CFR part 810 and providing a determination containing the results of the administrative review to CBP. As explained in more detail in section III.E. of this IFR, CBP will review and act on the protest pursuant to the procedures and requirements set forth in part 174.

6. Alternative Staging Regime

As described in more detail above in section II.C. of this IFR, a covered vehicle may be originating pursuant to an alternative staging regime. Section 182.106, *Alternative staging regime,* sets forth the conditions under which a covered vehicle is eligible for USMCA preferential tariff treatment under an alternative staging regime. Pursuant to paragraph (c) of § 182.106, a producer of a covered vehicle is required to submit to CBP a separate vehicle certification that covers only those vehicles subject to the alternative staging regime under certain circumstances. If the terms of the alternative staging regime specifically exempt the producer from the LVC, steel purchasing, or aluminum purchasing requirement (including when the producer qualifies for NAFTA 403.6 treatment), then the producer must submit to CBP a vehicle certification for that LVC, steel purchasing, or aluminum purchasing requirement covering only those vehicles subject to the alternative staging regime. If the terms of the alternative staging regime contain different requirements from sections 13 through 18 of Appendix A to 19 CFR part 182, then the producer must submit to CBP a vehicle certification for that LVC, steel purchasing, or aluminum purchasing requirement that covers only those vehicles subject the alternative staging regime. This additional vehicle certification must meet the requirements set forth in §§ 182.95, 182.96, and 182.97, as applicable, with the exception of the certifying statement, and must contain the additional information, including the certifying statement, as set forth in paragraph (c) of this section.

7. Reasons for Denial of USMCA Preferential Tariff Treatment of Covered Vehicles

In addition to the general reasons for denial set forth in § 182.75(c)(2) of subpart G, CBP may deny a claim for USMCA preferential tariff treatment of covered vehicles for the additional reasons set forth in § 182.107, *Denial of preferential tariff treatment of a covered vehicle.* These reasons for denial relate specifically to the LVC, steel purchasing, and aluminum purchasing requirements, the vehicle certifications, and the additional recordkeeping requirements for covered vehicles. If CBP determines that one of these reasons for denial set forth in § 182.107 applies to a vehicle certification that forms the basis for a claim's eligibility for USMCA preferential tariff treatment, CBP may deny USMCA preferential tariff treatment for any claim which uses that vehicle certification as a basis for eligibility for USMCA preferential tariff treatment regardless of whether the importer lacks prior knowledge of the vehicle producer's failure to meet the LVC, steel purchasing, or aluminum purchasing requirements because of the unique nature of the vehicle certifications.

G. Other Conforming Amendments

CBP is also amending certain sections of title 19 of the CFR, including §§ 10.31(h), 113.62(a), 141.0a(a), 141.0a(f), 141.68(i), and 144.38(b), to add the appropriate cross-references to the USMCA drawback and duty-deferral program provisions alongside existing references to NAFTA duty-deferral and drawback provisions.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, considers public comments in deciding on the content of the final amendments, and publishes the final amendments at least 30 days prior to their effective date. This rule is exempt from APA rulemaking requirements pursuant to 5 U.S.C. 553(a)(1) as a foreign affairs function of the United States because it implements the preferential tariff treatment and customs related provisions of the USMCA, which is a specific trilateral agreement negotiated between the United States, Mexico, and Canada. This IFR implements trilaterally agreed upon provisions in the USMCA, the Uniform Regulations regarding the Rules of Origin, and the Uniform Regulations regarding Origin Procedures. The regulatory amendments promulgated in this IFR fulfill the United States' USMCA commitments. This IFR amends 19 CFR part 182 to add regulations implementing provisions from USMCA Chapters 1, 2, 4, 5, and 6, as well as the USMCA Uniform Regulations regarding the Rules of Origin and the Uniform Regulations regarding Origin Procedures. Additionally, this IFR makes the amendments to 19 CFR parts 10, 24, 113, 123, 141, 144, 163, and 174 to implement provisions from USMCA Chapters 2, 5, 6, and 7 as well as the USMCA Uniform Regulations regarding Origin Procedures. This IFR meets the U.S. commitments to the other USMCA countries, as agreed to in the USMCA, and fulfills our international obligations.

B. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review), as reaffirmed by Executive Order 13563 (Improving Regulation and Regulatory Review) and

amended by Executive Order 14094 (Modernizing Regulatory Review), directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Orders 12866, as amended by Executive Order 14094, and 13563. Because this rule involves a foreign affairs function of the United States by implementing a specific trilateral agreement negotiated between the United States, Mexico, and Canada, the rule is not subject to the provisions of Executive Orders 12866, as amended by Executive Order 14094, and 13563.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs (OIRA) designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

E. Paperwork Reduction Act

The collection of information in this document was submitted to OMB for review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). Approval and assigned OMB control number are pending. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. These regulations provide for a new collection of information for USMCA's automotive goods requirements. Vehicle producers will be required to submit three new vehicle certifications to CBP, including the labor value content (LVC) certification, the aluminum purchasing certification, and the steel purchasing certification. In addition, vehicle producers may submit motor vehicle averaging elections, including an averaging election for labor value content (LVC) and regional value content (RVC). This information is used by CBP to determine if vehicles imported from Canada and Mexico are entitled to preferential tariff treatment under USMCA.

The proposed information collection requirements will result in the following estimated burden hours:

Aluminum Purchasing Certification

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 37.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 74.

Labor Value Content Certification

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 37.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 74.

Steel Purchasing Certification

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 37.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 74.

Labor Value Content Averaging Election

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 25.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25.

Regional Value Content Averaging Election

Estimated Number of Annual Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 25.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25.

Comments concerning the collection of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be posted to the docket of this rulemaking or to reginfo.gov. Comments are specifically welcome on (a) whether the proposed collection of information is necessary for the proper performance of the mission of the agencies, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information. Comments should be received on or before March 18, 2025.

Signing Authority

In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions. This regulation is being issued in accordance with DHS Directive 07010.3, Revision 03, which delegates to the Commissioner of CBP the authority to prescribe and approve/sign regulations related to customs revenue functions.

Pete Flores, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign the document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects

19 CFR Part 10

Bonds, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Accounting, Claims, Exports, Freight, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 113

Common carriers, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 123

Canada, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 141

Reporting and recordkeeping requirements.

19 CFR Part 144

Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 163

Administrative practice and procedure, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

CFR Part 174

Administrative practice and procedure.

19 CFR Part 182

Administrative practice and procedure, Canada, Exports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

For the reasons stated above, U.S. Customs and Border Protection and the Department of the Treasury amend 19 CFR parts 10, 24, 113, 123, 141, 144, 163, 174, and 182 of title 19 of the Code of Federal Regulations as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general and specific authority citations for part 10 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 4513.

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Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

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■ 2. In § 10.31, paragraphs (f) and (h) are revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) With the exceptions stated herein, a bond shall be given on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties and fees, which it is estimated would accrue (or such larger amount as the Center director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties and fees, determined at the time of entry. If appropriate, a carnet, under the provisions of part 114 of this chapter, may be filed in lieu of a bond on CBP Form 301 (containing the bond conditions set forth in § 113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS without formal entry, as provided for in §§ 10.36 and 10.36a, or the amount of the bond taken under any subheading of Chapter 98, Subchapter XIII, HTSUS, is less than $25, the bond shall be without surety or cash deposit, and the bond shall be modified to so indicate. In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a national of Canada or Mexico, or by a resident of Singapore, Chile, Morocco, Australia, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, Colombia, or Panama and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 11, 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, HTSUS, in the country of which the importer is a national or resident, as applicable. In the case of articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a national of Canada or Mexico, the bond shall be without surety or cash deposit in an amount equal to 110 percent of the estimated duties and fees determined at the time of entry, if the entered article is not originating, within the meaning of General Notes 11 and 12, HTSUS, in the country of which the importer is a national.

* * * * *

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall not be liquidated as the transaction does not involve liquidated duties. However, a TIB importer may be required to file an entry for consumption and pay duties, or pay liquidated damages under its bond for a failure to do so, in the case of merchandise imported under subheading 9813.00.05, HTSUS, and subsequently exported to Canada or Mexico (*see* § 181.53 or 182.53 of this chapter).

■ 3. In § 10.36a, paragraph (a) is revised to read as follows:

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (with repair or alteration defined as restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good imported into the United States) may be entered on the operator's baggage declaration, in lieu of formal entry and examination, and may be passed under subheading 9813.00.05, Harmonized Tariff Schedule of the United States (HTSUS), at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered.

The bond, prescribed by § 10.31(f), filed to support entry under this section, shall be without surety or cash deposit except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS, at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

* * * * *

■ 4. In § 10.41a, paragraphs (g)(1) and (3) are revised to read as follows:

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

* * * * *

(g)(1) Except as provided in paragraph (j) of this section, a container (as defined in Article 1 of the Customs Convention on Containers) that is designated as an instrument of international traffic is deemed to remain in international traffic provided that the container exits the United States within 365 days of the date on which it was admitted under this section. A container that is designated as an instrument of international traffic and admitted from Canada or Mexico is deemed to remain in international traffic beyond this 365-day time limit when CBP grants an extension, at the request of the person who filed the application for release under paragraph (a)(1) of this section, provided that the container exits the United States prior to the date of expiration of the extension granted. An exit from the United States in this context means a movement across the border of the United States into a foreign country where either:

(i) All merchandise is unladen from the container; or

(ii) Merchandise is laden aboard the container (if the container is empty).

* * * * *

(3) If the container does not exit the United States within 365 days of the date on which it is admitted under this section, or, by the date on which an extension granted under paragraph (g)(1) of this section expires, such container shall be considered to have been removed from international traffic, and entry for consumption must be made within 10 business days after the end of the month in which the container is deemed removed from international traffic. When entry is required under this section, any containers considered removed from international traffic in the same month may be listed on one entry. Such entry may be made at any port of entry. Under 19 U.S.C. 1484(a)(1)(B), the importer of record is required, using reasonable care, to complete the entry by filing with CBP the declared value, classification and rate of duty applicable to the merchandise. The importer of record must use the value of the container as determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by the Trade Agreements Act of 1979 (TAA).

■ 5. In § 10.212, paragraph (l) is revised to read as follows:

§ 10.212 Definitions.

* * * * *

(l) *USMCA.* ''USMCA'' means the Agreement between the United States of America, the United Mexican States, and Canada, entered into force by the United States, Canada and Mexico on July 1, 2020.

* * * * *

§ 10.213 [Amended]

■ 6. In § 10.213(a)(8), remove the words ''General Note 12(t)'' and add, in their place, the words ''General Note 11''.

§ 10.214 [Amended]

■ 7. Amend § 10.214 as follows:

■ a. In paragraph (b), remove the word ''NAFTA'' from the table and add, in its place, the word ''USMCA''; and

■ b. In paragraph (c)(12), remove the word ''NAFTA'' and add, in its place, the word ''USMCA''.

■ 8. In § 10.222, remove the definition for ''NAFTA'' and add, in alphabetical order, the definition for ''USMCA''.

The addition reads as follows:

§ 10.222 Definitions.

* * * * *

USMCA. ''USMCA'' means the Agreement between the United States of America, the United Mexican States, and Canada, entered into force by the United States, Canada and Mexico on July 1, 2020.

* * * * *

§ 10.223 [Amended]

■ 9. In § 10.223(a)(7), remove the words ''Annex 401 of the NAFTA'' and add, in their place, the words ''Annex 4–B of the USMCA''.

§ 10.224 [Amended]

■ 10. In § 10.224(c)(12), remove the word ''NAFTA'' and add, in its place, the word ''USMCA''.

■ 11. Amend § 10.232 as follows:

■ a. Remove the definition for ''NAFTA'';

■ b. Amend the definition of ''Preferential tariff treatment'' by removing the words ''Annex 302.2 of the NAFTA'' and adding, in their place, the words ''Annex 2–B of the USMCA''; and

■ c. Add, in alphabetical order, the definition for ''USMCA''.

The addition reads as follows:

§ 10.232 Definitions.

* * * * *

USMCA. ''USMCA'' means the Agreement between the United States of America, the United Mexican States, and Canada, entered into force by the United States, Canada and Mexico on July 1, 2020.

■ 12. In § 10.233, revise paragraphs(b) introductory text and (b)(1) to read as follows:

§ 10.233 Articles eligible for preferential treatment.

* * * * *

(b) *Application of the USMCA rules of origin.* In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 11 of the HTSUS, and part 182, appendix A of this chapter, will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the USMCA;

* * * * *

■ 13. In § 10.237, revise paragraph (b) to read as follows:

§ 10.237 Verification and justification of claim for preferential tariff treatment.

* * * * *

(b) *Importer requirements.* In order to make a claim for preferential tariff treatment under § 10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 11, HTSUS, and in part 182, appendix A of this chapter. A properly completed Certificate of Origin in the form prescribed in § 10.236(b) is a record that would serve this purpose;

* * * * *

■ 14. Revise § 10.301 to read as follows:

§ 10.301 Scope and applicability.

The provisions of §§ 10.302 through 10.311 of this part relate to the

procedures for obtaining duty preferences on imported goods under the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851). The United States and Canada agreed to suspend operation of the Agreement with effect from January 1, 1994, to coincide with the entry into force of the North American Free Trade Agreement (*see* part 181 of this chapter) and to continue suspending operation of the Agreement with the entry into force of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) (*see* part 182 of this chapter) and, accordingly, the provisions of §§ 10.302 through 10.311 of this part apply only to goods imported from Canada that were entered for consumption, or withdrawn from warehouse for consumption, during the period January 1, 1989, through December 31, 1993. In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to Article 407 of the Agreement.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 15. The general and specific authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 4531; Sec. 892, Public Law 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Public Law 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Public Law 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

* * * * *

Section 24.36 also issued under 26 U.S.C. 5001(c)(4), 5041(c)(7), 5051(a)(6), 6423; Public Law 115–97; Public Law 116–260; 134 Stat. 3046.

■ 16. In § 24.23, paragraph (c)(3) is revised to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (2) of this section will not apply to goods originating within the meaning of General Note 11, HTSUS (*see also* 19 U.S.C. 4531), or to goods that qualify for preferential tariff treatment under § 182.82 of this chapter (*see also* Annex 6–A of the USMCA), that are entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. The ad valorem, surcharge, and specific fees will also not apply to goods originating in Canada or Mexico within the meaning of General Note 12, HTSUS, that are entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020 where such goods qualify to be marked, respectively, as goods of Canada or Mexico pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. For qualifying goods originating in Mexico, the exemption applies to goods entered or released (as defined in this section) after June 29, 1999. Where originating goods or goods that qualify for preferential tariff treatment under § 182.82 of this chapter are entered or released with other goods that are not originating goods or are goods that do not qualify for preferential tariff treatment, the ad valorem, surcharge, and specific fees will apply only to those goods which are not originating goods or are goods that do not qualify for preferential tariff treatment.

* * * * *

■ 17. In § 24.36, paragraph (a)(1) introductory text is revised to read as follows:

§ 24.36 Refunds of excessive duties, taxes, etc.

(a) * * *

(1) Except as otherwise provided in paragraphs (a)(1)(i) through (iii) of this section, the refund shall include interest on the excess moneys deposited with Customs, and such interest shall accrue from the date the duties, taxes, fees or interest were deposited or, in a case in which a proper claim is filed under 19 U.S.C. 1520(d), from the date such claim is filed, to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

* * * * *

PART 113—CBP BONDS

■ 18. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

■ 19. In § 113.62, revise paragraph (a)(1) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(a) *Agreement to pay duties, taxes, and charges.* (1) If merchandise is imported and released from CBP custody or withdrawn from a CBP bonded warehouse into the commerce of, or for consumption in, the United States, or under § 181.53 or 182.53 of this chapter is withdrawn from a duty-deferral program for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the obligors (principal and surety, jointly and severally) agree to:

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

■ 20. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

■ 21. Revise § 123.0 to read as follows:

§ 123.0 Scope.

This part contains special regulations pertaining to CBP procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) are contained in part 182 of this chapter. The requirements for the United States Postal Service to transmit advance electronic information for inbound international mail shipments are set forth in § 145.74 of this chapter.

PART 141—ENTRY OF MERCHANDISE

■ 22. The general and specific authority citations for part 141 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

■ 23. In § 141.0a, paragraphs (a) and (f) are revised to read as follows:

§ 141.0a Definitions.

* * * * *

(a) *Entry.* ''Entry'' means that documentation or data required by § 142.3 of this chapter to be filed with the appropriate CBP officer or submitted electronically to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system to secure the release of imported merchandise from CBP custody, or the act of filing that documentation. ''Entry'' also means that documentation or data required by § 181.53 or 182.53 of this chapter to be filed with CBP to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico.

* * * * *

(f) *Entered for consumption.* ''Entered for consumption'' means that an entry summary for consumption has been filed with CBP in proper form, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system, with estimated duties attached. ''Entered for consumption'' also means the necessary documentation has been filed with CBP to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico (*see* § 181.53 or 182.53 of this chapter).

* * * * *

■ 24. In § 141.68, paragraph (i) is revised to read as follows:

§ 141.68 Time of entry.

* * * * *

(i) *Exportation to Canada or Mexico of goods imported into the United States under a duty-deferral program defined in § 181.53 or 182.53 of this chapter.* When merchandise in a U.S. duty-deferral program is withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the date of entry is the date that the entry is required to be filed under § 181.53(a)(2)(iii) or 182.53(a)(2)(iii) of this chapter.

* * * * *

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

■ 25. The general authority citation for part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

■ 26. In § 144.38, paragraph (b) is revised to read as follows:

§ 144.38 Withdrawal for consumption.

* * * * *

(b) *Withdrawal for exportation to Canada or Mexico.* A withdrawal for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico is considered a withdrawal for consumption pursuant to § 181.53 or 182.53 of this chapter.

* * * * *

PART 163—RECORDKEEPING

■ 27. The general authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 28. Amend § 163.1(a)(2) as follows:

■ a. Redesignate paragraph (a)(2)(xviii) as paragraph (a)(2)(xix);

■ b. In newly redesignated paragraph (a)(2)(xix), remove the word ''Customs'' and add in its place the word ''CBP''; and

■ c. Add a new paragraph (a)(2)(xviii).

The addition reads as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(xviii) The maintenance of any documentation in support of a claim for preferential tariff treatment under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) pursuant to part 182 of this chapter, including the certification of origin.

* * * * *

§ 163.7 [Amended]

■ 29. Amend § 163.7(a)(2) by adding the phrase ''to a USMCA country as defined in 19 U.S.C. 4502(10) (*see also* part 182 of this chapter) or'' after the phrase ''knowingly caused merchandise to be exported,''.

■ 30. Amend Appendix to part 163 as follows:

■ a. Revise the § 10.307 listing; and

■ b. Add a new listing under section IV in numerical order.

The revision and addition read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

† [§ 10.307 Documents, etc. required for entries under CFTA Certificate of origin of CF 353]

[† CFTA provisions are suspended while USMCA remains in effect. See part 182.]

* * * * *

§ 182.13 USMCA records that the importer may have in support of a USMCA claim for preferential tariff treatment, including the certification of origin.

* * * * *

PART 174—PROTESTS

■ 31. The general authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

■ 32. Amend § 174.12(a) as follows:

■ a. In paragraph (a)(5), remove the word ''or'' after the phrase ''§ 181.11(a) of this chapter;'';

■ b. Redesignate paragraph (a)(6) as paragraph (a)(7);

■ c. Add a new paragraph (a)(6); and

■ d. In newly redesignated paragraph (a)(7), remove the number ''5'' and add in its place the number ''6''.

The addition reads as follows:

§ 174.12 Filing of protests.

(a) * * *

(6) With respect to a determination of origin under part 182, subpart G, of this chapter, any exporter or producer of the merchandise subject to the determination of origin, if the exporter or producer completed and signed a certification of origin covering the merchandise as provided for in § 182.12 of this chapter; or

* * * * *

■ 33. Revise § 174.13(a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) * * *

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or if there is the ability for a party to make such entry the subject of drawback (*see* §§ 181.50, 182.50, 190.81, and 191.81 of this chapter).

* * * * *

■ 34. Revise § 174.15(b) to read as follows:

§ 174.15 Consolidation of protests filed by different parties.

* * * * *

(b) *NAFTA or USMCA transactions.* The following rules shall apply to a consolidation of multiple protests concerning a determination of origin under part 181, subpart G, or part 182, subpart G, of this chapter if one of the protests is filed by or on behalf of an exporter or producer described in § 174.12(a)(5) or (a)(6) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of § 181.121 of this chapter for NAFTA transactions or within the meaning of § 182.2 of this chapter for USMCA transactions. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the port director or Center director, before January 19, 2017, or the Center director on or after January 19, 2017, in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in § 181.121 of this chapter for NAFTA transactions or § 182.2 of this chapter for USMCA transactions.

■ 35. In § 174.22, amend paragraph (a) by adding a sentence to the end of the paragraph.

§ 174.22 Accelerated disposition of protest.

(a) * * * Accelerated disposition of a protest is not available for protests involving eligibility for USMCA preferential tariff treatment of a covered vehicle if the protest relates to the Department of Labor's analysis of the high-wage components of the labor value content (LVC) requirements as described under § 182.105(e) of this chapter.

* * * * *

§ 174.29 [Amended]

■ 36. In § 174.29, add the phrase ''or (a)(6)'' after the phrase ''under § 174.12(a)(5)''.

PART 182—UNITED STATES-MEXICO-CANADA AGREEMENT

■ 37. The general and specific authority citations for part 182 are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and General Note 11, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 4513, 4535; Section 182.1 also issued under 19 U.S.C. 4502; Subpart D also issued under 19 U.S.C. 1520(d); Subpart E also issued under 19 U.S.C. 4534; Subpart 182.61 also issued under 19 U.S.C. 4531, 4532; Subpart G also issued under 19 U.S.C. 4533; Subpart H also issued under 19 U.S.C. 4533; Subpart I also issued under 19 U.S.C. 4532.

Subpart A—General Provisions

■ 38. Amend § 182.0 by adding a sentence to the end of the paragraph to read as follows:

§ 182.0 Scope.

* * * Additional provisions applicable to the USMCA are contained in parts 10, 24, 163, 174, and 177 of this chapter.

■ 39. Amend § 182.1 by adding the definitions for ''Alternative staging regime'',

''Automotive good'', ''Corporate level'', ''Covered vehicle'', ''Customs offenses'',

''DOL'', ''Heavy truck'', ''Light truck'', ''Passenger vehicle'', ''Tariff preference level'',

''Textile or apparel good'', ''USMCA drawback'', ''Vehicle certifications'', and ''Wool apparel'' in alphabetical order to read as follows:

§ 182.1 General definitions.

* * * * *

Alternative staging regime means the application of the requirements of section 19 of Appendix A to this part to the production of covered vehicles to allow producers of such vehicles to bring such production into compliance with the requirements of sections 13 through 18 of Appendix A to this part;

Automotive good means either a covered vehicle or a part, component, or material listed in Table A.1, A.2, B, C, D, E, F, or G of Appendix A to this part;

* * * * *

Corporate level. For an independent producer of a covered vehicle, its purchases or expenditures at the corporate level means the producer's total purchases or expenditures by value in one or more of the USMCA countries. For a subsidiary company whose financial information is included in the parent company's consolidated financial statements, its purchases or expenditures at the corporate level means the parent company's total purchases or expenditures by value in one or more of the USMCA countries. For purposes of the high-wage technology expenditures credit for the labor value content (LVC) requirement, corporate level must include all USMCA countries with such expenditures.

Covered vehicle means a passenger vehicle, light truck, or heavy truck;

* * * * *

Customs offenses means any act committed for the purpose of, or having the effect of, avoiding the laws or regulations of the United States pertaining to the provisions of the USMCA governing importations or exportations of goods between, or transit of goods through, the territories of the United States, Canada, and Mexico, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, transshipment, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods;

* * * * *

DOL means the United States Department of Labor;

* * * * *

Heavy truck means a vehicle other than a vehicle that is solely or principally for off-road use of subheading 8701.20, 8704.22, 8704.23, 8704.32 or 8704.90, HTSUS, or a chassis fitted with an engine of heading 8706, HTSUS, as in effect on July 1, 2020, that is for use in such a vehicle;

* * * * *

Light truck means a vehicle of subheading 8704.21 or 8704.31, HTSUS, as in effect on July 1, 2020, except for a vehicle that is solely or principally for off-road use;

* * * * *

Passenger vehicle means a vehicle of subheading 8703.21 through 8703.90, HTSUS, as in effect on July 1, 2020, except for: A vehicle with a compression-ignition engine of subheadings 8703.31 through 8703.33, HTSUS, as in effect on July 1, 2020, or a vehicle of subheading 8703.90, HTSUS, as in effect on July 1, 2020, with both a compression-ignition engine and an electric motor for propulsion, a three- or four-wheeled motorcycle, an all-terrain vehicle, a motorhome or entertainer coach, or an ambulance, hearse or prison van;

* * * * *

Tariff preference level means a quantitative limit for certain non-originating textile or apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in § 182.82 of this part;

Textile or apparel good means a textile or apparel good classified in the HTSUS Chapters 54 through 63 or the following HTSUS headings or subheadings, as in effect on July 1, 2020: 4202.12, 4202.22, 4202.32, 4202.92, 5004 through 5007, 5104 through 5113, 5204 through 5212, 5303 through 5311, 6601, 7019, 9404.90, and 9619;

* * * * *

USMCA drawback means any drawback, waiver, or reduction of U.S. customs duty provided for in subpart E of this part;

* * * * *

Vehicle certifications means the labor value content (LVC) certification, steel purchasing certification, and aluminum purchasing certification for covered vehicles required by §§ 182.95, 182.96, and 182.97 of this part;

Wool apparel means apparel predominantly of wool, by weight; woven apparel predominantly of man-made fibers by weight, and containing 36 percent or more of wool, by weight; or knitted or crocheted apparel predominantly of man-made fibers by weight, and containing 23 percent or more of wool by weight;

* * * * *

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

■ 40. Revise § 182.42(c) to read as follows:

§ 182.42 Duties and fees not subject to drawback.

* * * * *

(c) Customs duties paid or owed under unused merchandise substitution drawback. There will be no payment of such drawback under 19 U.S.C. 1313(c)(2), 1313(j)(2), and 1313(p), when the basis for drawback is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), pursuant to § 190.173 of this chapter, on goods exported to Canada or Mexico per Article 2.5 of the USMCA.

■ 41. Revise § 182.43 to read as follows:

§ 182.43 Eligible goods subject to USMCA drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico;

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(c) Substituted by a good of the same kind and quality as defined in § 182.44(d) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

■ 42. Amend § 182.44 by adding new paragraphs (h) and (i) to read as follows:

§ 182.44 Calculation of drawback.

* * * * *

(h) *Substitution of finished petroleum derivatives under 19 U.S.C. 1313(p) for derivatives manufactured under 19 U.S.C. 1313(a) or (b).* Upon presentation of a USMCA drawback claim under 19 U.S.C. 1313(p) for manufactured or produced petroleum derivatives in accordance with § 190.174 of this chapter, the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico. The amount of drawback payable may not exceed the amount of drawback attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback. For purposes of substitution drawback under this subpart, the term ''same kind and quality'' is as used in 19 U.S.C. 1313(p) and part 190, subpart Q, of this chapter dealing with substitution of finished petroleum derivatives.

(i) *Goods sold at retail and returned under 19 U.S.C. 1313(c)(1)(C)(ii).* Upon presentation of the USMCA drawback claim under 19 U.S.C. 1313(c)(1)(C)(ii) for goods ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer, the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico. The amount of drawback payable may not exceed 99 percent of the duty paid on such imported merchandise into the United States. Substitution pursuant to 19 U.S.C. 1313(c)(2) is not permitted (s*ee* § 182.42(c) of this subpart).

■ 43. In § 182.45, revise paragraph (c) to read as follows:

§ 182.45 Goods eligible for full drawback.

* * * * *

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c)(1)(C)(i).* An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c)(1)(C)(i) without regard to the limitation on drawback set forth in § 182.44 of this subpart. Such a good must be exported or destroyed within the statutory five-year time period and in compliance with the requirements set forth in part 190, subpart D, of this chapter, as applicable.

* * * * *

■ 44. Revise § 182.47 to read as follows:

§ 182.47 Completion of claim for drawback.

(a) *General.* A claim for drawback will be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback must be in accordance with the provisions of part 190 of this chapter, as appropriate; however, a drawback claim subject to the provisions of this subpart must be filed separately from any part 190 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the periods specified in § 182.46 of this subpart will be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart must consist of the filing of the appropriate completed drawback entry, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents. Each drawback entry filed under this subpart must be filed using the indicator ''USMCA Drawback''.

(2) *Specific claims.* The following documentation must be submitted to CBP in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following must be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A manufacturing drawback ruling number;

(B) CBP Form 7501, or its electronic equivalent, or the import entry number;

(C) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico. Satisfactory evidence must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred must be submitted in order for the claim to be considered complete; and

(E) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's certification of origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify CBP if the party subsequently provides such an exporter's certification of origin to any person.

(ii) *Unused merchandise drawback claim under 19 U.S.C. 1313(j)(1).* The following must be submitted in connection with a drawback claim covering a good eligible for unused merchandise drawback under 19 U.S.C. 1313(j)(1):

(A) The foreign entry number and date of entry, the HTSUS classification for the foreign entry, the amount of duties paid for the foreign entry and the applicable exchange rate. For goods in the same condition, a certification from the claimant that provides as follows: ''Same condition—The undersigned certifies that the merchandise herein described is in the same condition as when it was imported under the import entry(s) and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.'';

(B) Information sufficient to trace the movement of the imported goods after importation;

(C) In-bond application submitted pursuant to part 18 of this chapter, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(D) CBP must be notified at least five business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* § 190.35 of this chapter);

(E) Acceptable documentary evidence of exportation to Canada or Mexico may include originals or copies of any of the following documents that are issued by the exporting carrier: bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, and cargo manifest. Supporting documentary evidence must establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(F) If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred is required in order for the claim to be considered complete; and

(G) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following must be submitted in the case of goods not conforming to sample or specifications, or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c)(1)(C)(i):

(A) CBP Form 7501, or its electronic equivalent, to establish the fact of importation, the receipt of the imported goods, and the identity of the party to whom drawback is payable (*see* § 182.48(c) of this subpart);

(B) Documentary evidence to support the claim that the goods did not conform to sample or specifications, or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(C) CBP Form 7512, or its electronic equivalent, if applicable;

(D) Notification of intent to export or waiver of prior notice. CBP must be notified at least five business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* § 190.42 of this chapter); and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(E) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph must be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of part 190, subpart N, of this chapter.

(vi) *Substitution of finished petroleum derivatives under 19 U.S.C. 1313(p) for derivatives manufactured under 19 U.S.C. 1313(a) or (b).* The provisions of paragraph (b)(2)(i) of this section relating to manufacturing drawback will apply to claims for drawback on manufactured or produced petroleum derivatives, in accordance with § 190.174 of this chapter, filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of part 190, subpart Q, of this chapter.

(vii) *Goods sold at retail and returned under 19 U.S.C. 1313(c)(1)(C)(ii).* The following must be submitted in the case of goods ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer and subject to a drawback claim under 19 U.S.C. 1313(c)(1)(C)(ii):

(A) CBP Form 7501, or its electronic equivalent, to establish the fact of importation, the receipt of the imported goods, and the identity of the party to

whom drawback is payable (*see* § 182.48(c) of this subpart);

(B) Documentary evidence to support the claim that the goods were ultimately sold at retail by the importer or the person who received the merchandise from the importer, and were returned to and accepted by the importer or the person who received the merchandise from the importer;

(C) CBP Form 7512, or its electronic equivalent, if applicable;

(D) Notification of intent to export or waiver of prior notice. CBP must be notified at least five business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* § 190.42 of this chapter); and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(E) of this section.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico must consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, presented with either the K–84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the ''pedimento'');

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, with respect to the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

■ 45. Add § 182.48 to subpart E to read as follows:

§ 182.48 Person entitled to receive drawback.

(a) General. The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, will be considered the exporter and entitled to drawback.

(b) *Manufacturing drawback.* The person named as the exporter is entitled to claim manufacturing drawback, unless the manufacturer or producer reserves the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, will receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(c) *Nonconforming or improperly shipped goods drawback under 19 U.S.C. 1313(c)(1)(C)(i) and drawback on goods sold at retail and returned under 19 U.S.C. 1313(c)(1)(C)(ii).* The person named as the exporter is entitled to claim rejected merchandise drawback; if the claimant was not the importer of the merchandise or its agent, the claimant must submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods, that no other claim for drawback was made on the goods (*see* § 190.42(b) of this chapter).

(d) *Unused merchandise drawback under 19 U.S.C. 1313(j)(1).* The person named as the exporter is entitled to claim drawback under 19 U.S.C. 1313(j)(1) unless the exporter has in writing waived its right to claim drawback (*see* § 190.33 of this chapter).

■ 46. Add § 182.50(b) to read as follows:

§ 182.50 Liquidation and payment of drawback claims.

* * * * *

(b) *Time for liquidation.* A drawback claim will not be liquidated until either a written waiver of the right to protest under 19 U.S.C. 1514 is filed with CBP or the liquidation of the import entry has become final under U.S. law. In addition, except in the case of goods covered by § 182.45 of this subpart, a drawback claim must not be liquidated for a period of three years after the date of entry of the goods in Canada or Mexico. A drawback claim may be adjusted pursuant to 19 U.S.C. 4534(e)(1) even after liquidation of the U.S. import entry has become final.

* * * * *

■ 47. Add § 182.53 to subpart E to read as follows:

§ 182.53 Collection and waiver or reduction of duty under duty-deferral programs.

(a) *General*—(1) *Definitions.* The following definitions apply for purposes of this section:

(i) *Date of exportation. Date of exportation* means the date of importation into Canada or Mexico as reflected on the applicable Canadian or Mexican entry document (*see* § 182.47(c)(1) and (2) of this subpart).

(ii) *Duty-deferral program.* A *duty-deferral program* means any measure which postpones duty payment upon arrival of a good in the United States until withdrawn or removed for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program. Such measures govern manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, and those temporary importations under bond that are specified in paragraph (b)(5) of this section.

(2) *Treatment as entered or withdrawn for consumption*—(i) *General.*

(A) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico, and provided that the good is a ''good subject to USMCA drawback'' within the meaning of 19 U.S.C. 4534 and is not described in § 182.45 of this subpart, the documentation required to be filed under this section in connection with the exportation of the good will, for purposes of this chapter, constitute an USMCA entry or withdrawal for consumption and the exported good must be subject to duty which will be assessed in accordance with paragraph (b) of this section.

(B) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico, and provided that the good is a ''good subject to USCMA drawback'' within the meaning of 19 U.S.C. 4534 and is not described in § 182.45 of this subpart, the documentation required to be filed under this section in connection with the withdrawal of the good from the U.S. duty-deferral program will, for purposes of this chapter, constitute a USMCA entry or withdrawal for consumption and the withdrawn good must be subject to duty which will be assessed in accordance with paragraph (b) of this section.

(C) Any assessment of duty under this section must include the duties and fees referred to in § 182.42(a) and (b) of this subpart and the fees provided for in § 24.23 of this chapter; these inclusions will not be subject to refund, waiver, reduction or drawback.

(ii) *Bond requirements.* The provisions of § 142.4 of this chapter will apply to each withdrawal and exportation transaction described in paragraph (a)(2) of this section. However, in applying the provisions of § 142.4 of this chapter in the context of this section, any reference to release from CBP custody in § 142.4 of this chapter will be taken to mean exportation to Canada or Mexico.

(iii) *Documentation filing and duty payment procedures*—(A) *Persons required to file.* In the circumstances described in paragraph (a)(2) of this section, the documentation described in paragraph (a)(2)(iii)(B) of this section must be filed by one of the following persons:

(*1*) In the case of a withdrawal of the goods from a warehouse, the person who has the right to withdraw the goods in accordance with § 144.31 of this chapter;

(*2*) In the case of a temporary importation under bond (TIB) specified in paragraph (b)(5) of this section, the TIB importer whether or not it sells the goods for export to Canada or Mexico unless § 10.31(h) of this chapter applies; or

(*3*) In the case of a withdrawal from a foreign trade zone, the person who has the right to make entry (see § 146.62 of this chapter). However, if a zone operator is not the person with the right to make entry of the good, the zone operator will be responsible for the payment of any duty due in the event the zone operator permits such other person to remove the goods from the zone (§§ 146.67 and 146.68 of this chapter) and such other person fails to comply with the requirements of this provision.

(B) *Documentation required to be filed and required filing date.* The person required to file must file CBP Form 7501, or its electronic equivalent, no later than 10 working days after the date of exportation to Canada or Mexico or 10 working days after the goods' being entered into a duty-deferral program in Canada or Mexico. Except where the context otherwise requires and except as otherwise specifically provided in this section, the procedures for completing and filing CBP Form 7501, or its electronic equivalent, in connection with the entry of merchandise under this chapter will apply for purposes of this paragraph. For purposes of completing CBP Form 7501, or its electronic equivalent, under this paragraph, any reference to the entry date will be taken to refer to the date of exportation of the good or the date the good is entered into a duty-deferral program in Canada or Mexico. The CBP Form 7501, or its electronic equivalent, required under this paragraph, may be transmitted electronically. *See* §§ 141.62, 141.63, and 144.38 (bonded warehouse) of this chapter.

(C) *Duty payment.* The duty estimated to be due under paragraph (b) of this section must be deposited with CBP 60 calendar days after the date of exportation of the good. If a good is entered into a duty-deferral program in Canada or Mexico, the duty estimated to be due under paragraph (b) of this section, but without any waiver or reduction provided for in that paragraph, must be deposited with CBP 60 calendar days after the date the good is entered into such duty-deferral program. Nothing precludes the deposit of such estimated duty at the time of filing the CBP Form 7501, or its electronic equivalent, under paragraph (a)(2)(iii)(B) of this section or at any other time within the 60-day period prescribed in this paragraph. However, any interest calculation will run from the date the duties are required to be deposited.

(3) *Waiver or reduction of duties—(i) General.* Except in the case of duties and fees referred to in § 182.42(a) and (b) of this subpart and fees provided for in § 24.23 of this chapter, CBP may waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who is required to file the CBP Form 7501, or its electronic equivalent (*see* paragraph (a)(2)(iii)(A) of this section) in accordance with paragraph (b) of this section, provided that a claim for waiver or reduction of the duties is filed with CBP within the appropriate 60-day time frame. The claim must be based on evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of duties paid in Canada or Mexico (*see* § 182.47(c) of this subpart).

(ii) *Filing of claim and payment of reduced duties.* A claim for a waiver or reduction of duties under paragraph (a)(3)(i) of this section must be made on CBP Form 7501, or its electronic equivalent, which must set forth, in addition to the information required under paragraph (a)(2)(iii)(B) of this section, a description of the goods exported to Canada or Mexico, and the Canadian or Mexican import entry number, date of importation, tariff classification number, rate of duty and amount of duty paid. If a claim for reduction of duties is filed under this paragraph, the reduced duties must be deposited with CBP when the claim is filed.

(iii) *Drawback on goods entered into a duty-deferral program in Canada or Mexico.* After goods within a duty-deferral program in the United States, which were exported from the United States and entered into a duty-deferral program in Canada or Mexico, are then withdrawn from that Canadian or Mexican duty-deferral program either for entry into Canada or Mexico or for export to a non-USMCA country, the person who filed the CBP Form 7501, or its electronic equivalent and the information required in paragraph (a)(2)(iii)(B) of this section, may file a claim for drawback if the goods are withdrawn within five years from the date of the original importation of the good into the United States. If the goods are entered for consumption in Canada or Mexico, drawback will be calculated in accordance with § 182.44 of this subpart.

(4) *Liquidation of entry*—(i) *If no claim is filed.* If no claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, CBP will determine the final duties due under paragraph (a)(2)(i) of this section and will post a notice of liquidation of the entry filed under this section in accordance with § 159.9 of this chapter. Where no claim was filed in accordance with this section and CBP fails to liquidate, or extend liquidation of, the entry filed under this section within one year from the date of entry, upon the date of expiration of that one-year period the entry will be deemed liquidated by operation of law in the amount asserted by the exporter on the CBP Form 7501, or its electronic equivalent, filed under paragraph (a)(2)(iii)(A) of this section. A protest under 19 U.S.C. 1514 and part 174 of this chapter must be filed within 180 days from the date of liquidation under this section.

(ii) *If a claim is filed.* If a claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, an extension of liquidation of the entry filed under this section will take effect for a period not to exceed three years from the date the entry was filed. Before the close of the extension period, CBP will liquidate the entry filed under this section and will post a bulletin of liquidation in accordance with § 159.9 of this chapter. If CBP fails to liquidate the entry filed under this section within four years from the date of the entry, upon the date of expiration of that four-year period the entry will be

deemed liquidated by operation of law in the amount asserted by the exporter on the CBP Form 7501, or its electronic equivalent, filed under paragraph (a)(3)(ii) of this section. A protest under 19 U.S.C. 1514 and part 174 of this chapter must be filed within 180 days from the date of liquidation under this section.

(b) *Assessment and waiver or reduction of duty*—(1) *Manipulation in warehouse.* Where a good subject to USMCA drawback under this subpart is withdrawn from a bonded warehouse (*see* 19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty will be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty must be paid no later than 60 calendar days after the date of exportation or of entry into the duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(2) *Bonded manufacturing warehouse.* Where a good is manufactured in a bonded warehouse (*see* 19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty will be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty must be paid no later than 60 calendar days after either the date of exportation or of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

(3) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (*see* 19 U.S.C. 1312), duty will be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after either the date of exportation of the treated materials to Canada or Mexico or the date of entry of the treated materials into a duty-deferral program of Canada or Mexico, either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon filing of a proper claim under paragraph (a)(3) of this section, the duty on the imported materials will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

(4) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (*see* 19 U.S.C. 81c(a)) and then withdrawn from the zone for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program, the duty assessed, as calculated under paragraph (b)(4)(i) or (ii) of this section, must be paid no later than 60 calendar days after either the date of exportation of the good to Canada or Mexico or the date of entry of the good into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(i) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico, or its entry into a duty-deferral program of Canada or Mexico.

(ii) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is elected.

(5) *Temporary importation under bond.* Except in the case of a good imported from Canada or Mexico for repair or alteration, where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, HTSUS) and is subsequently exported to Canada or Mexico, duty will be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty must be paid no later than 60 calendar days after either the date of exportation or the date of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty will be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(c) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person must maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico or entry into a duty-deferral program of Canada or Mexico, and if a person files a claim under this section for a waiver or reduction of duty on goods exported to Canada or Mexico or entered into a Canadian or Mexican duty-deferral program, that person must maintain evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the good (*see* § 182.47(c) of this subpart). Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(d) *Failure to file proper claim.* If the person identified in paragraph (a)(2)(iii)(A) of this section fails to file a proper claim within the 60-day period specified in this section, that person, or the FTZ operator, pursuant to paragraph (a)(2)(iii)(A)(3) of this section, will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(e) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 5.11 of the USMCA (post-importation claim) or under any other circumstance after duties have been waived or reduced under this section, CBP may reliquidate the entry filed under this section pursuant to 19 U.S.C. 4534(e) even after liquidation of the entry has become final.

■ 48. Add § 182.55 to subpart E to read as follows:

§ 182.55 Goods exported from duty-deferral programs that are not a ''good subject to USMCA drawback'' within the meaning of 19 U.S.C. 4534.

(a) An importer, or its agent, claiming a good is not a ''good subject to USMCA drawback'' within the meaning of 19 U.S.C. 4534 must notify CBP at:

(1) The time of importation and admission into the duty-deferral program; or

(2) The time of filing the documentation required under § 182.53(a)(2)(iii)(B) of this subpart.

(b) A person must maintain records supporting a claim that a good is not a ''good subject to USMCA drawback'' within the meaning of 19 U.S.C. 4534. The records must be made available for examination and inspection by a CBP official in the same manner as provided in part 163 of this chapter in the case of U.S. importer records.

Subpart G—Origin Verifications and Determinations

■ 49. In § 182.71, add two sentences to the end of the section

§ 182.71 Applicability.

* * * Additional verification procedures apply to automotive goods and are set forth in subpart I of this part. For textile and apparel goods, CBP may choose to conduct a verification pursuant to the verification means and procedures contained in this subpart or may alternatively choose to conduct a verification pursuant to a site visit as described in § 182.83 of this part.

■ 50. Amend § 182.75 as follows:

■ a. Revise paragraph (c)(2); and

■ b. In paragraph (c)(4), remove the phrase ''unless CBP determines that there is a pattern of conduct of false or unsupported representations pursuant to § 182.76,''.

The revision reads as follows:

§ 182.75 Determinations of origin.

* * * * *

(c) * * *

(2) *Denial of preferential tariff treatment.* CBP may deny the claim for preferential tariff treatment if:

(i) The certification of origin is not submitted to CBP upon request as required pursuant to § 182.12(a) of this part, or, for textile or apparel goods claiming USMCA preferential tariff treatment under a tariff preference level (TPL), the certificate of eligibility is not submitted to CBP upon request as required pursuant to § 182.82(d) of this part;

(ii) The claim or certification of origin is invalid or based on inaccurate information and is not corrected within the required time period pursuant to § 182.11(c) of this part;

(iii) CBP determines that the importer, exporter, or producer failed to provide sufficient information to substantiate the claim;

(iv) CBP determines that the good does not qualify for preferential tariff treatment, including failing to meet the rules of origin requirements in General Note 11, HTSUS, and Appendix A to this part, or the TPL requirements in § 182.82 of this part;

(v) The importer, exporter, or producer fails to respond to the request for information pursuant to § 182.73(f)(1) subject to the conditions in § 182.75(c)(1) of this subpart;

(vi) The importer, exporter, or producer fails to respond to the questionnaire pursuant to § 182.73(f)(1) of this subpart;

(vii) The exporter or producer fails to consent to a verification visit pursuant to § 182.74 of this subpart;

(viii) The importer, exporter, or producer fails to maintain records demonstrating that the good qualifies for preferential tariff treatment as required pursuant to this part;

(ix) The importer, exporter, or producer denies access, as requested by CBP, to records or documentation that are in its possession or required to be maintained pursuant to this part;

(x) The exporter or producer denies access to records or documentation that are in its possession or required to be maintained, or to facilities during a verification visit as required pursuant to this part;

(xi) CBP finds a pattern of conduct pursuant to § 182.76 of this subpart or, for textile and apparel goods, pursuant to § 182.83(g) of this part;

(xii) CBP determines, pursuant to a site visit for textiles or apparel goods conducted under § 182.83 of this part, that any of the reasons for denial set forth in § 182.83(e) of this part applies;

(xiii) CBP determines, for automotive goods, that any of the reasons for denial set forth in § 182.107 of this part applies; or

(xiv) CBP determines that any other reason to deny a claim for preferential tariff treatment as set forth in this part applies.

* * * * *

Subpart H—Textile and Apparel Goods

■ 51. Revise § 182.81 to read as follows:

§ 182.81 Applicability.

This subpart applies only to textile or apparel goods. This subpart contains the provisions for textile or apparel goods that are claiming USMCA preferential tariff treatment under a tariff preference level (TPL) and the provisions related to site visits. With the exception of §§ 182.11, 182.12, 182.14, 182.16, subpart D, and the rules of origin set forth in Appendix A of this part, the relevant requirements and procedures set forth in this part apply to TPLs. For textile or apparel goods, including TPLs, CBP has the discretion to conduct a verification pursuant to the general verification means and procedures contained in subpart G of this part or to choose to conduct a verification pursuant to a site visit as set forth in this subpart. Unless otherwise specified in this subpart, the requirements and procedures set forth in subpart G of this part do not apply to a site visit conducted pursuant to this subpart.

■ 52. Revise § 182.82 to read as follows:

§ 182.82 Claim for preferential tariff treatment under tariff preference level.

(a) *Basis of claim.* Textile or apparel goods described in paragraph (b) of this section that do not qualify as originating goods under the rules of origin in General Note 11, HTSUS, and Appendix A of this part may qualify for preferential tariff treatment under the USMCA under an applicable tariff preference level (TPL). An importer, who cannot make a claim pursuant to § 182.11(b) for these non-originating goods, may make a claim for USMCA preferential tariff treatment under a TPL, including an exemption from the merchandise processing fee, for such textile or apparel goods provided that:

(1) The textile or apparel goods are eligible for a TPL claim under paragraph (b) of this section;

(2) The annual quantitative limit has not been reached for the subject TPL as indicated in U.S. Note 11, Subchapter XXIII, Chapter 98, HTSUS, and paragraph (b) of this section; and

(3) The claim is based on a certificate of eligibility, as specified in paragraph (d) of this section.

(b) *Goods eligible for TPL claims.* The following goods are eligible for a TPL claim made under paragraph (c) of this section:

(1) *Cotton or man-made fiber apparel goods of a USMCA country.* Cotton or man-made fiber apparel goods described in U.S. Notes 11(a)(i) and (b)(i), Subchapter XXIII, Chapter 98, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of a USMCA country, and that meet the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Notes 11(a) and 11(b), Subchapter XXIII, Chapter 98, HTSUS;

(2) *Wool apparel goods of a USMCA country.* Wool apparel goods described in U.S. Note 11, Subchapter XXIII, Chapter 98, HTSUS, and that meet the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities

specified in U.S. Note 11(a)(i)(B) and (b)(i)(C), Subchapter XXIII, Chapter 98, HTSUS;

(3) *Cotton or man-made fiber fabrics and made-up goods.* Fabrics and made-up goods described in U.S. Note 11(a)(ii) and (b)(ii), Subchapter XXIII, Chapter 98, HTSUS, made from cotton or man-made fiber, provided that the goods meet the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 11(a)(ii) and (b)(ii), Subchapter XXIII, Chapter 98, HTSUS; and

(4) *Cotton or man-made fiber spun yarn.* Yarn described in U.S. Note 11(a)(iii) and (b)(iii), Subchapter XXIII, Chapter 98, HTSUS, made from cotton or man-made fiber, provided that the yarn meets the applicable conditions for preferential tariff treatment under the USMCA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 11(a)(iii) and (b)(iii), Subchapter XXIII, Chapter 98, HTSUS.

(c) *Making a TPL claim.* A claim for preferential tariff treatment under a TPL is made by including on the entry summary, or equivalent documentation, or by the method specified for equivalent reporting via an authorized electronic data interchange system, the applicable subheading in Chapter 98, HTSUS, the applicable subheading under which each non-originating textile or apparel good is classified with the letter ''S+'' as a prefix to the subheadings of the HTSUS, and the certificate of eligibility number. The applicable subheadings in Chapter 98, HTSUS, are:

(1) For goods described in paragraph (b)(1) of this section, subheadings 9823.52.01 and 9823.53.01;

(2) For goods described in paragraph (b)(2) of this section, subheadings 9823.52.02, 9823.52.03, 9823.53.02;

(3) For goods described in paragraph (b)(3) of this section, subheadings 9823.52.04, 9823.52.05, 9823.52.06, 9823.53.03, 9823.53.04, and 9823.53.05; and

(4) For goods described in paragraph (b)(4) of this section, subheadings 9823.52.07, 9823.52.08, and 9823.53.06.

(d) *Certificate of eligibility.* An importer who makes a claim for preferential tariff treatment pursuant to paragraph (c) of this section must submit, at the request of CBP, a certificate of eligibility issued by an authorized official of the government of Mexico or Canada. The certificate of eligibility must contain information demonstrating that a good is eligible for a TPL claim as set forth in paragraph (b) of this section and to track allocation and use of a TPL. The certificate of eligibility must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

(e) *Post-importation claims.* (1) *Right to make a post-importation claim.* Where a textile or apparel good would have qualified for preferential tariff treatment under paragraph (a) of this section when it was imported into the United States but no claim for preferential tariff treatment was made under paragraph (c) of this section, the importer of that good may file a claim for a refund of any excess customs duties at any time within one year after the date of importation of the good. As this post-importation claim is not filed in accordance with 19 U.S.C. 1520(d) or subpart D of this part, the claim must be filed in accordance with the procedures set forth in paragraph (e)(2) of this section.

(2) *Filing procedures.* Post-importation claims under a TPL must be filed with the certificate of eligibility for the year the entry summary, or equivalent documentation, is accepted by CBP. Post-importation claims will not be granted if the quantitative limits for the subject TPL, as provided for in paragraph (b) of this section, are already met.

(f) *Denial of preferential tariff treatment.* If the importer fails to comply with the requirements under this section, including the submission of a certificate of eligibility upon request in accordance with paragraph (d) of this section, or if the textile or apparel good is not eligible to make a TPL claim under paragraph (b) of this section, CBP may deny preferential tariff treatment to the textile or apparel good.

(g) *Verifications.* CBP will conduct a verification of a textile or apparel good claiming USMCA preferential tariff treatment under a TPL pursuant to the means and procedures in either subpart G of this part or § 182.83 of this subpart.

■ 53. Add § 182.83 to subpart H to read as follows:

§ 182.83 Verifications of textile and apparel goods.

(a) *Verification of textile and apparel goods.* For textile and apparel goods, CBP has two alternative means of conducting a verification. CBP may conduct a verification for purposes of determining whether a textile and apparel good qualifies for preferential tariff treatment using any of the means described in § 182.72(a) of this part. Alternatively, as described in this section, CBP may conduct a site visit to the premises of the exporter or producer of textile or apparel goods in Mexico or Canada for the purpose of determining:

(1) That a textile or apparel good qualifies for preferential tariff treatment; or

(2) That customs offenses with regard to a textile or apparel good are occurring or have occurred.

(b) *Verification of a material during a site visit.* When conducting a verification of a textile or apparel good imported into the United States, CBP may conduct a verification of the material that is used in the production of that good. A verification of a material producer may be conducted pursuant to the site visit procedures set forth in this section. With the exception of § 182.75, the provisions in this section also apply to the verification of a material and references to the term ''producer'' apply to a producer of a textile or apparel good or to a material producer.

(c) *Site visit procedures.* (1) *Consent required.* Prior to conducting a site visit in Canada or Mexico pursuant to this section, CBP must obtain the consent of the exporter, producer, or a person having capacity to consent on behalf of the exporter or producer, either prior to the site visit or at the time of the site visit, to access the relevant records or facilities. CBP must, at the time of the request for consent, inform the exporter, producer, or person having the capacity to consent to a site visit of:

(i) The legal authority for the visit;

(ii) The specific purpose of the visit; and

(iii) The names and titles of the U.S. officials performing the visit.

(2) *Failure to receive CBP on initial date.* (i) If the exporter, producer, or a person having the capacity to consent on behalf of the exporter or producer is not able to receive CBP to carry out the site visit, the site visit will be conducted on the following business day unless:

(A) CBP agrees otherwise; or

(B) The exporter, producer, or person having the capacity to consent on behalf of the exporter or producer substantiates a valid reason acceptable to CBP for why the site visit cannot occur on the following business day.

(ii) If the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer, does not have a valid reason acceptable to CBP for why the site visit cannot take place on the following business day, CBP will consider any reasonable alternative proposed dates, taking into account the availability of relevant employees or facilities of the exporter or producer to be visited. After such consideration, CBP may deem consent

for the site visit or access to the records or facilities to be denied.

(3) *Availability of records and facilities.* During a site visit, CBP may request access to:

(i) Records and facilities relevant to the claim for preferential tariff treatment; or

(ii) Records and facilities relevant to the customs offenses being verified.

(d) *Right to request report of the site visit.* The exporter or producer may request CBP's written report of the results of the site visit. The exporter or producer must submit this request in writing to CBP. CBP will provide the exporter or producer the portions of the report that pertain to that exporter or producer, including any findings, subject to the confidentiality provisions in § 182.2 of this part.

(e) *Denial of preferential tariff treatment.* CBP may deny preferential tariff treatment to any textile or apparel good imported or produced by the person that is the subject of the verification if CBP determines any of the following:

(1) CBP determines, pursuant to a site visit conducted under this section, that it has not received sufficient information to determine that the textile or apparel good qualifies for preferential tariff treatment;

(2) CBP determines that the textile or apparel good does not qualify for preferential tariff treatment, including failing to meet the rules of origin requirements in General Note 11, HTSUS, and Appendix A to this part, or the TPL requirements in § 182.82 of this subpart;

(3) CBP is unable to determine, pursuant to a site visit conducted under paragraph (a)(2) of this section, that the exporter or producer is complying with applicable customs measures affecting trade in textile or apparel goods;

(4) CBP is unable to conduct a site visit because access to or consent for the site visit is denied by the exporter, producer, or person having the capacity to consent on behalf of the exporter or producer;

(5) The exporter, producer, or a person having the capacity to consent on behalf of the exporter or producer prevents CBP from completing the site visit on the initial date of the site visit and the exporter or producer does not provide an acceptable alternative date for the site visit;

(6) The exporter, producer, or person having the capacity to consent on behalf of the exporter or producer fails to provide CBP with access to relevant documents or facilities during a site visit as required under § 182.83(c)(3) of this section; or

(7) CBP determines that any other reason to deny a claim for preferential tariff treatment as set forth in § 182.75(c)(2) of this part applies.

(f) *Intent to deny and determination of origin.* After CBP conducts a site visit under this section, CBP will issue a determination of origin pursuant to the procedures set forth in § 182.75, with the exception of § 182.75(c)(1). If CBP conducts a site visit under this section and, as a result, intends to deny preferential tariff treatment to a textile or apparel good, it must, prior to issuing a determination of origin, issue an intent to deny pursuant to § 182.75(c)(3).

(g) *Pattern of conduct for textile or apparel goods.* Where the verification of identical textile or apparel goods by CBP indicates a pattern of conduct by an exporter or producer of false or unsupported representations that a textile or apparel good imported into the territory of the United States qualifies for preferential tariff treatment, CBP may withhold preferential tariff treatment to identical textile or apparel goods imported, exported, or produced by that person until it is demonstrated to CBP that those identical textile or apparel goods qualify for preferential tariff treatment.

Subpart I—Automotive Goods

■ 54. Add § 182.91 to read as follows:

§ 182.91 Applicability.

This subpart contains the additional requirements and procedures applicable only to automotive goods, including covered vehicles claiming USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part. Covered vehicles claiming USMCA preferential tariff treatment must also meet the requirements and follow the procedures contained in this part, including the requirements set forth in Appendix A of this part. This subpart contains the labor value content (LVC), steel purchasing, and aluminum purchasing requirements for covered vehicles (passenger vehicles, light trucks, and heavy trucks), the LVC, steel purchasing, and aluminum purchasing certification requirements and procedures, the motor vehicle averaging election requirements and procedures, the recordkeeping requirements, the verification procedures applicable to automotive goods, and additional reasons that CBP may deny preferential tariff treatment to covered vehicles.

■ 55. Add § 182.92 to read as follows:

§ 182.92 Claim for preferential tariff treatment for covered vehicles.

(a) *General.* An importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for a covered vehicle only if the requirements set forth in this part are met, including the certification of origin requirement in § 182.12 of this part, the LVC requirement in § 182.93 of this subpart, and the steel purchasing and aluminum purchasing requirements in § 182.94 of this subpart, and if the vehicle producer has complied with the LVC, steel purchasing, and aluminum purchasing certification requirements under §§ 182.95, 182.96, and 182.97 of this subpart.

(b) *Requirement to include vehicle certification unique identifier.* An importer making a claim for USMCA preferential tariff treatment for a covered vehicle under § 182.11(b) of this part must include on the entry summary or equivalent documentation, or by the method specified for equivalent reporting via an authorized data interchange system, the unique identifier assigned by CBP for each of the LVC, steel purchasing, and aluminum purchasing certifications that forms the basis for the covered vehicle's eligibility for preferential tariff treatment. An importer making a claim for USMCA preferential tariff treatment for a covered vehicle under § 182.32 of this part must include, in the post-importation claim, the unique identifier assigned by CBP for each of the LVC, steel purchasing, or aluminum purchasing certifications that forms the basis for the covered vehicle's eligibility for preferential tariff treatment.

■ 56. Add § 182.93 to read as follows:

§ 182.93 Labor value content (LVC) requirement.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets the LVC requirement, as set forth in General Note 11(k)(vi), HTSUS, and section 18 of Appendix A to this part or, if the producer is subject to the alternative staging regime, General Note 11(k)(viii), HTSUS, and section 19 of Appendix A to this part.

(b) *Administering the LVC component.* The Department of Labor (DOL) is responsible for implementing and administering the high-wage components of the LVC requirement. The DOL regulations that set forth information concerning the high-wage components of the LVC requirement and the applicable procedures are in 29 CFR part 810. CBP is responsible for determining whether a covered vehicle

meets the LVC requirement generally, setting procedures for submitting the LVC certification, verifying the LVC requirement in conjunction with DOL, and determining whether a covered vehicle qualifies for USMCA preferential tariff treatment. CBP and DOL may exchange information as necessary to properly administer the LVC requirement, subject to the confidentiality provisions in § 182.2 of this part and the DOL regulations in 29 CFR part 810.

(c) *LVC calculation.* For the purpose of determining whether a covered vehicle meets the LVC requirement, the producer of the covered vehicle must calculate the LVC requirement pursuant to General Note 11(k)(vi), HTSUS, and section 18 of Appendix A to this part and the requirements for the high-wage components of the LVC requirement set forth in the DOL regulations at 29 CFR part 810.

(d) *Calculation periods.* The producer of a covered vehicle may base the LVC calculation over the calculation periods set forth in either this paragraph or paragraph (e) of this section. The following calculation periods are provided for in section 18(19) of Appendix A to this part, and include:

(1) The previous fiscal year of the producer;

(2) The previous calendar year;

(3) The quarter or month to date in which the vehicle is produced or exported;

(4) The producer's fiscal year to date in which the vehicle is produced or exported; or

(5) The calendar year to date in which the vehicle is produced or exported.

(e) *Additional calculation periods.* If the fiscal year of the producer of a covered vehicle begins after July 1, 2020, but before July 1, 2021, the producer may base the LVC calculation over the period beginning on July 1, 2020 and ending at the end of the following fiscal year, as provided for in sections 16(4) and 16(5) of Appendix A to this part.

(1) *Additional calculation periods applicable to all covered vehicles.* For the period from July 1, 2020 to June 30, 2023, the producer of a covered vehicle may base the LVC calculation over the following periods:

(i) July 1, 2020 to June 30, 2021;

(ii) July 1, 2021 to June 30, 2022;

(iii) July 1, 2022 to June 30, 2023; and

(iv) July 1, 2023 to the end of the producer's fiscal year.

(2) *Additional calculation periods for heavy trucks.* In addition to the calculation periods contained in paragraph (e)(1) of this section, the producer of a heavy truck may base the LVC calculation of a heavy truck over the following additional periods:

(i) July 1, 2023 to June 30, 2024;

(ii) July 1, 2024 to June 30, 2025;

(iii) July 1, 2025 to June 30, 2026;

(iv) July 1, 2026 to June 30, 2027; and

(v) July 1, 2027 to the end of the producer's fiscal year.

(3) *Calculation periods.* When basing the LVC calculation over the additional calculation periods set forth in this paragraph, the producer may calculate:

(i) Beginning on July 1 of the previous year and ending on June 30 of the current year, except for the additional calculation periods set forth in paragraph (e)(1)(iv) or (e)(2)(v) of this section when the period ends at the end of the producer's fiscal year; or

(ii) Beginning on July 1 of the current year and ending on June 30 of the following year, except for the additional calculation periods in paragraph (e)(1)(iv) or (e)(2)(v) of this section when the period ends at the end of the producer's fiscal year.

■ 57. Add § 182.94 to subpart I to read as follows:

§ 182.94 Steel purchasing and aluminum purchasing requirements.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle meets both the steel purchasing and the aluminum purchasing requirements, as set forth in General Note 11(k)(v), HTSUS, and section 17 of Appendix A to this part or, if the producer is subject to alternative staging regime, General Note 11(k)(viii), HTSUS, and section 19 of Appendix A of this part.

(b) *Steel and aluminum purchasing calculations.* For the purpose of determining whether the producer of a covered vehicle has met the steel or aluminum purchasing requirement, the producer must calculate the steel and aluminum requirements pursuant to General Note 11(k)(v), HTSUS, and section 17 of Appendix A to this part. The producer may calculate the value of the steel and aluminum purchases using a method in section 17(6) of Appendix A to this part and may calculate the purchases of steel or aluminum on the basis of the categories set forth in in section 17(9) of Appendix A to this part.

(c) *Calculation periods.* The producer of a covered vehicle may calculate the purchases of steel or aluminum over the calculation periods set forth in either this paragraph or paragraph (d) of this section. The following calculation periods are provided for in section 17(7) of Appendix A to this part, and include:

(1) The previous fiscal year of the producer;

(2) The previous calendar year;

(3) The quarter or month to date in which the vehicle is exported;

(4) The producer's fiscal year to date in which the vehicle is exported; or

(5) The calendar year to date in which the vehicle is exported.

(d) *Additional calculation periods.* If the fiscal year of a producer begins after July 1, 2020, but before July 1, 2021, the producer of a covered vehicle may calculate the purchases of steel and aluminum over the period beginning on July 1, 2020 and ending at the end of the following fiscal year, as provided for in sections 16(4) and 16(5) of Appendix A to this part.

(1) *Additional calculation periods applicable to all covered vehicles.* For the period from July 1, 2020 to June 30, 2023, the producer of a covered vehicle may calculate the purchases of steel and aluminum over the following periods:

(i) July 1, 2020 to June 30, 2021;

(ii) July 1, 2021 to June 30, 2022;

(iii) July 1, 2022 to June 30, 2023; and

(iv) July 1, 2023 to the end of the producer's fiscal year.

(2) *Additional calculation periods for heavy trucks.* In addition to the calculation periods set forth in paragraph (d)(1) of this section, the producer of a heavy truck may calculate the purchases of steel and aluminum for a heavy truck over the additional following periods:

(i) July 1, 2023 to June 30, 2024;

(ii) July 1, 2024 to June 30, 2025;

(iii) July 1, 2025 to June 30, 2026;

(iv) July 1, 2026 to June 30, 2027; and

(v) July 1, 2027 to the end of the producer's fiscal year.

(3) *Calculation periods.* When calculating the purchases of steel and aluminum over the additional calculation periods set forth in this paragraph, the producer may calculate:

(i) beginning on July 1 of the previous year and ending on June 30 of the current year, except for the additional calculation periods set forth in paragraph (d)(1)(iv) or (d)(2)(v) of this section when the period ends at the end of the producer's fiscal year; or

(ii) beginning on July 1 of the current year and ending on June 30 of the following year, except for the additional calculation periods in paragraph (d)(1)(iv) or (d)(2)(v) of this section when the period ends at the end of the producer's fiscal year.

(e) *Calculation periods may differ.* The producer of a covered vehicle may choose different calculation periods for its steel purchasing calculation and aluminum purchasing calculation.

■ 58. Add § 182.95 to subpart I to read as follows:

§ 182.95 Labor value content (LVC) certification.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the LVC requirement, as described in § 182.93 of this subpart. The producer of the covered vehicle must have information in its possession in accordance with § 182.103(a) of this subpart that proves the accuracy of the calculations relied on for the LVC certification.

(b) *Submission of LVC certification for vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the LVC requirement or contain different requirements than the LVC requirement set forth in § 182.93 of this subpart, the producer of the covered vehicle must submit to CBP a LVC certification that covers only those vehicles subject to the alternative staging regime pursuant to § 182.106(c) of this subpart.

(c) *LVC certification data elements.* The LVC certification must include the information required by 29 CFR part 810 and the following information:

(1) *Producer.* The certifying vehicle producer's name, corporate address (including country), Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, and a point of contact for the certifying vehicle producer;

(2) *Certifier.* The name, title, address (including country), telephone number, and email address of the person completing the certification;

(3) *LVC calculation.* The calculation used to determine that the production of covered vehicles specified under paragraph (c)(4) of this section meets the LVC requirement in General Note 11(k)(vi), HTSUS, § 182.93(c) of this subpart, and Appendix A to this part. The calculation should include each of the elements described in the formula based on net cost, as set forth in section 18(6)(a) of Appendix A to this part, or in the formula based on total annual purchase value, as set forth in section 18(6)(b) of Appendix A to this part, and the resulting LVC percentage;

(4) *Vehicle category.* The vehicle class, model line, and/or other category indicating the motor vehicles covered by the certification;

(5) *Calculation period.* For the calculation provided in paragraph (c)(3) of this section, the calculation period over which the calculation is made, as specified in § 182.93(d) and (e) of this subpart;

(6) *Plant or facility information.* The name, address, and Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for each plant or facility the producer of the covered vehicle is relying on to meet the high-wage material and manufacturing expenditures component of the LVC requirement for the calculation provided in paragraph (c)(3) in this section;

(7) *Average hourly base wage rate.* A statement that the average hourly base wage rate, calculated as required by DOL's regulations at 29 CFR part 810, meets or exceeds US $16 per hour for each plant or facility identified in paragraph (c)(6) of this section;

(8) *High-wage transportation or related costs.* If applicable, a statement that the producer is using high-wage transportation or related costs to meet the high-wage material and manufacturing expenditures component. If the producer is using high-wage transportation or related costs, the producer must identify the company name, address, and Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for each company the producer used to calculate its high-wage transportation or related costs for the calculation provided in paragraph (c)(3) of this section;

(9) *High-wage technology expenditures credit.* If applicable, a statement that the producer is using the high-wage technology expenditures credit to meet the LVC requirement for the calculation provided in paragraph (c)(3) of this section. If the producer is using the high-wage technology expenditures credit, a producer must identify the percentage the producer is claiming as a credit towards the total LVC requirement; and

(10) *High-wage assembly expenditures credit.* If applicable, a statement that the producer is using the high-wage assembly expenditures credit to meet the LVC requirement for the calculation provided in paragraph (c)(3) of this section. If the producer is using the high-wage assembly expenditures credit, the producer must identify the following:

(i) The name, address, and Federal Employer Identification Number (for U.S. plants) or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for the assembly plant the producer used to qualify for the high-wage assembly expenditures credit; and

(ii) A statement that the average hourly base wage rate, calculated as required by DOL's regulations at 29 CFR part 810, meets or exceeds US $16 per hour for the assembly plant used to qualify for the high-wage assembly expenditures credit.

(11) *Authorized signature, date and certifying statement.* The certification must be signed and dated by the certifier and include the following certifying statement: ''I certify that, for the vehicle category and over the relevant period indicated in this document, the producer has satisfied the LVC requirement as set out in General Note 11(k)(vi), HTSUS, section 18 of the Uniform Regulations regarding Rules of Origin, and 19 CFR 182.93. The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.''

(d) *Responsible official or agent.* The LVC certification must be signed and dated by a responsible official of the

producer, or by the producer's authorized agent having knowledge of the relevant facts.

(e) *Language.* The LVC certification must be completed in English, French, or Spanish. If the LVC certification is not in English, CBP may require the producer to submit an English translation of the certification.

(f) *Submission of LVC certification.* The producer of the covered vehicle must submit the LVC certification to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period described in paragraph (j) of this section.

(g) *Review of LVC certification to determine whether it is properly filed.* After the producer of the covered vehicle submits the LVC certification to CBP pursuant to paragraphs (f) or (i) of this section, the LVC certification will be reviewed for omissions and errors to determine whether the certification has been properly filed.

(1) *Review for omissions and errors.* DOL, in consultation with CBP, will review the LVC certification for omissions and errors to determine whether the certification has been properly filed.

(2) *LVC certification contains no omissions or errors.* Upon a determination that the LVC certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section.

(3) *LVC certification contains omissions or errors.* Upon a determination that the LVC certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that an omission or error was discovered, provide a description of the omission or error, and that the producer has the right to submit a revised LVC certification.

(i) *Submission of revised LVC certification.* Upon receipt of this notification that an omission or error was discovered, the producer must submit a revised certification or an explanation of why the producer believes the certification contains no omission or error to CBP within five business days. If no revised certification is submitted within the five business days, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has not been properly filed.

(ii) *Review of revised LVC certification.* Upon a determination that the revised LVC certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section. Upon a determination that the revised LVC certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

(h) *Making a claim for USMCA preferential tariff treatment during review for omissions and errors period.* If the LVC certification was filed by the required date, as specified in paragraph (f) of this section, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles during the period of review for omissions and errors, as described in paragraph (g) of this section, until the producer has received notice from CBP that the LVC certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed under paragraph (g)(3)(ii) of this section. If the producer receives notice that the LVC certification has not been properly filed under paragraph (g)(3)(ii) of this section, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle of that determination within 30 days of receipt of the CBP notice.

(i) *Resubmission of the LVC certification upon determination that the LVC certification was not properly filed.* Upon notification that the LVC certification has not been properly filed under paragraph (g)(3)(ii) of this section, the producer of the covered vehicle may, within 10 business days of receiving the notification, resubmit a new LVC certification to CBP.

(1) *Resubmission process.* The producer must resubmit a new LVC certification to CBP pursuant to the means set forth in paragraph (f) of this section and CBP will use the review of omissions and errors process as described in paragraph (g) of this section to determine whether the new certification is properly filed.

(2) *Right to resubmit LVC certification.* The producer may resubmit a new LVC certification for the same category and same calculation period up to two times per certification period, as described in this section.

(3) *Making a claim for USMCA preferential tariff treatment during resubmission period.* Notwithstanding paragraph (h) of this section, if a producer chooses to resubmit the new LVC certification, an importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the new certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

(j) *Certification periods.* (1) For an LVC calculation based on the previous fiscal year of the producer pursuant to § 182.93(d)(1) of this subpart, the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period;

(2) For an LVC calculation based on the previous calendar year pursuant to § 182.93(d)(2) of this subpart, the certification period begins on the first day of the following calendar year. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period;

(3) For all other LVC calculation periods pursuant to § 182.93(d) of this subpart, the certification period begins on the first day of that calculation period. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period;

(4) For an LVC calculation based on an additional calculation period calculated pursuant to § 182.93(e)(3)(i) of this subpart, the certification period begins on first day of the following period, meaning July 1 of the current year and ends on June 30 of the following year, except for the additional calculation periods in § 182.93(e)(1)(iv) or (e)(2)(v) when the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period; and

(5) For an LVC calculation based on an additional calculation period calculated pursuant to § 182.93(e)(3)(ii) of this subpart, the certification period begins on the first day of that calculation period, meaning July 1 of the current year and ends on the last day of the calculation period, except for the additional calculation periods in § 182.93(e)(1)(iv) or (e)(2)(v) when the certification period begins on the first

day of the current fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced or exported, as the case may be, within that period.

(k) *Request for modification of a properly filed LVC certification.* The producer of the covered vehicle must request a modification of a properly filed LVC certification in the event of any material changes to the information contained in the certification that would affect its validity.

(1) *Submission process.* The producer must submit a modification request to CBP by submitting a new certification through the means set forth in paragraph (f) of this section, along with a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity of the certification. If CBP grants the modification request, DOL, in consultation with CBP, will review the new LVC certification to determine whether it is properly filed in accordance with the procedures set forth in paragraph (g) of this section. If CBP denies the modification request, CBP will provide written or electronic notification to the producer of the covered vehicle.

(2) *Resubmission process.* The producer may resubmit the new certification, pursuant to the procedures in paragraph (i) of this section, upon a determination that the new certification was not properly filed. The producer may resubmit the new LVC certification up to two times in accordance with paragraph (i)(2) of this section.

(3) *Effective date of new LVC certification.* If CBP determines that the new certification is properly filed under paragraph (g) or (i) of this section, the new certification supersedes the former certification and is effective for the period specified in paragraph (j) of this section. Within 30 days of receiving notice that the new certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

■ 59. Add § 182.96 to subpart I to read as follows:

§ 182.96 Steel purchasing certification.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the steel purchasing requirement, as described in § 182.94 of this subpart. The producer of the covered vehicle must have information in its possession in accordance with § 182.103(a) of this subpart that proves the accuracy of the calculations relied on for the steel purchasing certification.

(b) *Submission of steel purchasing certification for vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the steel purchasing requirements or contain different requirements from the steel purchasing requirements set forth in § 182.94 of this subpart, the producer of the covered vehicle must submit to CBP a steel purchasing certification that covers only those vehicles subject to the alternative staging regime pursuant to § 182.106(c) of this subpart.

(c) *Steel purchasing certification data elements.* The steel purchasing certification must include:

(1) *Producer.* The producer of the covered vehicle's name, address (including country), email address, telephone number, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with the producer. The address of a producer provided under this paragraph is the place of production of the good in a USMCA country's territory;

(2) *Certifier.* The name, title, address (including country), telephone number, and email address of the person completing the certification;

(3) *Producer's purchases of steel.* The calculation used to determine that the producer of the covered vehicle has complied with the steel purchasing requirement in General Note 11(k)(v), HTSUS, and Appendix A to this part. The calculation should include the total value of the vehicle producer's purchases at the corporate level of steel listed in Table S of Appendix A to this part in the territories of one or more of the USMCA countries, the total value of those purchases that qualify as originating goods, and the resulting percentage;

(4) *Vehicle category.* For the calculation provided in paragraph (c)(3) of this section, the vehicle category for which the purchases are calculated, as specified in section 17(9) of Appendix A to this part;

(5) *Calculation periods.* For the calculation provided in paragraph (c)(3) of this section, the calculation period over which the purchases are made, as specified in § 182.94(c) and (d) of this subpart;

(6) *Steel producer, service center, or distributor.* The name and address (including country) for each steel producer, service center, or distributor relied upon in calculating the total value of purchases of steel that qualify as originating goods under paragraph (c)(3) of this section, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with those entities; and

(7) *Authorized signature, date and certifying statement.* The certification must be signed and dated by the certifier and include the following certifying statement: ''I certify that, for the vehicle category and over the relevant period indicated in this document, the producer has satisfied the steel purchasing requirement as set out in General Note 11(k)(v), HTSUS, section 17 of the Uniform Regulations regarding Rules of Origin, and 19 CFR 182.94. The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.''

(d) *Responsible official or agent.* The steel purchasing certification must be signed and dated by a responsible official of the producer, or by the producer's authorized agent having knowledge of the relevant facts.

(e) *Language.* The steel purchasing certification must be completed in English, French, or Spanish. If the certification is not in English, CBP may require the producer to submit an English translation of the certification.

(f) *Submission of steel purchasing certification.* The producer of the covered vehicle must submit the steel purchasing certification to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period described in paragraph (j) of this section.

(g) *Review of steel purchasing certification to determine whether it is properly filed.* After the producer of the covered vehicle submits the steel purchasing certification to CBP pursuant to paragraph (f) or (i) of this section, CBP will review the certification for errors or omissions to determine whether the certification has been properly filed.

(1) *Steel purchasing certification contains no omissions or errors.* If, upon review of the certification, CBP determines the certification contains no

omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section.

(2) *Steel purchasing certification contains omissions or errors.* If, upon review of the certification, CBP determines that the certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that an omission or error was discovered, provide a description of the omission or error, and that the producer has the right to submit a revised steel purchasing certification.

(i) *Submission of revised steel purchasing certification.* Upon receipt of this notification that an omission or error was discovered, the producer must submit a revised certification or an explanation of why the producer believes the certification contains no omission or error to CBP within five business days. If no revised certification is submitted within the five business days, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has not been properly filed.

(ii) *Review of revised steel purchasing certification.* Upon a determination that the revised steel purchasing certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section. Upon a determination that the revised steel purchasing certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

(h) *Making a claim for USMCA preferential tariff treatment during review for omissions and errors period.* If the steel purchasing certification was filed by the required date, as specified in paragraph (f) of this section, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles during the period of review for omissions and errors, as described in paragraph (g) of this section, until the producer has received notice from CBP that the steel purchasing certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed under paragraph (g)(2)(ii) of this section. If the producer receives notice that the steel purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle of that determination within 30 days of receipt of the CBP notice.

(i) *Resubmission of the steel purchasing certification upon determination that the steel purchasing certification was not properly filed.* Upon notification that the steel purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer of the covered vehicle may, within 10 business days of receiving the notification, resubmit a new steel purchasing certification to CBP.

(1) *Resubmission process.* The producer must resubmit a new steel purchasing certification to CBP pursuant to the means set forth in paragraph (f) of this section and CBP will use the review of omissions and errors process as described in paragraph (g) of this section to determine whether the new certification is properly filed.

(2) *Right to resubmit steel purchasing certification.* The producer may resubmit a new steel purchasing certification for the same category and same calculation period up to two times per certification period, as described in this section.

(3) *Making a claim for USMCA preferential tariff treatment during resubmission period.* Notwithstanding paragraph (h) of this section, if a producer chooses to resubmit the new steel purchasing certification, an importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the new certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

(j) *Certification periods.* (1) For a steel purchasing calculation based on the previous fiscal year of the producer pursuant to § 182.94(c)(1) of this subpart, the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(2) For a steel purchasing calculation based on the previous calendar year pursuant to § 182.94(c)(2) of this subpart, the certification period begins on the first day of the following calendar year. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(3) For all other steel purchasing calculation periods pursuant to § 182.94(c) of this subpart, the certification period begins on the first day of that calculation period. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period;

(4) For a steel purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(i) of this subpart, the certification period begins on first day of the following period, meaning July 1 of the current year and ends on June 30 of the following year, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period; and

(5) For a steel purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(ii) of this subpart, the certification period begins on the first day of that calculation period, meaning July 1 of the current year and ends on the last day of the calculation period, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the current fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period.

(k) *Request for modification of a properly filed steel purchasing certification.* The producer of the covered vehicle must request a modification of a properly filed steel purchasing certification in the event of any material changes to the information contained in the certification that would affect its validity.

(1) *Submission process.* The producer must submit a modification request to CBP by submitting a new certification through the means set forth in paragraph (f) of this section, along with a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity of the certification. If CBP grants the modification request, CBP will review the new steel purchasing certification to determine whether it is properly filed in accordance with the procedures set forth in paragraph (g) of this section. If CBP denies the modification request, CBP will provide written or electronic

notification to the producer of the covered vehicle.

(2) *Resubmission process.* The producer may resubmit the new certification, pursuant to the procedures in paragraph (i) of this section, upon a determination that the new certification was not properly filed. The producer may resubmit the new steel purchasing certification up to two times in accordance with paragraph (i)(2) of this section.

(3) *Effective date of new steel purchasing certification.* If CBP determines that the new certification is properly filed under paragraph (g) or (i) of this section, the new certification supersedes the former certification and is effective for the period specified in paragraph (j) of this section. Within 30 days of receiving notice that the new certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

■ 60. Add § 182.97 to subpart I to read as follows:

§ 182.97 Aluminum purchasing certification.

(a) *General.* A covered vehicle is eligible for USMCA preferential tariff treatment only if the producer of the covered vehicle has certified to CBP that the production of the vehicle by the producer meets the aluminum purchasing requirement, as described in § 182.94 of this subpart. The producer of the covered vehicle must have information in its possession in accordance with § 182.103(a) of this subpart that proves the accuracy of the calculations relied on for the aluminum purchasing certification.

(b) *Submission of aluminum purchasing certification for vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the aluminum purchasing requirements or contain different requirements from the aluminum purchasing requirements set forth in § 182.94 of this subpart, the producer of the covered vehicle must submit to CBP an aluminum purchasing certification that covers only those vehicles subject to the alternative staging regime pursuant to § 182.106(c) of this subpart.

(c) *Aluminum purchasing certification data elements.* The aluminum purchasing certification must include:

(1) *Producer.* The producer of the covered vehicle's name, address (including country), email address, telephone number, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with the producer. The address of a producer provided under this paragraph is the place of production of the good in a USMCA country's territory;

(2) *Certifier.* The name, title, address (including country), telephone number, and email address of the person completing the certification;

(3) *Producer's purchase of aluminum.* The calculation used to determine that the producer of the covered vehicle has complied with the aluminum purchasing requirement in General Note 11(k)(v), HTSUS, and Appendix A to this part. The calculation should include the total value of the vehicle producer's purchases at the corporate level of aluminum listed in Table S of Appendix A to this part in the territories of one or more of the USMCA countries, the total value of those purchases that qualify as originating goods, and the resulting percentage;

(4) *Vehicle category.* For the calculation provided in paragraph (c)(3) of this section, the vehicle category for which the purchases are calculated, as specified in section 17(9) of Appendix A to this part;

(5) *Calculation periods.* For the calculation provided in paragraph (c)(3) of this section, the calculation period over which the purchases are made, as specified in § 182.94(c) and (d) of this subpart;

(6) *Aluminum producer, service center, or distributor.* The name and address (including country) for each aluminum producer, service center, or distributor relied upon in calculating the total value of purchases of aluminum that qualify as originating goods under paragraph (c)(3) of this section, and any Manufacturers Identification Codes (MID), Federal Employer Identification Numbers (EIN), or Importer of Record Numbers (IOR) associated with those entities; and

(7) *Authorized signature, date and certifying statement.* The certification must be signed and dated by the certifier and include the following certifying statement: ''I certify that, for the vehicle category and over the relevant period indicated in this document, the producer has satisfied the aluminum purchasing requirement as set out in General Note 11(k)(v), HTSUS, section 17 of the Uniform Regulations regarding Rules of Origin, and 19 CFR 182.94. The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.''

(d) *Responsible official or agent.* The aluminum purchasing certification must be signed and dated by a responsible official of the producer, or by the producer's authorized agent having knowledge of the relevant facts.

(e) *Language.* The aluminum purchasing certification must be completed in English, French, or Spanish. If the certification is not in English, CBP may require the producer to submit an English translation of the certification.

(f) *Submission of aluminum purchasing certification.* The producer of the covered vehicle must submit the aluminum purchasing certification to CBP through an authorized electronic data interchange system or other specified means at least 90 days prior to the beginning of the certification period described in paragraph (j) of this section.

(g) *Review of aluminum purchasing certification to determine whether it is properly filed.* After the producer of the covered vehicle submits the aluminum purchasing certification to CBP pursuant to paragraph (f) or (i) of this section, CBP will review the certification for errors or omissions to determine whether the certification has been properly filed.

(1) *Aluminum purchasing certification contains no omissions or errors.* If, upon review of the certification, CBP determines the certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section.

(2) *Aluminum purchasing certification contains omissions or errors.* If, upon review of the certification, CBP determines that the certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that an omission or error was discovered, provide a description of the omission or error, and that the producer has the right to submit a revised aluminum purchasing certification.

(i) *Submission of revised aluminum purchasing certification.* Upon receipt of this notification that an omission or error was discovered, the producer must submit a revised certification or an explanation of why the producer believes the certification contains no

omission or error to CBP within five business days. If no revised certification is submitted within the five business days, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has not been properly filed.

(ii) *Review of revised aluminum purchasing certification.* Upon a determination that the revised aluminum purchasing certification contains no omissions or errors, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification has been properly filed and is effective for the period specified in paragraph (j) of this section. Upon a determination that the revised aluminum purchasing certification contains an omission or error, CBP will provide written or electronic notification to the producer of the covered vehicle that the certification was not properly filed.

(h) *Making a claim for USMCA preferential tariff treatment during review for omissions and errors period.* If the aluminum purchasing certification was filed by the required date, as specified in paragraph (f) of this section, an importer may make a claim for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles during the period of review for omissions and errors, as described in paragraph (g) of this section, until the producer has received notice from CBP that the aluminum purchasing certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has not been properly filed under paragraph (g)(2)(ii) of this section. If the producer receives notice that the aluminum purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer must send a notification, with a copy to CBP, to any known importers of the covered vehicle of that determination within 30 days of receipt of the CBP notice.

(i) *Resubmission of the aluminum purchasing certification upon determination that the aluminum purchasing certification was not properly filed.* Upon notification that the aluminum purchasing certification has not been properly filed under paragraph (g)(2)(ii) of this section, the producer of the covered vehicle may, within 10 business days of receiving the notification, resubmit a new aluminum purchasing certification to CBP.

(1) *Resubmission process.* The producer must resubmit a new aluminum purchasing certification to CBP pursuant to the means set forth in paragraph (f) of this section and CBP will use the review of omissions and errors process as described in paragraph (g) of this section to determine whether the new certification is properly filed.

(2) *Right to resubmit aluminum purchasing certification.* The producer may resubmit a new aluminum purchasing certification for the same category and same calculation period up to two times per certification period, as described in this section.

(3) *Making a claim for USMCA preferential tariff treatment during resubmission period.* Notwithstanding paragraph (h) of this section, if a producer chooses to resubmit the new aluminum purchasing certification, an importer of the covered vehicle should not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the new certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

(j) *Certification periods.* (1) For an aluminum purchasing calculation based on the previous fiscal year of the producer pursuant to § 182.94(c)(1) of this subpart, the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(2) For an aluminum purchasing calculation based on the previous calendar year pursuant to § 182.94(c)(2) of this subpart, the certification period begins on the first day of the following calendar year. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period;

(3) For all other aluminum purchasing calculation periods pursuant to § 182.94(c) of this subpart, the certification period begins on the first day of that calculation period. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period;

(4) For an aluminum purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(i) of this subpart, the certification period begins on first day of the following period, meaning July 1 of the current year and ends on June 30 of the following year, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the following fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles produced within that period; and

(5) For an aluminum purchasing calculation based on an additional calculation period calculated pursuant to § 182.94(d)(3)(ii) of this subpart, the certification period begins on the first day of that calculation period, meaning July 1 of the current year and ends on the last day of the calculation period, except for the additional calculation periods in § 182.94(d)(1)(iv) or (d)(2)(v) when the certification period begins on the first day of the current fiscal year of the producer. If the certification is considered properly filed, the certification is effective for covered vehicles exported within that period.

(k) *Request for modification of a properly filed aluminum purchasing certification.* The producer of the covered vehicle must request a modification of a properly filed aluminum purchasing certification in the event of any material changes to the information contained in the certification that would affect its validity.

(1) *Submission process.* The producer must submit a modification request to CBP by submitting a new certification through the means set forth in paragraph (f) of this section, along with a list of the material changes to the information contained in the certification and an explanation as to why the modification is necessary with respect to the validity of the certification. If CBP grants the modification request, CBP will review the new aluminum purchasing certification to determine whether it is properly filed in accordance with the procedures set forth in paragraph (g) of this section. If CBP denies the modification request, CBP will provide written or electronic notification to the producer of the covered vehicle.

(2) *Resubmission process.* The producer may resubmit the new certification, pursuant to the procedures in paragraph (i) of this section, upon a determination that the new certification was not properly filed. The producer may resubmit the new aluminum purchasing certification up to two times in accordance with paragraph (i)(2) of this section.

(3) *Effective date of new aluminum purchasing certification.* If CBP determines that the new certification is properly filed under paragraph (g) or (i) of this section, the new certification supersedes the former certification and is effective for the period specified in paragraph (j) of this section. Within 30 days of receiving notice that the new

certification has been properly filed, the producer must send a notification, with a copy to CBP, to any known importers of that determination.

■ 61. Add § 182.98 to subpart I to read as follows:

§ 182.98 Appeal of the determination that LVC, steel purchasing, or aluminum purchasing certification is not properly filed.

(a) *Producer of a covered vehicle's right to appeal.* If, following the review of the second resubmission of the vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2) of this subpart, CBP determines that the vehicle certification is not properly filed as provided in §§ 182.95(g)(3)(ii), 182.96(g)(2)(ii), and 182.97(g)(2)(ii) of this subpart, the producer of the covered vehicle may file a written appeal. This filing cannot be made unless the producer utilized both opportunities for resubmission of a vehicle certification and the producer has received notification from CBP that the resubmitted certification has not been properly filed. The determination as to whether a vehicle certification is properly filed does not qualify as a matter subject to protest under part 174 of this chapter.

(b) *Appeal of not properly filed determination.* Upon receipt of notification that the vehicle certification is not properly filed, following the second resubmission of the vehicle certification pursuant to §§ 182.95(i)(2), 182.96(i)(2), and 182.97(i)(2) of this subpart, the producer of the covered vehicle may file a written appeal to CBP Headquarters, Trade Policy and Programs, Office of Trade. This filing must be received by CBP within 14 days of the producer of the covered vehicle receiving the notification that, following the second resubmission, the certification was not properly filed. The Office of Trade will review the not properly filed determination and will render a written decision on the appeal within 30 days after receipt of the appeal. When an appeal involves DOL's review of the LVC certification for omissions and errors, CBP will coordinate with DOL regarding the appeal as necessary.

(c) *Making a claim for USMCA preferential tariff treatment during appeal period.* If a producer of the covered vehicle chooses to appeal the determination that a vehicle certification is not properly filed under this section, an importer of the covered vehicle may not submit claims for USMCA preferential tariff treatment under § 182.11(b) or § 182.32 of this part for such covered vehicles until the producer has received notice that the vehicle certification that forms the basis for the covered vehicle's eligibility for preferential tariff treatment has been properly filed.

§ 182.99 [Reserved]

■ 62. Add and reserve § 182.99 to subpart I.

■ 63. Add § 182.100 to subpart I to read as follows:

§ 182.100 Motor vehicle averaging elections.

(a) *RVC averaging.* For the purpose of calculating the regional value content (RVC) of a covered vehicle, the producer of the vehicle may elect to average the RVC calculation. The producer must comply with all the RVC averaging provisions set forth in section 16 of Appendix A to this part to elect RVC averaging.

(1) *RVC averaging categories.* The producer of a covered vehicle may elect to average its RVC calculation using any of the categories provided for in section 16(1) of Appendix A to this part, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(i) The same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(ii) The same class of motor vehicles produced in the same plant in the territory of a USMCA country;

(iii) The same model line or same class of motor vehicles produced in the territory of a USMCA country; or

(iv) Any other category as the USMCA countries may decide.

(2) *RVC averaging periods.* For purposes of calculating the RVC of a covered vehicle, the calculation may be averaged over the producer's fiscal year. If the fiscal year of a producer begins after July 1, 2020, but before July 1, 2021, the producer may base the RVC calculation over the period beginning on July 1, 2020 and ending at the end of the following fiscal year, as provided for in section 16(4) and 16(5) of Appendix A to this part.

(i) *RVC averaging periods applicable to all covered vehicles.* For the period from July 1, 2020 to June 30, 2023, the producer of a covered vehicle may base the RVC calculation over the following periods:

(A) July 1, 2020 to June 30, 2021;

(B) July 1, 2021 to June 30, 2022;

(C) July 1, 2022 to June 30, 2023; and

(D) July 1, 2023 to the end of the producer's fiscal year.

(ii) *Additional RVC averaging periods for heavy trucks.* In addition to the calculation periods set forth in paragraph (a)(2) of this section, a producer of a heavy truck may base the RVC calculation of a heavy truck over the additional following periods:

(A) July 1, 2023 to June 30, 2024;

(B) July 1, 2024 to June 30, 2025;

(C) July 1, 2025 to June 30, 2026;

(D) July 1, 2026 to June 30, 2027; and

(E) July 1, 2027 to the end of the producer's fiscal year.

(3) *Election to average.* A producer of a covered vehicle who elects to average its RVC calculation must file an averaging election with CBP pursuant to paragraph (c) of this section.

(b) *LVC averaging.* For purposes of calculating the LVC of a covered vehicle, the producer of the vehicle may elect to average the LVC calculation. The producer must comply with all the LVC averaging provisions set forth in section 18 of Appendix A to this part to elect LVC averaging.

(1) *LVC averaging categories.* The producer of a covered vehicle may elect to average its LVC calculation using any of the categories provided for in section 18(15) of Appendix A to this part, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries.

(2) *LVC averaging periods.* For purposes of calculating the LVC of a covered vehicle, the calculation may be averaged over the calculation periods as described in § 182.93(d) and (e) of this subpart.

(3) *Election to average.* A producer of a covered vehicle who elects to average its LVC calculation must file an averaging election with CBP pursuant to paragraph (c) of this section.

(c) *Filing of RVC and LVC averaging elections.* If the producer of a covered vehicle elects to average its RVC or LVC calculations, the producer must file an RVC or LVC averaging election with CBP via an authorized electronic data interchange system or other specified means at least 10 days before the first day of the producer's fiscal year during which the vehicles will be exported, or such shorter period as CBP may accept.

(d) *RVC averaging election required data elements.* When filing an RVC averaging election pursuant to paragraph (c) of this section, the averaging election must include:

(1) *Producer.* The producer of the covered vehicle's name, address (including country), email address, and telephone number;

(2) *Averaging period.* The period with respect to which the election is made pursuant to paragraph (a)(2) of this

section, including the starting and ending dates;

(3) *Averaging category.* The averaging category chosen by the producer pursuant to paragraph (a)(1) of this section;

(4) *Vehicles to be averaged.* The model name, the model line (if the averaging category under section 16(1)(a) or 16(1)(c) of Appendix A to this part is chosen), class of motor vehicle, and tariff classification of the motor vehicles in that category;

(5) *Location of the plant.* The location(s) of the plant at which the motor vehicles are produced;

(6) *Basis of calculation.* Whether the basis of the calculation is all vehicles in that category chosen by the producer or only those vehicles in that category that are exported to the territory of one or more of the other USMCA countries;

(7) *Basis of regional value content.* The basis of the calculation in determining the estimated RVC of motor vehicles pursuant to paragraph (a) of this section; and

(8) *Authorized signature and date.* The authorized officer's name, title, address (including country), telephone number, email address, signature, and date.

(e) *LVC averaging election required data elements.* When filing an LVC averaging election pursuant to paragraph (c) of this section, the averaging election must include:

(1) *Producer.* The producer's name, address (including country), email address, and telephone number;

(2) *Averaging period.* The period with respect to which the election is made pursuant to paragraph (b)(2) of this section, including the starting and ending dates;

(3) *Averaging category.* The averaging category chosen by the producer pursuant to paragraph (b)(1) of this section;

(4) *Vehicles to be averaged.* The model name, the model line (if the averaging category under section 18(15)(a) and 18(15)(c) of Appendix A to this part is chosen), class of motor vehicle, and tariff classification of the motor vehicles in that category;

(5) *Location of the plant.* The location(s) of the plant at which the motor vehicles are produced;

(6) *Basis of calculation.* Whether the basis of the calculation is all vehicles in that category chosen by the producer or only those vehicles in that category that are exported to the territory of one or more of the other USMCA countries;

(7) *Estimated LVC and net cost.* The estimated LVC and net cost of vehicles in that category with respect to the basis of calculation ; and

(8) *Authorized signature and date.* The authorized officer's name, title, address (including country), telephone number, email address, signature, and date.

(f) *Cost submission for motor vehicles.* A producer of a covered vehicle who files an RVC or LVC averaging election pursuant to paragraph (c) of this section must submit, at the request of CBP, a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. The requested cost submission must be submitted to CBP within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

■ 64. Add § 182.101 to subpart I to read as follows:

§ 182.101 Averaging for other automotive goods.

(a) *Automotive parts.* For the purpose of calculating the RVC of an automotive good provided for in section 16(10) of Appendix A to this part, the producer of the automotive good may average its RVC calculation pursuant to the provisions set forth in sections 16(5) and 16(10) of Appendix A to this part.

(b) *Other vehicles.* For the purpose of calculating the RVC of a motor vehicle provided for in sections 20(2) or (3) of Appendix A to this part, the producer of the automotive good may average its RVC calculation pursuant to the provisions set forth in sections 16(5) and section 20(6) of Appendix A to this part.

(c) *Averaging election not required.* The producer of the automotive good is not required to file an RVC averaging election with CBP when averaging the RVC pursuant to this section.

■ 65. Add § 182.102 to subpart I to read as follows:

§ 182.102 Required year-end reconciliation to actual costs when estimated costs or purchases used.

(a) *Year-end reconciliation required.* (1) *RVC and LVC.* When the producer of a covered vehicle has calculated the RVC or LVC of its vehicles on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer must conduct a reconciliation at the end of the producer's fiscal year to the actual costs incurred over the period with respect to the production of the vehicle, irrespective of whether the producer filed an averaging election pursuant to § 182.100 of this subpart.

(2) *Steel and aluminum purchases.* When the producer of a covered vehicle has calculated steel and aluminum purchases on the basis of estimates before or during the applicable period, the producer must conduct a reconciliation at the end of the producer's fiscal year to the actual purchases made over the period with respect to the production of the vehicle.

(b) *Notification.* If, based on the year-end reconciliation performed under paragraph (a) of this section, the covered vehicle does not satisfy the RVC or LVC requirement on the basis of the actual costs, or the steel or aluminum purchasing requirement on the basis of the actual purchases, the producer must, within 30 days of making that determination:

(1) Provide written notification to CBP that the vehicle is a non-originating good; and

(2) Inform any person to whom the producer has provided a certification of origin for the vehicle, or a written statement that the vehicle is an originating good, that the vehicle is a non-originating good.

■ 66. Add § 182.103 to subpart I to read as follows:

§ 182.103 Producer and exporter recordkeeping responsibilities for records relating to LVC, steel purchasing, and aluminum purchasing requirements.

(a) *Producer recordkeeping responsibilities.* A producer of a covered vehicle whose good is subject to a claim for USMCA preferential tariff treatment must make and keep, for a minimum of five years from the date that the vehicle certifications were submitted to CBP, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and all records and supporting documents that the producer of the covered vehicle has to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The records must be capable of being retrieved upon lawful request or demand by CBP. The producer of the covered vehicle must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810, and produce such records to DOL upon request.

(b) *Exporter who completed the certification of origin recordkeeping responsibilities.* An exporter who completed the certification of origin for a covered vehicle must keep, for a minimum of five years from the date that the certification of origin was completed, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and

all records and supporting documents that the exporter has to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The records must be capable of being retrieved upon lawful request or demand by CBP. The exporter must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810, and produce such records to DOL upon request.

■ 67. Add § 182.104 to subpart I to read as follows:

§ 182.104 Importer's responsibility to maintain records relating to LVC, steel purchasing, and aluminum purchasing requirements.

(a) *General.* In addition to any other records that the importer is required to prepare, maintain, or make available to CBP under this part or under part 163 of this chapter, an importer claiming USMCA preferential tariff treatment for a covered vehicle has additional recordkeeping responsibilities. The extent of the importer's recordkeeping responsibilities depends on whether the importer completed the certification of origin.

(1) *Claims based on certification of origin completed by the exporter or producer.* If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the exporter or producer, the importer must maintain, for a minimum of five years from the date of importation of the covered vehicle, any records and supporting documents in the importer's possession relating to the LVC, steel purchasing, and aluminum purchasing certifications that formed the basis for the covered vehicle's eligibility for USMCA preferential tariff treatment; or

(2) *Claims based on certification of origin completed by the importer.* If the claim for USMCA preferential tariff treatment is based on a certification of origin completed by the importer, the importer must maintain, for a minimum of five years from the date of importation of the covered vehicle, the LVC certification, the steel purchasing certification, the aluminum purchasing certification, and all records and supporting documents to demonstrate whether the covered vehicle meets the LVC, steel purchasing, and aluminum purchasing requirements. The importer must also maintain any records related to the high-wage components of the LVC requirement as required by DOL pursuant to 29 CFR part 810, and produce such records to DOL upon request.

(b) *Method of maintenance.* The records referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

(c) *Relation to other recordkeeping requirements.* Nothing in this section precludes compliance with any other applicable recordkeeping or reporting requirements, including, but not limited to, any recordkeeping requirements set forth in this chapter, and the DOL regulations at 29 CFR part 810.

■ 68. Add § 182.105 to subpart I to read as follows:

§ 182.105 Verification of automotive goods.

(a) *General.* CBP will initiate all verifications of automotive goods, including covered vehicles, pursuant to the means set forth in § 182.72(a) of this part. The general verification and determination provisions set forth in subpart G of this part and the provisions contained in this section are applicable for automotive good verifications.

(b) *Verification of a part, component, or material of a covered vehicle.* When conducting a verification of a covered vehicle imported into the United States, CBP may conduct a verification of the parts, components, or materials used in the production of that covered vehicle. This verification will be conducted in conjunction with DOL, if applicable. A verification of a part, component, or material producer may be conducted pursuant to any of the verification means set forth in § 182.72(a) of this part. With the exception of § 182.73(c) and § 182.75, the provisions in subpart G of this part apply to the verification of a part, component, or material, and, with the exception of paragraph (d)(1) of this section, the provisions in this section also apply to the verification of a part, component, or material. References to the term ''producer'' in this section apply to a producer of a covered vehicle or to a part, component, or material producer.

(c) *Availability of records*—(1) *Verification of a covered vehicle.* During a verification of a covered vehicle, the importer, exporter, and producer must make all records that they are required to maintain pursuant to this part, including §§ 182.103 and 182.104 of this subpart, and the DOL regulations at 29 CFR part 810, available for inspection by a CBP or DOL official conducting a verification. With respect to records related to vehicle certifications, an importer, whose claim is based on a certification of origin completed by the exporter or producer, must only make those records in the importer's possession, as described in § 182.104, available for inspection by a CBP or DOL official conducting a verification. CBP may deny the claim for preferential tariff treatment of the covered vehicle for failure to maintain the records required by CBP or DOL or for denying a CBP or DOL official access to these records.

(2) *Verification of a part, component, or material of a covered vehicle.* During the verification of a part, component, or material used in the production of a covered vehicle, any records in the part, component, or material producer's possession related to whether the part, component, or material qualifies as originating must be made available for inspection by a CBP or DOL official conducting a verification. CBP may consider the part, component, or material that is used in the production of the covered vehicle and is the subject of the verification to be a non-originating part, component, or material if a CBP or DOL official is denied access to these records.

(d) *Verification of the high-wage components of the LVC requirement.* When conducting a verification of a covered vehicle involving the high-wage components of the LVC requirement, CBP will conduct the verification in conjunction with DOL. DOL is responsible, pursuant to 19 U.S.C. 4532(e) and the DOL requirements and procedures in 29 CFR part 810, for conducting the verification of the high-wage components of the LVC requirement and determining whether the covered vehicle meets the high-wage components of the LVC requirement. CBP is responsible for verifying all other aspects of the LVC requirement not covered by DOL, including the annual purchase value and cost components of the high-wage material and manufacturing expenditures, and is ultimately responsible for determining whether the covered vehicle meets the LVC requirement, the requirements in this part, and whether the covered vehicle qualifies for USMCA preferential treatment.

(1) *Producer notification.* When CBP initiates a verification of a covered vehicle and that verification involves determining whether the covered vehicle meets the LVC requirement, CBP will notify the producer of the covered vehicle, through one of the communication means specified in § 182.73(d)(2) of this part, that CBP has initiated a verification of the covered vehicle and advise whether DOL will verify the high-wage components of the LVC requirement, subject to the confidentiality provisions in § 182.2 of this part and the DOL's regulations at 29 CFR part 810.

(2) *Determinations of origin involving the LVC requirement.* When issuing a determination of origin pursuant to § 182.75 of this part, CBP will determine whether the covered vehicle meets the LVC requirement and qualifies for preferential tariff treatment based in part on DOL's determination of whether the covered vehicle complied with the high-wage components of the LVC requirement and DOL's verification findings and analysis.

(e) *Protests.* An importer, exporter, or producer, who has the right to file a protest pursuant to § 174.12(a)(6) of this chapter, may protest a CBP determination of origin under part 174 of this chapter. When a protest involves DOL's analysis of the high-wage components of the LVC requirement, CBP will coordinate with DOL regarding the review of the protest and accelerated disposition of the protest will not be available pursuant to § 174.22 of this chapter. DOL is responsible, pursuant to 19 U.S.C. 4532(e)(6)(A), for conducting an administrative review of its initial analysis pursuant to DOL's regulations at 29 CFR part 810 and providing a determination containing the results of the administrative review to CBP. CBP will review and act on the protest pursuant to the procedures and requirements set forth in part 174 of this chapter.

■ 69. Add § 182.106 to subpart I to read as follows:

§ 182.106 Alternative staging regime.

(a) *General.* Pursuant to General Note 11(k)(viii), HTSUS, Appendix A to this part, and as may be further provided for in subchapter XXIII of chapter 99 of the HTSUS, a covered vehicle may be originating pursuant to an alternative staging regime. A covered vehicle is only eligible for USMCA preferential tariff treatment under an alternative staging regime provided that:

(1) Use of the alternative staging regime has been authorized by the Office of the U.S. Trade Representative (USTR);

(2) USTR has not made a determination that the producer of the covered vehicle failed to meet the requirements for use of an alternative staging regime under 19 U.S.C. 4532(d)(5);

(3) The alternative staging regime period is in effect;

(4) The terms of the alternative staging regime petition, as authorized by the USTR, are met; and

(5) The covered vehicle meets the requirements in this part, including the requirements in this subpart, unless the terms of the alternative staging regime specifically exempt the producer from these requirements or contain different requirements.

(b) *Verifications.* CBP will conduct a verification of a covered vehicle subject to an alternative staging regime pursuant to the same procedures that govern other covered vehicles as set forth in § 182.105 of this subpart.

(c) *Vehicle certifications for covered vehicles subject to an exemption or different requirements under an alternative staging regime.* For covered vehicles that qualify as originating pursuant to an alternative staging regime, if the terms of the alternative staging regime specifically exempt the producer from the LVC, steel purchasing, or aluminum purchasing requirement, or contain different requirements from sections 13 through 18 of Appendix A to this part, then the producer must submit to CBP a vehicle certification for that requirement that covers only those vehicles subject the alternative staging regime. In addition to meeting all other requirements set forth in §§ 182.95, 182.96, and 182.97 of this subpart, as applicable, with the exception of §§ 182.95(c)(11), 182.96(c)(7), and 182.97(c)(7), a producer's vehicle certification submitted pursuant to this paragraph must include the following additional information:

(1) A list of the vehicles covered by the alternative staging regime;

(2) A description of the applicable exemption or different requirements as provided under the alternative staging regime; and

(3) An authorized signature, date, and the following certifying statement: ''I certify that, for the vehicles listed and over the relevant period indicated in this document, the producer has satisfied the requirements of the alternative staging regime as set out in General Note 11(k)(viii), HTSUS, section 19 of the Uniform Regulations regarding Rules of Origin, 19 CFR 182.106, and under the terms authorized by the Office of the U.S. Trade Representative (USTR). The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.''

■ 70. Add § 182.107 to subpart I to read as follows:

§ 182.107 Denial of preferential tariff treatment of covered vehicles.

CBP may deny any claim for preferential tariff treatment of any covered vehicle if:

(a) CBP determines that the good does not qualify for preferential tariff treatment due to a failure to meet the LVC, steel purchasing, or aluminum purchasing requirements set forth in General Note 11, HTSUS, Appendix A to this part, or §§ 182.93 and 182.94 of this subpart;

(b) The producer of the covered vehicle fails to submit the required LVC, steel purchasing, or aluminum purchasing certifications to CBP, pursuant to §§ 182.95, 182.96, and 182.97 of this subpart;

(c) CBP determines that an LVC, steel purchasing, or aluminum purchasing certification that forms the basis for a covered vehicle's eligibility for USMCA preferential tariff treatment is not properly filed pursuant to §§ 182.95, 182.96, and 182.97 of this subpart;

(d) CBP determines that an LVC, steel purchasing, or aluminum purchasing certification that forms the basis for a covered vehicle's eligibility for USMCA preferential tariff treatment is invalid after it was determined to be properly filed;

(e) The importer, exporter, or producer fails to maintain records of the vehicle certifications and supporting documents as required pursuant to §§ 182.103 and 182.104 of this subpart;

(f) The importer, exporter, or producer fails to provide a CBP or DOL official the records or documentation that are in its possession or required to be maintained pursuant to § 182.105(c) of this subpart; or

(g) CBP determines that any other reason to deny a claim for preferential tariff treatment as set forth in § 182.75(c)(2) of this part applies.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

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Part VI

Department of Justice

Drug Enforcement Administration

Department of Health and Human Services

21 CFR Part 1306
42 CFR Part 12
21 CFR Parts 1300, 1301, et al.
Milk in the Northeast and Other Marketing Areas; Uniform Pricing Formula Provisions; Continuity of Care via Telemedicine for Veterans Affairs Patients; Special Registrations for Telemedicine and Limited State Telemedicine Registrations; Final Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

[Docket No. DEA–948]

RIN 1117–AB78

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 12

Expansion of Buprenorphine Treatment via Telemedicine Encounter

AGENCY: Drug Enforcement Administration, Department of Justice; Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration and the Department of Health and Human Services are amending their regulations to expand the circumstances under which practitioners registered by the Drug Enforcement Administration are authorized to prescribe schedule III–V controlled substances approved by the Food and Drug Administration for the treatment of opioid use disorder via a telemedicine encounter, including an audio-only telemedicine encounter. Under these new regulations, after a practitioner reviews the patient's prescription drug monitoring program data for the state in which the patient is located during the telemedicine encounter, the practitioner may prescribe an initial six-month supply of such medications (split amongst several prescriptions totaling six calendar months) through audio-only means. Additional prescriptions can be issued under other forms of telemedicine as authorized under the Controlled Substances Act, or after an in-person medical evaluation is conducted. This regulation also requires the pharmacist to verify the identity of the patient prior to filling a prescription. The *Ryan Haight Online Pharmacy Consumer Protection Act of 2008* generally requires an in-person medical evaluation prior to issuance of a controlled substance prescription. However, this regulation falls under one of the exceptions found within the *Ryan Haight Act.* Additionally, this regulation does not affect practitioner-patient relationships in cases where an in-person medical evaluation has previously occurred. The purpose of this regulation is to prevent lapses of care by continuing some of the telemedicine flexibilities that currently exist for those patients seeking treatment for opioid use disorder.

DATES: This rule is effective February 18, 2025.

FOR FURTHER INFORMATION CONTACT: Heather E. Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This final rule falls under the last category of telemedicine under the *Ryan Haight Act,* Public Law 110–425, 122 Stat. 4820 (2008), which authorizes the practice of telemedicine in specified circumstances when no in-person medical evaluation has occurred. The Administrator of the Drug Enforcement Administration (DEA) (pursuant to delegation by the Attorney General) [1] and the Substance Abuse and Mental Health Services Administration (on behalf of the Secretary of Health and Human Services (HHS) jointly issue this regulation and have each determined that this regulation is consistent with effective controls against diversion and with the public health and safety as required under 21 U.S.C. 802(54)(G).

In March 2023, DEA published a notice of proposed rulemaking (NPRM) titled *Expansion of Induction of Buprenorphine via Telemedicine Encounter.*[2] DEA and HHS are now finalizing the rule, with several modifications to the proposed provisions to address concerns brought forth by commenters. Under this final rule, a DEA-registered practitioner, prior to issuing a prescription via telemedicine for a schedule III–V controlled substance approved by the Food and Drug Administration (FDA) for use in the treatment of opioid use disorder (OUD),[3] must review the prescription drug monitoring program (PDMP) data of the state in which the patient is located when the telemedicine encounter occurs, and the pharmacist must verify the identity of the patient [4] prior to filling the prescription. The practitioner is authorized to prescribe up to an initial six-month supply (split amongst several prescriptions totaling six calendar months); additional prescriptions may be issued under other forms of telemedicine as authorized by the Controlled Substances Act (CSA) or after an in-person medical evaluation is conducted.

This final rule pertains to practitioners prescribing controlled substances to patients for the treatment of OUD in circumstances where the prescribing practitioner has not conducted an in-person medical evaluation of the patient prior to the issuance of the prescription. Therefore, it is important to emphasize that the limitations set forth in this final rule, and those associated with the ''practice of telemedicine'' as defined in 21 U.S.C. 802(54) generally, do not apply to practitioner-patient relationships in which there has already been a prior in-person medical evaluation of the patient by the prescribing practitioner.

II. Legal Authority and Background

DEA implements and enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the CSA, and the Controlled Substances Import and Export Act, (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 through 1399. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822.[5] The CSA further authorizes the Attorney General (and the Administrator of DEA by delegation through 28 CFR part 0) to promulgate regulations necessary and appropriate to execute the functions of

[1] The Attorney General has delegated this authority to the Administrator of DEA under 28 CFR 0.100.

[2] 88 FR 12890 (Mar. 1, 2023).

[3] Treatment of OUD means the use of effective FDA-approved medications including methadone, buprenorphine, and naltrexone to treat opioid use disorder. See NIDA. 2021, December 2. Overview. *https://nida.nih.gov/publications/research-reports/medications-to-treat-opioid-addiction/overview.* Last accessed on January 8, 2025.

[4] DEA understands there are situations where the patient (for whom the prescription was written) may not be the individual picking up the prescription at the pharmacy. In these situations, DEA defers to the definition of ''ultimate user'' as found in 21 U.S.C. 802(27). As such, this regulation authorizes the pharmacist to verify the identity of the patient by accepting identification from any individual who falls under the definition of ''ultimate user'' prior to filling a prescription.

[5] ''Dispense'' in the context of this rulemaking means to deliver a controlled substance to an ultimate user, which includes the prescribing of a controlled substance. 21 U.S.C 802(10).

subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA.[6]

The Ryan Haight Act

The *Ryan Haight Online Pharmacy Consumer Protection Act of 2008* (*Ryan Haight Act*) amended the CSA, in part, by adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. The *Ryan Haight Act* generally requires that a practitioner conduct an in-person medical evaluation before issuing a prescription to a patient. This requirement is set forth in 21 U.S.C. 829(e), which provides that ''[n]o controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be . . . dispensed by means of the internet without a valid prescription.'' [7] A ''valid prescription'' is defined as ''a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by . . . a practitioner who has conducted at least 1 in-person medical evaluation of the patient.'' [8] Section 829(e) further provides an exception to the in-person medical evaluation when a practitioner is ''engaged in practice of telemedicine.'' [9] The practice of telemedicine is defined as ''the practice of medicine in accordance with applicable Federal and state laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system [10] referred to in section 1395m(m) of Title 42.'' [11]

The *Ryan Haight Act* sets forth seven distinct categories in which a prescribing practitioner may engage in the practice of telemedicine even though no in-person medical evaluation has been conducted.[12] In these circumstances, provided certain safeguards are in place to ensure that the practitioner who is engaged in the practice of telemedicine is able to conduct a *bona fide* medical evaluation of the patient at the remote location, and is otherwise acting in the usual course of professional practice, the *Ryan Haight Act* contemplates that the practitioner will be permitted to prescribe controlled substances via telemedicine encounters despite not having conducted an in-person medical evaluation prior to prescribing. Specifically, the last category provides that a telemedicine encounter may occur between the practitioner and the patient ''under any other circumstances that the Attorney General and the Secretary [of Health and Human Services] have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.'' [13]

As noted above, when practitioners engage in the practice of telemedicine, the practitioner must use ''a telecommunications system referred to in section 1395m(m) of Title 42.'' For purposes of section 1395m(m), the Centers for Medicare and Medicaid Services (CMS) has defined ''interactive telecommunications system'' as multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. Interactive telecommunications system may also include two-way, real-time audio-only communication technology for any telehealth service furnished to a patient in their home if the distant site physician or practitioner is technically capable of using an interactive telecommunications system as defined in the previous sentence, but the patient is not capable of, or does not consent to, the use of video technology.[14] DEA and HHS are utilizing the aforementioned definition of ''interactive telecommunications system'' within this final rule.

COVID–19 Public Health Emergency

In response to the COVID–19 Public Health Emergency (PHE), as declared by the Secretary of HHS on January 31, 2020, pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247),[15] DEA granted temporary exceptions to the *Ryan Haight Act* and DEA's implementing regulations under 21 U.S.C. 802(54)(D), one of the seven distinct categories of telemedicine envisioned under the statutory definition of the practice of telemedicine. In order to prevent lapses in care, these exceptions authorized the prescribing of controlled-substance medications via telemedicine encounters even when the prescribing practitioner had not conducted an in-person medical evaluation of the patient. These telemedicine flexibilities authorized practitioners to prescribe schedule II–V controlled substances via audio-video telemedicine encounters, including schedule III–V controlled substances approved by the FDA for the treatment of OUD via audio-only telemedicine encounters. DEA granted the temporary exceptions to the *Ryan Haight Act* and DEA's implementing regulations via two letters published in March 2020:

- A March 25, 2020 ''Dear Registrant'' letter signed by William T. McDermott, DEA's then-Assistant Administrator, Diversion Control Division (the McDermott Letter); [16] and
- A March 31, 2020 ''Dear Registrant'' letter signed by Thomas W. Prevoznik, DEA's then-Deputy Assistant Administrator, Diversion Control Division (the Prevoznik Letter).[17]

Temporary Rules and Telemedicine Listening Sessions

On May 10, 2023 DEA, jointly with HHS (with the Substance Abuse and Mental Health Services Administration (SAMHSA) acting on behalf of HHS), issued a temporary extension (First Temporary Rule) pursuant to 21 U.S.C. 802(54)(G), which extended the full set of telemedicine flexibilities regarding the prescribing of controlled substances that had been in place under the COVID–19 PHE, through November 11, 2023.[18] On September 12 and 13, 2023,

[6] 21 U.S.C. 871(b), 958(f).

[7] 21 U.S.C. 829(e)(1).

[8] *Id.* 829(e)(2)(A)(i).

[9] *Id.* 829(e)(3)(A).

[10] 42 U.S.C. 1395m(m) references, but does not define, such *telecommunications systems.* The Center for Medicare and Medicaid Services (CMS) promulgated regulations implementing these statutory provisions and define the term *interactive telecommunications system.* 42 CFR 410.78(a)(3) defines *interactive telecommunications system* as the multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. Interactive telecommunications system may also include two-way, real-time audio-only communication technology for any telehealth service furnished to a patient in their home if the distant site physician or practitioner is technically capable of using an interactive telecommunications system as defined in the previous sentence, but the patient is not capable of, or does not consent to, the use of video technology.

[11] 21 U.S.C. 802(54).

[12] *See* 21 U.S.C. 802(54).

[13] *Id.* 802(54)(G).

[14] 42 CFR 410.78(a)(3).

[15] Determination That a Public Health Emergency Exists, U.S. Department of Health and Human Services. *https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx.* Last accessed May 1, 2024.

[16] William T. McDermott, DEA Dear Registrant letter, Drug Enforcement Administration (Mar. 25, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-018)(DEA067)%20DEA%20state%20reciprocity%20(final)(Signed).pdf.*

[17] Thomas W. Prevoznik, DEA Dear Registrant letter, Drug Enforcement Administration (Mar. 31, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf.*

[18] Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications, 88 FR 30037 (May 10, 2023).

DEA hosted live, in-person *Telemedicine Listening Sessions,* to receive additional input concerning the practice of telemedicine, namely, the advisability of permitting telemedicine prescribing of certain controlled substances without any in-person medical evaluation. Approximately 58 stakeholders, including DEA-registered institutional and individual practitioners, pharmacists, trade associations, state agencies, and other public interest groups, presented at the listening sessions. On October 10, 2023, DEA, jointly with HHS, issued a second temporary extension (Second Temporary Rule), also pursuant to 21 U.S.C. 802(54)(G), thereby extending the full set of telemedicine flexibilities regarding prescription of controlled substances as were in place during the COVID–19 PHE through December 31, 2024.[19] This extension authorized all DEA-registered practitioners to prescribe schedule II–V controlled substances via telemedicine through December 31, 2024. On November 19, 2024, DEA, jointly with HHS, issued a third temporary extension (Third Temporary Rule) extending the current telemedicine flexibilities that have been in place since March 2020 through December 31, 2025.[20]

III. The Opioid Overdose Epidemic and Buprenorphine Use in Treating Opioid Use Disorder

One way to assist individuals experiencing acute opioid withdrawal symptoms and seeking treatment for OUD is with the administration of certain narcotic controlled substances. The use of medications approved by the FDA for the treatment of OUD can effectively assist an individual in successfully recovering from opioid dependence. Currently, the only schedule III–V controlled substance narcotic drug approved by the FDA for the treatment of OUD is buprenorphine.[21]

DEA classifies buprenorphine as a schedule III narcotic controlled substance because it has a currently accepted medical use in treatment, and has less potential for misuse than controlled substances in schedules I and II under the CSA.[22] Buprenorphine is a long-acting partial opioid agonist. Its effects last for a longer period of time compared to a short-acting medication.[23] For people who are not used to taking opioids, it can cause effects such as euphoria or respiratory depression, but these effects are weaker, and with less risk, including lower risk of overdose, than those caused by full opioid agonists such as heroin or fentanyl.[24] When buprenorphine is taken as prescribed and at the appropriate dosage, it can significantly diminish cravings, lower physical dependence on other opioids, eliminate withdrawal symptoms, and reduce morbidity and cases of death from overdose.[25] Buprenorphine is an effective medication for treating OUD, especially when used as part of a complete, individualized, treatment plan.

However, because buprenorphine is itself an opioid, it can be misused or abused, and it should be used under the care of a practitioner to decrease the likelihood of diversion. As explained below, this final rule will expand access to OUD treatments by authorizing DEA-registered practitioners with schedule III–V authority the ability to prescribe schedule III–V controlled substances approved by the FDA for the treatment of OUD via audio-only telemedicine encounter, while also mitigating the risks of diversion.

A. The Opioid Overdose Epidemic and Treatments

The estimated number of deaths from opioid overdoses for the 12-month period ending in October 2023 was 79,695, with a peak of 83,985 opioid overdose deaths in the 12-month period ending in May 2023.[26] Although the opioid overdose epidemic has plagued the United States for many decades, overdose deaths have been attributed to ''several distinct waves'' beginning in the late 1990s with expanded opioid analgesic prescribing for pain; another wave following in 2010 involving heroin; and a third wave began in 2013 related to illicit fentanyl, primarily illicitly made fentanyl.[27] The United States is currently experiencing a fourth wave related to rising polysubstance use and co-involvement of fentanyl and stimulant drugs such as methamphetamine.[28]

To combat substance abuse and assist individuals in receiving proper treatment, DEA published regulations in October 1974 to implement the Narcotic Addict Treatment Act of 1974 (NATA), authorizing practitioners to administer and dispense certain narcotic controlled substances, like methadone (schedule II) for detoxification treatment or maintenance treatment as long as the practitioners were separately registered as a narcotic treatment program (NTP or Opioid Treatment Program (OTP) as termed by SAMHSA).[29] The Drug Addiction Treatment Act of 2000 (DATA) further expanded treatment options for OUD by authorizing physicians who met certain qualifications to treat OUD with FDA-approved medications, like buprenorphine, in treatment settings other than NTPs/OTPs.[30] These DEA-registered practitioners became known as ''DATA-waived practitioners.'' Most recently, the Consolidated Appropriations Act, 2023 (CAA, 23) (Pub. L. 117–328) removed the DATA-waiver requirement, expanding practitioner ability to prescribe buprenorphine.[31] Under the CAA, DEA-registered practitioners with the authority to prescribe schedule III controlled substances can prescribe buprenorphine to their patients without needing a DATA waiver or having a limit or cap as to the number of patients they can treat.[32]

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[19] Second Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications, 88 FR 69879 (Oct. 10, 2023).

[20] Third Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications, 89 FR 91253 (Nov. 19, 2024).

[21] 42 CFR 8.12(h)(2)(ii).

[22] *See* 21 U.S.C. 812(b)(3)(A)–(C); 21 CFR 1308.13(e)(2)(i).

[23] Buprenorphine, Substance Abuse and Mental Health Services Administration. *https://www.samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/buprenorphine.* Last accessed Apr. 11, 2024.

[24] *Id.*

[25] *Id.*

[26] Provisional Drug Overdose Death Counts, National Center for Health Statistics, Centers for Disease Control and Prevention. *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.* Updated Mar. 3, 2024. Last accessed Apr. 12, 2024.

[27] *Opioid-Related Outcomes Among Individuals With Co-occurring Behavioral Health Conditions,* National Quality Forum Final Report. *https://www.qualityforum.org/Publications/2022/09/2022_Opioid_and_Behavioral_Health_Final_Report.aspx.* Published September 26, 2022. Last accessed Apr. 12, 2024. *See also 'Fourth wave' of opioid epidemic crashes ashore, propelled by fentanyl and meth,* Washington State Standard. *https://washingtonstatestandard.com/2024/03/18/fourth-wave-of-opioid-epidemic-crashes-ashore-propelled-by-fentanyl-and-meth/.* Published March 18, 2024. Last accessed Apr. 12, 2024.

[28] Ciccarone, D, *The Rise of Illicit Fentanyls, Stimulants and the Fourth Wave of the Opioid Overdose Crisis,* Curr Opin Psychiatry (July 1, 2021), The Rise of Illicit Fentanyls, Stimulants and the Fourth Wave of the Opioid Overdose Crisis—PMC. Last accessed Oct. 28, 2024.

[29] 37 FR 37986; *see also* 21 CFR 1306.07(a).

[30] Title XXXV of Public Law 106–310. DATA was subsequently amended in 2005 (Pub. L. 109–56), 2016 (sec. 303 of Title III of the Comprehensive Addiction and Recovery Act of 2016, Pub. L. 114–198) and in 2018 (sec. 3202 of the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act, Pub. L. 115–271).

[31] Section 1262 of Public Law 117–328.

[32] *Id.*

B. Barriers To Access and Risk of Diversion of Buprenorphine

Access to buprenorphine decreases the risk of opioid-related overdose.[33] Increasing access to buprenorphine after a drug overdose has also been associated with a reduced risk of death.[34] However, barriers to access remain. One study showed that of those Americans who likely would benefit from treatment for OUD, only 28% actually received such treatment.[35] Another impediment occurs at pharmacies where pharmacists decline to fill buprenorphine prescriptions. For example, during the *Telemedicine Listening Sessions,* one speaker stated that pharmacies have sometimes declined to fill telemedicine prescriptions for buprenorphine, which they may perceive as inferior or suspect solely because the prescription was issued through telemedicine.[36]

Expanding the circumstances under which practitioners are authorized to prescribe buprenorphine via telemedicine encounters, including audio-only encounters, would increase access to treatment for those individuals with OUD who may not want to seek treatment, or are unable to seek treatment, due to various economic, geographical, sociological, and logistical reasons. Many patients may lack the financial means to obtain in-person treatment traditionally or through audio-video telemedicine encounters. Patients who are unhoused, unemployed, or facing other challenges may find it prohibitive to afford devices capable of audio-video telemedicine encounters or to find consistent access to wireless internet and/or data plans adequate to support bandwidth demands of audio-video telemedicine encounters.[37]

This final rule authorizing audio-only telemedicine of buprenorphine in certain circumstances does not imply that buprenorphine cannot be, or is not, diverted. Some presenters spoke to these issues during the *Telemedicine Listening Sessions.* According to one presentation, there is a ''robust illicit market for buprenorphine,'' and patients may be selling buprenorphine to fund abuse of other controlled substances.[38] Another presenter said that drugs that contain Suboxone®, which contains buprenorphine [39] prescribed to treat OUD, can be used as a ''currency'' to purchase other drugs like methamphetamine, adding that, in the individual's community, ''if [abuse or misuse of] methamphetamine is involved, you can pretty much be assured the diversion of buprenorphine is involved.'' [40]

Though, as with all transactions involving controlled substances, there is an inherent risk of diversion, DEA and HHS believe these regulatory provisions have been narrowly tailored to enable DEA and HHS to mitigate the risk of diversion associated with buprenorphine prescriptions issued pursuant to these new regulations. Moreover, considering the efficacy of treating OUD with buprenorphine when taken appropriately and subject to the additional safeguards in this rule, DEA and HHS believe that expanding access to buprenorphine through audio-only telemedicine outweighs the relatively lower risk of misuse and diversion of buprenorphine.

IV. Summary of Notice of Proposed Rulemaking

DEA published an NPRM titled *Expansion of Induction of Buprenorphine via Telemedicine Encounter,* jointly with HHS, on March 1, 2023.[41] Within this NPRM, DEA and HHS proposed adding definitions for ''prescription drug monitoring program'' and ''telemedicine encounter.'' This NPRM proposed to authorize practitioners to prescribe buprenorphine for maintenance treatment and detoxification treatment [42] of OUD via telemedicine encounter, to include an audio-only telemedicine encounter, if all of the following certain conditions were met: (1) the practitioner would have needed to be registered under 21 U.S.C. 823(g), *see* 21 CFR 1301.13(e)(1)(iv), in the state in which the practitioner was located; (2) the practitioner would have needed to be authorized by state law to engage in the practice of telemedicine in both the state where the practitioner is located and the patient is located; (3) the practitioner would have needed to be authorized under 21 CFR 1301.28; and (4) the practitioner would have needed to be technologically capable of conducting a telemedicine encounter by using audio and video equipment. Prior to prescribing, the practitioner would have been required to review and consider the PDMP data of the state in which the patient is located regarding any controlled substance prescriptions issued to the patient in the last year, or if less than one year's worth of PDMP data was available, the entire available period.

The practitioner would have been required to review the PDMP data within seven days of the telemedicine encounter and would then have been authorized to prescribe an initial 30-day supply of schedule III–V buprenorphine-containing medication until a subsequent in-person medical evaluation of the patient had been conducted. Specifically, in order to prescribe more than a 30-day supply, the practitioner would have had three options as to how to conduct that subsequent in-person medical evaluation: (1) an in-person medical evaluation in which the patient would be in the physical presence of the prescribing practitioner; (2) an in-person medical evaluation in which the patient would be in the physical presence of a DEA-registered practitioner (other than the prescribing practitioner) and the two practitioners and patient were participating in a simultaneous real-time audio-video conference (''Telepresenter'' Model); or (3) an in-person medical evaluation would be conducted by a DEA-registered practitioner who then issued a written ''qualifying telemedicine referral'' for the patient to a prescribing practitioner before sharing an electronic medical record for the patient with the prescribing practitioner. Ultimately,

[33] Dadiomov, *et al., Buprenorphine and naloxone access in pharmacies within high overdose areas of Los Angeles during the COVID–19 pandemic,* Harm Reduction Journal (June 29, 2022). *https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-022-00651-3.* Last accessed Apr. 11, 2024.

[34] Larochelle, *et al., Medication for Opioid Use Disorder After Nonfatal Opioid Overdose and Association With Mortality,* Annals of Internal Medicine (Aug. 7, 2018), *https://www.acpjournals.org/doi/10.7326/M17-3107.* Last accessed Apr. 11, 2024.

[35] *Only one in Four People Needing Treatment for Opioid Use Disorder Received Medication,* Columbia University School of Public Health (Mar. 23, 2022), *https://www.publichealth.columbia.edu/public-health-now/news/only-one-four-people-needing-treatment-opioid-use-disorder-received-medication.* Last accessed Apr. 11, 2024.

[36] Telemedicine Listening Sessions, Dr. Juan Hincapie-Castillo (National Pain Advocacy Center), 173:7–13 (Sept. 13, 2023) (available: *https://www.deadiversion.usdoj.gov/Telemedicine_listening_session.html*).

[37] DeLaCruz et al., *Telemental Health for the Homeless Population: Lessons Learned when Leveraging Care* (December 8, 2022), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9734763/.*

[38] Telemedicine Listening Sessions, Daniel Reck (Matclinics), 104:3–9 (Sept. 12, 2023).

[39] Suboxone is a medication containing buprenorphine, and is a schedule III controlled substance. Buprenorphine, SAMHSA.gov, *https://www.samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/buprenorphine.* Last accessed Apr. 20, 2024.

[40] Telemedicine Listening Sessions, Jerome Cohan (Catalyst Health Solutions), 268:2–20 (Sept. 12, 2023).

[41] 88 FR 12890 (Mar. 1, 2023).

[42] For the purposes of this rule, reference to treatment of OUD via telemedicine encounters refers to all stages of treatment of OUD, including ''maintenance treatment'' and ''detoxification treatment'' as defined under 21 U.S.C. 802(29)–(30).

under any of these three pathways, the patient would have been required to be in the physical presence of a DEA-registered practitioner at some point to receive more than a 30-day supply of medication. Furthermore, additional recordkeeping requirements would have been mandatory if the medical evaluation occurred in the presence of another DEA-registered practitioner or through a qualifying telemedicine referral. For example, the prescribing practitioner would have been required to record whether the encounter was conducted via audio-video or audio-only means and record the reason a patient chose an audio-only telemedicine encounter when applicable. The NPRM also would have required practitioners to maintain copies of all qualifying telemedicine referrals, if the referral pathway had been used to conduct the subsequent in-person medical evaluation. If the practitioner was unable to access the required PDMP data, the practitioner would have been authorized to issue a seven-day buprenorphine prescription and would have been required to record both the dates and times of any attempts to access the PDMP data, as well as why the practitioner was unable to access the PDMP data.

V. Summary of Changes From the NPRM

After reviewing comments received in response to the NPRM, as will be discussed in more detail below, DEA and HHS have amended the requirements for this rulemaking. Most significantly, DEA and HHS have expanded the initial 30-day prescription supply limitation via audio-only telemedicine to a six calendar month supply limitation. In addition, DEA is no longer amending 21 CFR part 1300 relating to definitions and part 1304 relating to records and reports of registrants. Specifically, DEA and HHS are no longer defining the terms ''prescription drug monitoring program'' or ''telemedicine encounter'' that were found in the NPRM. DEA and HHS have also removed the requirement that in order to prescribe more than the initial supply of buprenorphine, an in-person medical evaluation of some sort *must* be conducted. In other words, DEA and HHS have removed the three options through which a subsequent in-person medical evaluation may be conducted and specified instead that continued prescribing may occur pursuant to other forms of the practice of telemedicine as defined in 21 U.S.C. 802(54).

In drafting the NPRM, DEA and HHS sought to ensure that patient access to buprenorphine via telemedicine encounters, including audio-only telemedicine encounters, would still be authorized to continue once the COVID flexibilities ended, but also included additional requirements, not found within the flexibilities, to ensure that effective controls are in place to combat diversion. To this end, DEA and HHS created a framework under which specific types of in-person medical evaluations would have been required to be conducted after the initial 30-day prescription. However, a review of the comments persuaded DEA and HHS that the requirements found within the NPRM would be overly burdensome for the majority of patients, contradicting an important goal of this rulemaking. Therefore, in its place, DEA and HHS have expanded the 30-day supply limitation to an initial six-month prescription supply limitation, after which two options can be used by the practitioner in order to continue prescribing to the patient: (1) conduct an in-person medical evaluation as defined in 21 U.S.C. 829(e)(2)(B); or (2) continue treating the patient via another form of telemedicine as defined in 21 U.S.C. 802(54). Since the supply limitation has been increased and a patient will not necessarily need to be seen in-person by the prescribing practitioner at any point, DEA and HHS have included an identification verification requirement, wherein the pharmacist must verify a patient's identity prior to filling a prescription issued under these regulations.

Additionally, pursuant to this final rule, the practitioner will be required to review the PDMP data of the state in which the patient is located when the telemedicine evaluation occurred, prior to issuing a prescription. The practitioner will also be required to annotate the date and time that the PDMP was reviewed. If the PDMP is unavailable or inaccessible for any reason, the practitioner will be required to notate the date and time that such review was attempted and will be authorized to prescribe renewable seven-day prescriptions until the six-month limitation is reached; attempts must be made to review the PDMP every seven days in this situation. The remaining recordkeeping requirements from the NPRM, including maintaining a record of whether the encounter was conducted via audio-visual or audio-only means, why the patient chose an audio-only telemedicine encounter, and maintaining copies of all qualifying telemedicine referrals, have not been promulgated within the final rule.

Lastly, DEA and HHS invited comments for any additional safeguards or flexibilities that should be considered with respect to the proposed regulatory changes. Based on comments received in response, and as noted above and discussed in more detail below, DEA and HHS are promulgating an additional provision which would require pharmacists to verify the identification of the patient receiving the prescription under this framework prior to dispensing the controlled substance medication.[43]

VI. Discussion of Public Comments Received

DEA and HHS received a total of 2,915 comments in response to the NPRM. Of those comments, 68 were intended for the separately published NPRM titled *Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation*[44] and 178 were deemed outside the scope of the proposed rulemaking. As such, those comments will not be discussed further within this rulemaking. DEA and HHS received comments from practitioners, pharmacists, lawyers, professional associations, government entities, Tribal nations and associations, law firms and law school clinics, private companies, medical organizations, hospitals and medical practices, pharmacies, educational institutions, health insurance companies, and other members of the general public. DEA and HHS thank all commenters for their input during the rulemaking process.

All comments have been reviewed. DEA and HHS have grouped the comments into several distinct categories below in order to more easily summarize and respond to the large number of comments received in response to the NPRM. Of the comments received, some comments pertained to only one issue while others involved several issues.

In-Person Medical Examination Requirement

Comment: DEA and HHS received the largest number of comments pertaining to the NPRM's proposed in-person medical evaluation requirement following the initial 30-day supply. Commenters raised several issues and concerns with this requirement. The following is a summary of the comments received. One thousand two hundred and eighty (1,280) commenters expressed concern that the proposed in-person medical evaluation requirement would be costly and/or time-prohibitive to patients. Commenters stated that the

[43] 21 CFR 1306.51(b)(4).

[44] 88 FR 12875 (Mar. 1, 2023).

in-person medical evaluation requirement created obstacles, such as: living in a rural area, work responsibilities or an inability to take leave from work, family and childcare obligations, and transportation issues. Three hundred and fifty-nine (359) commenters stated that the in-person medical evaluation requirement would result in a lack of care or reduced access to care because the in-person medical evaluation requirement would be a barrier to treatment. These commenters stated that patients may drop out of their treatment program and potentially relapse due to the in-person medical evaluation requirement potentially limiting access to buprenorphine via remote care. Two hundred and thirty (230) commenters stated that there still remains stigma within their community regarding OUD treatment and requiring patients to be seen in-person could expose them to harm, ''out them'' to the general public, and/or reduce their ability to keep their treatment private. Two hundred and seventeen (217) commenters expressed concern about a physical or mental hardship or risk potentially limiting their ability to fulfill an in-person medical evaluation requirement; these included mental health conditions such as agoraphobia, physical conditions, other conditions such as autism, and/or wanting to avoid interactions with other patients receiving OUD treatment out of concern that such interactions could increase the likelihood of a relapse. One hundred and twenty one (121) commenters stated that an evaluation conducted in-person is generally the same as one conducted via a virtual appointment and there is no separate benefit in receiving a medical evaluation in-person for purposes of OUD treatment. Sixty nine (69) commenters stated that an in-person medical evaluation requirement would have a disparate impact on or discriminate against certain persons, including those with disabilities, persons of color, American Indians/Alaska Natives, the elderly, and those recently incarcerated.

Sixty seven (67) commenters stated that an in-person medical evaluation would be nearly impossible for them to schedule because of a general practitioner shortage and 44 commenters expressed the same concern because of a buprenorphine practitioner shortage within their geographic area. Fifty three (53) commenters, many of whom identified themselves as practitioners, stated that the decision to conduct or not conduct an in-person examination constitutes a clinical decision that should be left to the practitioner's discretion and therefore, there should be no in-person medical evaluation requirement imposed by regulation. Twenty two (22) commenters stated that in-person medical evaluations are rarely utilized for those receiving OUD treatment. One commenter stated that the *Ryan Haight Act* does not require an in-person medical evaluation, and if an in-person medical evaluation is required under the *Ryan Haight Act,* the in-person medical evaluation can be conducted by the prescribing practitioner or a practice group. Nine hundred and eleven (911) commenters expressed general disapproval of the in-person medical evaluation requirement.

Response: DEA and HHS understand the many hardships an in-person medical evaluation requirement could cause patients and notes the multitude of reasons provided by commenters as to why this requirement would be burdensome to many patients. Therefore, DEA and HHS have expanded the initial prescription supply that may occur pursuant to audio-only telemedicine encounters from 30 days to six months. In addition, DEA and HHS have promulgated this final rule offering two options pursuant to which the prescribing practitioner is authorized to issue additional prescriptions for the treatment of OUD via telemedicine encounters subsequent to this initial six-month supply: (1) the practitioner can conduct an in-person medical evaluation; or (2) the practitioner can engage in other forms of the practice of telemedicine as defined in 21 U.S.C. 802(54). DEA and HHS believe this solution, which will allow subsequent prescribing pursuant to additional telemedicine pathways as DEA (and for rules that must be issued jointly, HHS) promulgate regulations permitting them, likely will further alleviate the various concerns raised by commenters as to the options for continued treatment.

Comment: DEA and HHS received 11 comments agreeing with the inclusion of the in-person medical evaluation requirement. These commenters stated that the requirement is important because in-person medical evaluations prior to buprenorphine induction allow a practitioner to better determine the state of the patient and ensure the patient is not under the influence of any other substances.

Response: DEA and HHS agree that an in-person medical evaluation provides a prescribing practitioner with valuable information about the patient that might not be fully discerned via a telemedicine encounter. The in-person medical evaluation allows a prescribing practitioner to conduct a thorough physical assessment of the patient, more accurately assess the patient's physical and mental health, and provides more accurate treatment options.[45] Additionally, DEA and HHS believe an in-person medical evaluation can serve as an effective control against diversion by allowing the practitioner to better discern whether the medications the patient has been prescribed are working effectively and are being taken appropriately by the patient.[46] However, DEA and HHS understand that not all patients are able to schedule and attend an in-person medical evaluation. As mentioned above, given the unique circumstances of increasing access to potentially life-saving medications for the treatment of OUD during the overdose epidemic, DEA and HHS believe that removing the in-person medical evaluation requirement is appropriate in this situation. Therefore, within this final rule, DEA and HHS have provided the option for the practitioner to conduct an in-person medical evaluation; otherwise, practitioners are able to continue prescribing via other forms of telemedicine authorized under the CSA after the initial six-month prescription.

In-Person Medical Evaluation Requirement Alternatives

Comment: DEA and HHS received 144 total comments regarding the non-traditional methods of fulfilling the in-person medical evaluation requirement,'' *i.e.,* the Telepresenter Model or the qualifying telemedicine referral, listed within the NPRM. Seven comments addressed the Telepresenter Model, *i.e.,* a scenario in which the patient attends an in-person medical evaluation in the physical presence of a DEA-registered practitioner (other than the prescribing practitioner) and the two practitioners and patient participate in a simultaneous real-time audio-video conference; 137 comments addressed the qualifying telemedicine referral model. For the Telepresenter Model, commenters expressed concern that this model also requires a substantial amount of travel (especially if the patient resides in a rural area); that it would be extremely difficult for the patient to try to coordinate the schedules of two practitioners; that these consults would be cumbersome

[45] K. Moulaei et al., *Patients' perspectives and preferences toward telemedicine versus in-person visits: a mixed-methods study on 1226 patients* (Nov. 15, 2023). *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10647122/#:~:text=The%20primary%20reasons%20for%20selecting,better%20treatment%20of%20the%20disease.* Last accessed Aug. 5, 2024.

[46] *Id.*

and unmanageable; that this model is not common practice in this type of medical care; and that getting an in-person appointment would be difficult especially for those who face stigma within their community for receiving OUD treatment. With regards to the qualifying telemedicine referral, the commenters stated that the referral process would be overly cumbersome and unnecessary; some practitioners may refuse to conduct an in-person medical evaluation for the purpose of issuing a referral; it takes too long to get a referral; some patients don't have medical insurance and requiring an in-person medical evaluation and a referral would not be possible; it is hard to make an in-person appointment with a primary care physician (PCP) as many people don't have PCPs; if a patient needs care from an addiction specialist the patient would need to wait for the referral before beginning treatment; and the referral process would be a barrier and diminish success of the treatment program.

Response: DEA and HHS acknowledge that these non-traditional methods for fulfilling the in-person medical evaluation requirement may not represent feasible options for many patients. As noted above, DEA and HHS have removed both the Telepresenter Model and the qualifying telemedicine referral process from the final rule. DEA and HHS agree that, for many patients, these proposed provisions were not practicable and would create an undue burden on both patients and practitioners. After the initial six-month period, the option to conduct a traditional in-person medical evaluation remains should the practitioner and patient wish to continue treatment in such a manner.

30-Day Prescription Supply Limitation

Comment: DEA and HHS received many comments related to the 30-day time period limitation. The comments asserting that 30 days was too short a time period in which to obtain an in-person medical evaluation are summarized in the above sections relating to in-person medical evaluations. DEA and HHS received a total of 68 comments related specifically to the 30-day prescription supply limitation. Some commenters stated that 30 days was too short a duration for buprenorphine dispensing before an in-person medical evaluation could be obtained, while other commenters generally supported the 30-day supply limitation. The commenters who believed 30 days was not enough time cited to various reasons: 10 commenters believed that the 30-day supply limitation was arbitrary and that it is not the typical length of prescription provided for OUD treatment; three commenters stated that 30 days represents insufficient supply and will interrupt a treatment regimen that has already been established; and one commenter stated the limit should be removed if the patient is clinically indicated for a buprenorphine prescription. 41 commenters stated there should be a prescription limitation but requested that the time period be increased from 30 days. Five commenters stated the supply limitation should be removed and prescriptions should be issued indefinitely; while two commenters stated that the prescribing practitioner should decide how long a prescription should be issued for.

Four commenters expressed support for the 30-day supply limitation and indicated that 30 days was an appropriate time period. One of these commenters (a patient) stated they currently receive a 30-day supply of buprenorphine at a time and had no concerns with that limit. Two commenters indicated a 30-day supply prior to an in-person medical evaluation was too permissive: one commenter stated that after the initial 30-day supply, refills should only occur seven days at a time until an in-person medical evaluation could be obtained; and the other commenter stated that prescriptions should be restricted to three-to-seven days for new patients with documentation that an in-person medical evaluation was not practical with one three-to-seven-day refill prescribed by a fully trained addiction physician. Additionally, some of these commenters asked clarifying questions about whether the 30-day supply limitation was only for a buprenorphine initiation period and not for every 30-day period of buprenorphine treatment, and also requested clarification about how the proposed regulations would have addressed a patient who started with a 30-day supply and then was ''lost to follow-up'' but later re-engaged with treatment.

Response: DEA and HHS acknowledge the commenters' concerns and agree that 30 days is too short of a timeframe to receive an initial buprenorphine prescription before being required to obtain an in-person medical evaluation to receive additional prescriptions. After reviewing the comments and feedback from the various listening sessions, DEA and HHS agree that many patients would have difficulty in scheduling an in-person medical evaluation with a practitioner and/or specialist within a 30-day time period. At the same time however, DEA and HHS believe that prescriptions issued pursuant to audio-only telemedicine should not be issued indefinitely or solely at the discretion of the practitioner, given the increased risks of abuse, misuse, or other forms of diversion posed by audio-only telemedicine without a visual or in-person component. Several commenters suggested 180 days (six months) as a supply limitation before an in-person medical evaluation should be conducted. DEA and HHS agree and believe a six-month supply provides adequate time for a patient to be stabilized on medication via audio-only medical encounter(s) without unduly increasing the risk of diversion. Therefore, the final rule allows for an initial prescription limitation of six calendar months after which time either an in-person medical evaluation must be conducted or the practitioner can continue prescribing via another form of telemedicine. DEA is also clarifying that the six-month (previously 30-day) supply limitation applies when the patient is treated by the same practitioner, regardless of when the six-month prescriptions are issued. For example, if a patient receives a prescription for a one-month supply three times by a practitioner, then stops treatment with that practitioner, the patient can only receive prescriptions for another three months of supply upon resuming treatment with that same practitioner, regardless of the reason treatment was stopped and time period that treatment was paused. Once an in-person medical evaluation has been conducted, the practitioner and patient are no longer engaged in the practice of telemedicine under 21 U.S.C. 802(54) and are thus no longer bound to the requirements found within this rule.

Mandatory PDMP Review

Comment: DEA received 30 comments opposing the mandatory PDMP review prior to issuing a buprenorphine prescription under this framework. These commenters, many of whom identified themselves as practitioners or as part of professional medical associations, stated that PDMP checks do not provide valuable information because they only show prescribed medications, not substances bought on the street illegally; state PDMPs do not all require practitioners to report the same medications (as which medications must be reported is based on state law); telehealth appointments are already limited in duration and valuable time would be spent by the practitioner reviewing the PDMP; DEA should defer to state law as to whether a PDMP check is required; patients

should not be penalized and limited to a seven-day supply if the PDMP is inaccessible or inoperable; practitioners may not have access to a state's PDMP; and the recordkeeping requirement associated with the PDMP review is too burdensome. Conversely, 15 commenters agreed with the PDMP requirement.

Response: DEA and HHS believe it is essential for a practitioner to review the PDMP data for possible drug interactions and to discern whether there is any potential misuse or abuse of prescribed medications within a patient's history. PDMP reviews have been shown to combat the fraudulent prescribing of medications, reduce incidences of multiple overlapping prescriptions for the same controlled medications, known as doctor shopping, aid in the monitoring of controlled substance abuse and misuse, and help reduce drug-poisoning deaths.[47] For these reasons, this final rule requires practitioners to review PDMP data prior to prescribing buprenorphine and restricts prescriptions to seven days at a time when the PDMP cannot be accessed. A review of PDMP laws and regulations of the 50 states, along with the District of Columbia, Guam, Puerto Rico, and the Northern Mariana Islands, shows that at least four states require a review of PDMP data prior to issuing any prescriptions and at least three states require the PDMP to be reviewed prior to issuing any telemedicine prescriptions. Further, 54 states/territories require that buprenorphine prescriptions be reported to a PDMP and 48 states/territories require review of a patient's PDMP data prior to issuing a buprenorphine prescription. Since most states/territories already have PDMP requirements, DEA and HHS believe this requirement poses a minimal administrative burden on practitioners, which are significantly outweighed by the benefits of reviewing this data.

As for recordkeeping requirements, this final rule will require practitioners to review the PDMP data and notate the date and time that such a review took place within the patient's electronic health record (EHR) or paper record. This notation will ensure that the prescribing practitioner has reviewed, or attempted to review, the PDMP prior to a prescription being issued. DEA and HHS understand that many EHR systems already contain this capability as this information is automatically integrated into the patient's record as soon as the data has been reviewed by the prescribing practitioner. If the PDMP data is inaccessible for any reason, the prescribing practitioner will be required to notate the date and time that such review was attempted, indicate why the PDMP was inaccessible, and will be limited to prescribing a seven-day supply. This seven-day supply can be renewed (up to six calendar months) if, every time the prescribing practitioner tries to review the PDMP data, the PDMP system is inoperable. While this is not meant to penalize either the practitioner or the patient, it should be a rare occurrence for a PDMP to be inaccessible for a full six-month time period. DEA and HHS believe the benefits of requiring a practitioner to review the patient's data for signs of abuse or misuse of controlled substances as soon as it becomes available outweigh any potential ''harms'' to the patient should the patient only receive an initial seven-day supply, especially since this seven-day supply can be renewed for up to six months.

Recordkeeping Requirements

Comment: DEA and HHS received 105 comments voicing disapproval and eight comments supporting the recordkeeping requirements found within the NPRM. Specifically, 75 commenters stated the requirements were administratively burdensome, time consuming, and confusing; would cause delays in workflow and patient care; practitioners should not need to record why audio-only telemedicine was chosen; the NPI and registration number of practitioners should not be required to be recorded; and practitioners were uncomfortable recording their home or physical address.

Twenty four (24) comments pertained to the requirement that the practitioner maintain a record that the encounter was conducted via audio-visual or audio-only means. Commenters indicated that this requirement would exacerbate the already common occurrence of pharmacies refusing to fill telemedicine prescriptions; there would be no clinical value; and it would create confusion. Six commenters asked for a 12-month grace period in order to update EHR systems to comply with the requirements.

Response: DEA and HHS agree with the commenters who raised concern with the stated recordkeeping requirements and does not believe the requirements would fulfill their intended purpose. The majority of the recordkeeping requirements detailed within the NPRM therefore have been removed and the final rule contains only one recordkeeping requirement that pertains to the PDMP review (explained in the previous comment response). DEA and HHS believe the other safeguards found within this final rule will help to prevent diversion without being overly burdensome for either patients or practitioners. The prescribing practitioner will need to notate the date and time the PDMP review was conducted or, if such review could not be completed, the date and time the PDMP review was attempted and why the review could not be completed. As many EHR systems already have this functionality integrated within their systems, DEA and HHS do not believe additional time needs to be allocated in order to update systems or bring them into compliance with this requirement.

Diversion of Buprenorphine

Comment: DEA and HHS received 791 comments regarding diversion of buprenorphine. Five hundred and twenty (520) commenters stated that the proposed rule would result in an increase of drug poisonings or overdoses due to patients having limited access to or losing access to their current buprenorphine treatment. One hundred and thirty five (135) commenters stated that there is no evidence to show that telemedicine care leads to higher diversion of buprenorphine than in-person care and cited to studies concluding that the COVID–19 PHE flexibilities did not lead to higher diversion or misuse of buprenorphine. The remainder of the comments stated that if legitimate prescriptions were easier to obtain there would be less diversion; if buprenorphine is diverted, then it is diverted for therapeutic purposes or to mitigate withdrawal; the buprenorphine combination product with naloxone (Suboxone®) actually deters diversion and is harder to overdose on when misused because of its chemical makeup; and increasing access to buprenorphine should outweigh any potential harm from diversion. Twelve (12) commenters voiced approval for the rule and stated that diversion and overdoses of buprenorphine are of real concern and there is further cause for concern because for-profit telehealth companies or ''virtual pill mills'' have been expanding their buprenorphine business, which could lead to more diversion of the medication.

Response: DEA and HHS understand that the COVID–19 PHE flexibilities have allowed for greater access to buprenorphine and it is DEA and HHS's

[47] F. Alogaili et al., *Prescription drug monitoring programs in the US: A systematic literature review on its strengths and weakness,* Journal of Infection and Public Health (Sept. 30, 2020). *https://www.sciencedirect.com/science/article/pii/S1876034120305657?via%3Dihub.* Last accessed Aug. 5, 2024.

intention to continue expanding access to buprenorphine via telemedicine for patients who have a legitimate need for treatment as the flexibilities come to an end. DEA and HHS have relaxed many of the requirements found within the NPRM, in response to concerns raised by commenters that patients may have limited access or lose access to treatment otherwise.

However, DEA has a mandate and commitment to detect and prevent the diversion of controlled substances, regardless of the reason for diversion, so DEA and HHS must nevertheless place certain safeguards on the telemedicine prescribing of buprenorphine. DEA and HHS note that several commenters expressed concern over buprenorphine diversion and the growth of ''virtual pill mill'' companies during the time the COVID–19 PHE flexibilities have been in place. Determining the reasons for diversion of buprenorphine in any particular case may prove difficult to discern, and a patient may divert buprenorphine for both claimed therapeutic and non-therapeutic purposes. Specifically, and as noted above, buprenorphine constitutes an effective treatment for OUD, but it can also create euphoric feelings similar in kind—even if not in intensity—to other opioid agonists. For these reasons, it is possible that some diverted buprenorphine might be used for reasons other than therapeutic purposes or mitigation of withdrawal. As the practice of telemedicine facilitates wider access to buprenorphine, DEA must ensure certain safeguards remain in place to deter potential diversion—whether for claimed therapeutic or non-therapeutic uses.

DEA and HHS have promulgated this final rule taking into consideration the many concerns raised by the thousands of comments received in response to the NPRM. DEA and HHS have amended the requirements from the NPRM to the final rule in large part in response to the comments and concerns expressed by the public, and the data they have provided. The safeguards that are found within the final rule will continue to expand access to OUD treatment by allowing for buprenorphine treatment via audio-only encounters and will allow patients and practitioners to continue using telemedicine as a means of receiving treatment. The telemedicine flexibilities established during the COVID–19 PHE were intended to be temporary flexibilities during a time when in-person care was not universally routinely and safely available. The COVID–19 PHE flexibilities should not continue indefinitely at a time when receiving in-person care no longer poses a significant risk to public health and safety. This final rule acknowledges that telemedicine encounters are more flexible and convenient to many patients but also acknowledges that safeguards need to be in place to prevent misuse and abuse of controlled substances, especially during a time when an increasing number of for-profit telehealth companies continue to grow their practices without any permanent regulatory requirements or safeguards.

Additional Safeguards Requested by Commenters

Comment: DEA and HHS received 41 comments requesting additional regulatory safeguards be put in place on top of the requirements already laid out in the NPRM. Commenters suggested requiring urine drug screens or blood tests, monthly pill counts, testing for alcohol use, psychological and physical monitoring, psychosocial support, and/or follow-up in-person medical evaluations every three months for the first year of treatment. Some commenters were in favor of buprenorphine prescribing via telehealth only if an in-person medical evaluation and drug screen were required while others believed that even with an in-person medical evaluation and drug screen, buprenorphine should not be prescribed via telehealth encounter.

Response: DEA and HHS acknowledge these concerns. As noted above the detection and prevention of diversion of buprenorphine is a significant priority of this rulemaking. At the same time, DEA and HHS understand that the addition of too many regulatory requirements may cause some patients to abandon their current OUD treatment or to decline to enter treatment in the first place. Within this rulemaking, DEA and HHS are attempting to continue to expand treatment options for OUD and make permanent some of the flexibilities permitted during the COVID–19 PHE. DEA and HHS are confident that the safeguards in place within this final rule will help alleviate diversion concerns while also allowing for patients to seek and obtain safe treatment for OUD.

Additionally, as noted above, practitioners who have conducted an in-person medical evaluation of a patient are not required to adhere to the telemedicine requirements established by the *Ryan-Haight Act* when prescribing a controlled substance to that patient. More generally, those practitioner-patient relationships no longer constitute telemedicine as defined by the *Ryan Haight Act* and are outside the scope of this rulemaking.

DEA 823(g) Registration of Practitioners

Comment: DEA and HHS received 18 comments regarding DEA registrations under 21 U.S.C. 823(g). Three commenters stated that a practitioner should only need one DEA registration and be legally authorized to practice telemedicine in the state in which the patient is located. Six commenters stated that the practitioner should only need to be DEA-registered and fully licensed in the state in which the patient is located. Two commenters stated that a practitioner should be able to prescribe controlled substances via telemedicine as long as they are licensed to practice medicine in the state the patient is located and that, furthermore, the practitioner should not also need a DEA registration for the state the patient is located in. Four commenters stated it was unclear if the NPRM was requiring that a practitioner needs a DEA registration in both the state in which the practitioner is located and state in which the patient is located. One commenter agreed generally with the NPRM and stated that telemedicine companies should be required to have a DEA registration in every state they want to prescribe. Two commenters requested an exception for separate DEA registrations for practitioners that have medical licensing reciprocity requirements.

Response: DEA and HHS understand some confusion may have arisen from the NPRM regarding registration. As DEA has made clear elsewhere, under current statutes and regulations, practitioners are required, unless subject to an exception, to obtain a DEA registration both in the state in which the practitioner dispenses controlled substances and in the state in which the patient is located.[48]

[48] The CSA requires all practitioners to be registered in the state in which the patients to which they are prescribing controlled substances are located, regardless of whether the prescribing is taking place via telemedicine. The CSA provides that every person who dispenses, or who proposes to dispense, any controlled substance shall obtain from DEA a registration issued in accordance with DEA rules and regulations. *See* 21 U.S.C. 822(a)(2). Under the CSA, such dispensing includes prescribing and administering controlled substances. *Id.* 802(10). DEA may only register a person to dispense a controlled substance if that person is permitted to do so by the jurisdiction in which his or her patients are located. *See id.* 802(21), 823(f). Thus, unless an applicable exception applies, DEA regulations require a practitioner to obtain a separate DEA registration in each state in which a patient to whom he or she prescribes a controlled substance is located when the prescription is made, regardless of whether the prescription is made via telemedicine. The CSA also contains provisions (added by the Ryan Haight Act) expressly requiring a practitioner to be registered in the state in which the patient to whom he is prescribing is located when he or she is

Definitions

Comment: DEA and HHS received 14 comments relating to definitions found within the NPRM. Seven commenters requested a definition of ''mental health disorders'' be included in the rule; two commenters requested removal of the ''prognosis'' of OUD requirement as it relates to the qualifying telemedicine referral; two commenters requested a definition for ''telemedicine prescription''; two commenters requested amending the definition of ''patient's location''; and one commenter stated that DEA should not rely on the CMS definition of ''interactive telecommunications system.''

Response: DEA and HHS have greatly simplified the final rule, which includes omitting any changes to current definitions within the Code of Federal Regulations. Additionally, as certain requirements from the NPRM have been removed, such as the qualifying telemedicine referral and the need for a notation on the telemedicine prescription, there is no need to provide definitions for those terms. DEA and HHS do not believe a definition for ''mental health disorders'' is needed as that question falls outside the scope of this rule. Furthermore, HHS regulations define the terms ''drug abuse'' and ''drug addiction'' in 42 CFR 34.2(h) and (i) as ''current substance use disorder or substance-induced disorder, mild'' and ''current substance use disorder or substance-induced disorder, moderate to severe'', respectively, using the most recent edition of the Diagnostic and Statistical Manual for Mental Disorders. This rule authorizes the treatment of OUD through audio-only means solely to treat substance use disorders under this definition. The final rule also does not enact any regulations that explicitly require the ''patient's location'' to be disclosed, so no definition is needed. While DEA and HHS anticipate that many of these audio-only encounters will occur in a private setting, such as a patient's home, this rule is not placing any additional regulations or requirements upon the practitioner or the patient to verify the patient's location. DEA and HHS will continue to rely on the CMS definition of ''interactive telecommunications system'' within this rule, as the current definition of the term ''practice of telemedicine'' uses the CMS definition.[49]

Rule's Applicability to Pharmacists

Comment: DEA and HHS received seven comments related to the rule's applicability to pharmacists. Four commenters requested clarification as to whether DEA-registered pharmacists who are granted controlled substance prescriptive authority within their state would be allowed to prescribe and dispense medications under this rule, and whether they could conduct the in-person medical evaluation (or serve as the referring provider) under the framework proposed in the NPRM. Additionally, three commenters were concerned that the rulemaking would require pharmacists to ''police'' the practice of telemedicine, placing an undue burden on pharmacists and overwhelming pharmacy operations. These commenters expressed concern and sought clarity as to if, and how, a pharmacist would be required to verify that the in-person medical evaluation requirement had been fulfilled; how a pharmacist would discern which prescriptions are telemedicine prescriptions absent an indicator on the face of the prescription denoting it as such; and how a pharmacist would access or receive this information without violating the Health Insurance Portability and Accountability Act (HIPAA) and other patient privacy laws.

Response: DEA and HHS understand the important role pharmacists play when they fill controlled substance prescriptions and appreciates the legitimate concerns raised by these comments. DEA and HHS are aware there still remains stigma associated with OUD treatment and has decided not to require a notation on the face of the prescription denoting that the prescription is one issued via telemedicine. DEA and HHS understand this may place more responsibility on a pharmacist and urges pharmacists to treat all buprenorphine prescriptions equally, while continuing to fulfill their longstanding corresponding responsibilities, without attempting to discern whether the prescription was issued via a telemedicine encounter. Pharmacists will not be required to access a patient's record to figure out whether the in-person medical evaluation has been conducted or whether an evaluation was completed via telemedicine. This rule is not intended to place pharmacists in the role of ''policing'' the practice of telemedicine, but rather reflects that pharmacists play an integral role in helping to prevent drug misuse. As set forth in 21 CFR 1306.04(a), ''The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.'' Therefore, the pharmacist will be required to verify the identity of the patient prior to filling a prescription. As explained in further detail below, many states already have placed on pharmacists an identification verification requirement for many controlled substances, including buprenorphine, as a matter of state law, and DEA and HHS believe placing an identity verification responsibility on pharmacists as a matter of Federal law generally should not represent an additional burden in the vast majority of cases.

Effective Date

Comment: DEA and HHS received 43 comments solely concerned with the potential effective date of the final rule. Twenty (20) comments requested that the COVID–19 PHE flexibilities continue indefinitely for the duration of the ongoing opioid epidemic PHE; 19 commenters requested that the COVID flexibilities continue for six months after publication of the final rule, until the end of calendar year 2023, or until the end of calendar year 2024; and five commenters requested that the COVID flexibilities continue until the final rule is published.

Response: The NPRM for this final rule was published on March 1, 2023, and at the time the NPRM was published, the COVID–19 PHE flexibilities were set to expire on May 11, 2023. The COVID–19 PHE flexibilities have since been temporarily extended until December 31, 2025, while DEA and, for rules that must be issued jointly, HHS have worked on other rulemakings. Once published, this final rule will be effective February 18, 2025. DEA and HHS believe this effective date, in concert with the latest extension of the telemedicine flexibilities, satisfies the concerns of those who commented on this issue.

Executive Order 12866—60 Day Comment Period

Comment: DEA and HHS received nine comments stating that the 30-day comment period found within the NPRM violated Executive Order (E.O.) 12866, which allegedly requires a 60-day comment period.

Response: The language contained within E.O. 12866 states ''each agency should afford the public a meaningful opportunity to comment on any

engaged in certain forms of telemedicine. Under the CSA, a prescription for a controlled substance issued by means of the internet must generally be predicated on an in-person medical evaluation. *See id.* 829(e)(1). This requirement does not apply, however, when a practitioner is practicing telemedicine as defined by the CSA.

[49] *See* 21 U.S.C. 802(54).

proposed regulation, which in most cases *should* include a comment period of not less than 60 days.'' [50] Since the 60-day comment period is not a requirement and because, at the time of publication of the NPRM, the COVID–19 PHE telemedicine flexibilities were set to expire on May 11, 2023, DEA chose to use a 30-day comment period to ensure all comments were received and to allow adequate time to publish a final rule.

Indian Tribes and Tribal Organizations

Comment: DEA and HHS received two comments regarding the effect of this rulemaking on American Indian and Alaska Native (AI/AN) Tribes and Tribal organizations. One commenter requested an exemption from registration for all Indian Health Service (IHS) and Tribal health system and Indian Health Care providers.

Both commenters indicated that consultation and coordination with Indian Tribes and Tribal organizations is required under Executive Order 13175 and requested that DEA meaningfully consult with Tribal officials prior to promulgating the final rule.

Response: DEA and HHS thank these commenters for voicing their concerns. DEA held *Telemedicine Listening Sessions* on September 12 and 13, 2023, and held Tribal Consultations with various Tribal governments and organizations on June 13 and 27, 2024. DEA and HHS have taken the opinions and concerns raised during both the listening sessions and consultations into account when promulgating this final rule. As such, DEA and HHS believe the requirements of Executive Order 13175 have been satisfied.

Other Comments

Comment: One commenter asked for clarification on how patients in various stages of buprenorphine treatment would be impacted by the rule, given the rule's focus on ''induction'' of buprenorphine. The commenter stated that there are various stages of buprenorphine treatment, including: (1) patients being prescribed buprenorphine to initiate therapy (general understanding of ''induction''); (2) patients being re-established on buprenorphine treatment when previously prescribed the controlled substance medication; and (3) patients being moved from the ''induction'' phase to maintenance phase. The commenter sought clarification as to whether DEA intended to include all these stages under the proposed rule, and if not, the commenter asked that the rule allow buprenorphine at all stages of treatment.

Response: Both the NPRM and this final rule are published with the intent of authorizing buprenorphine treatment via telemedicine. This final rule allows for any patient, beginning on February 18, 2025, to either begin treatment for OUD or continue treatment for OUD (*i.e.,* all ''stages'' of treatment) via audio-only telemedicine encounter if the requirements of 42 CFR 410.78(a)(3) are met. Beginning on this date, when a practitioner provides the patient with a prescription or prescription refill for buprenorphine as medication for OUD via telemedicine, the practitioner must review the PDMP prior to issuing the prescription. And the pharmacist, prior to filling the prescription, must verify the identity of the patient.

Once the initial six-month supply has been prescribed, the practitioner and patient can choose to continue treatment either once an in-person medical evaluation has been conducted or through other forms of telemedicine pursuant to 21 U.S.C. 802(54). In other words, a patient has six months from the date a prescription (or prescription refill) has been issued pursuant to this final rule to either obtain an in-person medical evaluation or continue with another form of telemedicine.

Comment: DEA and HHS received one comment stating DEA lacks the legal authority to limit telemedicine prescriptions to the FDA-approved indications contained in a medication's FDA-approved labeling. This commenter argued that DEA would effectively be attempting to define general standards of accepted medical practice, a power which is usually reserved for states.

Response: DEA and HHS, jointly, have the legal authority to promulgate regulations regarding the practice of telemedicine that are consistent with the public health and safety.[51] DEA reiterates that practitioners who are otherwise authorized under state and Federal law (including under the *Ryan Haight Act*) might prescribe buprenorphine for indications other than for treatment of OUD. This final rule only applies to circumstances where the prescribing practitioner has not conducted an in-person medical evaluation of the patient and is otherwise unable to prescribe buprenorphine while engaged in the practice of telemedicine under 21 U.S.C. 802(54) but for the authority provided in this final rule.

Comment: One commenter stated that DEA should hold an annual review of the efficacy and burden of the in-person medical evaluation requirement and this review should be published in the **Federal Register**.

Response: DEA appreciates this comment and will take this recommendation under consideration and advisement; however, no definitive response can be provided on this issue at this time.

VII. Provisions of the Final Rule

Under this final rule, a DEA-registered practitioner may prescribe buprenorphine via audio-only or audio-video telemedicine encounter as defined by 42 CFR 410.78(a)(3). After a practitioner reviews the PDMP data for the state in which the patient is located and annotates in the patient's EHR that such a review was conducted, the practitioner may prescribe an initial six-month supply of buprenorphine. DEA and HHS expect that the practitioner will not issue the six-month prescription at one time but will rather issue prescriptions as medically appropriate. Following the initial six-month supply, practitioners may prescribe buprenorphine only by other forms of telemedicine or practices authorized by the CSA, or after conducting an in-person medical examination. Additionally, prior to dispensing under this framework, the pharmacist will need to verify the identity of the patient [52] with either a state or Federal Government-issued photographic identification card or other form of identification.

A. Prescription Drug Monitoring Program Check by Prescribing Practitioner

The regulation at 21 CFR 1306.51(b)(1), found within this final rule, provides that the prescribing practitioner must review the PDMP data of the state in which the patient is located. The prescribing practitioner will then need to ensure that the date and time of the PDMP review is annotated in the patient's EHR or paper record. If, for any reason, the PDMP is unavailable or inaccessible and the

[50] Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993) (emphasis added).

[51] *See* 21 U.S.C. 821, 21 U.S.C. 871, and 21 U.S.C. 802(54)(G).

[52] As noted previously, DEA understands there are situations where the patient (for whom the prescription was written) may not be the individual picking up the prescription at the pharmacy. In these situations, DEA defers to the definition of ''ultimate user'' as found in 21 U.S.C. 802(27). As such, this regulation authorizes the pharmacist to verify the identity of the patient by accepting identification from any individual who falls under the definition of ''ultimate user'' prior to filling a prescription.

practitioner is unable to review the PDMP data for the patient, the prescribing practitioner should annotate in the patient's EHR the reason such a review was unable to be completed.

1. If PDMP Data Can Be Reviewed

Prior to prescribing buprenorphine to the patient, the practitioner will be required to review the PDMP data of the state in which the patient is located and ensure that the date and time of such review is annotated in the patient's EHR or paper record. The prescribing practitioner will be required to review the PDMP data for the last year, or if less than one year's worth of data is available, for the entire period. The inclusion of this requirement prior to prescribing is to ensure that the practitioner has the information needed in order to make the clinical decision of whether or not to prescribe buprenorphine to a patient under this framework. Inherent in the telemedicine context, and especially through audio-only means, there may be situations where it is difficult for a practitioner to ascertain if a patient is being truthful about their medical history and prior usage of controlled substances. The requirement of a mandatory PDMP review can furnish the prescribing practitioner with valuable information regarding a patient's controlled substance prescription history, and by using their own clinical judgment, the practitioner can make an informed decision.

Regarding the date and time requirement, DEA and HHS understand that many EHR systems already integrate state PDMP data into their systems. For these systems, a date and time stamp recording when a prescribing practitioner reviews PDMP data should be automatically integrated into the patient's EHR. For other EHR systems where only the date of PDMP access is integrated into the patient's EHR or no integrations exist at all, the prescribing practitioner will be required to manually input the date and time the PDMP review was conducted prior to closing or signing off on a patient's chart. DEA and HHS understand this may be burdensome to practitioners but DEA and HHS are confident that as technology changes, many EHR systems will likely update their platforms to enable automatic integration.

2. If PDMP Data Cannot Be Reviewed

The regulation at 21 CFR 1306.51(b)(3) provides that if, for any reason, the PDMP data cannot be reviewed for a patient, the prescribing practitioner should ensure that the reason for this is noted in the patient's EHR or paper record. For example, if a state PDMP is inaccessible or unavailable due to technological issues, the prescribing practitioner should note the date and time that an attempt to view such data was made. In these situations, when PDMP data cannot be reviewed, a practitioner would only be permitted to prescribe an initial seven-day supply of buprenorphine. The practitioner may not prescribe an additional supply without again checking the PDMP data for that patient. However, the practitioner would be authorized to issue additional limited seven-day supply prescriptions (up until the six-calendar month limitation is reached) if the PDMP remained unavailable or inaccessible, as long as each time a review is attempted, the date and time of each attempt is annotated in the patient's EHR or paper record.

B. Time Limitation of Buprenorphine Prescriptions

The regulation at 21 CFR 1306.51(b)(2) provides that buprenorphine prescriptions issued pursuant to audio-visual or audio-only telemedicine encounters are limited to a period ending no later than six calendar months after the date of the first prescription. This six-month supply must be split across multiple prescriptions or refills as the practitioner deems medically appropriate. Subsequent prescriptions may be issued once the practitioner has met with the patient for a follow-up evaluation either through any other form of telemedicine as defined in 21 U.S.C. 802(54) or through an in-person examination of the patient by the prescribing practitioner. Additionally, this requirement would comport with the current regulations found in 21 CFR 1306.22(a) regarding refilling of prescriptions for controlled substances listed in schedule III or IV.

1. Other Authorized Forms of Telemedicine or Practices Established by Regulation

After an initial six-month prescription of buprenorphine via audio-visual or audio-only means, additional prescriptions may be written pursuant to any other form of telemedicine as defined in 21 U.S.C. 802(54). This includes the regulations found within any final rule that may be issued setting forth a special registration framework. In the event DEA issues future regulations setting forth practices DEA determines to be consistent with effective controls against diversion, pursuant to 21 U.S.C. 829(e)(3)(B), additional prescriptions would also be permitted to be issued pursuant to those practices.[53]

2. In-Person Medical Evaluation

Practitioners who conduct an in-person medical evaluation of a patient subsequent to the initial six-month supply restriction would, from that point on, no longer be required to adhere to the telemedicine requirements established by the *Ryan-Haight Act* for that patient. As explained above, this rulemaking contemplates situations only wherein the prescribing practitioner has never conducted an in-person examination. Once an in-person examination has been conducted by the prescribing practitioner, the duties and obligations found within this final rule no longer apply.

C. ID Requirement for Pharmacists

Under new 21 CFR 1306.51(b)(4), prior to filling a prescription that was issued pursuant to the authorities created by this final rule, the pharmacist will be required to verify that, as a general matter, the identity of the individual picking up the prescription at the pharmacy matches the name of the patient listed on the prescription itself.[54] Before the pharmacist can fill a prescription issued pursuant to the regulations found in this final rule, they must inspect the patient's state or Federal Government-issued photographic identification card, or in the absence of such identification, any other form of documentation showing that the patient is the same person as the patient listed on the prescription. The form of identification presented need not contain the patient's address. Such forms of identification include, but are not limited to: state issued driver's licenses and identification cards; U.S. passport; U.S. military card or military dependent's identification card; Native American tribal documents; paycheck; bank or credit card statement; utility bill; tax bill; or voter registration card. For minors under the age of 18, unhoused persons, and those without photographic identification, examples of other permissible forms of identification include: school transcripts; school

[53] No such practices have yet been determined by future DEA regulation to be consistent with effective controls against diversion.

[54] As noted previously, DEA understands there are situations where the patient (for whom the prescription was written) may not be the individual picking up the prescription at the pharmacy. In these situations, DEA defers to the definition of ''ultimate user'' as found in 21 U.S.C. 802(27). As such, this regulation authorizes the pharmacist to verify the identity of the patient by accepting identification from any individual who falls under the definition of an ''ultimate user'' prior to filling a prescription.

report cards; or a letter from a homeless shelter employee or a letter from a Tribal government official or other Tribal leader verifying the identity of the patient. As indicated, the acceptable forms of identification provided as examples within this final rule are not intended to be an exhaustive list.

As mentioned above, even absent the ID provision, DEA and HHS believe that the requirements as proposed in the NPRM and modified as a result of public comment and promulgated herein would be sufficient to mitigate and provide effective controls against diversion under this framework. As a result of the *Telemedicine Listening Sessions,* DEA's survey of state law, input received from public comments, and DEA's collaboration with HHS, DEA and HHS are promulgating 21 CFR 1306.51(b)(4) as an additional layer of protection against diversion. In sum, verifying the identity of the patient prior to dispensing is intended to ensure that the individual who is receiving the controlled substance medication from the pharmacist is the same individual for whom the prescription was issued.

During the *Telemedicine Listening Sessions,* seven presenters spoke on the importance of verifying a patient's identification prior to dispensing a controlled substance. Many of these presenters, who are practitioners themselves, indicated they already require a valid form of identification during a telemedicine encounter and require patients to provide proof of identification prior to prescribing. The practitioners subsequently keep a record of that identification. These presenters emphasized this policy helps to prevent illegal access to and misuse of medication. Since DEA and HHS believe that many prescribers already require proof of identification during the telemedicine encounter itself and since practitioners will be required to review PDMP data, DEA and HHS have promulgated this identification verification requirement for the pharmacist to provide an extra layer of protection against diversion by ensuring the prescription is being dispensed to the patient for whom the prescription was issued.

DEA and HHS further believe this requirement is a codification of widely employed current practice, as many state laws currently require pharmacists to verify the identity of the patient prior to dispensing. DEA conducted a review of the laws and regulations of all 50 states along with the District of Columbia and found that there are currently 43 states that have an identification requirement placed on pharmacists prior to filling a prescription. The situations in which identification verification is required varies: some states require verification outright, some states indicate that the pharmacist ''may'' verify identification, and some states only require verification if the patient is ''unknown'' to the pharmacist. Additionally, states vary as to what medications require verification: some states only require it for schedule II controlled substances, some for controlled substances found within schedules II–V, and some for ephedrine or pseudoephedrine products or precursors. Since several states already impose identification verification requirements on pharmacists, DEA and HHS do not believe imposing this requirement on buprenorphine prescriptions will create an undue burden on pharmacists. Additionally, as DEA and HHS are not requiring government-issued photo identification, DEA and HHS believe providing the pharmacist with any documentation that sufficiently verifies identity will not be a burden on patients. Even though some states do not have statutes which mirror this new provision, DEA and HHS believe this provision largely codifies existing practice and assists in mitigating the risk of diversion.

DEA and HHS have thus chosen to include this requirement in the context of schedule III–V prescriptions for the treatment of OUD issued pursuant to this final rule, which permits prescriptions based on audio-only telemedicine encounters, in order to assist in reducing the risk of unauthorized individuals diverting buprenorphine for illicit purposes. DEA and HHS believe this additional layer of protection will help curtail any potential diversion. This identification requirement will help ensure that the patient using the buprenorphine prescription picked up at the pharmacy is the same patient that received the buprenorphine prescription from the audio-only telemedicine encounter.[55]

Should the identification requirements described in 21 CFR 1306.51(b)(4), or 42 CFR 12.3(b)(4), be held to be invalid or unenforceable as applied to any person or circumstance, or stayed pending agency action, it shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the identification requirements described in 21 CFR 1306.51(b)(4), or 42 CFR 12.3(b)(4), are invalid and unenforceable in all circumstances, in which event 21 CFR 1306.51(b)(4) and 42 CFR 12.3(b)(4), shall be severable from the remainder of 21 CFR 1306.51(b) and 42 CFR 12.3(b).

D. Scope-Clarifying Provisions

The three remaining provisions of 21 CFR 1306.51 serve to clarify the scope of the final rule. The regulation at 21 CFR 1306.51(b)(5) provides that this final rule only applies to prescriptions issued for the treatment of OUD, even if the schedule III–V controlled substance approved by the FDA for use in the treatment of OUD also has other medical uses; for example, there are drugs containing buprenorphine that have been approved by the FDA to treat acute moderate-to-severe pain.[56] Though buprenorphine-containing drugs have other FDA-approved uses, the intention of this paragraph, and this final rule writ large, is to increase patient access to buprenorphine for the treatment of OUD. The regulation at 21 CFR 1306.51(b)(6) makes explicit that this final rule only applies to practitioners who are already registered, or otherwise exempt from registration, to dispense buprenorphine.

Finally, 21 CFR 1306.51(b)(7) provides that prescriptions issued pursuant to this final rule must otherwise comply with relevant DEA regulations. For example, a prescription issued under this final rule must be dated and signed and must include the patient's name and address, the name, strength, dosage, form and quantity of the drug, directions for use, and the practitioner's name, address, and DEA registration number of the practitioner.[57]

VIII. Regulatory Analyses

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

DEA and HHS have determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, but it is not a section 3(f)(1) significant action. Accordingly, this final rule has been

[55] As noted previously, DEA understands there are situations where the patient (for whom the prescription was written) may not be the individual picking up the prescription at the pharmacy. In these situations, DEA defers to the definition of ''ultimate user'' as found in 21 U.S.C. 802(27). As such, this regulation authorizes the pharmacist to verify the identity of the patient by accepting identification from any individual who falls under the definition of an ''ultimate user'' prior to filling a prescription.

[56] Poliwoda, *et al.* Buprenorphine and its formulations: a comprehensive review. Health Psychology Research. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9392838/.* Published Aug. 20, 2022. Last accessed Ap. 20, 2024.

[57] 21 CFR. 1306.05(a).

submitted to the Office of Management and Budget (OMB) for review. This final rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation; Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation; and Executive Order 14094, ''Modernizing Regulatory Review.''

DEA and HHS are amending their regulations to expand the circumstances under which DEA-registered practitioners are authorized to prescribe schedule III–V controlled substances approved by the FDA for the treatment of OUD via a telemedicine encounter, including an audio-only telemedicine encounter. Under these new regulations, after a prescribing practitioner reviews the patient's state PDMP data, the practitioner can prescribe an initial six-month prescription (split amongst several prescriptions totaling six calendar months) of such medications through audio-only means. This final rule does not affect practitioner-patient relationships in cases where an in-person medical evaluation has previously occurred.

Number of Telemedicine Encounters, Providers, and Patients

The number of telemedicine encounters, including audio-only telemedicine, leading to buprenorphine prescriptions under the temporary guidance during the COVID–19 PHE forms the basis for estimating the number of audio-only telemedicine encounters pursuant to this final rule.

Based on CMS claims data provided by the Department of Health & Human Services Office of Inspector General (HHS OIG), from March 2020, the start of the COVID–19 health emergency shutdowns, to December 2021, 24,285 Medicare fee-for-service and managed care telemedicine services were identified as being linked to buprenorphine Part D prescription fills.[58] These telemedicine services were rendered by 7,733 providers to 15,521 patients.[59] Of the 24,285 matching telemedicine services, 3,083 were billed with audio-only procedure codes, rendered by 1,806 providers to 2,548 patients.[60]

Based on the CMS data, the telemedicine services and associated buprenorphine prescriptions identified spiked at the beginning of the COVID–19 PHE and stayed relatively steady in 2021. Therefore, 2021 data is used to estimate the number of telemedicine encounters for this analysis.

In 2021, there were a total of 1,929,151 Part D buprenorphine prescriptions associated with 1,332,353 beneficiaries.[61] Over the same period, there were 11,956 telemedicine Medicare fee-for-service and managed care telemedicine services, including audio-only telemedicine, identified as being linked to buprenorphine Part D prescriptions fills.[62] These telemedicine services were provided by 4,533 providers to 8,182 patients.[63] The 1,929,151 Part D buprenorphine claims associated with 1,332,353 beneficiaries equates to a ratio of 1.45 [64] claims per beneficiary. Therefore, the 11,956 services represent an estimated 8,257 (11,956/1.45) initial prescriptions, which equates to 0.428 percent (8,257/1,929,151) of total Part D claims for buprenorphine (1,929,151 total claims). Based on IQVIA data, the total number of new prescriptions for buprenorphine in the U.S. in 2021 was 15,782,652.[65] Applying the telemedicine share of total Part D buprenorphine prescriptions to the estimated number of total services associated with a buprenorphine prescription yields an estimated 67,552 (0.428 percent × 15,782,652) initial prescriptions. DEA and HHS believe this is a high estimate, as the telemedicine share of total Part D buprenorphine prescriptions may include telemedicine services allowed by regulation prior to the PHE.

Affected Persons

This final rule would affect practitioners prescribing schedule III–V controlled substances for the treatment of OUD using audio-video or audio-only technology and the patients being treated using this technology. Based on the analysis above, DEA and HHS expect the final rule to affect 67,552 patients annually. As previously discussed, in 2021, 8,182 patients received a prescription for buprenorphine under the Medicare Part D program, from 4,533 providers, equating to a ratio of approximately 1.80 patients per provider. Applying this ratio to the number of affected patients, DEA and HHS estimate 37,425 providers are affected by this final rule.

Impact on Physicians or Practitioners

The final rule would permit the use of audio-video or audio-only telemedicine provided that (1) the DEA-registered practitioner meets all requisite state and Federal registration requirements for both prescribing of controlled substances and engaging in the practice of telemedicine, (2) reviews state PDMP data regarding any controlled substance prescriptions issued to the patient and annotates this within the patient's EHR, (3) is limited to prescribing a six-month supply, across all such prescriptions, until the practitioner conducts an in-person medical evaluation or engages in other forms of authorized telemedicine, and (4) the pharmacist filling the prescription confirms the patient identity using a valid government-issued ID or other acceptable form of identification. Below is the analysis of the four requirements stated above:

1. DEA Registration Requirement: DEA and HHS assume all practitioners who would issue prescriptions via telemedicine encounters pursuant to this final rule are authorized under DEA regulations under 21 CFR 1301.13(e)(1)(iv) as well as the states where the practitioner is located (unless otherwise excepted). Therefore, the impact of this requirement is minimal.

2. *Review PDMP data and annotate within the EHR:* Based on a 2018 study, it takes a practitioner 27 seconds to log in and 37 seconds to retrieve a report once logged in. The total time it takes to retrieve a PDMP report is roughly a minute (27 + 37 = 64 seconds) or 0.0167 of an hour (1/60).[66] Based on an estimated loaded hourly rate of $169.80,[67] the cost of a review of the

[58] ''Monthly summary of telemedicine visits matched to a subsequent buprenorphine prescription between March 2020 and December 2021'', HHS OIG, Mar. 2022.

[59] Ibid.

[60] HHS OIG analyzed telemedicine billing codes and patient information to identify telemedicine visits within a 48-hour period prior to a buprenorphine prescription fill associated with the same patient, and where the prescribing provider is the same as or related to the billing or rendering provider of the telemedicine visit.

[61] *Id.*

[62] *Id.*

[63] HHS OIG, May 2022.

[64] Numbers shown are rounded for presentation and clarity. Calculations using the provided numbers may not yield the same results due to this rounding.

[65] IQVIA, National Prescription Audit, September 2022.

[66] Bachhuber MA, Saloner B, LaRochelle M, Merlin JS, Maughan BC, Polsky D, Shaparin N, Murphy SM. Physician Time Burden Associated with Querying Prescription Drug Monitoring Programs. Pain Med. 2018 Oct.

[67] For the purpose of this analysis, the cost per registrant is estimated by multiplying the loaded labor rate by the estimated time to complete the review. The loaded labor rate is based on the estimated loaded hourly wage for 29–1229, Physicians, all other. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023, https://www.bls.gov/oes/current/oes291229.htm.* The average hourly wage is $119.54, with benefits estimated at an additional 42.05% of the base wage. The load factor is calculated by comparing the benefits for private workers as a share of wages, 29.6%/70.4% = 42.05%. Bureau of Labor Statistics,

Continued

PDMP is $2.83 ($169.80 × 0.0167). Applying this cost to 67,552 services, the total cost of PDMP review is $191,171 ($2.83 × 67,552), annually.[68] While many practitioners already check PDMP data prior to issuing a prescription for controlled substances for a variety of reasons, DEA and HHS will consider the full cost of checking the PDMP, $191,171, as a cost of this final rule to be conservative.

3. *Limited to a six-month supply:* Increasing the limit to a six-month supply under this final rule will give patients and prescribing practitioners more time to schedule follow-up appointments and reduce the likelihood of a relapse by a patient due to lack of medication, and will allow prescribing practitioners greater flexibility in managing their patient populations. While DEA and HHS do not have a basis to quantify the economic impact of the six-month supply limit, six months of medication for treatment is believed to be a net benefit compared to a baseline of zero to seven days of medication for treatment.

4. *Pharmacist ID verification:* Pharmacists must verify the patient's identity with either a state or Federal Government-issued photographic identification card, or another acceptable form of identification as listed above. The practice of checking identification when providing prescriptions is already well-established and widespread, and DEA expects any additional labor costs for pharmacists to be minimal.

In summary, the total cost to practitioners is $191,171 annually, which is the cost associated with checking PDMPs.

Impact on Patients

As discussed earlier, DEA and HHS estimate this final rule will affect 67,552 patients per year. DEA and HHS anticipate that patients will fall into one of two categories:

(1) Patients who would otherwise not receive treatment or prescriptions for OUD absent this final rule. These patients have no other means to receive treatment. They are unable to visit a practitioner in-person or otherwise visit a practitioner engaged in the practice of telemedicine as defined in 21 CFR 1300.04(i), but are able to have an audio-video or audio-only telemedicine visit pursuant to this final rule.

(2) Patients who would eventually receive treatment and prescriptions even absent the final rule. These patients are able to either visit a practitioner in-person or have a telemedicine visit with a practitioner engaged in the practice of telemedicine as defined in 21 CFR 1300.04(i); however, such visit is delayed for any variety of reasons, *e.g.,* long wait times for an appointment with the practitioner, personal hardship, etc. This final rule, if implemented, would create additional flexibilities, potentially allowing the patient to more quickly start treatment, absent this final rule.

DEA and HHS do not have a basis to estimate how many of the estimated 67,552 patients fall into the two groups. However, DEA and HHS anticipate a larger impact for the first group. The impact on the first group of patients is a result of receiving treatment for OUD. There would be a cost of treatment and the benefit generated from the treatment, which would not have been possible without this final rule. The impact on the second group would be the result of receiving treatment sooner than they would have without this final rule. For both groups, the impact could potentially be lifesaving. However, DEA and HHS do not have access to data that would permit them to estimate the number of lives the improved access could save. There would be a cost of treatment and the benefit of earlier treatment, including potential cost-offsets associated with reduced healthcare and public safety expenditures. According to a December 2021 research report, treatment costs with buprenorphine for a stable patient provided in a certified Opioid Treatment Program, including medication and twice-weekly visits, were $115 per week or $5,980 per year.[69] This is likely higher than the cost of treating a stable patient in a primary care setting, where patients are more likely to see providers once per week and where there are no associated specialized costs. However, using the $5,980 per year estimate serves to establish an upper boundary for potential costs in any cost-benefit comparison. Estimates of the impact of buprenorphine use in the treatment of OUD suggests a 23.7% decrease in total deaths, and 31.2% reduction in drug poisonings (both fatal and nonfatal). In total, the combined cost-savings of buprenorphine (including both health-care costs as well as criminal justice costs) was estimated by one study at $60,000 per person.[70] At the costs listed above, the savings from the treatment of one person would cover the cost of buprenorphine treatment for ten others.

A study published in 2021 of the societal costs for OUD found that the ''costs for opioid use disorder and fatal opioid overdose in 2017 were estimated to be $1.02 trillion. The majority of the economic burden is due to reduced quality of life from opioid use disorder and the value of life lost due to fatal opioid overdose.'' [71] According to the report, in 2017 total non-fatal costs were $471 billion and total fatal costs were $550 billion and there were 2.1 million persons ages 12 years and older with OUD, and 47,000 fatal opioid overdoses.[72] Non-fatal costs include costs associated with health care, substance use disorder treatment, criminal justice, lost productivity, and the value of reduced quality of life. Dividing the total non-fatal cost of $471 billion by the number of persons ages 12 and older with OUD of 2.1 million, the societal cost of non-fatal OUD is approximately $224,000 ($471 billion/2.1 million) per person per year. While DEA and HHS are unable to quantify how many of the affected patients will be successfully treated for OUD or how many fatal opioid overdoses will be avoided as a result of this final rule, the potential economic benefit is disproportionally large compared to any cost associated with this rule.

Risk of Diversion

This final rule will reduce the requirements imposed on practitioners who wish to prescribe schedule III–V controlled substances as part of treatment for OUD. DEA and HHS understand that there is potential for the misuse of controlled substances approved for OUD treatment, which could be worsened by an increase in prescribing.

While this final rule may increase the risk of diversion, with the safeguards, DEA and HHS estimate this increased risk will be minimal. Requirements to check the state PDMP prior to issuance of a prescription, in-person requirements for follow-up

Employer Costs for Employee Compensation—December 2023, https://www.bls.gov/news.release/archives/ecec_03132024.pdf. The loaded wage was therefore $119.54 × 1.4205 = $169.80 per hour for private physicians, all other.

[68] Numbers shown are rounded for presentation and clarity. Calculations using the provided numbers may not yield exactly the same results due to this rounding

[69] *How much does opioid treatment cost?,* NIDA. (Apr. 13, 2021), *https://nida.nih.gov/publications/research-reports/medications-to-treat-opioid-addiction/how-much-does-opioid-treatment-cost.*

[70] Fairley *et al.. Cost-effectiveness of Treatments for Opioid Use Disorder.* JAMA Psychiatry (July 1, 2021).

[71] Florence C, Luo F, Rice K. The economic burden of opioid use disorder and fatal opioid overdose in the United States, 2017. *Drug Alcohol Depend.* 2021;218:108350. doi:10.1016/j.drugalcdep.2020.108350.

[72] *Id.*

appointments under current law, and the requirement that pharmacists verify identification prior to filling a prescription are expected to minimize the diversion of buprenorphine via telemedicine, including audio-only telemedicine. Practitioners already have the authority to prescribe buprenorphine. Studies have found that, in 2019, the percentage of buprenorphine misuse among adults with past-year use was 29.2%. Of those adults who misused buprenorphine in a previous year, 71.8%–74.7% did not have their own prescription.[73] Given the misuse of buprenorphine is often for self-treatment of OUD symptoms, these numbers underscore the need for expanded access to buprenorphine treatment for OUD.

The growth of waivers to prescribe buprenorphine was slower among prescribers working in small nonmetropolitan counties than urban counties. Prescribers in rural counties were associated with low buprenorphine dispensing.[74] DEA and HHS believe that by providing increased access for rural areas, the benefits of increasing access to buprenorphine outweigh any added risk of diversion as the result of this rule.

Other Potential Costs

DEA and HHS also examined the cost of technology, both capital investment and operation expenses, in order to provide audio-only telemedicine in compliance with the final rule. DEA and HHS believe that the use of telemedicine will not require any additional capital expenditures on the part of practitioners or patients. Recordkeeping requirements are likely to have a minimal impact because current recordkeeping practices are likely to meet the requirements imposed by the final rule, and any additional time is expected to be minimal. EHRs may be updated in the future to reflect the final rule change, such as the integration of state PDMP data into a patient's EHR, but such changes are likely to be minor and included as part of any normal software update.

Summary

In summary, DEA and HHS estimate this rule would affect 37,425 providers and 67,552 patients, annually. DEA and HHS believe that this rule would increase patient access to buprenorphine for two types of patients: those who otherwise would be unable or unwilling to seek treatment, as well as those who would seek treatment but with some form of delay. Increased access to buprenorphine is expected to reduce the number of opioid drug poisonings annually, however, DEA and HHS cannot quantify the size or total benefits of such a reduction. There would be a slight increase in labor costs per practitioner, due to increased time spent reviewing PDMP databases. The estimated total cost to the 37,425 providers is $191,171 annually. DEA and HHS estimate recordkeeping requirements are likely to have a minimal impact because current recordkeeping practices are likely to meet the requirements imposed by this final rule, and any additional time is expected to be minimal. The increase in the availability and flexibility of treatment with schedule III–V controlled substances may increase the risk of diversion, however DEA and HHS believe that any increase would be small and outweighed by the benefit to patients and reduction in the societal cost of OUD.

Executive Order 12988, Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This final rule does not have federalism implications warranting the application of E.O. 13132. The final rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

DEA and HHS are committed to the principles of collaboration and consultation with Tribal governments, as demonstrated through its plans to conduct the appropriate Executive Order 13175 Tribal consultations and recognizes the significance of these consultations and their role in shaping regulations that impact Tribal communities. DEA and HHS have determined that there is a reasonable basis to believe that this rule may have Tribal implications, consistent with the definition in Executive Order 13175.

On June 13 and 27, 2024, DEA held virtual consultations with numerous Tribal governments and organizations. DEA and HHS considered the valuable insights from Tribal persons and organizations received during the comment period of the Buprenorphine NPRM from March 2023 (88 FR 12890), the *Telemedicine Listening Sessions* held in September 2023, and the most recent virtual consultations from June 2024. DEA's intentions have been to engage in consultations as appropriate throughout the rulemaking process, fostering a collaborative environment that respects the sovereignty and interests of Tribal governments, while enhancing the overall quality and effectiveness of DEA's regulatory efforts. As such, DEA and HHS have incorporated these concerns, as necessary, within this final rule to ensure DEA and HHS's regulations align with the diverse needs and considerations of various stakeholders impacted by DEA oversight.

Regulatory Flexibility Act

The Administrator and the Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), have reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

Due to the COVID–19 PHE, DEA issued guidance which authorized prescribing of buprenorphine to new and existing patients with OUD via telephone by otherwise authorized practitioners without requiring such practitioners to first conduct an examination of the patient in person.[75] To continue the flexibilities of audio-only telemedicine prescribing of schedule III–V controlled substances approved by the FDA for the treatment of OUD beyond the COVID–19 PHE, DEA and HHS have promulgated regulations which would balance the need to increase patient access to legitimate medical treatment with the goal of providing effective controls against diversion. Thus, within this final rule, DEA and HHS are explaining the conditions in which a practitioner is authorized to prescribe buprenorphine via an audio-only telemedicine encounter, and the obligations which arise once a practitioner prescribes to patients.

Affected Persons

This final rule affects DEA-registered practitioners prescribing schedule III–V controlled substances for the treatment of OUD via telemedicine, including audio-only telemedicine. As stated

[73] Han, Beth et al. ''Trends in and Characteristics of Buprenorphine Misuse Among Adults in the US.'' JAMA Netw Open. 2021 Oct 1; 4(10):e2129409. Accessed 9/15/2022.

[74] *Id.*

[75] Prevoznik Letter.

above, DEA and HHS estimate this final rule will affect 37,425 DEA-registered practitioners and 67,552 patients annually. Because patients are individuals and not small entities, this analysis examines the impact of the final rule on affected practitioners and small entities that employ the affected practitioners.

With respect to practitioners, this final rule would permit the use of audio-only telemedicine provided that the practitioner (1) meets all requisite state and Federal registration requirements for both prescribing of controlled substances and engaging in the practice of telemedicine, (2) reviews PDMP data regarding any controlled substance prescriptions issued to the patient in the previous year, and (3) is limited to prescribing a six-month supply, across all such prescriptions, until the practitioner conducts an in-person medical evaluation or engages in other forms of telemedicine.

A significant number of practitioners work in offices and institutions that meet the RFA's definition of small entities. To estimate the number of affected entities, DEA and HHS first determined the North American Industry Classification System (NAICS) codes that most closely represent businesses that would employ the practitioners who would prescribe buprenorphine via an audio-only telemedicine encounter. Then, DEA and HHS researched economic data for those codes. The source of the economic data is the Small Business Administration (SBA) Office of Advocacy, and is based on data provided by the U.S. Census Bureau Statistics of U.S. Businesses (SUSB).[76] The following business NAICS codes are estimated to represent businesses that employ the affected persons:

- 621111—Offices of Physicians, Except Mental Health Specialists
- 621112—Offices of Physicians, Mental Health Specialists
- 621420—Outpatient Mental Health and Substance Abuse Centers
- 622110—General Medical and Surgical Hospitals
- 622210—Psychiatric and Substance Abuse Hospitals

SUSB data contains the number of firms by size ranges for each of the NAICS codes. For the purposes of this analysis, the term ''firm'' as defined in the SUSB is used interchangeably with ''entity'' as defined in the RFA.

To estimate the number of affected entities that are small entities, DEA and HHS compared the SUSB data for the number of firms in various firm size ranges with SBA size standards for each of the representative NAICS codes. The SBA size standard is the firm size based on the number of employees or annual receipts depending on industry. The SBA size standards for NAICS codes 621111, 621112, 621420, 622110, and 622210 are annual receipts of $14 million, $12 million, $16.5 million, $41.5 million, and $41.5 million, respectively.

The firms in each size range below the SBA size standard are small firms. The number of firms below the SBA size standard was added to determine the total number of small firms in each NAICS code. DEA and HHS estimate there are 161,286, 10,561, 6,523, 2,560, and 396 entities in the 621111, 621112, 621420, 622110, and 622210 industries. Based on the SUSB data on the firm sizes, DEA and HHS estimate there are 157,060, 10,392, 5,849, 1,047, and 204 small entities in the 621111, 621112, 621420, 622110, and 622210 industries. In total, DEA and HHS estimate there are 181,326 entities in the three potentially affected industries, of which 174,552 (96.3 percent) are small entities. The analysis is summarized in table 1 below.

TABLE 1—NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES

NAICS code	Number of firms	SBA size standard ($)	Number of small firms *
621111—Offices of Physicians, Excepting Mental Health Specialists	161,286	14,000,000	157,060
621112—Offices of Physicians, Mental Health Specialists	10,561	12,000,000	10,392
621420—Outpatient Mental Health and Substance Abuse Centers	6,523	16,500,000	5,849
622110—General Medical and Surgical Hospitals	2,560	41,500,000	1,047
622210—Psychiatric and Substance Abuse Hospitals	396	41,500,000	204
Total	181,326	.....	174,552
Percent of Total	.....	.....	96.3%

* Not all decimal places shown.

From above, E.O. 12866 section, DEA and HHS estimate that audio-only telemedicine services will be provided by 37,425 providers to 67,552 patients, annually. Therefore, this final rule is estimated to affect 37,425 individual practitioners employed by some of the 174,552 small businesses in industries potentially affected by this final rule. Since some small entities will employ more than one practitioner, the number of affected small entities is expected to be less than 37,425 and is expected to be concentrated in the 621111, 621112, and 621420 industries, with a combined total of 173,301 small entities. Therefore, the number of small entities affected by this final rule is estimated to be approximately 21.6%, which is a substantial number of the representative industries.

The cost of the final rule will impact the affected entities and small entities on a ''per person'' basis. Rather than estimating the number of practitioners per firm, then the cost per firm, then whether the cost is significant, DEA and HHS employed a more direct approach based on the following logic:

- In order to continue, the affected firms must generate enough revenue to pay the wages of practitioners, and other operating expenses.
- Therefore, revenue for firms must be greater than the wages paid to practitioners.
- Therefore, if the cost of the final rule is not economically significant when compared to individual wages for practitioners, the cost of the final rule is not economically significant when

[76] SUSB's employer data contain the number of firms, number of establishments, employment, and annual payroll for employment size of firm categories by location and industry. A ''firm'' is defined as an aggregation of all establishments owned by a parent company (within a geographic location and/or industry) with some annual payroll. Small Business Administration, *Firm Size Data, https://www.sba.gov/advocacy/firm-size-data* (last visited Apr 25, 2024). The data table is available at *https://www.sba.gov/sites/default/files/files/static_us_11.xls* (last visited April 25, 2024).

compared to the annual revenue of the firms.

From 2021 data provided by CMS, DEA and HHS estimate that 67,552 patients received telemedicine services prior to receiving a prescription for buprenorphine. These services were provided by 37,425 separate providers, for approximately 1.8[77] patients per provider.

DEA and HHS estimate a non-loaded median hourly wage of $119.54[78] and $62.11[79] for potentially affected physicians and MLPs, respectively. Applying the hourly wage rates to the estimated time to apply, DEA and HHS estimate the labor cost per PDMP review is $1.99 ($119.54 × 1/60) and $1.04 ($62.11 × 1/60) per physician and MLP, respectively. The non-loaded wage rates are calculated to represent the cost to the individual, whereas previously the loaded wage rates were calculated to represent the total cost of employment to the entity and to the economy. These rates are multiplied by 1.8 patients, for total labor costs of $3.59 and $1.88, respectively.

The loaded unit cost of conducting a PDMP review is compared to the non-loaded annual wage rate for practitioners. Based on the Bureau of Labor Statistics' (''BLS'') Occupational and Employment and Wages data, DEA and HHS estimate an average annual wage of $248,640 for physicians and $118,553 for MLPs. Unit costs of $3.59 and $1.88 represent 0.001 0.002 percent of those wages. Table 2 presents the details of the calculation.

TABLE 2—COSTS AND FEES AS PERCENT OF WAGES

	Mean hourly wage ($)	Time to review (hours)	Cost per patient ($)	Cost per 1.8 patients ($)	Mean annual wage ($)	Additional costs as percent of wage (%)
Physicians	119.54	0.0167	1.99	3.59	248,640	0.001
MLP	62.11	0.0167	1.04	1.88	118,553	0.002

The economic impact of additional time spent conducting PDMP reviews represents a small fraction (0.001 and 0.002 percent) of annual wages. DEA and HHS estimate this final rule will not have a significant economic impact on individual practitioners. The entities and small entities that employ the potentially affected practitioners are expected to generate enough revenue to pay their wages.

In addition to DEA-registered prescribers detailed above, the proposed rule would require pharmacists to verify the identification of any person receiving a prescription for Buprenorphine via an audio-only telemedicine visit. Identity verification is already a common practice and DEA believes that this would not impose any significant additional time or labor costs to the actions of pharmacist registrants. Therefore, DEA and HHS conclude this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The estimated annual impact of this rule is minimal. Thus, DEA and HHS have determined in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) that this action would not result in any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), the Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

Paperwork Reduction Act of 1995

This final rule is finalizing a new collection of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521. As required under PRA, DEA proposed the creation of a new collection of information in the NPRM, which OMB assigned the following control number: 1117–NEW. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. Copies of existing information collections approved by OMB may be obtained at *http://www.reginfo.gov/public/do/PRAMain.*

A. Collections of Information Associated With the Final Rule

1. Title: Recordkeeping Related to PDMP.

OMB Control Number: 1117–NEW.

Form Number: N/A.

DEA and HHS are amending their regulations by authorizing initiation of schedule III–V controlled medications approved for use in the treatment of OUD via telemedicine encounter, to include audio-only means. Prior to prescribing, the practitioner must review the PDMP data of the state in which the patient is located and annotate the date and time that such a review was conducted in the patient's EHR. If the PDMP is unavailable or inaccessible for any reason, the prescribing practitioner must annotate the date and time that such a review was attempted in the patient's EHR and provide a reason as to why a review was unable to be completed.

DEA and HHS estimate the following number of respondents and burden associated with this collection of information:

- *Number of respondents:* 37,425.
- *Frequency of response:* 1.804996.
- *Number of responses:* 67,552.
- *Burden per response:* 1 minute (0.01666667 hours).
- *Total annual hour burden:* 1,126 Hours.

If you need a copy of the information collection instrument(s) with

[77] Numbers shown are rounded for presentation and clarity. Calculations using the provided numbers may not yield exactly the same results due to this rounding

[78] Bureau of Labor Statistics, *Occupational and Employment and Wages, May 2023, 29–1229 Physicians, All Others, http://www.bls.gov/oes/current/oes291229.htm.*

[79] Bureau of Labor Statistics, *Occupational and Employment and Wages, May 2023, 29–1071 Physician Assistants, http://www.bls.gov/oes/current/oes291071.htm.* Bureau of Labor Statistics, *Occupational and Employment and Wages, May 2023, 29–1171 Nurse Practitioners, http://www.bls.gov/oes/current/oes291171.htm.* DEA calculated the weighted average hourly wage based on the distribution of physician assistants (36.2%) and nurse practitioners (63.8%).

instructions or additional information, please contact the Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

Any additional comments on this collection of information may be sent in writing to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to OMB Control Number 1117–NEW.

List of Subjects

21 CFR Part 1306

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

42 CFR Part 12

Administrative practice and procedure.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 13, 2025, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

Miriam E. Delphin-Rittmon,

Assistant Secretary for Mental Health and Substance Use, Department of Health and Human Services.

DRUG ENFORCEMENT ADMINISTRATION

For the reasons set out above, the Drug Enforcement Administration amends 21 CFR part 1306 as follows:

PART 1306—PRESCRIPTIONS

■ 1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 823, 829, 829a, 831, 871(b) unless otherwise noted.

§§ 1306.28 through 1306.49 [Added and Reserved]

■ 2. Add reserved §§ 1306.28 through 1306.49.

■ 3. Add an undesigned center heading and § 1306.51 to read as follows:

Special Circumstances for Telemedicine Prescribing

§ 1306.51 Telemedicine prescribing of schedule III–V medications for the treatment of Opioid Use Disorder.

(a) For purposes of this section, terms defined in part 1300 of this chapter, elsewhere in this chapter, or in 21 U.S.C. 802 and 829 shall have the definitions set forth therein.

(b) A practitioner may issue a prescription for schedule III–V controlled substances listed in 42 CFR 8.12(h)(2) as approved by the Food and Drug Administration (FDA) for use in the treatment of Opioid Use Disorder (OUD), defined as the use of an effective medication such as buprenorphine to treat OUD, pursuant to a communication between the prescribing practitioner and the patient using an interactive telecommunications system, including an audio-only telecommunications system, as described in 42 CFR 410.78(a)(3), if the following conditions are met:

(1) *Prescription drug monitoring program review.* The prescribing practitioner must be authorized to access the applicable prescription drug monitoring program (PDMP) data of the state in which the patient is located at the time of the telemedicine encounter. The prescribing practitioner shall review such data regarding any controlled substance prescriptions issued to the patient in the last year, or, if less than one year of data is available, in the entire available period. The prescribing practitioner shall ensure the date and time of such a review is annotated in the patient's electronic health record (EHR) or paper record. This review, or attempted review, must be conducted prior to issuing a prescription in a manner authorized under this section.

(2) *Time limit.* The practitioner may issue prescriptions to the patient pursuant to this section for a period not to exceed six calendar months beginning on the date the first prescription is issued. The practitioner may issue additional prescriptions to the patient for schedule III–V controlled substances approved by the FDA for use in the treatment of OUD either:

(i) After the prescribing practitioner has conducted at least one in-person medical evaluation of the patient, as defined in 21 U.S.C. 829(e)(2)(B); or

(ii) As otherwise authorized by 21 U.S.C. 829(e), including pursuant to any other form of telemedicine as defined in 21 U.S.C. 802(54) or pursuant to practices as determined by regulation issued pursuant to 21 U.S.C. 829(e)(3)(B).

(3) *PDMP inaccessible or unavailable.* If the PDMP data is inaccessible or unavailable for any reason, the prescribing practitioner shall annotate in the patient's EHR or paper record the date and time that an attempt to view the PDMP data was made and the reason the data could not be reviewed. A practitioner may prescribe a seven-day supply of medication and must perform another PDMP review before prescribing another seven-day supply. Each time the PDMP is reviewed or attempted to be reviewed, the date and time must be annotated in the patient's EHR. A seven-day supply prescribed pursuant to this paragraph (b)(3) counts toward the time limit described in paragraph (b)(2) of this section.

(4) *Pharmacy identification requirement.* The pharmacist shall verify the identity of the patient prior to filling a controlled substance prescription issued under the authority of this section. The pharmacist shall verify the identity of the patient with a state or Federal Government-issued photographic identification card or other form of identification. For the purposes of verifying the identity of the patient, the pharmacist may accept identification in the manner described herein from any qualifying ''ultimate user'' as defined in 21 U.S.C. 802(27) prior to filling the prescription.

(5) *Prescription only for treatment of OUD.* Controlled substance prescriptions issued pursuant to this section may only be issued for the treatment of OUD, and subject to the requirements of this section.

(6) *Authorization to prescribe.* The practitioner must be:

(i) Authorized under §§ 1301.11, 1301.12(a), and 1301.13(e)(1)(iv) of this chapter to prescribe the basic class of controlled substance specified on the prescription; or

(ii) Exempt from obtaining a registration to dispense controlled substances under 21 U.S.C. 822(d).

(7) *Consistent with general prescription requirements.* The issuance of the controlled substance prescription otherwise complies with the requirements set forth in this part.

Department of Health and Human Services

For the reasons set out above, the Department of Health and Human

Services amends 42 CFR part 12 as follows:

PART 12—TELEMEDICINE FLEXIBILITIES

■ 4. The authority citation for part 12 continues to read as follows:

Authority: 21 U.S.C. 802(54)(G).

■ 5. Add subpart B to read as follows:

Subpart B—Telemedicine Prescribing

§ 12.3 Telemedicine prescribing of schedule III–V medications for the treatment of Opioid Use Disorder.

(a) For purposes of this section, terms defined in 21 CFR part 1300, elsewhere in 21 CFR chapter II, or in 21 U.S.C. 802 and 829 shall have the definitions set forth therein.

(b) A practitioner may issue a prescription for schedule III–V controlled substances listed in 42 CFR 8.12(h)(2) as approved by the Food and Drug Administration (FDA) for use in the treatment of Opioid Use Disorder (OUD), defined as the use of an effective medication such as buprenorphine to treat OUD, pursuant to a communication between the prescribing practitioner and the patient using an interactive telecommunications system, including an audio-only telecommunications system, as described in 42 CFR 410.78(a)(3), if the following conditions are met:

(1) *Prescription drug monitoring program review.* The prescribing practitioner must be authorized to access the applicable prescription drug monitoring program (PDMP) data of the state in which the patient is located at the time of the telemedicine encounter. The prescribing practitioner shall review such data regarding any controlled medication prescriptions issued to the patient in the last year, or, if less than one year of data is available, in the entire available period. The prescribing practitioner shall ensure the date and time of such a review is annotated in the patient's electronic health record (EHR) or paper record. This review, or attempted review, must be conducted prior to issuing a prescription in a manner authorized under this section.

(2) *Time limit.* The practitioner may issue prescriptions to the patient pursuant to this section for a period not to exceed six calendar months beginning on the date the first prescription is issued. The practitioner may issue additional prescriptions to the patient for schedule III–V controlled substances approved by the FDA for use in the treatment of OUD either:

(i) As authorized by 21 U.S.C. 829(e), including pursuant to any other form of telemedicine as defined in 21 U.S.C. 802(54) or pursuant to practices as determined by regulation issued pursuant to 21 U.S.C. 829(e)(3)(B); or

(ii) After the prescribing practitioner has conducted at least one in-person medical evaluation of the patient, as defined in 21 U.S.C. 829(e)(2)(B).

(3) *PDMP inaccessible or unavailable.* If the PDMP data is inaccessible or unavailable for any reason, the prescribing practitioner shall annotate in the patient's EHR or paper record the date and time that an attempt to view the PDMP data was made and the reason the data could not be reviewed. A practitioner may prescribe a seven-day supply of medication and must perform another PDMP review before prescribing another seven-day supply. Each time the PDMP is reviewed or attempted to be reviewed, the date and time must be annotated in the patient's EHR. A seven-day supply prescribed pursuant to this paragraph (b)(3) counts toward the time limit described in paragraph (b)(2) of this section.

(4) *Pharmacy identification requirement.* The pharmacist shall verify the identity of the patient prior to filling a controlled medication prescription issued under the authority of this section. The pharmacist shall verify the identity of the patient with a state or Federal Government-issued photographic identification card or other form of identification. For the purposes of verifying the identity of the patient, the pharmacist may accept identification in the manner described herein from any qualifying ''ultimate user'' as defined in 21 U.S.C. 802(27) prior to filling the prescription.

(5) *Prescription only for treatment of OUD.* Controlled medication prescriptions issued pursuant to this section may only be issued for the treatment of OUD.

(6) *Authorization to prescribe.* The practitioner must be:

(i) Authorized under 21 CFR 1301.13(e)(1)(iv) to prescribe the basic class of controlled medication specified on the prescription; or

(ii) Exempt from obtaining a registration to dispense controlled substances under 21 U.S.C. 822(d).

(7) *Consistent with general prescription requirements.* The issuance of the controlled substance prescription otherwise complies with the requirements set forth in 21 CFR part 1306.

[FR Doc. 2025–01049 Filed 1–15–25; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

[Docket No. DEA–407VA]

RIN 1117–AB40; 1117–AB88

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 12

Continuity of Care via Telemedicine for Veterans Affairs Patients

AGENCY: Drug Enforcement Administration, Department of Justice; Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule authorizes Department of Veterans Affairs (VA) practitioners acting within the scope of their VA employment to prescribe controlled substances via telemedicine to a VA patient with whom they have not conducted an in-person medical evaluation. VA practitioners are permitted to prescribe controlled substances to VA patients if another VA practitioner has, at any time, previously conducted an in-person medical evaluation of the VA patient, subject to certain conditions.

DATES: This final rule is effective February 18, 2025.

FOR FURTHER INFORMATION CONTACT: Heather Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION: This rule is a final rule that finalizes portions of the proposed rule titled *Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient have Not Had a Prior In-Person Medical Evaluation,* specifically those proposed regulations affecting VA practitioners prescribing controlled substances.[1] Under this final rule, a VA practitioner who is acting within their scope of employment with the VA may prescribe controlled substances while engaged in the practice of telemedicine with a VA patient with whom they have not conducted an in-person medical evaluation, if another VA practitioner has previously conducted an in-person medical evaluation with the VA patient. Additionally, prior to issuing a prescription via telemedicine for a

[1] 88 FR 12875 (Mar. 1, 2023).

schedule II–V controlled substance, the prescribing practitioner must review both the patient's VA electronic health record (EHR) (to include the internal prescription database) and the prescription drug monitoring program (PDMP) data for the state in which the VA patient is located at the time of the telemedicine encounter (if the state has such a program) for prescriptions of controlled substances issued to the VA patient. Should either the VA EHR (to include the VA internal prescription database) or the state PDMP (if the state has a PDMP program) be unavailable or non-operational, the practitioner must limit the prescription to a 7-day supply and must later review both the VA patient's VA EHR (to include the internal prescription database) and the PDMP data for the state in which the patient is located at the time of the telemedicine encounter for prescriptions of controlled substances issued to the patient before continuing to prescribe controlled substances to the patient via telemedicine. If no PDMP program exists for the state in which the VA patient is located at the time of the telemedicine encounter the practitioner must review the VA EHR, to include the VA internal prescription database, prior to issuing a prescription for controlled substances for more than a 7-day supply. For reasons discussed more fully below, this final rule does not apply to contracted practitioners located outside a VA facility or clinic providing care via the community care network (CCN) or conducting disability compensation evaluations.

I. Legal Authority and Background

In March 2023, the Drug Enforcement Administration (DEA) published a notice of proposed rulemaking (NPRM) titled *Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation* (the General Telemedicine NPRM).[2] DEA is now partially finalizing the rule, specifically the sections of that proposed rule that pertain to Department of Veterans Affairs (VA) practitioners.[3] DEA has modified the proposed provisions to address concerns brought forth by commenters that are specific to VA practitioners prescribing controlled substances through the practice of telemedicine under the statutory authority of 21 U.S.C. 802(54)(G). This final rule pertains only to VA practitioners prescribing controlled substances to VA patients in circumstances where the prescribing VA practitioner has not conducted an in-person medical evaluation of the VA patient prior to the issuance of the prescription.[4]

This final rule falls under the last category of the ''practice of telemedicine'' as defined in the *Ryan Haight Online Pharmacy Consumer Protection Act of 2008* (Ryan Haight Act),[5] which authorizes the prescribing of controlled substances in specified circumstances where the prescribing practitioner has not conducted an in-person medical evaluation of the patient. The Administrator of the DEA (pursuant to delegation by the Attorney General)[6] and the Secretary of Health and Human Services (HHS) jointly issue this regulation and have both determined that this regulation is consistent with effective controls against diversion and with the public health and safety, as required under 21 U.S.C. 802(54)(G).

DEA implements and enforces the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 through 1399. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes. As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distributing, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822.[7] The CSA further authorizes the Attorney General (and the Administrator of DEA by delegation through 28 CFR part 0) to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA.[8]

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008

The Ryan Haight Act amended the CSA by, among other things, adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. A central feature of the Ryan Haight Act is the in-person medical evaluation requirement. The in-person medical evaluation requirement is set forth in 21 U.S.C. 829(e), which provides that ''[n]o controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be . . . dispensed by means of the internet without a valid prescription,''[9] and which defines ''valid prescription'' in part as ''a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by . . . a practitioner who has conducted at least 1 in-person medical evaluation of the patient . . .''[10]

However, pursuant to 21 U.S.C. 829(e)(3)(A), there is an exception to this in-person medical evaluation requirement where the practitioner is ''engaged in the practice of telemedicine.''[11] Pursuant to 21 U.S.C. 802(54), the *practice of telemedicine* means ''the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist)[12] who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42,'' and which also falls within

[2] 88 FR 12875 (Mar. 1, 2023).

[3] A ''VA practitioner'' refers to an individual authorized to prescribe, dispense, or administer controlled substances within the Department of Veterans Affairs, consistent with the definition of ''practitioner'' in 21 U.S.C. 802(21). This includes any licensed individual permitted by the VA to perform professional medical duties within the scope of VA healthcare practices.

[4] Pursuant to 21 CFR 1300.04(f), the term ''in-person-medical evaluation'' means a medical evaluation that is conducted with the patient in the physical presence of the practitioner.

[5] Public Law 110–425, 122 Stat. 4820 (2008).

[6] The Attorney General has delegated this authority to the Administrator of DEA under 28 CFR 0.100(b).

[7] The term ''dispense'' in the context of this rulemaking means to deliver a controlled substance to an ultimate user, which includes the prescribing of a controlled substance. 21 U.S.C. 802(10).

[8] 21 U.S.C. 871(b), 958(f).

[9] 21 U.S.C. 829(e)(1).

[10] *Id.* 829(e)(2)(A)(i). Under the Ryan Haight Act, the requirement of an in-person medical evaluation does not apply to a ''covering practitioner,'' *id.* 829(e)(2)(A)(ii), as defined by 829(e)(2)(C). A prescribing practitioner meeting this definition of a covering practitioner need not conduct an in-person medical evaluation as a prerequisite to prescribing a controlled substance to a given patient, provided that the practitioner for whom the practitioner is covering has provided an in-person medical evaluation of that patient and provided further that this covering arrangement is taking place on only a temporary basis. In addition, the covering practitioner—as with all DEA-registered practitioners who prescribe controlled substances—remains subject to the requirement that such prescriptions may be issued only for a legitimate medical purpose in the usual course of professional practice. *Id.*

[11] *Id.* 829(e)(3)(A).

[12] This definition of telemedicine does not exclude a pharmacist functioning as a mid-level practitioner authorized to prescribe controlled substances.

one of seven distinct categories that Congress determined were appropriate to allow for the prescribing of controlled substances via telemedicine despite the practitioner never having conducted an in-person medical evaluation of the patient.[13]

As a general matter, those seven distinct categories include telemedicine encounters where: (1) patients are physically located at DEA-registered hospital or clinic, and the remote prescribing practitioner is DEA-registered in the state in which the patient is located at the time of the telemedicine encounter; (2) patients are being treated by a practitioner, and in the physical presence of a DEA-registered practitioner in the state in which the patient is located; (3) the practitioner is an employee or contractor of the Indian Health Service, acting within the scope of the practitioner's employment, who has been designated an *Internet Eligible Controlled Substances Provider* by HHS; (4) they take place during a public health emergency declared by HHS; (5) the practitioner has obtained a *Special Registration* with DEA; [14] (6) there is a medical emergency that prevents the patient from being in the physical presence of an employee or contractor of the Veterans Health Administration (VHA) and one of its hospitals or clinics, and immediate intervention by the practitioner using controlled substances is required to prevent injury or death; and (7) any other circumstances that DEA and HHS have jointly determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.[15]

The seven distinct categories provided under the statutory definition of the practice of telemedicine involve circumstances in which the prescribing practitioner might be unable to satisfy the Ryan Haight Act's in-person medical evaluation requirement, yet nonetheless may be able to prescribe a controlled substance for a legitimate medical purpose in the usual course of professional practice. In these circumstances, provided certain safeguards are in place to ensure that the practitioner who is engaged in the practice of telemedicine is able to conduct a bona fide medical evaluation of the patient at the remote location, and is otherwise acting in the usual course of professional practice, the Ryan Haight Act contemplates that the practitioner will be permitted to prescribe controlled substances by means of the internet despite not having conducted an in-person medical evaluation.

As noted above, when a practitioner engages in the practice of telemedicine, the practitioner must use ''a telecommunications system referred to in section 1395m(m) of Title 42.'' The Centers for Medicare and Medicaid Services has defined telehealth for the Medicare program, in part, as ''multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner.'' [16]

COVID–19 Public Health Emergency

In response to the COVID–19 public health emergency (PHE), as declared by the Secretary of HHS on January 31, 2020, pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247), DEA granted temporary exceptions (listed below) to the Ryan Haight Act. To prevent lapses in care, these exceptions authorized the prescribing of controlled substances via telemedicine encounters even when the prescribing practitioner had not conducted an in-person medical evaluation of the patient prior to prescribing. These telemedicine flexibilities authorized DEA-registered practitioners to prescribe schedule II–V controlled substances via audio-video telemedicine encounters, including schedule III–V narcotic controlled substances approved by FDA for maintenance and withdrawal management treatment of opioid use disorder via audio-only telemedicine encounters, provided that such controlled substance prescriptions otherwise comply with the requirements outlined in DEA guidance documents, DEA regulations, and applicable Federal and State law. DEA granted those temporary exceptions to the Ryan Haight Act and DEA's implementing regulations via two letters published in March 2020:

- A March 25, 2020 ''Dear Registrant'' letter signed by William T. McDermott, DEA's then-Assistant Administrator, Diversion Control Division; [17] and
- A March 31, 2020 ''Dear Registrant'' letter signed by Thomas W. Prevoznik, DEA's then-Deputy Assistant Administrator, Diversion Control Division.[18]

Prior NPRMs and Temporary Rules; Telemedicine Listening Sessions

On March 1, 2023, DEA, in concert with HHS and pursuant to 21 U.S.C. 802(54)(G), published two NPRMs in the **Federal Register**, *Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation* (the General Telemedicine NPRM) [19] and *Expansion of Induction of Buprenorphine via Telemedicine Encounter* (the Buprenorphine NPRM).[20] These NPRMs proposed to expand patient access to prescriptions for controlled substances via telemedicine encounters relative to the pre-COVID–19 PHE landscape. The intent of the two proposed rules was to make permanent some of the telemedicine flexibilities established during the COVID–19 PHE in order to facilitate patient access to controlled substance medications via telemedicine when consistent with public health and safety, while maintaining effective controls against diversion.

The General Telemedicine NPRM proposed specific requirements for telemedicine prescribing of controlled substances by both VA and non-VA practitioners, addressing both the types of drugs permitted and the procedural safeguards necessary for prescribing via telemedicine without an in-person medical evaluation. For practitioners, the General Telemedicine NPRM proposed permitting prescribing schedule III–V non-narcotic controlled substances via telemedicine for up to a 30-day supply prior to conducting an in-person medical evaluation. However, for schedule II substances or narcotics, or any controlled substance prescription exceeding a 30-day supply, the General Telemedicine NPRM proposed that a ''qualifying telemedicine referral'' is necessary. As proposed in the General Telemedicine NPRM, the qualifying

[13] 21 U.S.C. 802(54).

[14] Congress enacted legislation in addition to the Ryan Haight Act which required DEA to ''promulgate final regulations specifying . . . the limited circumstances in which a special registration for telemedicine may be issued.'' 21 U.S.C. 831(h)(2). In particular, the SUPPORT for Patients and Communities Act, signed into law on October 24, 2018, mandated that, in consultation with the Secretary of Health and Human Services, the Attorney General shall promulgate final regulations specifying—(A) the limited circumstances in which a special registration for telemedicine may be issued; and (B) the procedure for obtaining a special registration for telemedicine.

[15] 21 U.S.C. 802(54).

[16] 42 CFR 410.78(a)(3).

[17] William T. McDermott, DEA Dear Registrant letter, Drug Enforcement Administration (March 25, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-018)(DEA067)%20DEA%20state%20reciprocity%20(final)(Signed).pdf.*

[18] Thomas W. Prevoznik, DEA Dear Registrant letter, Drug Enforcement Administration (March 31, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf.*

[19] 88 FR 12875 (Mar. 1, 2023).

[20] 88 FR 12890 (Mar. 1, 2023).

referral would involve a physical evaluation conducted by another DEA-registered practitioner, who would then formally refer the patient to the prescribing practitioner. Additionally, practitioners would be required to conduct a review of the PDMP for the state where the patient is located at the time of the telemedicine encounter to monitor recent controlled substance prescriptions, as a safeguard against potential misuse. The General Telemedicine NPRM proposed that in instances where the PDMP is temporarily unavailable, the prescribing practitioner would be authorized to prescribe up to a 7-day supply until the prescribing practitioner is able to review the PDMP.

The General Telemedicine NPRM also proposed to mandate detailed recordkeeping, whereby the telemedicine practitioner would be required to thoroughly document each controlled substance prescribed via telemedicine, including the date, patient details, medication specifics, and locations of both the practitioner and the patient during the encounter. Moreover, each prescription issued via a telemedicine encounter would be required to bear a notation on its face indicating it was issued via a telemedicine encounter. These extra safeguards were intended to provide an additional layer of transparency for DEA audits and investigations.

The General Telemedicine NPRM proposed certain provisions for VA practitioners prescribing controlled substances via telemedicine. Specifically, VA practitioners prescribing controlled substances during telemedicine encounters with VA patients utilizing the VA healthcare system would be exempt from the 30-day supply limitation, allowing VA practitioners to prescribe controlled substances, including schedule II drugs, without a qualifying referral. This proposed exemption recognized the VA's integrated healthcare system, and the reliable, centralized patient data systems bridging all VA facilities, which ensures a continuity of patient care provided within its healthcare system. To mitigate risks related to diversion or misuse, the General Telemedicine NPRM proposed to require VA practitioners to consult not only the PDMP for the state the VA patient is located during the telemedicine encounter, but also the VA's internal prescription database, ensuring a comprehensive review of the VA patient's controlled substance prescription history.

These distinctions underscore DEA's intention in the General Telemedicine NPRM to balance access to care via telemedicine with the necessary safeguards against diversion or misuse of controlled substances. Specifically, the General Telemedicine NPRM emphasized the continuity and security of care for VA patients receiving healthcare services through the VA system. By structuring the requirements differently for VA and non-VA practitioners, the General Telemedicine NPRM sought to leverage the VA's established telemedicine infrastructure and patient monitoring capabilities to enhance safety without imposing excessive restrictions on the VA's healthcare delivery model. Unlike other healthcare providers, VA operates under Federal law and is a nationally integrated, closed healthcare system with rigorous internal policies and controls that ensure patient safety, continuity of care, and thorough monitoring of prescriptions. VA practitioners have access to shared information systems that enable continuity of care and veterans' data sharing across VA facilities. This includes access to VA's internal prescription database, allowing VA practitioners to monitor and manage controlled substance prescriptions. This infrastructure ensures the safety of telemedicine prescribing without necessitating an additional registration layer, as VA practitioners operate within a highly regulated and cohesive system tailored specifically to veterans' needs.

The comment period for the General Telemedicine NPRM and Buprenorphine NPRM closed on March 31, 2023. The General Telemedicine NPRM generated a total of 35,454 comments.

On May 10, 2023, DEA jointly with HHS (with the Substance Abuse and Mental Health Services Administration (SAMHSA) acting on behalf of HHS) issued a Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications (First Temporary Rule) pursuant to 21 U.S.C. 802(54)(G), which extended through November 11, 2023, the full set of telemedicine flexibilities regarding the prescribing of controlled substances, as had been in place under the COVID–19 PHE.[21] The First Temporary Rule also provided a one-year grace period, through November 11, 2024, to any practitioner-patient telemedicine relationships that had been or would be established on or before November 11, 2023.

On September 12 and 13, 2023, DEA hosted live, in-person Telemedicine Listening Sessions to receive additional public input concerning the practice of telemedicine with regard to prescribing controlled substances, and potential safeguards that could effectively prevent and detect diversion of controlled substances prescribed via telemedicine. DEA invited the public to express their views concerning the advisability of permitting prescribing of certain controlled substances via telemedicine without any in-person medical evaluation at all, the availability and types of data that would be useful in detecting diversion of controlled substances via telemedicine that are either already reported or could be reported, and specific additional safeguards that could be placed around the prescribing of schedule II-controlled substances via telemedicine. Approximately 58 stakeholders, practitioners, pharmacists, trade associations, state agencies, and other public interest groups presented at the listening sessions.

On October 10, 2023, in light of the need to further evaluate the best course of action given the comments received in response to the General Telemedicine and Buprenorphine NPRMs and the presentations at the Telemedicine Listening Sessions, DEA, jointly with HHS, issued the Second Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications (Second Temporary Rule), also pursuant to 21 U.S.C. 802(54)(G), thereby extending through December 31, 2024, the full set of telemedicine flexibilities regarding prescription of controlled substances as were in place during the COVID–19 PHE.[22] The extension authorized all DEA-registered practitioners to prescribe schedule II–V controlled substances via telemedicine through December 31, 2024, whether or not the patient and DEA-registered practitioner had established a telemedicine relationship on or before November 11, 2023. In other words, the grace period provided in the First Temporary Rule was effectively subsumed by the Second Temporary Rule, which continued the extension of the current flexibilities for all practitioner-patient relationships—not just those established on or before November 11, 2023—until the end of 2024. The purpose of the Second Temporary Rule, like the one before it, was to ensure a smooth transition for patients and DEA-registered

[21] Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications, 88 FR 30037 (May 10, 2023).

[22] 88 FR 30037 (May 10, 2023).

practitioners that have come to rely on the availability of telemedicine for controlled substance prescriptions, as well as to allow adequate time for providers to come into compliance with any new standards or safeguards that are promulgated as part of a final set of telemedicine regulations.

On November 19, 2024, DEA and HHS issued a Third Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications (Third Temporary Rule) to again extend the temporary exceptions originally authorized under the COVID–19 PHE, through December 31, 2025. This extension allows telemedicine flexibilities for all practitioners, extending patient access to care until broader telemedicine rulemaking is complete. Additionally, these temporary exemptions, now extended through December 31, 2025, ensure that practitioners can continue to prescribe controlled substances without an in-person medical evaluation, maintaining continuity of care while DEA works to establish tailored regulations for both VA and non-VA practitioners. DEA's NPRM titled *Special Registrations for Telemedicine and Limited State Telemedicine Registrations* (RIN 1117–AB40) (Special Registrations NPRM), published elsewhere in this issue of the **Federal Register**, focuses on non-VA practitioners and allows for further opportunity for public comment and development of a framework suited to the diverse operational environments outside the VA's integrated healthcare system.

DEA is specifically tailoring this final rule to practitioners within the VA healthcare system to accommodate VA's unique healthcare infrastructure while safeguarding effective prescribing of controlled substances via telemedicine. This final rule is distinct from the broader Special Registrations NPRM to acknowledge the VA's unique structure and patient population, particularly VA patients in rural or underserved areas who benefit significantly from telemedicine services. This final rule reflects the VA's robust internal controls and centralized framework, which ensure continuity and quality of care across VA facilities and practitioners.

After careful consideration of the public comments and discussions with the VA, DEA and HHS have decided to promulgate this final rule only with respect to VA practitioners. Specifically, DEA and HHS have decided to extend telemedicine prescribing authority to VA practitioners to accommodate VA's unique healthcare infrastructure while safeguarding effective prescribing of controlled substances via telemedicine. Unlike non-VA practitioners, who operate in a variety of healthcare systems with diverse, non-integrated records management structures, VA practitioners are governed by a unified, closed-loop healthcare system, which offers comprehensive patient oversight, centralized health information and a dedicated internal prescription database, facilitating safe and effective telemedicine practices specific to VA patients and veterans' healthcare needs. Thus, DEA and HHS believe that promulgating this final rule would maintain critical patient access to necessary medications without creating an unreasonable risk of diversion. Although DEA and HHS are not extending this authority to non-VA practitioners at this time, DEA is committed to working with HHS to periodically evaluate whether extending telemedicine prescribing authority to non-VA practitioners under 21 U.S.C. 802(54)(G) would be appropriate in the future.

Additionally, DEA notes that the Special Registrations NPRM, proposes to create a special registration for telemedicine which would authorize telemedicine prescribing authority for non-VA practitioners. DEA encourages the public to review and comment on that proposed rule.

II. Need for Rulemaking Specific to the Department of Veteran Affairs

As a result of discussions held between DEA, HHS, and the VA, as well as the comments received in response to the General Telemedicine NPRM, DEA and HHS have determined that the best course of action to ensure continued access to care for patients receiving care from VA healthcare, while maintaining sufficient safeguards to detect and protect against the diversion of controlled substances, is to promulgate regulatory changes that enable a VA practitioner to prescribe controlled substances, via telemedicine, to a VA patient who has previously had an in-person medical evaluation with a different VA practitioner. The proposed expansion of authorized internet prescribing for VA practitioners responds directly to the evolving landscape of the healthcare needs of VA patients, advancements in telemedicine, and DEA's capacity to implement safeguards that protect against potential misuse. The need for comprehensive, accessible medical care for VA patients has been a consistent priority; however, recent factors underscore the necessity for regulatory updates. Notably, the COVID–19 pandemic accelerated the adoption and acceptance of telemedicine, demonstrating its effectiveness in maintaining continuity of care without in-person interactions, particularly for vulnerable populations as discussed below.[23] This shift has underscored the need for accessible controlled-substance prescribing via telemedicine, enabling VA practitioners to respond swiftly and safely to VA patients' healthcare needs. VA now has improved tools and data systems, including enhanced monitoring of telemedicine practices and centralized systems like the VA's internal prescription monitoring database, allowing for more effective oversight than what was available in the past.[24] These advances support a framework that meets current clinical and oversight needs.

Further, alternative telemedicine provisions, such as those outlined in 21 U.S.C. 802(54)(A)–(B), (F), are insufficient to address the unique policy goals of this rulemaking. For instance, the requirement for an in-person medical evaluation to establish a prescribing relationship fails to accommodate VA patients with limited mobility, access issues, or chronic health conditions that make travel difficult. While theoretically possible for some VA patients to attend an in-person medical evaluation with every provider, practical barriers mean that an in-person medical evaluation is often not feasible or results in delayed access to needed medications. VA's centralized healthcare model offers a unique opportunity to manage these challenges responsibly, with systems that allow for comprehensive patient oversight across facilities, secure data sharing, and a controlled, consistent telemedicine infrastructure. The rule thus leverages the VA's specific capabilities to meet VA patients' needs without over-relying on a one-size-fits-all approach to telemedicine, creating tailored, effective access to care for VA patients while maintaining appropriate oversight that ensures the continued protection of patient health through the mitigation of diversion and prevention of overprescribing.

This approach is based on several considerations:

A. Specialized Needs of Veterans

Upon separation from the military, many veterans face physical, mental,

[23] Aday, L.A. (2002). At Risk in America: The Health and Health Care Needs of Vulnerable Populations in the United States, 2 (13).

[24] Frequently Asked Questions—VA EHR Modernization. *https://digital.va.gov/ehr-modernization/frequently-asked-question/#:~:text=VA%27s%20Electronic%20Health%20Record%20Modernization%20(EHRM)%20program%20is%20managing%20the,)%2C%20to%20the%20Federal%20EHR.*

and social issues that categorize them as a vulnerable population. Due to the nature of their military service, the veteran population is comprised of individuals who may be diagnosed with serious medical conditions which require specialized care.[25] Some of these medical conditions include, but are not limited to, traumatic brain injury, Post-Traumatic Stress Disorder (PTSD), loss of limb(s), and medical conditions related to exposure to hazardous environments and materials (*e.g.,* medical conditions associated with the exposure to the herbicide ''Agent Orange'' during the Vietnam War).[26] To ensure that VA is able to accomplish its mission to provide comprehensive medical care to all veterans receiving care through its healthcare system, this final rule provides that VA practitioners are authorized to prescribe controlled substances via telemedicine, so long as the VA patient has an established medical relationship with any VA practitioner who has conducted at least one in-person medical evaluation of the patient, at any time, among other requirements. It is important to note, that within the scope of this final rule, ''VA patient'' refers to a veteran as defined in 38 CFR 3.1 as ''a person who served in the active military, naval, or space service and who was discharged or released under conditions other than dishonorable'' and is receiving medical care via the VA healthcare system. It also includes persons otherwise eligible under title 38, United States Code, or any other law authorizing the Secretary of Veterans Affairs to furnish health care.

1. *Vulnerable Population.* The veteran population is comprised of individuals from a cross-section of the American people, including the elderly, disabled, chronically ill, racial and ethnic minorities, individuals who identify as lesbian, gay, bisexual, transgender, or queer (LGBTQ), and those who are economically disadvantaged.[27] These vulnerable groups face an increased risk of health-related problems, and due to a lack of access to health care, their mortality rates are higher, and their quality of life may be lower than that of the American population at-large.[28] [29]

2. *Geographic and Physical Barriers to Care.* Approximately 2.7 million veterans receive VA healthcare and live in rural or underserved areas where access to healthcare facilities is limited, particularly for the complex care needed by many veterans.[30] [31] Of these veterans, 54 percent are aged 65 or older, and 44 percent earn less than $35,000 per year.[32] Requiring frequent in-person medical evaluation for veterans who have already established a relationship with the VA healthcare system would create a significant barrier to care, potentially leading to undiagnosed or untreated conditions and worsening health outcomes.

Additionally, for veterans with significant mobility issues or chronic pain, traveling to in-person appointments can be daunting and may discourage them from seeking necessary medical attention.[33] One of the top five cited reasons that veterans cancel medical appointments is transportation issues.[34] Authorizing VA practitioners to prescribe controlled substance medications via telemedicine would facilitate access to medications that are crucial for managing patients' overall health and wellbeing.

3. *Mental Health Considerations.* Veterans have a higher risk for mental health disorders, traumatic brain injuries, and suicide when compared to their civilian counterparts.[35] One in three veterans experience some type of mental health issue, including but not limited to PTSD, depression, or anxiety.[36] In the 2023 VA Annual Benefits Report, 2,564,653 veterans were receiving disability compensation benefits for a mental health condition. Of these, 1.4 million were for PTSD and an additional 322,158 veterans were receiving benefits for major depressive disorder.[37] The stigma associated with seeking mental health help can deter veterans from attending in-person appointments, making telehealth an essential alternative path to receiving care.[38] By allowing VA practitioners to prescribe controlled substances without requiring more than one in-person medical evaluation with a VA practitioner, this final rule will support the mental health needs of the veteran community, making it easier for them to access treatments and controlled substance medications that can significantly improve their quality of life.

B. Unique Structure of VA Health Care

The VHA is one of the largest Federal health care systems in the United States, providing care at more than 1,300 facilities, including more than 150 VA Medical Centers and 1,100 VHA outpatient clinics to over 9 million veterans in the integrated VA health care program.[39] [40] As a Federal healthcare system, the VA establishes, maintains, and ensures compliance with standardized internal policies and procedures, including those to prevent and detect diversion of controlled substances, and engages in quality improvement and inspection activities.[41]

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[25] Moore MJ, Shawler E, Jordan CH, et al. Veteran and Military Mental Health Issues. Updated 2023 Aug 17. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2024 Jan-. Available from: *https://www.ncbi.nlm.nih.gov/books/NBK572092/.*

[26] The Department of Veterans Affairs, Annual Benefits Report 2023 (2023), *https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf.*

[27] Ernstmeyer K, Christman E. (2022). Nursing: Mental Health and Community Concepts, Vulnerable Populations. *https://www.ncbi.nlm.nih.gov/books/NBK590046/#.*

[28] Aday, L.A. (2002). At Risk in America: The Health and Health Care Needs of Vulnerable Populations in the United States, 2 (13).

[29] Waisel, D.B. (2013). Vulnerable populations in healthcare, Current Opinion in Anesthesiology 26(2), 186–192.

[30] The Department of Veterans Affairs, Office of Rural Health Annual Report (2023), *https://www.va.gov/HEALTH/docs/annual-reports/ORH2842_2023_Thrive_051524_508c.pdf.*

[31] The Department of Veterans Affairs, Care of Complex Chronic Conditions (2024), *https://www.hsrd.research.va.gov/research/portfolio_description.cfm?Sulu=9.*

[32] The Department of Veterans Affairs, Office of Rural Health Annual Report (2023), *https://www.va.gov/HEALTH/docs/annual-reports/ORH2842_2023_Thrive_051524_508c.pdf.*

[33] Musich, S., et al. (2018). The impact of mobility limitations on health outcomes among older adults. Geriatric Nursing, 39(2), 162–169. *https://www.sciencedirect.com/science/article/pii/S0197457217302057?via%3Dihub.*

[34] VA's Veterans Engineering Research Council. *https://www.research.va.gov/.*

[35] Ernstmeyer K, Christman E. (2022). Nursing: Mental Health and Community Concepts, Vulnerable Populations. *https://www.ncbi.nlm.nih.gov/books/NBK590046/#.*

[36] Id.

[37] The Department of Veterans Affairs, Annual Benefits Report 2023 (2023), 103, *https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf.*

[38] McGuffin, J.J., Riggs, S.A., Raiche, E.M., & Romero, D.H. (2021). Military and Veteran help-seeking behaviors: Role of mental health stigma and leadership. Military Psychology, 33(5), 332–340. *https://doi.org/10.1080/08995605.2021.1962181.*

[39] It is important to note that the VA is comprised of three entities that serve unique missions: (1) the Veteran Benefits Administration, which provides benefits and services, such as disability compensation and needs-based pension benefits; (2) the VHA, which provides healthcare to veterans; and (3) the National Cemetery Administration, which provides veterans with burial services and memorials. The scope of this final rule focuses solely on the VHA, as it is responsible for the administration of healthcare to the veteran population.

[40] About VHA—Veterans Health Administration (*va.gov*). As a general matter, integrated healthcare refers to ''coordinated care that addresses all aspects of patient health, focuses on a patient's individual needs, and involves a multidisciplinary team of health care professionals.'' *https://www.va.gov/health/aboutvha.asp#:~:text=The%20Veterans%20Health%20Administration%20(VHA,Veterans%20enrolled%20in%20the%20VA.*

[41] Readiness for the Patient-Centered Medical Home: Structural Capabilities of Massachusetts Primary Care Practices—PMC (*nih.gov*) *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2629002/*

1. *VA Oversight and Control.* The VA's continued commitment to patient safety is evidenced by its ongoing efforts to combat prescription drug misuse through education, monitoring, and intervention programs. These rigorous internal controls include regular audits, prescription monitoring programs, and adherence to established clinical guidelines, ensuring that controlled substances are prescribed ethically and as appropriate for the patient.[42] Additionally, the VA continues to collaborate closely with DEA and other regulatory bodies to ensure compliance with applicable Federal and state regulations related to prescribing controlled substances, including to ensure that VA practitioners acting in the usual course of their professional practice issue controlled substance prescriptions for legitimate medical purposes. This continued partnership enhances the VA's ability to maintain high standards of care while ensuring the safety of veterans receiving controlled substances.

2. *Movement Towards an Integrated EHR.* As a Federal health care system, VA delivers standardized medical care through multidisciplinary team(s) of health care professionals who share information regarding veteran patients through data systems that cross VA facilities.[43] VA's national, integrated health care system allows VA practitioners to access information on a VA patient's encounter history, prior prescriptions, and any relevant treatment plans. VA is transitioning from its current medical records system to a more robust Federal EHR which will share information among the VA, the Department of Defense, the U.S. Coast Guard, the National Oceanic and Atmospheric Administration, and participating community care providers.[44]

III. Summary of the General Telemedicine NPRM's Veteran Affairs-Specific Provisions and Changes in This Final Rule

As noted above, safeguards within the regulations proposed in the General Telemedicine NPRM generally would have limited initial prescriptions of non-narcotic schedules III–V controlled substances to no more than a 30-day supply in instances where the patient had never had an in-person medical evaluation with the prescribing practitioner, and additional prescriptions beyond the initial 30-day prescription would have required that the patient undergo an in-person medical evaluation. The proposed General Telemedicine NPRM also would have generally prohibited the telemedicine prescribing of schedule II and narcotic controlled substances in schedules III through V, unless there had been a qualifying referral.

As also noted above, in the General Telemedicine NPRM, the provisions governing VA practitioners largely took the form of exemptions from these safeguards applicable to non-VA practitioners. Specifically, the General Telemedicine NPRM proposed that, subject to safeguards discussed below, a VA practitioner would be authorized to issue a prescription for controlled substances via telemedicine to a VA patient without a qualifying referral if that VA patient had previously been evaluated in-person by a VA practitioner. It additionally proposed that the VA practitioner would be authorized to prescribe a supply in addition to the 30-day supply if the in-person medical evaluation had been conducted by a VA practitioner. The NPRM proposed this would include controlled substances in schedules II–V.

In addition to these proposed exemptions from some of the safeguards in the General Telemedicine NPRM, VA practitioners would also be subject to certain additional safeguards relative to other telemedicine practitioners. Specifically, before prescribing controlled substances pursuant to the regulations proposed in the General Telemedicine NPRM, VA practitioners would be required to review not only the PDMP of the state in which the patient was located at the time of the telemedicine visit, but also the VA's internal prescription database when prescribing controlled substances via telemedicine.

After reviewing comments received in response to the General Telemedicine NPRM, as will be discussed in more detail below, DEA and HHS are adopting this final rule to treat VA practitioners as was proposed in the General Telemedicine NPRM. However, while the General Telemedicine NPRM proposed a generally applicable telemedicine scheme, and then created exemptions or additional requirements for VA practitioners relative to that generally applicable scheme, DEA and HHS are now finalizing only the proposed treatment of VA practitioners from the General Telemedicine NPRM, without finalizing the broader scheme. Most notably, when VA patients have had an in-person medical evaluation with a VA practitioner previously, this final rule authorizes a different VA practitioner, via the practice of telemedicine, to issue prescriptions for that patient for schedule II–V controlled substances, without being limited to a 30-day supply.

In this final rule, DEA and HHS are also finalizing, among other things, the General Telemedicine NPRM's proposed requirement for a VA practitioner to review the VA's internal prescription database and the PDMP data of the state in which the patient is located during the telemedicine encounter prior to issuing a prescription via telemedicine. It also finalizes the proposed requirement that a prescription for controlled substances be limited to a 7-day supply in situations when either the VA's internal prescription database or the PDMP data of the state in which the patient is located during the telemedicine encounter is unavailable or non-operational. It also requires that under circumstances where the VA patient is located in a state which does not have a PDMP program, the VA practitioner review the VA EHR prior to issuing a prescription for controlled substances in excess of a 7-day supply. DEA and HHS believe these changes will provide VA practitioners with necessary and appropriate flexibilities to provide care for our Nation's veterans, while still ensuring effective controls are in place to safeguard against diversion or misuse of controlled substances.

IV. Discussion of Veteran-Related Public Comments Received in Response to the March 1, 2023, General Telemedicine NPRM

DEA received a total of 233 veteran-related comments in response to the General Telemedicine NPRM.[45] Of those comments, 87 focused on non-VA healthcare or unrelated issues and therefore are outside the scope of this final rule, as this rulemaking focuses solely on the practice of telemedicine by VA practitioners within the VA

Id.; and Concerns of Primary Care Clinicians Practicing in an Integrated Health System: a Qualitative Study—PMC (*nih.gov*). *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7661604/.*

[42] VA healthcare regulations establish a range of protections and safeguards for veterans and VA patients. See 38 U.S.C. 1701 et seq; 38 CFR parts 17 through 80.

[43] Ten Key Principles for Successful Health Systems Integration—PMC (*nih.gov*). *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3004930/.*

[44] Frequently Asked Questions—VA EHR Modernization. *https://digital.va.gov/ehr-modernization/frequently-asked-question/#:~:text=VA%27s%20Electronic%20Health%20Record%20Modernization%20(EHRM)%20program%20is%20managing%20the,)%2C%20to%20the%20Federal%20EHR.*

[45] 88 FR 12875 (Mar. 1, 2023).

healthcare system. As such, those comments will not be discussed further within this rulemaking. DEA and HHS thank all commenters for their input during the telemedicine rulemaking process.

In this final rule, DEA and HHS are only finalizing the proposals specific to the VA from the General Telemedicine NPRM. Therefore, in this final rule DEA will not be responding to comments deemed outside the scope of VA telemedicine. Moreover, the Special Registrations NPRM, focuses on non-VA practitioners and allows for further opportunity for public comment and additional development of a framework suited to the diverse operational environments outside the VA's integrated healthcare system. DEA has grouped the comments into several distinct categories below in order to effectively summarize and respond to the VA-related comments received in response to the General Telemedicine NPRM. Of the comments received, some comments pertained to only one issue while others encompassed several issues.

In-Person Medical Evaluation Requirement

Comment: DEA received the largest number of comments with concerns pertaining to the General Telemedicine NPRM's proposed requirement that, as a general matter, would require an in-person medical evaluation as a predicate to receiving a telemedicine prescription for either (1) a schedule II substance or a narcotic controlled substance in schedules III–V or (2) more than a 30-day supply of a non-narcotic controlled substance in schedules III–V. Specifically, commenters stated that requiring an in-person medical evaluation to receive such prescriptions would create an undue barrier for veterans seeking care within the VA healthcare system.

Response: DEA and HHS recognize the hardships an in-person medical evaluation requirement could cause to receive such prescriptions and why this requirement could be burdensome to VA patients.[46] Consequently, this final rule expands the telemedicine prescribing authority of VA practitioners so long as another VA practitioner has conducted an in-person medical evaluation with the VA patient. This expansion eliminates the need for a VA patient to undergo an in-person medical evaluation with the prescribing practitioner prior to receiving telemedicine services. For the reasons discussed above, DEA and HHS believe that this expansion reduces the burdens placed on VA patients receiving medical care from the VA and addresses these commenters' concerns, while at the same time providing sufficient safeguards against diversion.

Access to Care

Comment: DEA received 45 comments raising concerns about the challenges VA patients face, including disabilities that cause mobility issues and residency in rural areas, emphasizing that telemedicine is often their only viable option for accessing healthcare (particularly specialized care). Commenters asserted that the General Telemedicine NPRM posed practical barriers to care due to the burdens associated with conducting an in-person medical evaluation, such as long travel times and lack of available providers.

Response: DEA and HHS acknowledge that in-person medical evaluation requirements may be burdensome for patients with limited ability, either geographically or physically, to receive an in-person medical evaluation in order to be prescribed controlled substances either in the first instance or for additional duration. As noted above, this final rule authorizes indefinite prescribing via telemedicine so long as the VA patient has previously had at least one prior in-person medical evaluation with another VA practitioner. DEA and HHS believe that this will reduce the overall burden placed on VA patients living in rural areas and those with mobility issues, while still providing sufficient safeguards against diversion.

Negative Impact on VA Patients and VA Healthcare

Comment: DEA received 39 comments specifically highlighting potential adverse effects the General Telemedicine NPRM's in-person medical evaluation requirements would have on VA patients, including veterans, who rely on VA telemedicine services. Commenters stated that the VA's national telemedicine system, which is considered efficient and widely utilized, could be impacted by an in-person medical evaluation requirement. Many of these commenters urged for an exemption for VA practitioners due to the unique needs of the VA's patient population, which includes veterans.

Response: DEA and HHS agree that VA's use of telemedicine services has been effective and has taken under advisement the potential impact that any restrictions would impose on the VA healthcare system. Accordingly, this final rule authorizes indefinite prescribing via telemedicine so long as the VA patient has previously had at least one prior in-person medical evaluation with another VA practitioner, as noted above.

Mental Health Care

Comment: DEA received 28 comments from mental health professionals or patients within the VA healthcare system who emphasized the importance of telemedicine in providing continuous care for VA patients with mental health conditions. These commentors raised concerns that limiting telemedicine would have severe consequences for VA patient populations, including veterans.

Response: DEA and HHS recognize the unique challenges that mental health patients and providers face, particularly as it relates to veterans. DEA and HHS note that 1 in 3 veterans experience some type of mental health issue, including, but not limited to, PTSD, depression, and anxiety.[47] DEA and HHS believe that the changes incorporated within this final rule provide an environment where continuity of care can be maintained, while still helping to ensure VA patient safety and safeguard against diversion.

V. Scope of Final Rule

Once an in-person medical evaluation of a VA patient has been conducted by a VA practitioner, this practitioner-patient relationship is extended to all VA practitioners engaging in the practice of telemedicine (which is defined as ''telehealth'' in 38 CFR 17.417).[48] Under such circumstances, this rulemaking essentially avoids the need for VA practitioners to obtain a DEA Special Registration for telemedicine before issuing prescriptions for controlled substances; such Special Registrations are the subject of the Special Registrations NPRM. The VA-specific regulations discussed below align with DEA's core responsibilities of regulating controlled substances, while enabling the VA to leverage its existing integrated and standardized model of care to allow VA practitioners to prescribe controlled substances to VA patients when they have not conducted an in-person medical evaluation. It is important to

[46] DEA is proposing to address this issue more generally for individuals outside of the VA healthcare system under the Special Registrations NPRM.

[47] McGuffin, J. J., Riggs, S.A., Raiche, E.M., & Romero, D.H. (2021). Military and Veteran help-seeking behaviors: Role of mental health stigma and leadership. Military Psychology, 33(5), 332–340. *https://doi.org/10.1080/08995605.2021.1962181.*

[48] 38 CFR 17.417(a)(4) and (b) define a healthcare professional's scope while practicing telemedicine within the VA healthcare system.

emphasize that this final rule will only be applicable in situations where the VA patient has previously undergone an in-person medical evaluation with a VA practitioner, thus establishing a preexisting relationship of care with the VA healthcare system. A preexisting relationship of care between a VA patient and the VA healthcare system will be deemed to exist if, even prior to promulgation of this rule, the VA patient has undergone an in-person medical evaluation with a VA practitioner. The changes to DEA's regulations are consistent ''with effective controls against diversion and otherwise consistent with the public health and safety'' pursuant to 21 U.S.C. 802(54)(G). DEA is promulgating these regulatory changes in concert with HHS, and HHS was consulted in the creation of these regulatory provisions and concurs with this rulemaking. HHS also has advised DEA that no further rulemaking by HHS is necessary for the promulgation of this joint final rule. Moreover, these regulations, and DEA regulations generally, do not apply to telehealth encounters that do not result in a prescription for controlled substances.[49] Simply put, the regulations promulgated in this final rule do *not* apply unless a VA practitioner deems it necessary to prescribe controlled substances to a VA patient via telemedicine and that VA patient has previously had an in-person medical evaluation performed by a VA practitioner.

The following provides the criteria that must be met to allow a VA practitioner to engage in the practice of telemedicine under this final rule:

A. *Criteria for Practitioners.* To be eligible for the provisions within these regulations, the VA practitioner must meet each of the following criteria:

i. Be either employed by, or in contract with, the VA, and be operating within the scope of their employment as defined in 38 CFR 17.419.[50]

ii. For VA contracted practitioners, the prescribing practitioner conducting the telemedicine encounter must be practicing at either a VA facility or a VA community clinic. For the scope of this rule, practitioners providing medical care to VA patients as part of the Community Care Network (CCN) are not considered to be practicing within a VA facility or a VA community clinic.

iii. Be registered with DEA under 21 U.S.C 823(g) in any State or be utilizing the DEA registration of a hospital or clinic operated by the VA registered under section 823(g).

iv. Be prescribing within the usual course of their practice and ensure all prescribing practices are in accordance with applicable State and Federal law(s).

The above criteria are designed to ensure that a practitioner engaging in the practice of telemedicine is operating within their capacity as a VA practitioner and is acting in accordance with both applicable Federal and state law(s) and regulation(s).

B. *Requirements for Previous In-Person Medical Evaluation.* To be eligible for the provisions within these regulations, an in-person medical evaluation must have been conducted by a VA practitioner, who at the time of the evaluation:

i. Conducted the evaluation within their official capacity as an employee of the VA (as defined above), and

ii. The nature of the in-person medical evaluation falls within the scope of their practice of medicine as defined in 38 CFR 17.419.

The criteria in this section establish the circumstances when a previous in-person medical evaluation conducted by another VA practitioner would establish the necessary relationship of care between patient and the VA healthcare system so as to allow for use of the telemedicine flexibilities finalized in this final rule.

C. Requirements for the Review of the VA's Internal Prescription Database and Prescription Drug Monitoring Program. Before issuing a telemedicine-controlled substance prescription otherwise authorized by this final rule, the prescribing practitioner must:

i. Review both the VA patient's EHR (to include the VA's internal prescription database) and the PDMP data of the state in which the patient is located at the time of the telemedicine encounter for any prescriptions of controlled substances issued to the patient and annotate the date and time that such a review was conducted in the patient's EHR. If either the VA's internal prescription database or the PDMP for the state where the patient is located at the time of the telemedicine encounter is unavailable or inaccessible for any reason, the prescribing practitioner must annotate the date and time that such a review was attempted in the patient's EHR and provide a reason as to why a review was unable to be completed.

ii. The review of the VA patient's EHR (to include the VA's internal prescription database) and state PDMP must encompass the previous 12 calendar months, proceeding the controlled substance prescription, of the patient's record, or if less than a year of data is available, for the entire period of data availability.

iii. In instances where the VA patient's EHR (to include the VA's internal prescription database) or the state PDMP for the state the patient is located at the time of the telemedicine encounter (if the state has such a program) are either unavailable or non-operational, prescribing VA practitioners must limit the supply of the controlled substance prescription to 7-days. Once access is restored to the VA patient's EHR (to include the VA's internal prescription database) and the PDMP, if one exists for the state where the VA patient is located at the time of the telemedicine encounter, the prescribing practitioner must review the relevant data prior to prescribing an additional supply of the controlled substance, in accordance with the otherwise applicable requirements discussed above. Additionally, the prescribing VA practitioner must annotate the date and time that such a review was attempted in the patient's EHR and provide a reason as to why a review was unable to be completed. The VA practitioner may then issue a controlled substance prescription in excess of a 7-day supply limit.

iv. If the VA patient is located in a state which does not use a PDMP, the VA practitioner must review the patient's EHR before issuing a prescription for controlled substances for more than a 7-day supply.

The above criteria are designed to safeguard against the risk of diversion of controlled substances. The review of the patient's VA medical record (to include the internal prescription database) and the PDMP data for the state in which the patient is located gives the prescribing VA practitioner additional insight into the patient's prescription history of controlled substances, allowing for additional clarity on the medical appropriateness of an additional controlled substance prescription issued via telemedicine. Moreover, limiting the quantity of controlled substances that can be prescribed during periods when the either the VA patient's EHR (to

[49] This is an important distinction given potential conflation between colloquial use of the term ''telemedicine'' and the statutory definition of the ''practice of telemedicine'' in the CSA and these regulations. To illustrate this point, the following scenarios are non-exhaustive examples in which ''telemedicine'' may occur (in the colloquial sense) but would not constitute the ''practice of telemedicine'' under the CSA or these regulations: (1) a practitioner issues a prescription for a non-controlled substance; (2) a practitioner treats the patient through audio-visual means and, after doing so, determines the patient does not require controlled substances; or (3) a practitioner is a mental health counselor who treats patients using ''talk therapy'' exclusively, without prescribing controlled substances.

[50] 38 CFR 17.419 provides the requirements for an individual to be considered a health care professional within the scope of the VA healthcare system.

include the VA's internal prescription database) or the PDMP for the state where the VA patient is located at the time of the telemedicine encounter is unavailable provides an additional safeguard to ensure that controlled substances are prescribed appropriately, while preventing a lapse in care.

VI. Regulatory Analyses

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

DEA and HHS have determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of Executive Order (E.O.) 12866, Regulatory Planning and Review, but it is not a section 3(f)(1) significant action. Accordingly, this final rule has not been submitted to the Office of Management and Budget for review. This rule has been drafted and reviewed in accordance with E.O. 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation; E.O. 13563, Improving Regulation and Regulatory Review, section 1(b), General Principles of Regulation; and E.O. 14094, Modernizing Regulatory Review.

This final rule authorizes Department of Veterans Affairs practitioners acting within the scope of their VA employment to prescribe controlled substances via telemedicine to a VA patient with whom they have not conducted an in-person medical evaluation. VA practitioners are permitted to prescribe controlled substance medications to VA patients if, among other things, another VA practitioner has previously conducted an in-person medical evaluation of the VA patient. DEA and HHS estimate the total annual cost savings of this rule is $2.54 million due to patient travel time and cost savings. Two million three hundred ninety thousand dollars ($2.39 million) of the cost savings is realized by the patient and $0.15 million of the cost savings is realized by the VA in form of reduced transfers (travel reimbursements). Government benefit payments are considered as ''transfers.'' [51] Additionally, DEA and HHS estimate an additional annual cost to the VA of $1.76 million due to the required EHR and PDMP reviews. The full analysis of costs, cost savings, and transfer savings is provided below.

1. Baseline

For DEA and HHS's analysis of the economic impact of this final rule, the baseline is the period before the temporary COVID–19 PHE exceptions to the Ryan Haight Act. During the baseline period, under 21 U.S.C. 829(e), the Ryan Haight Act has generally required an in-person medical evaluation prior to the prescription of controlled substances. This final rule provides:

(1) *In-Person medical evaluation exemption:* exempts VA practitioners from the requirement of an in-person medical evaluation if the patient has had a prior in-person medical evaluation from any VA practitioner (21 CFR 1306.52(a)(3)).

(2) *PDMP review:* requires a PDMP review of the state in which the patient is located, if the state has such a program (21 CFR 1306.52(b)(1)).

The costs, cost savings, and benefits associated with exempting VA practitioners from the requirement of conducting an in-person medical evaluation under the circumstances permitted by this rule were evaluated from the perspective of the following impacted parties in the following areas: patients, the VA, and the risk of diversion. Those costs, cost savings, and benefits are discussed below.

2. Patient Costs, Cost Savings, and Benefits

This rule benefits VA patients by reducing transportation costs and travel time costs, and by expanding access to medical care. The cost savings associated with this rule predominantly stem from reductions in two categories of costs: (1) the cost of time, and (2) the cost of transportation.

a. Patient's Cost of Time per Practitioner Visit

To derive patients' cost of time, DEA needed to assess two factors: the average length of time to travel and wait for a practitioner's appointment, and the average opportunity cost (*i.e.,* forgone wages) to travel and wait for a practitioner's appointment. Simply put, (average length of the time) × (opportunity cost) = patient's cost of time. To determine an appropriate average length of time, DEA consulted relevant medical articles. While the practice of telemedicine in this final rule is a subset of telehealth that focuses on clinical services by practitioners, broader telehealth research can inform our understanding of telemedicine and provide a greater array of research to use in our analysis. It is also common for research to indicate it relates to ''telehealth,'' even when it may be more appropriate to call it a ''telemedicine'' study.[52]

To determine the average length of time to be used in this analysis, DEA consulted various studies. A 2023 study focused on cancer (non-elderly) telehealth patients treated between April 1, 2020, and June 30, 2021. This study found that telehealth patients saved about 2.9 hours of round-trip driving time and 1.2 hours of in-clinic time per visit, including time spent with a practitioner.[53]

However, as this study focused on non-elderly cancer patients, it did not adequately represent the broader scope of telehealth patients considered in this analysis. In contrast, a 2019 study indicated that the average length of time (combining travel and waiting time) was 45 minutes (0.75 hours) per visit.[54] Given that 68.2 percent of all current telehealth claims are related to mental health, not non-elderly cancer patients, DEA believes that the 45-minute average is more relevant for this analysis.[55] DEA, however, acknowledges that there may be significant variability in the average lengths of time across different patient populations.

To determine an appropriate average opportunity cost (*i.e.,* forgone wages) to travel and wait for a practitioner's appointment, DEA consulted relevant data from the U.S. Bureau of Labor Statistics (BLS). DEA used median hourly wage data for all occupations ($23.11) as a proxy for the hourly average opportunity cost of travel and wait time for all patients, as can be seen in table 1 below.[56] Additionally, BLS reports that average wages and salaries for civilians are 68.8 percent of total compensation. The 68.8 percent of total compensation equates to 45.3 percent (100 percent/68.8 percent—1) load on wages and salaries.[57] The load of 45.3 percent, or $10.47 (0.453 × $23.11), is added to the hourly rate to estimate the loaded hourly rates. As can be seen in table 1, the loaded hourly wage for patients is $33.58 ($23.11 + $10.47).

[51] Office of Management and Budget (OMB) Circular A–4.

[52] Accordingly, in discussing such studies, DEA will use the word the word ''telehealth'' instead of telemedicine.

[53] Patel KB, Turner K, Alishahi Tabriz A, et al. Estimated Indirect Cost Savings of Using Telehealth Among Nonelderly Patients With Cancer. JAMA Netw Open. 2023;6(1):e2250211.

[54] Rhyan C. Travel and Wait Times are Longest for Health Care Services and Result in an Annual Opportunity Cost of $89 Billion. Altarum (Feb. 22, 2019), *https://altarum.org/travel-and-wait* (accessed 9/5/2023).

[55] Fair Health, ''Monthly Telehealth Regional Tracker.'' *https://www.fairhealth.org/fh-trackers/telehealth* (accessed 8/4/2023 selecting May 2023 using National Statistics data dropdown menu).

[56] Bureau of Labor Statistics, Occupational Employment and Wages, May 2023 National Occupational Employment and Wage Estimates, Occupation code: 00–0000 All Occupations, *https://www.bls.gov/oes/2023/may/oes_nat.htm.*

[57] Bureau of Labor Statistics, Employer Costs for Employee Compensation—June 2024, *https://www.bls.gov/news.release/archives/ecec_09102024.pdf* (accessed 11/13/2024).

Therefore, the $33.58 loaded hourly wage represents the hourly *average opportunity cost* to travel and wait for a practitioner's appointment.

TABLE 1—PATIENTS LOADED HOURLY WAGE

Occupation	Hourly wage ($)	Load for benefits ($)	Loaded hourly wage ($)
All Occupations	23.11	10.47	33.58

Therefore, the patient's cost of time to travel and wait for a practitioner's visit—and thus the time cost savings achieved by telemedicine patients who could forego such a trip—equals $25.19 ($0.75 \times \$33.58$), as can be seen in table 2 below.

TABLE 2—PATIENT COST OF TIME

[per Practitioner's Appointment]

Cost savings	Hourly opportunity cost ($)	Travel and wait time (hours)	Cost per appointment ($)
Time cost savings	33.58	0.75	25.19

b. Patient's Net Cost of Travel per Practitioner Visit

DEA estimates there will be cost savings to VA patients as a result of not having to travel to a VA practitioner for a visit. The patient's net cost of travel is the cost of travel net of reimbursements received from the VA. To determine the cost of travel to and from a practitioner's appointment, DEA used data from the *Southwest Rural Health Research Center* in the *Texas A&M School of Public Health,* and mileage reimbursement rates from the U.S. Internal Revenue Service (IRS). According to a 2017 survey by the *Southwest Rural Health Research Center,* the average national round-trip travel distance for a doctor's visit was 9.9 miles, or 19.8 miles round-trip.[58] Using the IRS travel reimbursement rate for businesses of 67 cents per mile as an estimate of travel cost,[59] the estimated patient's cost of travel to and from a practitioner's appointment is $13.27 ($0.67 \times 19.8$), as can be seen in table 3 below.

TABLE 3—PATIENT TRAVEL COST PER TRIP

Cost savings	Travel cost per mile ($)	Travel distance (miles)	Per appointment cost ($)
Patient travel cost	0.67	19.8	13.27

The VA reimbursement rate is $0.415 per mile for approved, health-related travel, with a current deductible of $6 round-trip for each appointment, up to $18 total each month.[60] Assuming VA patients generally do not reach the $18 monthly deductible limit, the estimated VA mileage reimbursement is $8.22 ($0.415 \times 19.8$) per visit. After a $6 deductible, the net VA reimbursement after deductible is $2.22 ($8.22 − $6) and the patient's net cost of travel is $11.05 ($13.27 − $2.22). Table 4 summarizes the VA reimbursement and patient's net cost of travel.

TABLE 4—VA REIMBURSEMENT AND PATIENT NET TRAVEL COST PER TRIP

	Travel cost per mile ($)	Travel distance (miles)	Per appointment cost ($)
VA mileage reimbursement per trip	0.415	19.8	8.22
Deductible (paid by patient)	N/A	N/A	6.00
Net VA mileage reimbursement per trip	N/A	N/A	2.22
Patient net travel cost per trip	N/A	N/A	11.05

[58] Akinlotan, M., Khodakarami, N., Primm, K., Bolin, J., and Ferdinand, A.O., Yen W., Rhyan C. Rural-Urban Variations in Travel Burdens for Care: Findings from the 2017 National Household Travel July 2021. *https://srhrc.tamu.edu/publications/travel-burdens-07.2021.pdf. https://ofm.wa.gov/sites/default/files/public/legacy/researchbriefs/2013/brief070.pdf* (accessed 9/24/2024)

[59] Internal Revenue Service. Standard Mileage Rates, Notice 2024–08, *https://www.irs.gov/pub/irs-drop/n-24-08.pdf* (accessed 10/18/2024).

[60] U.S. Department of Veterans Affairs, Reimbursed VA travel expenses and mileage rate, *https://www.va.gov/resources/reimbursed-va-travel-expenses-and-mileage-rate/* (accessed 11/12/2024).

c. Total Number of Telemedicine Visits

This final rule's patient cost savings results from eliminating the need for an in-person medical evaluation or visit. Subsequent telemedicine visits are allowed after that initial in-person medical evaluation or visit, even without the COVID–19 PHE telemedicine flexibilities. So, to calculate the total patient cost savings under this rule, DEA needed to estimate the total number of first-time telemedicine visits resulting in prescriptions for controlled substances.[61] Given the absence of direct information on this point, however, it was necessary for DEA to perform a multi-step analysis or derivation using different available data sources at each step to derive an estimate. First, the number of practitioner visits conducted via telemedicine was reduced to those that constituted first-time telemedicine visits. Second, DEA determined the proportion of the first-time telemedicine visits that would result in prescriptions. Third, it refined the total number of first-time telemedicine visits resulting in prescriptions of controlled substances. And lastly, DEA considered the impact of the rule's requirements and determined the total number of first-time telemedicine visits resulting in prescriptions of controlled substances under this rule. DEA performed this multi-step analysis to derive an estimate of *the number* of first-time telemedicine visits resulting in prescriptions for controlled substances, which resulted in an estimate of the current value for the total patient cost savings.

Step 1: First-Time Visits. Based on a VHA 2023 annual report there were over 9.4 million telehealth encounters to veterans in the home or other offsite locations.[62] DEA needed to further refine the total number of telemedicine practitioner visits to those that constituted first-time telemedicine visits. DEA's focus on first-time telemedicine practitioner visits, rather than all telemedicine visits, was to prevent an overestimation of the total patient cost savings. Under the status quo, after one bona fide in-person medical evaluation, patients are typically permitted to be seen via telehealth thereafter when receiving prescriptions for controlled substances. A potential overestimate of total patient cost savings arises from the fact that patient cost savings under this rule primarily hinge on the bypassing of a first-time, in-person medical evaluation, but not subsequent telemedicine visits.

A 2022 study analyzing trends between 2017–2020 in interstate telehealth use by Medicare beneficiaries, a subset of the population impacted by this rule, shows that the vast majority of practitioner visits are for returning patients, and approximately 10 percent of those practitioner visits are new visits.[63] This is in line with the Center for Disease Control and Prevention's (CDC) 2019 National Ambulatory Medical Care (NAMC) non-Federal survey where 16.8 percent of office visits were for new patients. The CDC's 2019 NAMC survey, however, was not limited to telehealth visits, so DEA decided that the 10 percent estimate from the 2022 interstate telehealth study was more applicable to this analysis.[64] Taking 10 percent of 9,400,000 practitioner visits conducted via telemedicine would provide a total of approximately 940,000 first-time, telemedicine practitioner visits, as can be seen in table 5.

TABLE 5—NUMBER OF FIRST-TIME TELEMEDICINE VISITS

Telemedicine visits	9,400,000
First-time telemedicine visit rate	0.1
First-time telemedicine visits	940,000

Step 2: Visits Resulting in Prescriptions. DEA needed to determine the fraction of first-time telemedicine visits that would result in prescriptions. Looking again at CDC's 2019 NAMC survey, DEA determined, as reflected in table 6, that 291,394,000 visits did not include any prescribing, which means 745,090,000 of the 1,036,484,000 visits, or approximately 72 percent of the visits, did in fact result in the issuance of prescriptions. Because only 72 percent of visits resulted in a prescription, DEA applied the 72 percent to the calculated 940,000 first-time, telemedicine visits resulting in approximately a total of 676,800 first-time telemedicine visits resulting in the issuance of prescriptions, as can be seen in table 7.

TABLE 6—ESTIMATE OF NUMBER OF PRESCRIPTIONS USING VISIT DATA

Number of prescriptions	Number of visits (thousands)	Total number of prescriptions (thousands)
0	291,394	
1	192,488	192,488
2	129,561	259,122
3	84,898	254,694
4	60,766	243,064
5	52,613	263,065
6	34,041	204,246
7	28,900	202,300
8	29,043	232,344
9	23,393	210,537
10	15,320	153,200
11	17,034	187,374
12	14,744	176,928
13	13,419	174,447
14	10,635	148,890

[61] Total Patient Cost Savings = (number of first-time telemedicine visits resulting in prescriptions for controlled substances) * (patient cost savings).

[62] VHA. *VHA 2023 Annual Report. https://department.va.gov/vha-annual-report/* (accessed 10/12/2024).

[63] Andino, J.J., Zhu, Z., Surapaneni, M., Dunn, R. L., & Ellimoottil, C. (2022). *Interstate Telehealth Use by Medicare Beneficiaries Before and After COVID–19 Licensure Waivers, 2017–20.* Health Affairs, 41(6). Appendix Exhibit 1 show that in person level 3 and level 4 new visits are 6.8% (3.5% + 3.3%) and out-of-state new visits are 10.7% (5.6% + 5.1%).

[64] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (2019). National Ambulatory Medical Care Survey: 2019 National Summary Tables. Retrieved from *https://www.cdc.gov/nchs/data/ahcd/namcs_summary/2019-namcs-web-tables-508.pdf.*

TABLE 6—ESTIMATE OF NUMBER OF PRESCRIPTIONS USING VISIT DATA—Continued

Number of prescriptions	Number of visits (thousands)	Total number of prescriptions (thousands)
15+	38,236	*573,540
Total	**1,036,485	3,476,239

*Used 15 as an approximation for 15+.
**The published total shows 1,036,484, so there is a rounding error of 1.

TABLE 7—ESTIMATE OF NUMBER OF FIRST-TIME TELEMEDICINE VISITS WITH PRESCRIPTIONS

First-time telemedicine visits	.....	940,000
NAMC survey visits—total	1,036,484,000	.....
NAMC survey visits—0 prescriptions	291,394,000	.....
NAMC survey rate—0 prescriptions	0.28	.....
NAMC survey rate—with prescriptions	0.72	0.72
First-time telemedicine visits with prescriptions	.....	676,800

Step 3: Prescriptions for Controlled Substances. DEA then refined the total number of first-time telemedicine visits resulting in prescriptions for controlled substances. According to the Federal Trade Commission (FTC), *Surescripts* has 95% market share in e-prescribing services as of 2023.[65] DEA was able to use 2021 data from the *Surescripts National Progress Report* to determine that approximately 16 percent of all prescriptions (paper and electronic) are for controlled substances.[66] Applying this 16 percent to the total number of 676,800 telemedicine visits resulting in the issuance of prescriptions, provides a value of approximately 108,288 first-time telemedicine visits resulting in prescriptions for controlled substances, as can be seen in table 8.

TABLE 8—CURRENT ESTIMATE OF NUMBER OF FIRST-TIME TELEMEDICINE VISITS RESULTING IN PRESCRIPTIONS OF CONTROLLED SUBSTANCES

First-time telemedicine visits with prescriptions	676,800
Controlled substance (CS) rate	0.16
First-time telemedicine visits with CS prescriptions	108,288

Step 4: Effect of this Rule. Lastly, DEA determined the total number of first-time telemedicine visits resulting in prescriptions of controlled substances under this rule. Under this final rule, patients would not have an in-person follow-up visit after the first-time telemedicine visit; they would never have to see the prescribing practitioner in person. Based on a study by *Epic Research* of primary care visits between March 1, 2020 and October 15, 2022, 61 percent of telehealth visits did not require an in-person follow-up.[67] A similar study by *Epic Research* on specialty visits provided that 85 percent of mental health and psychiatry telehealth visits did not have an in-person follow-up visit.[68] Because this rule is not limited to mental health, DEA applied the broader and lower 61 percent to the 108,288 first-time telemedicine visits resulting in prescriptions of controlled substances. The multi-step analysis ultimately derived a current estimate of 66,056 first-time telemedicine visits resulting in prescriptions of controlled substances under this rule, as can be seen in table 9.

[65] *FTC Reaches Proposed Settlement with Surescripts in Illegal Monopolization Case Federal Trade Commission* (July 27, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-reaches-proposed-settlement-surescripts-illegal-monopolization-case* (accessed 9/24/2024).

[66] According to the Surescripts National Progress Report, there were 256.9 million prescriptions of controlled substances prescribed through EPCS, accounting for 73 percent of the total number of prescriptions of controlled substances. Using these figures, DEA derived the total number of prescriptions of controlled substances to be 351.9 million ((256.9 million) * (100)/(73) = 351.9 million). There were 2.12 billion prescriptions of controlled substances and non-controlled substances prescribed electronically, accounting for 94 percent of the total number of all prescriptions paper or electronic for controlled substances or non-controlled substances. DEA derived the total number of all prescriptions paper or electronic for controlled substances or non-controlled substances to be 2.26 billion ((2.12 billion) * (100)/(94) = 2.26 billion). Using the total of all controlled substances prescriptions (351.9 million) and the total of all prescriptions (2.26 billion), DEA determined that 16% of all prescriptions are for controlled substances ((256.9 million) * (100)/2.26 billion = 16 percent).

[67] Gerhart J, Piff A, Bartelt K, Barkley E. *Most Primary Care Telehealth Visits Unlikely to Need In-Person Follow-Up. Epic Research. https://www.epicresearch.org/articles/most-primary-care-telehealth-visits-unlikely-to-need-in-person-follow-up* (accessed 10/20/2024).

[68] Gerhart J, Piff A, Bartelt K, Barkley E. *Telehealth Visits Unlikely to Require In-Person Follow-Up Within 90 Days.* Epic Research. *https://epicresearch.org/articles/telehealth-visits-unlikely-to-require-in-person-follow-up-within-90-days* (accessed 10/20/2024).

TABLE 9—CURRENT ESTIMATE OF NUMBER OF FIRST-TIME TELEMEDICINE VISITS RESULTING IN PRESCRIPTIONS OF CONTROLLED SUBSTANCES UNDER THIS RULE

Telemedicine visits	9,400,000			
First time telemedicine visit rate	0.1			
First-time telemedicine visits	*940,000*		940,000	
NAMC survey visits—total		1,036,484,000		
NAMC survey visits—0 prescriptions		291,394,000		
NAMC survey rate—0 prescriptions		*0.28*		
NAMC survey rate—with prescriptions		*0.72*	0.72	
First-time telemedicine visits with prescriptions			*676,800*	676,800
Controlled substance (CS) rate				0.16
First-time telemedicine visits with CS prescriptions				*108,288*
First-time telemedicine visits that do not have an in-person follow up visit.				0.61
First-time telemedicine visits under this rule with CS prescriptions				66,056

d. Total Patient Cost Savings

Each telemedicine visit saves patients time and travel costs of $25.19 and $13.27, respectively, for a total savings of $38.46. Applying the cost savings of $38.46 to the estimated number of first-time telemedicine visits under the proposed rule with controlled substance prescriptions results in a total patient cost savings of $2,540,514 ($38.46 × 66,056) per year.

Additionally, from table 4, DEA estimates VA will reimburse the patient $2.22 per trip. Applying this reimbursement amount to the number of trips, the VA reimbursement amount (transfers to the patient) is $146,644 ($2.22 × 66,056). Subtracting the VA reimbursement amount from the total cost savings, DEA estimates a total patient net cost savings of $2,393,870 ($2,540,514 − $146,644) per year. Table 10 summarizes this calculation.

TABLE 10—TOTAL COST/TRANSFER SAVINGS

	Total cost savings ($)	VA reimbursement ($)	Patient net cost savings ($)
Patient cost savings (per visit)	38.46	2.22	N/A
Patient cost savings	2,540,514	146,644	2,393,870

e. Patient Benefit: Increased Access to Care

While DEA estimated the patient cost savings for the estimated 66,056 patient visits that would fall under this final rule, DEA is unable to quantify the number of patients that will be treated that would not have been treated absent this regulation. In recent years, telemedicine has emerged as a vital solution for enhancing healthcare accessibility for VA patients, especially in the face of healthcare shortages. Notably, telemedicine extends its benefits to patients in remote and other underserved areas, including by offering access to specialized care. While DEA is unable to quantify the number of patients that will be treated that would not have been treated absent this regulation, it is reasonable to assume there will be VA patients that will fall in this category and the benefits of increased access to care are not negligible.

3. VA Costs and Transfer Savings

Impact on the VA is primarily due to two primary factors, additional burden for VA patient EHR and PDMP reviews prior to prescribing and reduced travel reimbursements to VA patients.

Prior to prescribing, the practitioner must conduct a review of both the patient's VA medical record, to include in the VA's internal prescription database, and the PDMP of the state in which the patient is located at the time of the telemedicine encounter (if the State has such a program) for controlled substance prescription(s) for the patient's previous twelve (12) months preceding the controlled substance prescription(s), or if less than a year of data is available, for the entire prescription period. Additionally, the VA practitioner must annotate in the VA patient's EHR their attempts to obtain the PDMP of the state in which the patient is located and VA internal prescription database data. DEA estimated the cost of this requirement by estimating the cost per review and applying the cost to the number of patient visits.

Based on the BLS wage data, DEA estimated the cost per review for physicians, nurse practitioners (NPs), and physician's assistants (PAs), then calculated a weighted average cost per review based on the number of physicians, NPs, and PAs.[69]

The mean wage data for physicians is $129.71 and the median wage for PAs and NPs are $62.51 and $60.70, respectively.[70] Additionally, BLS reports that average wages and salaries for civilians are 68.8 percent of total compensation. The 68.8 percent of total compensation equates to 45.3 percent (100 percent/68.8 percent − 1) load on wages and salaries.[71] The load of 45.3 percent is added to wages and salaries by multiplying the wages and salaries by 1.453 (1 + 0.453). The resulting loaded hourly rates are $188.47 ($129.71 × 1.453), $90.83 ($62.51 × 1.453), and $88.20 ($60.70 × 1.453), for physicians, PAs, and NPs, respectively.

Based on a 2018 study, it takes a practitioner 27 seconds to log in and 37 seconds to retrieve a report once logged

[69] Bureau of Labor Statistics, Occupational Employment and Wages, May 2023 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2023/may/oes_nat.htm* (accessed 10/18/2024). The following occupation codes were used: 29–1210 Physicians and 29–1240 Surgeons (for ''physician''), 29–1171 Nurse Practitioners, and 29–1071 Physician Assistants.

[70] *Id.* (Weighted average of mean hourly wages for 29–1210 Physicians and 29–1240 Surgeons. Used ''mean'' hourly wages because ''median'' was not available.)

[71] Bureau of Labor Statistics, Employer Costs for Employee Compensation—March 2023, *https://www.bls.gov/news.release/archives/ecec_06162023.pdf* (accessed 9/24/2024).

in.[72] The total time it takes to retrieve a PDMP report is roughly a minute (27 + 37 = 64 seconds) or 0.017 (1/60) hours. Applying 0.017 hours to the loaded hourly rates, the estimated labor cost to complete the review for physicians is $3.20 ($188.47 × 0.017), for physician assistants is $1.54 ($90.83 × 0.017), and for nurse practitioners is $1.50 ($88.20 × 0.017). Table 11 summarizes the results.

TABLE 11—EHR AND PDMP CHECK TIME COST

Occupation	Hourly wage ($)	Load for benefits ($)	Loaded hourly wage ($)	PDMP check time (hours)	Cost per PDMP check ($)
Physicians	129.71	58.76	188.47	0.017	3.20
Physician Assistant	62.51	28.32	90.83	0.017	1.54
Nurse Practitioners	60.70	27.50	88.20	0.017	1.50

As of October 19, 2024, DEA estimates there were 15,148 physicians, 5,351 NPs, and 1,513 PAs registered with DEA that meet the VA employment requirements of this final rule.[73] For simplicity, DEA calculated a single cost of a review based on the weighted average of the three occupations. The weighted average of the cost of review is $2.67. Table 12 details the calculation.

TABLE 12—EHR PDMP CHECK TIME COST

Occupation	VA registrants	VA registrant weights	Cost per PDMP check ($)	Weighted cost per PDMP check ($)
Physicians	15,148	0.6882	3.20	2.20
Physician Assistant	1,513	0.0687	1.54	0.11
Nurse Practitioners	5,351	0.2431	1.50	0.36
Total	22,012	N/A	N/A	2.67

As discussed earlier in table 9, DEA estimates that annually, there will be 66,056 first time telemedicine patient visits, which are patients visiting a specific practitioner for the first time, that result in a prescription for a controlled substances that fall under this final rule. However, unlike patient travel time and cost savings, since the EHR and PDMP reviews are required for all visits and not just first-time visits, there will not be a first-time visit adjustment. While EHR and PDMP reviews will be required for all prescriptions under this rule, DEA believes PDMP checks are already conducted in most cases, lowering the additional burden imposed by this rule. However, to be conservative, DEA applied the full cost of $2.67 to all telemedicine visits leading to a prescription by backing out the 0.1 factor applied for first-time visits (table 9), in other words, by multiplying the number of first-time telemedicine visits (66,056) by 10 for 660,560 total visits. Applying the cost of $2.67 to the total number of visits results in a total cost of $1,763,695 ($2.67 × 660,560) per year.

As discussed earlier in table 10, DEA estimates the VA will save $146,644 annually from reduced travel reimbursements to patients.

While there may be reduced costs to the VA as a result of fewer patient visits to its facilities, for the purposes of this analysis, DEA and HHS anticipate that there will be no significant net economic impact on the VA's healthcare systems due to the rule. According to one peer-reviewed medical journal article from 2020, telehealth is expected to reduce costs in health systems between 32 percent to 53 percent of the time.[74]

However, evidence suggests that it does not routinely reduce the cost of care delivery for the health system as a whole.[75] A more recent 2023 study, focused on payment analysis for telehealth and in-person care, comes to a similar conclusion, noting the lack of cost differential and concluding that the primary benefit of telehealth is increased access and convenience, not cost savings.[76]

4. Risk of Diversion

Requiring an in-person medical evaluation serves as a safeguard against diversion, consistent with the Ryan Haight Act. Since the advancement of telemedicine technology, new diversion paradigms have emerged in telemedicine.[77] Therefore, to address new ways of delivering care, DEA believes that other anti-diversion safeguards—such as those in this final rule—are necessary, beyond the measures that have been in place since March 2020, to address the ongoing risks of diversion.

Admittedly, there is little quantified data on diversion since the onset of the COVID–19 pandemic. However, Dea is

[72] Bachhuber MA, Saloner B, LaRochelle M, Merlin JS, Maughan BC, Polsky D, Shaparin N, Murphy SM. Physician Time Burden Associated with Querying Prescription Drug Monitoring Programs. Pain Med. 2018 Oct.

[73] DEA estimate based on registrations.

[74] Snoswell CL, Taylor ML, et al. Determining if Telehealth Can Reduce Health System Costs: Scoping Review. J Med Internet Res. October 2020.

[75] *Id.*

[76] Amin K, Rae M, et al. Early in the pandemic, private insurer payments for telehealth and in-person claims were similar. Peterson-KFF Health System Tracker. January 18, 2023. *https://www.healthsystemtracker.org/brief/telehealth-payments-similar-early-in-the-pandemic/#Average%20payment%20for%20evaluation%20and%20management%20professional%20claims%20by%20telehealth%20and%20in-person,%20among%20privately%20insured,%202020* (accessed 9/5/2023).

[77] See, *e.g.,* Founder/CEO and Clinical President of Digital Health Company Arrested for $100M Adderall Distribution and Health Care Fraud Scheme, U.S. Department of Justice, Press Release Number: 24–752 (June 13, 2024), *https://www.justice.gov/opa/pr/founderceo-and-clinical-president-digital-health-company-arrested-100m-adderall-distribution.*

concerned that the intentionally concealed and frequently underreported nature of drug diversion makes these illicit activities inherently difficult to track.[78] By design, illegal activities like diversion are meant to evade detection, which complicates the collection of comprehensive and reliable quantitative data. Furthermore, diversion of controlled substances can take on many forms, from theft and fraud to improper prescribing making it difficult to quantify in a standardized method.

Given the dearth of comprehensive standardized data on diversion, DEA has had to rely on qualitative information and insights, such as anecdotal information, expert testimony from industry, and the specialized experience and knowledge of DEA's diversion investigators to identify emerging trends and inform enforcement strategies. Under this rule, DEA is requiring prescribers to review patient records and check PDMPs prior to prescribing controlled substances. DEA believes the requirements of this rule and the VA's internal safeguards will adequately manage the risk of diversion. DEA and HHS would like to protect and advance access to care for Veterans. Accordingly, this final rule will help to advance access to care while protecting against potential diversion risk.

[78] In some comments to the March 2023 NPRMs and during some of the presentations during the Telemedicine Listening Sessions, individuals cited studies demonstrating a lack of increased proportion of overdose deaths involving buprenorphine during the initial months of the pandemic, when the telemedicine flexibilities were first put in place, as evidence of a lack of diversion of controlled substances more generally. However, it is important to note that these studies focused solely on buprenorphine, and it would be inappropriate to extrapolate their findings to all controlled substances given the unique characteristics of buprenorphine, particularly the combination buprenorphine product (*Suboxone*), which adds naloxone designed to deter diversion and misuse. Consistent with this data, buprenorphine has been provided unique treatment under this rule and under the separate *Expansion of Buprenorphine Treatment via Telemedicine Encounter* final rule (RIN 1117–AB78), published elsewhere in this issue of the **Federal Register**. *See, e.g.,* Tanz LJ, Jones CM, Davis NL, Compton WM, Baldwin GT, Han B, Volkow ND. *Trends and Characteristics of Buprenorphine-Involved Overdose Deaths Prior to and During the COVID–19 Pandemic.* JAMA Netw Open. 2023 Jan 3;6(1): e2251856. doi: 10.1001/jamanetworkopen.2022.51856. PMID: 36662523; PMCID: PMC9860517; and Sade E. Johns, Mary Bowman, F. Gerard Moeller, *Utilizing Buprenorphine in the Emergency Department after Overdose,* Trends in Pharmacological Sciences, Volume 39, Issue 12, (2018), *https://doi.org/10.1016/j.tips.2018.10.002,* available: *https://www.sciencedirect.com/science/article/pii/S0165614718301809.*

5. Summary of Economic Impact

DEA and HHS estimate the total annual cost savings of this final rule is $2.54 million due to patient travel time and cost savings. $2.39 million of the cost savings is realized by the patient and $0.15 million of the cost savings is realized by the VA in form of reduced transfers (travel reimbursements). Additionally, DEA and HHS estimates an additional annual cost to the VA of $1.76 million due to the required EHR and PDMP reviews.

DEA believes that the benefits of increased availability for treatment outweigh the dangers of a potential increase in diversion, so long as VA practitioners adhere to the anticipated safeguards VA and/or DEA will implement or have already implemented with respect to the practice of telemedicine.

Regulatory Flexibility Act

The Administrator of DEA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

This final rule affects the VA and its individual patients. The VA is not a small entity. Therefore, this rule will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

This action would not create or modify a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. PRA is not applicable when the information is being collected from Federal employees or contractors as a part of their job. In this final rule, all recordkeeping actions are taken by Federal employees as a part of their work-related duties with the VA.

Executive Order 12988, Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This final rule does not have federalism implications warranting the application of E.O. 13132. The final rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Unfunded Mandates Reform Act of 1995

The estimated annual impact of this final rule is minimal. Thus, DEA has determined in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) that this action would not result in any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), the Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2). DEA will submit a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects

21 CFR Part 1306

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

42 CFR Part 12

Administrative practice and procedure.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 13, 2025, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for

publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

Miriam E. Delphin-Rittmon,

Assistant Secretary for Mental Health and Substance Use, Department of Health and Human Services.

Drug Enforcement Administration

For the reasons set out above, the Drug Enforcement Administration amends 21 CFR part 1306 as follows:

PART 1306—PRESCRIPTIONS

■ 1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 823, 829, 829a, 831, 871(b) unless otherwise noted.

■ 2. Add § 1306.52 to read as follows:

§ 1306.52 Other circumstances where Department of Veterans Affairs practitioners may prescribe controlled substances via the practice of telemedicine.

A practitioner may prescribe controlled substance(s) to a patient via the practice of telemedicine under § 1300.04(i)(7) of this chapter if all the following conditions are met:

(a) The practitioner is:

(1) An employee or contractor of the Department of Veterans Affairs (VA) who is acting in the scope of such employment or contract, and registered under section 303(g) of the Act (21 U.S.C. 823(g)) (§ 1301.13 of this chapter) in any state or is utilizing the registration of a hospital or clinic operated by the VA registered under section 303(f);

(2) Prescribing to a VA patient who has previously received, at any time, an in-person medical evaluation by any VA practitioner who at the time of the in-person medical evaluation was acting within the scope of their VA employment or contract and had prescribing authority, or would reasonably be expected to have prescribing authority based on their credentials (*e.g.,* medical doctor) or organizational role (*e.g.,* primary care provider), as described in paragraph (a)(1) of this section;

(3) Not a contracted practitioner located outside a VA facility or clinic providing care via the community care network or conducting disability compensation evaluations; and

(4) Prescribing a controlled substance(s) for a legitimate medical purpose in the usual course of professional practice, and in accordance with applicable Federal and State law(s).

(b) Prior to prescribing, the practitioner must conduct a review of both the VA EHR, to include the VA's internal prescription database, and the PDMP data of the state in which the patient is located at the time of the telemedicine encounter (if the state has such a program) for controlled substance prescription(s) for the patient's previous twelve (12) months preceding the controlled substance prescription(s), or if less than a year of data is available, for the entire prescription period.

(1) Should either the patient's VA electronic health record, to include the VA's internal prescription database, or the PDMP of the state in which the patient is located at the time of the telemedicine encounter (if the state has such a program) be unavailable or non-operational, for any reason, the VA practitioner must limit the prescription to a 7-day supply. Once the VA's internal prescription database and the PDMP are available or operational, a review of the databases as outlined in this paragraph (b) must be completed to continue prescribing the controlled substance(s) to the VA patient.

(2) If no PDMP exists in the state in which the patient is located at the time of the telemedicine encounter, the VA practitioner must review the VA internal prescription database prior to issuing a controlled substance prescription. A prescription may extend beyond 7 days under this circumstance.

(3) The VA practitioner must annotate in the VA patient's EHR their attempts to access the PDMP data of the state in which the patient is located, and VA internal prescription database data. If no PDMP exists in the state in which the patient is located at the time of the telemedicine encounter, the prescribing practitioner must annotate that in the VA patient's EHR. If the prescribing VA practitioner fails to access the PDMP data of the state in which the patient is located or VA internal prescription database data as described in paragraph (b)(1) of this section, the VA practitioner must annotate in the VA patient's EHR the dates and times that the VA practitioner attempted to gain access, the reason why the VA practitioner was unable to gain access, and any follow-up attempts made to gain access to the system. The attempts must be recorded in accordance with the VA's internal policies and recordkeeping requirements.

(c) The controlled substance prescription(s) must be otherwise in conformity with the requirements of the Controlled Substances Act and this chapter.

Department of Health and Human Services

For the reasons set out above, the Department of Health and Human Services amends 42 CFR part 12 as follows:

PART 12—TELEMEDICINE FLEXIBILITIES

■ 3. The authority citation for part 12 continues to read as follows:

Authority: 21 U.S.C. 802(54)(G).

■ 4. Add § 12.4 to read as follows:

§ 12.4 Telemedicine prescribing of schedule II–V medications by the Department of Veterans Affairs practitioners.

A practitioner may prescribe controlled substance(s) to a patient via the practice of telemedicine under 21 CFR 1300.04(i)(7) if all the following conditions are met:

(a) The practitioner is:

(1) An employee or contractor of the Department of Veterans Affairs (VA) who is acting in the scope of such employment or contract, and registered under section 303(g) of the Controlled Substances Act (Act) (21 U.S.C. 823(g)) (21 CFR 1301.13) in any state or is utilizing the registration of a hospital or clinic operated by the VA registered under section 303(f);

(2) Prescribing to a patient who has previously received, at any time, an in-person medical evaluation by any VA practitioner who at the time of the in-person medical evaluation was acting within the scope of their VA employment or contract and had prescribing authority, or would reasonably be expected to have prescribing authority based on their credentials (*e.g.,* medical doctor) or organizational role (*e.g.,* primary care provider), as described in paragraph (a)(1) of this section;

(3) Not a contracted practitioner located outside a VA facility or clinic providing care via the community care network or conducting disability compensation evaluations; and

(4) Prescribing a controlled substance(s) for a legitimate medical purpose in the usual course of professional practice, and in accordance with applicable Federal and State law(s).

(b) Prior to prescribing, the practitioner must conduct a review of both the VA EHR, to include the VA's internal prescription database, and the PDMP data of the state in which the patient is located at the time of the

telemedicine encounter (if the state has such a program) for controlled substance prescription(s) for the patient's previous twelve (12) months preceding the controlled substance prescription(s), or if less than a year of data is available, for the entire prescription period.

(1) Should either the patient's VA electronic health record, to include the VA's internal prescription database, or the PDMP data of the state in which the patient is located at the time of the telemedicine encounter (if the state has such a program) be unavailable or non-operational, for any reason, the VA practitioner must limit the prescription to a 7-day supply. Once the VA's internal prescription database and the PDMP are available or operational, a review of the databases as outlined in this paragraph (b) must be completed to continue prescribing the controlled substance(s) to the VA patient.

(2) If no PDMP exists in the state in which the patient is located at the time of the telemedicine encounter, the VA practitioner must review the VA internal prescription database prior to issuing a controlled substance prescription. A prescription may extend beyond 7 days under this circumstance.

(3) The VA practitioner must annotate in the VA patient's EHR their attempts to access the PDMP data of the state in which the patient is located, and VA internal prescription database data. If the prescribing VA practitioner fails to access the PDMP data of the state in which the patient is located or VA internal prescription database data as described in paragraph (b)(1) of this section, the VA practitioner must annotate in the VA patient's EHR the dates and times that the VA practitioner attempted to gain access, the reason why the VA practitioner was unable to gain access, and any follow-up attempts made to gain access to the system. The attempts must be recorded in accordance with the VA's internal policies and recordkeeping requirements.

(c) The controlled substance prescription(s) is otherwise in conformity with the requirements of the Act and 21 CFR chapter II.

[FR Doc. 2025–01044 Filed 1–15–25; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, and 1306

[Docket No. DEA–407]

RIN 1117–AB40

Special Registrations for Telemedicine and Limited State Telemedicine Registrations

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The *Ryan Haight Online Pharmacy Consumer Protection Act of 2008* (the ''*Ryan Haight Act*'') generally requires an in-person medical evaluation prior to the issuance of a prescription of controlled substances but provides an exception to this in-person medical evaluation requirement where the practitioner is engaged in the ''practice of telemedicine'' within the meaning of the *Ryan Haight Act.* These proposed regulatory changes would establish a Special Registration framework and authorize three types of Special Registration. This proposed rulemaking also provides for heightened prescription, recordkeeping, and reporting requirements. DEA believes such changes are necessary to effectively expand patient access to controlled substance medications via telemedicine while mitigating the risks of diversion associated with such expansion. A summary of this rule may be found at *https://www.regulations.gov/docket/DEA-2023-0029.*

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before March 18, 2025. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. All comments concerning collections of information under the *Paperwork Reduction Act* must be submitted to the Office of Management and Budget (OMB) on or before March 18, 2025.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–407'' on all correspondence, including any attachments.

- *Electronic comments:* DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type comments directly into the comment field on the web page or to attach a file containing comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment generated by *http://www.regulations.gov.* Please be aware that submitted comments are not instantaneously available for public view on *http://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted, and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are discouraged. Should you wish to mail a paper comment *in lieu of* submitting a comment electronically, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. Hand-delivered comments will not be accepted.
- *Paperwork Reduction Act Comments:* All comments concerning collections of information under the *Paperwork Reduction Act* must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to RIN 1117–AB40/Docket No. DEA–407.

FOR FURTHER INFORMATION CONTACT: Heather E. Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received, including attachments and other supporting materials, in response to this docket are considered part of the public record. The Drug Enforcement Administration (DEA) will make all comments available for public inspection online at *http://www.regulations.gov.* The *Freedom of Information Act* applies to all comments received. Confidential information or personal identifying information (PII), such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

Comments with confidential information, which should not be made available for public inspection, should be submitted as written/paper submissions. Two written/paper copies should be submitted. One copy will include the confidential information with a heading or cover sheet that states ''CONTAINS CONFIDENTIAL INFORMATION.'' DEA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy should have the claimed confidential information redacted/blacked out. DEA will make this copy available for public inspection online at *http://www.regulations.gov.* Other information, such as name and contact information, that should not be made available, may be included on the cover sheet but not in the body of the comment, and must be clearly identified as ''confidential.'' Any information clearly identified as ''confidential'' will not be disclosed except as required by law.

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I. Executive Summary

The *Ryan Haight Online Pharmacy Consumer Protection Act of 2008* (the ''*Ryan Haight Act*''), amended the Controlled Substances Act (CSA) by, among other things, requiring all prescription drugs which are dispensed by means of the *internet* [1] be issued as a ''valid prescription.'' [2] Generally, a valid prescription requires, at a minimum, at least one ''in-person medical evaluation,'' [3] which is issued for a legitimate medical purpose in the usual course of professional practice.[4] The *Ryan Haight Act* does, however, provide an exception to this in-person medical evaluation requirement, when the practitioner is ''engaged in the practice of telemedicine.'' [5]

The *Ryan Haight Act* provides seven (7) distinct categories of the *practice of telemedicine* in which a prescribing practitioner need not satisfy the *Ryan Haight Act's* in-person medical evaluation requirement, yet nonetheless may be able to prescribe a controlled substance for a legitimate medical purpose in the usual course of professional practice.[6] In these circumstances, provided certain safeguards are in place to ensure that the practitioner who is engaged in the *practice of telemedicine* is able to conduct a *bona fide* medical evaluation of the patient at the remote location, and is otherwise acting in the usual course of professional practice, the *Ryan Haight Act* contemplates that the practitioner will be permitted to prescribe controlled substances by means of the *internet* despite not having conducted an in-person medical evaluation.

Thus far, DEA has permitted, or promulgated regulations to permit, the *practice of telemedicine* pursuant to two of the seven categories of telemedicine authorized under the *Ryan Haight Act.* In March 2020, in response to the COVID–19 Public Health Emergency (''COVID–19 PHE'') declared by the Secretary (the ''Secretary'') of the Department of Health and Human Services (HHS) on January 31, 2020, pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247), DEA used its authority under 21 U.S.C. 802(54)(D) to grant temporary exceptions to the *Ryan Haight Act* and its implementing regulations, allowing authorized practitioners to generally prescribe controlled substances in Schedules II–V through telemedicine.

Three years later, in March 2023, DEA, in concert with HHS, promulgated two notices of proposed rulemakings (NPRMs) (the ''General Telemedicine NPRM,'' and ''Buprenorphine NPRM'') pursuant to 21 U.S.C. 802(54)(G), which collectively proposed to expand patient access to prescriptions via telemedicine relative to the pre-COVID–19 PHE landscape. On May 10, 2023, to prevent a lapse of care with the expiration of the COVID–19 PHE, DEA, jointly with HHS, promulgated a rule (the ''First Temporary Rule'') pursuant to 21 U.S.C.802(54)(G) to extend the temporary exceptions originally authorized under the COVID–19 PHE through November 11, 2023.

On September 12 and 13, 2023, DEA hosted live, in-person Telemedicine Listening Sessions to receive additional input concerning the *practice of telemedicine* with regards to controlled substances and potential safeguards that could effectively prevent and detect diversion of controlled substances prescribed via telemedicine. DEA invited the public to express their views concerning the advisability of permitting telemedicine prescribing of certain controlled substances without any in-person medical evaluation at all, the availability and types of data that would be useful in detecting diversion of controlled substances via telemedicine, and specific additional safeguards that could be placed around the prescribing of Schedule II controlled substances via telemedicine.

On October 10, 2023, in light of the need to further evaluate the best course of action given the comments received in response to the March 2023 NPRMs and the presentations at the September 2023 Telemedicine Listening Sessions, DEA, jointly with HHS, issued a second temporary rule (the ''Second Temporary Rule'') to further extend the temporary exceptions originally authorized under the COVID–19 PHE through December 31, 2024. On November 19, 2024, DEA and HHS issued a third temporary rule (the ''Third Temporary Rule'') to again extend the temporary exceptions originally authorized under the COVID–19 PHE through December 31, 2025, to ensure a smooth transition for patients and practitioners that have come to rely on the availability of telemedicine for controlled substance prescriptions.

The Third Temporary Rule has also provided additional time for DEA to promulgate the *Special Registration* regulations proposed in this NPRM, and additional time for practitioners to come into compliance with any new standards or safeguards eventually found within a final rule establishing a *Special Registration* framework. DEA has determined that the best course of action to ensure patient access to care, while maintaining sufficient safeguards to prevent and detect diversion of controlled substances, is to establish and maintain a regulatory scheme including three separate *Special Registrations* pursuant to 21 U.S.C. 802(54)(E) and 21 U.S.C. 831(h).

These separate *Special Registrations* would allow more comprehensive prescribing, including prescribing of Schedule II and narcotic and non-narcotic controlled substances in limited circumstances, by properly registered physicians and *mid-level practitioners* (hereinafter collectively referred to as *clinician practitioners*), and dispensing by online telemedicine platforms that constitute *covered online telemedicine platforms,* in their capacity as *platform practitioners,* who have proven to have a legitimate need for such *Special Registrations* and where DEA has concluded that such registration is consistent with the public interest. Once properly registered under the *Special Registration* framework, *clinician practitioners* would be considered *clinician special registrants* and *covered online telemedicine platforms,* in their capacity as *platform practitioners,* would be considered *platform special registrants.*

This NPRM introduces the three types of *Special Registrations for Telemedicine:* (1) a *Telemedicine Prescribing Registration,* authorizing qualified *clinician practitioners* to prescribe Schedule III–V controlled substances via telemedicine, (2) an *Advanced Telemedicine Prescribing Registration,* authorizing qualified, specialized *clinician practitioners* (*e.g.,* psychiatrists, *hospice care* physicians) to prescribe Schedule II–V controlled substances via telemedicine, and (3) a *Telemedicine Platform Registration,* authorizing *covered online telemedicine platforms,* in their capacity as *platform practitioners,* to dispense Schedule II–V controlled substances.[7] To satisfy the

[1] Italicized terms indicate that it is a proposed term defined by the NPRM or a term currently defined in the CSA or DEA's regulations.

[2] 21 U.S.C. 829(e)(1).

[3] 21 U.S.C. 829(e)(2)(B)(i).

[4] 21 U.S.C. 829(e)(2)(A)(i).

[5] 21 U.S.C. 829(e)(3)(A).

[6] 21 U.S.C. 802(54).

[7] The term ''institutional practitioner'' is currently defined at 21 CFR 1300.01. Proposed changes to 21 CFR 1300.01 will explicitly exclude

statutory requirements under 21 U.S.C. 831(h), DEA would also require the *special registrant* to maintain a *State Telemedicine Registration* for every state in which a patient is treated by the *special registrant,* unless otherwise exempted. The *State Telemedicine Registration* would be issued by DEA, not the states, and operate as an ancillary credential, contingent on the *Special Registration* held by the *special registrant.*

To streamline the *Special Registration* application process, the NPRM would introduce a new registration application form, known as Form 224S. The three types of *Special Registrations* (*Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration,* and *Telemedicine Platform Registration*) and the *State Telemedicine Registration* (one type for *clinician special registrants* and one type for *platform special registrants*) would be on a three-year cycle. The NPRM also proposes heightened prescription requirements addressing the manner in which *special registration prescriptions* are issued, as well as additional elements required to be on a *special registration prescription* issued under a *Special Registration.*

Special registration prescriptions issued under the *Special Registration* would be required to be prescribed through electronic prescribing for controlled substances (EPCS), and after the *special registrant* has verified the identity of the patient and carried out a nationwide Prescription Drug Monitoring Program (PDMP) check of all 50 states and any U.S. district or territory that maintains its own PDMP (referred to as the ''nationwide PDMP check''). The nationwide PDMP check requirement, however, would have a delayed effective date of three years. In the interim, for all Schedule II–V controlled substances, *clinician special registrants* would be required to conduct a PDMP check of: (1) the state/territory where the patient is located; (2) the state/territory where the *clinician special registrant* is located; and (3) any state/territory that has a PDMP reciprocity agreement with the states/territories where the patient and *clinician special registrant* are located.

Furthermore, *special registration prescriptions* would require the inclusion of the *Special Registration* numbers of the *clinician special registrant* and the *platform special registrant* (if a *platform special registrant* facilitated the prescription), and the *State Telemedicine Registration* numbers of the *clinician special registrant* and *platform special registrant* (if a *platform special registrant* facilitated the prescription). To ensure clarity and easy identification of the type of registration, *Special Registration* numbers and *State Telemedicine Registration* numbers would be formatted distinctly. This would allow registrants and DEA to differentiate them from each other and from conventional DEA registration numbers issued under 21 U.S.C. 823(g). Additionally, pharmacies filling *special registration prescriptions* would be able to easily verify these registration numbers to confirm that the prescribing *clinician practitioner* is authorized to prescribe controlled substances within a given Schedule via a *Special Registration,* and that a *platform practitioner,* if one facilitated the *special registration prescription,* is authorized to dispense controlled substances under the *Special Registration* framework.

It is also important to note when the proposed regulations would not apply. The *Ryan Haight Act,* and the telemedicine regulations implementing it thereunder, apply only in limited circumstances, impacting only a subset of practitioner-patient relationships: those where the prescribing practitioner intends to prescribe controlled substances, and has never conducted an in-person medical evaluation of the patient prior to the issuance of the prescription. In other words, the regulations implemented under the *Ryan Haight Act* would not be applicable to practitioner-patient relationships in which there has ever been a prior in-person medical evaluation of the patient by the practitioner.

Moreover, the regulations proposed in this rule are further limited to telemedicine practiced under a *Special Registration,*[8] but would not apply to the other forms of the *practice of telemedicine* authorized under the *Ryan Haight Act.* The proposed regulations within this NPRM would not apply to the *practice of telemedicine* authorized under 21 U.S.C. 802(54)(A)–(D), (F), and (G). Therefore, these proposed regulations would not apply to the *practice of telemedicine* authorized under the *Expansion of Buprenorphine Treatment via Telemedicine Encounter* final rule (RIN 1117–AB78) or the *Continuity of Care via Telemedicine for Veterans Affairs Patients* final rule (RIN 1117–AB88) published elsewhere in this issue of the **Federal Register**. Under the authority of 21 U.S.C. 802(54)(G), these final rules permit, in limited circumstances, certain prescribing practitioners to issue prescriptions for controlled substances by telemedicine, without having personally performed an in-person medical evaluation or fulfilling the *Special Registration* requirements as proposed within this rule. At this stage, DEA remains committed to actively soliciting and considering feedback from the public and revising the *Special Registration* regulations as necessary and appropriate.[9]

II. Legal Authority and Background

DEA implements and enforces the CSA and the *Controlled Substances Import and Export Act,* (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes. As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822.[10] The CSA further authorizes the Attorney General (and the Administrator by delegation through 28 CFR part 0) to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA.[11]

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008. The *Ryan Haight Act* amended the CSA by, among other things, adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the *internet.* A central feature of the *Ryan Haight Act* is the in-person medical evaluation requirement. The in-person medical evaluation requirement is set forth in 21 U.S.C. 829(e), which provides that ''[n]o controlled substance that is a prescription drug as determined under the Federal Food, Drug, and

''covered online telemedicine platform'' to clarify that such an entity is not an ''institutional practitioner.''

[8] 21 U.S.C. 802(54)(E).

[9] *See* Appendix A for Chart: *Do I Need a Special Registration for Telemedicine?*

[10] ''Dispense'' in the context of this rulemaking means to deliver a controlled substance to an ultimate user, which includes the prescribing of a controlled substance. 21 U.S.C 802(10).

[11] 21 U.S.C. 871(b), 958(f).

Cosmetic Act may be . . . dispensed by means of the internet without a valid prescription,'' [12] and which defines ''valid prescription'' as ''a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by . . . a practitioner who has conducted at least 1 in-person medical evaluation of the patient.'' [13] Section 829(e), however, provides an exception to this in-person medical evaluation requirement where the practitioner is ''engaged in the practice of telemedicine.'' [14]

Pursuant to 21 U.S.C. 802(54) the *practice of telemedicine* means ''the practice of medicine in accordance with applicable Federal and state laws by a practitioner (other than a pharmacist) [15] who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system [16] referred to in section 1395m(m) of Title 42,'' and which also falls within one of seven distinct categories that Congress determined were appropriate to allow for the prescribing of controlled substances via telemedicine despite the practitioner never having conducted an in-person medical evaluation of the patient.

The seven distinct categories provided under the statutory definition of the *practice of telemedicine* generally involve either circumstances in which an in-person medical evaluation has been rendered impracticable due to temporary emergencies, or circumstances in which the prescribing practitioner might be unable to satisfy the *Ryan Haight Act's* in-person medical evaluation requirement, yet nonetheless has sufficient medical information to prescribe a controlled substance for a legitimate medical purpose in the usual course of professional practice. In these circumstances, provided certain safeguards are in place to ensure that the practitioner who is engaged in the *practice of telemedicine* is able to conduct a *bona fide* medical evaluation of the patient at the remote location, and is otherwise acting in the usual course of professional practice, the *Ryan Haight Act* contemplates that the practitioner will be permitted to prescribe controlled substances by means of the *internet* despite not having conducted an in-person medical evaluation. The *Ryan Haight Act* defines these categories through the definition of ''practice of telemedicine,'' which is set forth in 21 U.S.C. 802(54).

As a general matter, those seven distinct categories include telemedicine encounters where: (1) a patient is physically located at a DEA-registered hospital or clinics, and the remote prescribing practitioner is DEA-registered in the state in which the patient is located; (2) a patient is being treated by a prescribing practitioner, and in the physical presence of a DEA-registered practitioner in the state in which the patient is located; (3) the prescribing practitioner is an employee or contractor of the Indian Health Service (IHS), acting within the scope of the practitioner's employment, who has been designated an *internet Eligible Controlled Substances Provider* by HHS; (4) it takes place during a public health emergency declared by HHS under section 247d of title 42; (5) the practitioner has obtained a *Special Registration* with DEA; [17] (6) there is a medical emergency that prevents the patient from being in the physical presence of an employee or contractor of the Veterans Health Administration (VHA) and one of its hospitals or clinics, and immediate intervention by the practitioner using controlled substances is required to prevent injury or death; and (7) any other circumstances that DEA and HHS have jointly determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.[18]

As noted above, the *Ryan Haight Act,* and the telemedicine regulations implementing it thereunder, apply only in limited circumstances, impacting only a subset of practitioner-patient relationships: where the prescribing practitioner wishes to prescribe controlled substances and has never conducted an in-person medical evaluation of the patient prior to the issuance of the prescription. In other words, the regulations proposed in this rule would not be applicable to practitioner-patient relationships in which there has been a prior in-person medical evaluation of the patient by the practitioner.

COVID–19 Public Health Emergency. In response to the COVID–19 PHE, as declared by the Secretary on January 31, 2020, pursuant to the authority under section 319 of the *Public Health Service Act* (42 U.S.C. 247), DEA granted temporary exceptions to the *Ryan Haight Act* and DEA's implementing regulations under 21 U.S.C. 802(54)(D), one of the seven distinct categories of telemedicine envisioned under the statutory definition of the *practice of telemedicine.* In order to prevent lapses in care, these exceptions allowed for the prescribing of controlled substances via

[12] 21 U.S.C. 829(e)(1).

[13] *Id.* at 829(e)(2)(A)(i). Under the Ryan Haight Act, the requirement of an in-person medical evaluation does not apply to a ''covering practitioner,'' *id.* 829(e)(2)(A)(ii), as defined by 829(e)(2)(C). A prescribing practitioner meeting this definition need not conduct an in-person medical evaluation as a prerequisite to prescribing a controlled substance to a given patient, provided that the practitioner for whom the practitioner is covering has provided an in-person medical evaluation of that patient and provided further that this covering arrangement is taking place on only a temporary basis. In addition, the covering practitioner—as with all practitioners who prescribe controlled substances—remains subject to the requirement that such prescriptions may be issued only for a legitimate medical purpose in the usual course of professional practice. *Id.*

[14] *Id.* 829(e)(3)(A).

[15] While this statutory definition of the *practice of telemedicine* explicitly excludes pharmacists, such exclusion does not apply to situations where a pharmacist is acting in their capacity as a *mid-level practitioner,* authorized to dispense controlled substances in accordance with their state licensure.

[16] 42 U.S.C. 1395m(m) references, but does not define, such *telecommunications systems.* The Center for Medicare and Medicaid Services (CMS) promulgated regulations implementing these statutory provisions and define the term *interactive telecommunications system.* 42 CFR 410.78(a)(3) defines *interactive telecommunications system* as ''. . . [the] multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. For services furnished *for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient* in their home, interactive telecommunications *may include two-way, real-time audio-only communication technology* if the distant site physician or practitioner is technically capable to use an interactive telecommunications system as defined in the previous sentence, but the patient is not capable of, or does not consent to, the use of video technology'' (emphases added). Though DEA's proposed regulatory definition for *audio-video telecommunications system* largely aligns with CMS's definition of *interactive telecommunications system,* DEA's proposed regulations would not authorize the use of audio-only communication technology for the diagnosis, evaluation, or treatment of mental health disorders, subject to one exception for opioid use disorder discussed in more depth later. These provisions reflect the heightened risks associated with prescribing controlled substances specifically.

[17] Congress enacted legislation in addition to the *Ryan Haight Act* which required DEA to ''promulgate final regulations specifying . . . the limited circumstances in which a special registration for telemedicine may be issued.'' 21 U.S.C. 831(h)(2). In particular, the SUPPORT for Patients and Communities Act (''SUPPORT Act''), signed into law on October 24, 2018, mandated that, in consultation with the Secretary [of Health and Human Services], the Attorney General shall promulgate final regulations specifying—(A) the limited circumstances in which a special registration for telemedicine . . . may be issued; and (B) the procedure for obtaining [a] special registration for telemedicine.'' *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act* (SUPPORT Act), Public Law 115–271, 3232, 132 Stat. 3894, 3950 (2018). The Attorney General has delegated this authority to the Administrator of DEA. *See* 28 CFR 0.100. As required by the SUPPORT Act, DEA has consulted with representatives of the Secretary of Health and Human Services regarding the substance of this proposed rule.

[18] 21 U.S.C. 802(54).

telemedicine encounters even when the prescribing practitioner had not conducted an in-person medical evaluation of the patient. These telemedicine flexibilities authorized practitioners to prescribe Schedule II–V controlled substances via audio-video telemedicine encounters, including Schedule III–V opioid controlled substances approved by the Food and Drug Administration (FDA) for maintenance and withdrawal management treatment of opioid use disorder via audio-only telemedicine encounters, provided that such prescriptions otherwise comply with the recommendations outlined in DEA guidance documents, the requirements outlined in DEA regulations, and applicable Federal and State law. DEA granted those temporary exceptions to the *Ryan Haight Act* and DEA's implementing regulations via two letters published in March 2020:

- A March 25, 2020 ''Dear Registrant'' letter signed by William T. McDermott, DEA's then-Assistant Administrator, Diversion Control Division (the McDermott Letter); [19] and
- A March 31, 2020 ''Dear Registrant'' letter signed by Thomas W. Prevoznik, DEA's then-Deputy Assistant Administrator, Diversion Control Division (the Prevoznik Letter).[20]

Prior NPRMs and Temporary Rules; Telemedicine Listening Sessions. On March 1, 2023, DEA, in concert with HHS and pursuant to 21 U.S.C. 802(54)(G), promulgated two NPRMs in the **Federal Register**, *Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation* (the ''General Telemedicine NPRM'') [21] and *Expansion of Induction of Buprenorphine via Telemedicine Encounter* (the ''Buprenorphine NPRM''),[22] which proposed to expand patient access to prescriptions for controlled substances via telemedicine encounters relative to the pre-COVID–19 PHE landscape. The purpose of the two proposed rules was to make permanent some of the telemedicine flexibilities established during the COVID–19 PHE in order to facilitate patient access to controlled substance medications via telemedicine when consistent with public health and safety, while maintaining effective controls against diversion. The comment period for these two NPRMs closed on March 31, 2023. Those NPRMs generated a total of 38,369 public comments—35,454 comments on the General Telemedicine NPRM and 2,915 comments on the Buprenorphine NPRM.

On May 10, 2023 DEA, jointly with HHS (with the Substance Abuse and Mental Health Services Administration (SAMHSA) acting on behalf of HHS), issued the First Temporary Rule pursuant to 21 U.S.C. 802(54)(G), which extended the full set of telemedicine flexibilities regarding the prescribing of controlled substances, as had been in place under the COVID–19 PHE, through November 11, 2023.[23] The First Temporary Rule also provided a one-year grace period, through November 11, 2024, to any practitioner-patient telemedicine relationships that had been or would be established on or before November 11, 2023.

On September 12 and 13, 2023, DEA hosted the live, in-person Telemedicine Listening Sessions, to receive additional input concerning the practice of telemedicine with regards to prescribing controlled substances and potential safeguards that could effectively prevent and detect diversion of controlled substances prescribed via telemedicine. DEA invited the public to express their views concerning the advisability of permitting telemedicine prescribing of certain controlled substances without any in-person medical evaluation at all, the availability and types of data that would be useful in detecting diversion of controlled substances via telemedicine that are either already reported or could be reported, and specific additional safeguards that could be placed around the prescribing of Schedule II controlled substances via telemedicine. Approximately 58 stakeholders, including *institutional practitioners* and *clinician practitioners,* pharmacists, trade associations, state agencies, and other public interest groups, presented at the listening sessions.

On October 10, 2023, in light of the need to further evaluate the best course of action given the comments received in response to the March 2023 NPRMs and the presentations at the Telemedicine Listening Sessions, DEA, jointly with HHS, issued the Second Temporary Rule, also pursuant to 21 U.S.C. 802(54)(G), thereby extending the full set of telemedicine flexibilities regarding prescription of controlled substances as were in place during the COVID–19 PHE through December 31, 2024.[24] The extension authorized all DEA-registered practitioners to prescribe Schedule II–V controlled substances via telemedicine through December 31, 2024, whether or not the patient and practitioner established a telemedicine relationship on or before November 11, 2023. In other words, the grace period provided in the First Temporary Rule was effectively subsumed by this Second Temporary Rule, which continued the extension of the current flexibilities for all practitioner-patient relationships—not just those established on or before November 11, 2023—until the end of 2024. The purpose of the Second Temporary Rule, like the one before it, was to ensure a smooth transition for patients and practitioners that have come to rely on the availability of telemedicine for controlled substance prescriptions, as well as to allow adequate time for providers to come into compliance with any new standards or safeguards that are promulgated as part of a final set of telemedicine regulations.

Tribal Consultations. On June 13 and 27, 2024, the Office of Tribal Justice, Department of Justice (OTJ) collaborated with DEA to host two virtual DOJ Government-to-Government Tribal Consultations to seek input from Tribal governments on the practice of telemedicine within American Indian/Alaskan Native (AI/AN) communities. OTJ and DEA invited the Tribal leaders of all federally recognized Tribes using the Bureau of Indian Affairs Tribal Leaders Directory, and provided a framing paper detailing the flexibilities, public engagement, and regulatory actions taken by DEA in recent years concerning telemedicine. OTJ and DEA invited Tribal input on any question or topic of interest related to the use of telemedicine by AI/AN communities, and specifically requested input on potential regulatory requirements and suggestions on what would help Tribal governments implement and comply with a future rule. OTJ and DEA also welcomed the submission of any written comments as well.

III. Need for Further Rulemaking: Special Registration for Telemedicine

In the process of reviewing and evaluating the comments to the

[19] William T. McDermott, DEA Dear Registrant letter, Drug Enforcement Administration (March 25, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-018)(DEA067)%20DEA%20state%20reciprocity%20(final)(Signed).pdf.*

[20] Thomas W. Prevoznik, DEA Dear Registrant letter, Drug Enforcement Administration (March 31, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf.*

[21] 88 FR 12875 (Mar. 1, 2023).

[22] 88 FR 12890 (Mar. 1, 2023).

[23] Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications, 88 FR 30037 (May 10, 2023).

[24] Second Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications, 88 FR 69879 (October 10, 2023).

proposed 2023 General Telemedicine NPRM and Buprenorphine NPRM, as well as the presentations made by various stakeholders at the Telemedicine Listening Sessions, DEA has determined that the best course of action to ensure patient access to care, while maintaining sufficient safeguards to detect and protect against the diversion of controlled substances, is to establish and maintain a separate *Special Registration for Telemedicine* (also referred to as simply ''Special Registration''), *i.e.,* the regulatory scheme Congress specifically authorized in 21 U.S.C. 802(54)(E) and 21 U.S.C. 831(h). As compared to the pre-COVID–19 PHE landscape, the *Special Registration* proposed herein would allow more comprehensive prescribing, including prescribing of Schedule II narcotics and non-narcotic controlled substances in limited circumstances, by properly registered *clinician practitioners* and dispensing by *platform practitioners* with a legitimate need for the *Special Registration.*

In determining when a *Special Registration* should be issued under 21 U.S.C. 802(54)(E), DEA must consider the criteria set forth in 21 U.S.C. 831(h). First, DEA must evaluate a practitioner's legitimate need for such a *Special Registration,* as well as clearly define the limited circumstances under which a *Special Registration* is appropriate.[25] These statutory requirements emphasize the need for careful consideration when extending prescribing privileges through telemedicine. This evaluation is crucial in determining whether telemedicine serves a necessary role, especially given the heightened risks of diversion and inappropriate prescribing of controlled substances posed by remote services where a patient has never undergone an in-person medical evaluation with the prescribing practitioner.

While the COVID–19 PHE created a genuine need for increased use of telemedicine, it also highlighted the inherent risks associated with remote prescribing, particularly in the absence of in-person medical evaluations. In a 2021 *Harris Poll* online survey conducted on behalf of *Quest Diagnostics,* 67 percent of physicians expressed concerns about missing signs of drug use or use disorders during the COVID–19 PHE, and 75 percent of physicians felt that telemedicine constrained their ability to assess whether patients were at risk of, or already, misusing prescription drugs.[26] Although the telemedicine flexibilities during the PHE allowing practitioners to prescribe controlled substances without prior in-person medical evaluations were necessary to prevent lapses of care amid a global pandemic, it also facilitated the emergence of concerning business models engaged in the widespread diversion of controlled substances, taking advantage of the flexibilities established during the COVID–19 PHE.[27]

Second, DEA may only issue a *Special Registration* if the practitioner is ''registered under 21 U.S.C. 823(g) in the state which the patient will be located'' when receiving the telemedicine treatment, unless the *practitioner* is excepted from 823(g) registration.[28] Such 823(g) registration in the patient's state is a critical validation of the practitioner's qualifications and expertise in prescribing controlled substances within a given state. Moreover, the definition of ''practice of telemedicine'' under the *Ryan Haight Act* requires the practitioner to engage in the practice of medicine only ''in accordance with applicable Federal and state laws.'' A *special registrant* under this proposed framework would need to continue to comply with the laws and regulations of the state in which registered, and the laws and regulations of the state in which they are issuing *special registration prescriptions*[29] via a telemedicine encounter. Thus, where one state's law and regulations are more restrictive than the other state's law and regulations, the *special registrant* would be required to follow the more restrictive state law and regulations.[30]

Third, in all instances, *clinician practitioners* ''must establish and maintain a bonafide doctor-patient relationship in order to act 'in the usual course of . . . professional practice' and to issue a prescription for a 'legitimate medical purpose.' ''[31] The ''usual course of professional practice'' is defined by the state in which a registrant practices, because ''[c]onsistent with the CSA's recognition of the State's primary role in regulating the practice of medicine, the [CSA] generally looks to State law and standards of medical practice to determine whether a doctor and patient have established (and are maintaining) a bonafide doctor-patient relationship'' at the time of the prescription.[32]

Direct-to-Consumer Online Telemedicine Platforms. In today's rapidly evolving healthcare landscape, third-party online telemedicine platforms play a large and integral role, as intermediaries, in the delivery of remote healthcare to patients beyond traditional medical settings, with a shift towards predominantly virtual interactions. Many of these online telemedicine platforms employ a direct-to-consumer (''DTC'') business model in which they introduce or connect

[25] 21 U.S.C. 831(h)(1)(A).

[26] *Majority of Physicians Worry Signs of Addiction Were Missed During Pandemic, Finds New Quest Diagnostics Health Trends Report,* Quest Diagnostics (Nov. 15, 2021), *https://newsroom.questdiagnostics.com/2021-11-15-Majority-of-Physicians-Worry-Signs-of-Addiction-Were-Missed-During-Pandemic,-Finds-New-Quest-Diagnostics-Health-Trends-R-Report#assets_30649_137302-130:199.* While a survey conducted on behalf of a diagnostics services company, such as *Quest Diagnostics,* may carry the potential for bias—given the company's potential preference for traditional in-person healthcare models—it still offers valuable insights, even if interpreted with some caution. When considered in context, such information still provides a unique data point, that when weighted accordingly, can inform this analysis. The results of the *Harris Poll* survey are further reinforced by a 2024 National Center for Health Statistics (NCHS) Data Brief that shows the percentage of physicians who feel telemedicine *fully* provides the same care as in-person is 4.0 percent for primary care, 6.3 percent for surgical specialty, and 6.0 percent for medical specialty. Myrick K, Mahar M, DeFrances CJ. *Telemedicine Use Among Physicians by Physician Specialty: United States, 2021. NCHS Data Brief,* no 493. (Feb. 2024), *https://www.cdc.gov/nchs/data/databriefs/db493.pdf.*

[27] In June 2024, the founder and clinical president of a telehealth company were arrested for allegedly participating in a scheme to distribute *Adderall* and other stimulants online and conspiring to commit healthcare fraud. Specifically, they have been accused of arranging the prescription of over 40 million pills of *Adderall* and other stimulants, often with no legitimate medical purpose. The company allegedly provided easy access to controlled substances in exchange for a monthly subscription fee, leading to tragic consequences, including overdoses and deaths. These allegations underscore DEA's need to judiciously evaluate when a practitioner has a legitimate need for a *Special Registration,* and to ensure that any rule permanently authorizing telemedicine contains sufficient safeguards. *Founder/CEO and Clinical President of Digital Health Company Arrested for $100M Adderall Distribution and Health Care Fraud Scheme,* U.S. Department of Justice, Press Release Number: 24–752 (June 13, 2024), *https://www.justice.gov/opa/pr/founderceo-and-clinical-president-digital-health-company-arrested-100m-adderall-distribution.*

[28] 21 U.S.C. 831(h)(1)(B).

[29] Proposed 21 CFR 1300.04 defines a *special registration prescription* to mean ''a prescription, defined under [21 CFR 1300.01], for controlled substances issued under a practitioner's Special Registration for Telemedicine for a legitimate medical purpose in the usual course of professional practice through the utilization of an audio-video telecommunications system defined in § 1300.04 of this chapter.

[30] Under some circumstances, a special registrant may operate under a state reciprocity agreement or other form of state permission that would authorize the special registrant to comply only with the normally applicable law or regulations of either the state in which they are registered or the state in which they are practicing. In other words, states may deem compliance with one state's normally applicable law and regulations as compliance with both states' laws and regulations. In this context, DEA would understand the special registrant to be complying with both states' laws and regulations, because the special registrant's prescribing of controlled substances would be authorized by both states.

[31] Dewey C. MacKay, 75 FR 49956, 49973 (2010), aff'd, *MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011).

[32] *Id.*

patients with a remote *clinician practitioner* enabling the patient to be ''seen'' anywhere using a computer or smart phone, forgoing the need for the patient to go to a medical facility to use the facility's telecommunications system.

Today's DTC online telemedicine platforms often engage in marketing to attract new patients, whom they then introduce or match with *clinician practitioners* under the platforms' direct employment or contract. The payment arrangements between the patient and the platform vary, but some platforms offer subscriptions, where patients pay a monthly fee for virtual consultations, sometimes up to and including an unlimited number of consultations, with a *clinician practitioner.* Often, but not always, the online telemedicine platform may own and operate the virtual environment, including the telecommunications system, where the patient and practitioner virtually ''meet,'' providing the technological infrastructure or support. Unlike traditional medical settings, the *clinician practitioner* conducts the medical evaluation remotely, after which they may prescribe medications, including controlled substances. While the DTC online telemedicine platforms are not entirely new, they proliferated in recent years, in large part due to the COVID–19 pandemic.

Dispensing by Practitioners under the CSA. Although these third-party, DTC online telemedicine platforms do not directly prescribe to patients or physically dispense controlled substances to patients, certain platforms' central involvement as intermediaries in the remote dispensing of controlled substances qualifies them as ''practitioners'' engaged in ''dispensing'' under the CSA. Under the CSA, to ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance.'' [33] This statutory definition encompasses not only the physical act of handing out medications, but the broader process of providing them to patients under the direction of a licensed healthcare provider.

The online telemedicine platforms serving as intermediaries for the prescribing of controlled substances fall squarely within the CSA's broad definition of ''practitioner.'' Under the CSA a ''practitioner'' means ''a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' [34] According to this statutory definition, a ''practitioner'' is not limited solely to individual healthcare providers, but also encompasses entities permitted by law to distribute or dispense controlled substances. Furthermore, considering the evolving nature of healthcare delivery, recognizing certain DTC online telemedicine platforms as practitioners engaged in dispensing under the CSA reflects the current landscape of telemedicine practice and ensures that DEA's regulations remain relevant and responsive to changes in healthcare technology.[35]

DEA Registration of Intermediaries. The registration of telemedicine intermediaries is not a novel concept. In fact, when Congress amended the CSA with the *Ryan Haight Act,* it recognized the integral role telepresenters, serving as intermediaries, played in certain telemedicine models. In 21 U.S.C. 802(54)(A)–(B), Congress specifically authorized two categories of telemedicine, both involving an intermediary healthcare provider facilitating a medical evaluation between a patient and a *clinician practitioner* located at a distance. Such intermediaries, in this context, are referred to as telepresenters. To uphold the integrity of the closed system, Congress required that such telepresenters, as intermediaries, be registered with DEA. Registration, the cornerstone of the closed system, helps to ensure that such intermediaries are qualified and accountable to DEA, reducing the risk of vulnerabilities or loopholes in this closed system that could lead to diversion and abuse of controlled substances.[36]

Special Registration of Certain DTC Online Telemedicine Platforms. Certain modern DTC online telemedicine platforms of today, which play a substantial and integral role as intermediaries in the remote dispensing of controlled substances, also require registration with DEA. These platforms are indispensable for delivering telemedicine services directly to patients through virtual platforms, in contrast to the other telemedicine models such as those that utilize telepresenters under 21 U.S.C. 802(54)(A)–(B). The necessity for oversight of these newer telemedicine intermediaries is heightened by concerns arising from business practices that have come to light during and after the COVID–19 pandemic. These practices include platforms that incentivize the prescription of controlled substances to patients by practitioners and the exertion of control over the medications prescribed to patients. DEA has been informed by some clinicians that there have been instances when they terminated their relationship with an online telemedicine platform and, in doing so, forfeited access to their patient's medical records stored by the platform. This renders such records non-compliant with DEA regulations, which mandate that the records be readily retrievable by the practitioner, because they become entirely inaccessible to the *clinician practitioner.*

As discussed in further detail below, DEA is proposing the *Special Registration* of these DTC online telemedicine platforms when they meet the proposed regulatory definition of a *covered online telemedicine platform.* DEA is proposing a definition for *covered online telemedicine platform,* delineating the criteria that indicate their substantial and integral role as intermediaries in the remote dispensing of controlled substances, qualifying them as practitioners engaged in dispensing under the CSA and subject to the requirements imposed upon non-

[33] 21 U.S.C. 802(10).

[34] Public Law 91–513 and 21 U.S.C. 802(21). The definition of *practitioner* has also remained unchanged since the enactment of the original CSA.

[35] *See* Senate Report 110–521, *Ryan Haight Online Pharmacy Consumer Protection Act of 2007,* accompanying S.980, November 17, 2008 (providing ''[c]ertain telemedicine practices are exempted from the in-person medical evaluation requirement. The Committee recognizes that telemedicine is a practice tool that can improve health outcomes and reduce costs. It is not the intent of the Committee to restrict the legitimate practice of telemedicine or the emerging practices of telemedicine which are consistent with medical practice guidelines of the State in which the practitioner is licensed, provided such practices do not contravene the goal of effectively controlling the diversion of controlled substances'').

[36] In addition to these two telepresenter categories, Congress created two additional regulatory categories (the *special registration* category and the joint rule category) to allow DEA to carry out its diversion control mission in light of future industry developments. *See* Senate Report 110–521, *Ryan Haight Online Pharmacy Consumer Protection Act of 2007,* accompanying S.980, November 17, 2008 (noting that the statute provides that the Attorney General and the Secretary of Health and Human Services may promulgate regulations that allow for the full practice of telemedicine consistent with medical practice guidelines, so long as these regulations continue to effectively control diversion).

pharmacist practitioners [37] under the *Controlled Substances Act* and its regulations.

When any one of the four outlined factors are present, it solidifies the platform's role as an integral intermediary in the remote dispensing of controlled substances.[38] The proposed definition and criteria are intended to provide a practical and clear framework for identifying when a DTC online telemedicine platform's conduct qualifies them as a *covered online telemedicine platform,* mandating registration as a dispenser with DEA.[39] As proposed, this definition is intended to limit the *Special Registration* requirements only to those DTC online telemedicine platforms that play a substantial and integral role as intermediaries in the remote dispensing of controlled substances.

The definition of *covered online telemedicine platform* also explicitly excludes certain types of entities, including hospitals, clinics, insurance providers, and *local in-person medical practices. Local in-person medical practice* is, in turn, defined by this rule to be a medical practice where all its offices are within 100 miles of each other, and where less than 50 percent of the total prescriptions for controlled substances collectively issued by the practice's physicians and *mid-level practitioners* are issued via telemedicine in any given calendar month, but is not a hospital, clinic, or insurance provider. The type of entities excluded from the definition of *covered online telemedicine platform* are entities that engage in conduct that could potentially fall under the definition's criteria but are not the types of entities whose primary business operations rely on, or center around, telemedicine services. Moreover, it should be noted that the proposed definition of *local in-person medical practice* uses the term ''telemedicine'' rather than ''*practice of telemedicine.*'' This distinction is significant, as ''telemedicine'' is used in its general, colloquial sense, whereas the ''*practice of telemedicine*'' carries the specific statutory meaning defined by the *Ryan Haight Act.*

Determining whether an entity dispenses controlled substances and meets the criteria of a *covered online telemedicine platform* is a fact-specific inquiry. If there is any uncertainty regarding the entity's role as a dispenser, particularly concerning its involvement in the practitioner-patient relationship, registering may be advisable to avert the risk of enforcement action based on potential unregistered, and thus illegal, dispensing of controlled substances.

IV. Section-by-Section Discussion of Proposed Rule

The proposed regulations discussed below are designed to satisfy the statutory mandates of 21 U.S.C. 831(h) and 21 U.S.C. 802(54)(E), while fulfilling DEA's core responsibilities of regulating controlled substances and adapting to the evolving landscape of telemedicine, including the rise of new types of DTC online telemedicine platforms engaged in dispensing of controlled substances. Before discussing the proposed regulations, it is important to once again highlight what they do not govern or permit. First, as emphasized previously, the proposed regulations do not affect practitioner-patient relationships in cases where an in-person medical evaluation has occurred at any point within the relationship. Once an in-person medical evaluation has taken place, the practitioner-patient relationship falls outside the scope of the *Ryan Haight Act* and the DEA regulations implementing the *Ryan Haight Act.* Second, these proposed regulations primarily focus on the *practice of telemedicine* under the *Special Registration* framework authorized by the *Ryan Haight Act.*[40] Other categories of telemedicine established by the *Ryan Haight Act,* such as telemedicine occurring during a public health emergency declared by HHS as authorized under 21 U.S.C. 802(54)(D), are not subject to the registration, prescription, and recordkeeping and reporting regulations proposed in this NPRM.

Third, these proposed regulations would not apply in the absence of a prescription for controlled substances.[41] In other words, practitioners would *not* be required to obtain a *Special Registration* unless they wish to prescribe or otherwise dispense controlled substances to patients via telemedicine encounters. And fourth, the proposed regulations would only permit the *prescribing* of controlled substances through telemedicine by *clinician practitioners.* Under the *Special Registration* framework, *clinician practitioners* would not be authorized to engage in other modes of ''dispensing,'' such as ''administering'' controlled substances to patients via telemedicine.[42]

A. Registration Requirements Under 21 CFR Part 1301

As discussed earlier, registration is the cornerstone of the closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless otherwise exempted. Establishing a *Special Registration* for telemedicine would enhance patient access to care by allowing certain practitioners to prescribe controlled substances via telemedicine without the limitations of geographical barriers. At the same time, it would establish the appropriate circumstances and guardrails for telemedicine-based prescribing and dispensing of controlled substances where an in-person medical evaluation has never been performed by the prescribing practitioner. The rise of DTC online telemedicine platforms in recent years has further transformed healthcare delivery, but it has also introduced new challenges and heightened risks of diversion due to the remote nature of care delivery. The proposed registration requirements for telemedicine-based prescribing and dispensing create a new business activity within DEA's overarching registration framework, distinguishing it from the traditional modes of dispensing under a 21 U.S.C. 823(g) registration.

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[37] *See supra* footnote 15.

[38] The behaviors listed in these four factors are included solely to determine whether a platform is serving as an integral intermediary. Federal, state, or local laws and/or regulations may impose statutory or regulatory requirements related to these behaviors. The inclusion of these behaviors in the definition of *covered online telemedicine platform* does not indicate that such behaviors are permitted under any particular law or regulation.

[39] The definition of *covered online telemedicine platform* and the four criteria are discussed in further detail below in the NPRM's discussion of proposed regulatory definitions.

[40] *Ryan Haight Online Pharmacy Consumer Protection Act of 2008,* Public Law 110–425, 122 Stat. 4820, § 3(a) (2008) (codified as amended in 21 U.S.C. 802(54)(E)).

[41] This is an important distinction given potential conflation between colloquial use of the term ''telemedicine'' and the statutory definition of the ''practice of telemedicine'' in the CSA and these proposed regulations. To illustrate this point, the following scenarios are non-exhaustive examples in which ''telemedicine'' may occur in the colloquial sense but would not constitute the ''practice of telemedicine'' under the CSA or these proposed regulations: (1) a practitioner issues a prescription for a non-controlled substance; (2) a practitioner treats the patient through audio-visual means and, after doing so, determines the patient does not require controlled substances; or (3) a practitioner is a mental health counselor who treats patients using ''talk therapy'' exclusively, without prescribing controlled substances.

[42] 21 U.S.C. 802(2) defines ''administer'' to mean the ''direct application of a controlled substance to the body of a patient or research subject by a practitioner (or, in his presence, by his authorized agent), or the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means.''

1. Three Types of Special Registration; Registrant Eligibility

The proposed requirements for the *Special Registration* [43] are devised to meet the statutory requirements of 21 U.S.C. 831(h). This provision authorizes DEA to issue a *Special Registration* if the practitioner demonstrates a legitimate need for a *Special Registration.*[44] Moreover, this statutory provision requires DEA to promulgate regulations specifying the limited circumstances under which a *Special Registration* may be issued and establish clear eligibility criteria for practitioners and the procedure for seeking a *Special Registration.*[45] To accommodate the varying legitimate needs of practitioners, including both *clinician practitioners* and *covered online telemedicine platforms,* in their capacity as *platform practitioners,* the proposed framework offers three distinct categories of *Special Registrations.*

The first category, the *Telemedicine Prescribing Registration,* would authorize the prescribing of Schedules III through V controlled substances by *clinician practitioners.*[46] The second category, the *Advanced Telemedicine Prescribing Registration,* would authorize certain specialized *clinician practitioners* the privilege to prescribe not only Schedule III through V controlled substances, but Schedule II controlled substances as well,[47] even though such substances have higher potential for abuse and dependence.[48] And lastly, the third category, the *Telemedicine Platform Registration,* would authorize *covered online telemedicine platforms* to dispense Schedules II through V controlled substances through a *clinician practitioner* possessing either a *Telemedicine Prescribing Registration* or an *Advanced Telemedicine Prescribing Registration.*[49]

Under proposed § 1301.11(c)(1)(A), an applicant for one of the three types of *Special Registration* would be required to already have one or more DEA registrations under 21 U.S.C. 823(g) to prescribe (if an *clinician practitioner*) or dispense (if a *platform practitioner*) controlled substances in a state in which they are licensed, registered, or otherwise permitted to prescribe or dispense controlled substances through telemedicine, unless they are otherwise exempted.

This requirement for *Special Registration* streamlines the review and approval process for applications for *Special Registrations* by building upon the checks and assessments already conducted for 21 U.S.C. 823(g) registrations. While the proposed framework allows for VA *practitioners* to seek and obtain a *Special Registration,* DEA and HHS have also jointly promulgated the *Continuity of Care via Telemedicine for Veterans Affairs Patients* final rule (RIN 1117–AB88), published elsewhere in this issue of the **Federal Register**, which specifically addresses the *practice of telemedicine* within the VA health care system. As discussed above, a DTC online telemedicine platform that qualifies as a *covered online telemedicine platform* dispenses controlled substances and must register with DEA in its capacity as a dispenser. It also bears emphasizing that proposed § 1301.11(c)(1) requires that *covered online telemedicine platforms,* like their *clinician practitioner* counterparts, already have one or more DEA registrations under 21 U.S.C. 823(g) to dispense controlled substances; DEA registrations under 21 U.S.C. 823(g) in turn require licensing of the activity by the state in which DEA registration under 21 U.S.C. 823(g) is sought.

Proposed § 1301.11(c)(1)(i) makes it clear that those officials for whom the requirement of registration to prescribe is generally waived under § 1301.23(a) of this chapter must still obtain a *Telemedicine Prescribing Registration* or *Advance Telemedicine Prescribing Registration* before issuing *special registration prescriptions.*[50] Such officials are, as described below, exempt from obtaining *State Telemedicine Registrations,* though they must identify all the states in which patients will be treated via telemedicine on their registration application.

a. Telemedicine Prescribing Registration (Schedules III–V) Clinician Practitioners Eligibility

To be eligible for the *Telemedicine Prescribing Registration* under proposed § 1301.11(c)(2), *clinician practitioners* would need to demonstrate that they have a legitimate need for a *Special Registration.* DEA has determined that physicians and board-certified *mid-level practitioners* (defined under 21 CFR 1300.01) have a legitimate need to prescribe Schedules III through V controlled substances when they anticipate that they will be treating patients for whom requiring in-person medical evaluations prior to prescribing Schedule III–V controlled substances could impose significant burdens on *bona fide* practitioner-patient relationships. For example, practitioners may have a legitimate need for the *Special Registration* when their patients face significant challenges in attending in-person medical evaluations, such as severe weather conditions, living in remote or distant areas, or having communicable diseases, which make in-person appointments difficult or even unadvisable.

b. Advanced Telemedicine Prescribing Registration (Schedules II–V) Clinician Practitioner Eligibility

To be eligible for the *Advanced Telemedicine Prescribing Registration* under proposed § 1301.11(c)(3), physicians and *mid-level practitioners,* as *clinician practitioners,* would not only need to demonstrate they have a legitimate need for the *Special Registration* but that such need warrants the authorization of prescribing of Schedule II controlled substances in addition to Schedules III through V controlled substances. DEA has determined that certain specialized physicians and board-certified *mid-level practitioners* have a legitimate need to prescribe Schedule II controlled substances via telemedicine when treating particularly vulnerable patient populations. Such authorization is reserved only for the most compelling use cases, ensuring that Schedule II prescribing via telemedicine is used only when necessary.

Consistent with these concerns regarding vulnerable patient populations, and cognizant of the high potential for abuse that exists for Schedule II controlled substances, DEA has determined that only certain specialized physicians and board-certified *mid-level practitioners* have a legitimate need for the *Advanced Telemedicine Prescribing Registration,* in the following limited circumstances or practice specialties:

(1) psychiatrists;
(2) *hospice care* physicians;
(3) *palliative care* physicians;
(4) physicians rendering treatment at *long term care facilities;*
(5) pediatricians; [51]

[43] Proposed 21 CFR 1301.11.
[44] 21 U.S.C. 831(h)(1)(A).
[45] *Id.;* 831(h)(2)(A).
[46] Proposed 21 CFR 1301.11(c)(2).
[47] Proposed 21 CFR 1301.11(c)(3).
[48] *See* 21 U.S.C. 812(b)(2), (3).
[49] Proposed 21 CFR 1301.11(c)(4).

[50] 21 CFR 1301.23(a) waives the requirement of registration ''for any official of the U.S. Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, Public Health Service, or Bureau of Prisons who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of his/her official duties.''

[51] Proposed 21 CFR 1306.45(e) would also require that the parent or guardian of patients under the age of 18 be present in the room with the patients when the patients are being issued prescriptions for a Schedule II controlled substance.

(6) neurologists; and

(7) *mid-level practitioners* and physicians from other specialties who are board certified in the treatment of psychiatric or psychological disorders, *hospice care, palliative care,* pediatric care, or neurological disorders unrelated to the treatment and management of pain.

The type of specialized practitioners and board-certified *mid-level practitioners* eligible for the *Advanced Telemedicine Prescribing Registration* typically treat patients that face significant healthcare accessibility challenges, and, in some cases, who suffer from particularly debilitating or terminal illnesses. The hardships faced by such patients were discussed at length by certain speakers during the Telemedicine Listening Sessions. For example, some speakers discussed accessibility issues created by shortages of psychiatrists, and the need for qualified, perhaps board-certified, psychiatrists to diagnose and treat illnesses like ADHD.[52] Another group of speakers addressed the accessibility challenges faced by *palliative* and *hospice* patients, often homebound, who may need urgent pain treatment and symptom management.[53] The heightened specificity of these limited circumstances is intended to strike a balance between ensuring access to necessary medications for vulnerable patients while controlling the prescribing of Schedule II controlled substances that have a higher potential risk of abuse and dependence.

Furthermore, these eligible specialized physicians and board-certified *mid-level practitioners* are uniquely positioned to provide expert care for specific, vulnerable patient populations. These specialized physicians and *mid-level practitioners* have specialized training and in-depth knowledge to equip them to make informed decisions regarding the use of Schedule II controlled substances when prescribed remotely to particularly vulnerable patient groups. While DEA is not proposing regulations that delineate specific criteria for practitioners falling into the designated practice specialties, *clinician* practitioners are required to furnish information on their *Special Registration* applications that would demonstrate their specialized training. For example, the *clinician practitioner* could cite or provide information on board certification in a specialty, specialized training, or the percentage of the *clinician practitioner's* overall practice that falls within one of the specialized practices. *Mid-level practitioners* are, however, required to be board-certified under this proposed framework. DEA invites public comments on all facets of the proposed regulations, including this specific provision.[54] Particularly, DEA seeks input on whether other types of practitioners should be included if they can demonstrate specific training in expertise in managing conditions that are traditionally treated with Schedule II controlled substances. DEA also seeks input on alternative methods to ensure that practitioners seeking to prescribe Schedule II controlled substances pursuant to the *Advanced Telemedicine Prescribing Registration* have the appropriate training and expertise to do so safely.

c. Telemedicine Platform Registration (Schedules II–V) Platform Practitioner Eligibility

To be eligible for the *Telemedicine Platform Registration* under proposed § 1301.11(c)(4), *covered online telemedicine platforms* would need to demonstrate that they have a legitimate need for a *Special Registration.* DEA has determined that *covered online telemedicine platforms* (defined under 21 CFR 1300.04), in their capacity as *platform practitioners,* have a legitimate need to dispense Schedules II through V controlled substances when they anticipate providing necessary services to introduce or facilitate connections between patients and *clinician practitioners* via telemedicine for the diagnosis, treatment, and prescription of controlled substances, are compliant with federal and state regulations, provide oversight over *clinician practitioners'* prescribing practices, and take measures to prioritize patient safety and prevent diversion, abuse, or misuse of controlled substances. The *platform practitioner* would be required to attest to its legitimate need on their *special registration* application. If, however, it is later discovered that the practitioner provided false information to obtain the *special registration* or used it for unlawful or inappropriate purposes, the practitioner could be found in violation of 21 U.S.C. 824(a), which could lead to penalties such as revocation or suspension of the registration.

As discussed previously, the registration of *covered online telemedicine platforms* within the *Special Registration* framework is necessary given the pivotal role they sometimes play in the delivery of healthcare through telemedicine. While these *covered online telemedicine platforms* may improve healthcare accessibility by connecting patients with *clinician practitioners,* their emergence also brings more, and sometimes easier, avenues to divert or abuse controlled substances, particularly when such entities have financial incentives tied to prescriptions and/or do not adequately screen the *clinician practitioners* utilizing their system or platform. The lack of proper oversight and verification of *clinician practitioners'* credentials open the door to ''doctor shopping'' [55] on the systems or platforms, particularly when bad actors are aware of, and exploit, the lack of oversight and credential verification by *covered online telemedicine platforms.*

2. Ancillary Registration: State Telemedicine Registrations

Pursuant to 21 U.S.C. 802(54), the *practice of telemedicine,* including such practice authorized under a *Special Registration,* must be ''in accordance'' or consistent with Federal and *State* law. Section 831(h)(1)(B) authorizes DEA to issue a *Special Registration* to a practitioner if the practitioner is registered under 21 U.S.C. 823(g) in the *state* in which the patient is located when receiving a prescription for controlled substance via telemedicine (a ''823(g) patient state registration), subject to certain exceptions. While the proposed *Special Registration* framework must comply with these

[52] *See* Telemedicine Listening Sessions, Georgia Gaveras (Talkiatry), 21:6–22:4, 25:1–8 (Sept. 12, 2023); John Heaphy (NY State Dep. of Health, Mental Health), 76:10–77:14 (Sept. 13, 2023); and Caitlin Gilloley (American Hospital Association), 63:21–64:14 (Sept. 13, 2023).

[53] *See* Telemedicine Listening Sessions, David Hoffman (Columbia University), 44:17–44:23, 45:16–21, 46:19–21 (Sept. 12, 2023); Robin Plumer, M.D., 190:18–191:17 (Sept. 12, 2013); Kevin Duane, PharmD, 206:16–207:1 (Sept. 12, 2023); Joseph Rotella, M.D. (American Academy of Hospice and Palliative Medicine), 289:25–290:12 (Sept. 12, 2023); Alex Armitage, M.D. (Baylor Scott & White Health), 43:8–14, 43:24–44:10 (Sept. 13, 2023); and Caitlin Gilloley (American Hospital Association), 63:21–64:14 (Sept. 13, 2023).

[54] *See* Appendix B for Chart: *Which Special Registration for Telemedicine Do I Need as a Clinician Practitioner?*

[55] Bollmeier SG, Stevenson E, Finnegan P, Griggs SK. *Direct to Consumer Telemedicine: Is Healthcare from Home Best?* Mo Med. 2020 Jul–Aug;117(4):303–309. PMID: 32848261; PMCID: PMC7431063. *See also, Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications,* 88 FR 30037, 30040 (May 10, 2023). As discussed in the First Temporary Rule, while the conduct of certain online telemedicine platforms has raised concerns and such platforms may be subject to investigation for problematic prescribing practices, many others have acted in good faith to expand access to care. ''Doctor shopping is defined as seeing multiple treatment providers, either during a single illness episode or to procure prescription medications illicitly.'' Sansone RA, Sansone LA. Doctor shopping: a phenomenon of many themes. Innov Clin Neurosci. 2012 Nov;9(11–12):42–6. PMID: 23346518; PMCID: PMC3552465.

statutory provisions, DEA is mindful that telemedicine is largely designed to overcome geographical constraints. Therefore, to reduce the administrative burden and cost on *special registrants,* DEA is proposing a limited type of 21 U.S.C. 823(g) registration for a lower registration fee, the *State Telemedicine Registration.*

Pursuant to proposed § 1301.11(d), a *clinician special registrant* would be required to obtain a *State Telemedicine Registration,* which is a DEA-issued registration and not a registration issued by the individual states, for every state in which they intend to issue prescriptions for controlled substances to patients via telemedicine. Likewise, a *platform special registrant* would be required to obtain a *State Telemedicine Registration* for every state in which it dispenses Schedule II–V controlled substances to a patient. The *State Telemedicine Registration* would operate as an ancillary credential, contingent on the *Special Registration* held by the *clinician practitioner* or *platform practitioner.* In other words, a *State Telemedicine Registration* for a given state would allow the *special registrant* to prescribe only via telemedicine encounters as to that state, and only for the scheduled controlled substances authorized by their *Special Registration* (*i.e., Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration, or Telemedicine Platform Registration*).

Proposed 21 CFR 1301.11(d) stipulates that a practitioner's eligibility for the *State Telemedicine Registration* for a specific state depends on their authorization, such as state licensure or state-level registration, to prescribe or otherwise dispense controlled substances through telemedicine within that state. Consistent with the criteria for all 823(g) registrations, DEA will consider the public interest factors outlined in 21 U.S.C. 823(g)(1)(A)–(E) before granting a *State Telemedicine Registration.* The requirement of state authorization aligns with 21 U.S.C. 823(g)(1)(D), which assesses compliance with *state,* federal, and local laws regarding controlled substances.

Exemptions to the State Telemedicine Registration Requirement. Section 21 U.S.C. 831(h)(1)(B) does, however, provide two categories of exemptions to the state registration requirement. Generally, a *clinician special registrant* would not be required to obtain a section 823(g) registration in each patient state to prescribe via telemedicine, if the *clinician special registrant* is either: (1) subject to a regulatory exemption applicable to all states pursuant to 21 U.S.C. 822(d),[56] or (2) the *clinician special registrant* is an employee or contractor of the VA.[57]

As to the first category of exemptions, there is currently one regulatory exemption, promulgated pursuant to 21 U.S.C. 822(d), applicable to registration in all states. Specifically, 21 CFR 1301.23(a) waives registration ''for any official of the U.S. Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, Public Health Service, or Bureau of Prisons who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of his/her official duties.'' The second category of exemptions is the one explicitly extended to VA employees or contractors by statute.[58] When an employee or contractor of the VA is acting in the scope of such employment or contract, and is registered under section 823(g) in *any state* or is utilizing the registration of a hospital or clinic operated by the VA registered under 21 U.S.C. 823(g), the prescriber would not need to possess a *State Telemedicine Registration* in each state in which a patient is located.[59]

While proposed § 1301.11(d) incorporates these exemptions, those *clinician practitioners* who are exempted from the *State Telemedicine Registration* requirement remain subject to other *Special Registration* eligibility requirements and are required to identify all the states in which patients will be treated via telemedicine on their registration application for the *Telemedicine Prescribing Registration* or the *Advanced Telemedicine Prescribing Registration.* DEA must have this information to coordinate oversight and verify that *State Telemedicine Registration*-exempted *clinician special registrants* are operating within the boundaries of their exemption while upholding regulatory standards. The *State Telemedicine Registration*-exempted *clinician special registrants* would also be exempted from the $50 fee per state under proposed 21 CFR 1301.13(e)(1)(xiii), further discussed below.[60]

[56] Pursuant to 21 U.S.C. 822(d), ''[t]he Attorney General may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.''

[57] 21 U.S.C. 802(54)(A)(ii)(III).

[58] 21 U.S.C. 802(54)(A)(ii)(III)(bb).

[59] 21 U.S.C. 831(h)(1)(B)(i)–(ii).

[60] *See* Appendix C for Chart: *Which State Telemedicine Registrations Do I Need, If Any?*

3. Special Registration Application Process

The *Special Registration* application process for obtaining the proposed *Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration,* and the *Telemedicine Platform Registration* would differ from the standard 21 U.S.C. 823(g) registration application process. The proposed amendments to 21 CFR 1301.13 outline the new *Special Registration* application requirements.

a. Special Registration Application, Cycles, Fees, Generally

Proposed 21 CFR 1301.13(e)(1)(xi)–(xv) summarizes the *Special Registration* Application, Cycle, and Fees. DEA proposes issuing a new registration application, *Form 224S* (*Application for Special Registration for Telemedicine Under the Controlled Substances Act*), tailored for *Special Registrations. Special Registration* applicants would use the *Form 224S* to apply for one of the three types of the *Special Registration* (*i.e., Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration,* or *Telemedicine Platform Registration*), as well as the *State Telemedicine Registrations* for each state in which telemedicine patients will be located. The regulations propose a tiered fee structure to address the administrative demands specific to the new business activities. The regulations propose a three-year cycle for the *Special Registrations* (*i.e., Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration,* and *Telemedicine Platform Registration*), as well as the *State Telemedicine Registrations* (*i.e., Clinician Practitioner State Telemedicine Registration* and the *Platform Practitioner State Telemedicine Registration*).

For any one of the three types of *Special Registration,* the registration fee would be $888. The fee for the *Platform Practitioner State Telemedicine Registration* would be $888 for each state in which a *State Telemedicine Registration* is sought; however, the *Clinician Practitioner State Telemedicine Registration* would be discounted to $50 for each state in which the *clinician practitioner* sought a *State Telemedicine Registration.*[61] The fee for the *State Telemedicine Registration* for *clinician practitioners* is discounted to account for the expected

[61] 21 CFR 1301.21 exempts certain *clinician practitioner* applicants from payment of application fees for registration, including for *Special Registrations* and *State Telemedicine Registrations.*

lower volume of telemedicine that would be conducted by *clinician practitioners* compared to *covered online telemedicine platforms.* The $50 registration fee for the *Clinician Practitioner State Telemedicine Registration* would be waived for those exempted from registration pursuant to 21 U.S.C. 831(h)(1)(B) and proposed 21 CFR 1301.11(c)(3). In DEA's preliminary assessment, the registration fees are reasonable and are expected to account for the full operating costs associated with the heightened administrative and resource demands on the Diversion Control Program that will arise from regulating a new registration class; however, DEA may adjust these fees as it acquires additional information about the new registration classes to ensure appropriate funding for regulatory oversight.[62]

b. Supplemental Requirements on Special Registration Application (Form 224S)

Special Registered Location. Pursuant to proposed § 1301.13(k)(1), all *Special Registration* applicants would be required to designate one of their existing 21 U.S.C. 823(g) registered locations as the registered location/physical address (''*special registered location*'') of their *Special Registration.* The *special registered location* would serve as the physical point of contact for DEA telemedicine inquires and compliance actions. As will be further discussed below, the proposed rule would also mandate that the records arising from telemedicine encounters under the *Special Registration* be maintained at the *special registered location.*[63] Such centralized recordkeeping would allow DEA to more efficiently review records and ensure that prescriptions are being issued in accordance with DEA regulations. Proposed § 1301.13(k)(1) would provide an exemption for applicants who are exempted from the *State Telemedicine Registration* requirement under proposed § 1301.11(d); however, such exempted persons would be required to provide another physical address on the application to serve as their *special registered location.*

Form 224S Supplementary Disclosures and Attestations. Proposed 21 CFR 1301.13(k)(2) would require the *Special Registration* applicant to provide certain disclosures and attestations on the Form 224S. Such information would enhance transparency, patient safety, and anti-diversion efforts. First, proposed § 1301.13(k)(2)(i) would require *platform practitioners* applying for the *Telemedicine Platform Registration* to attest to all employment, contractual relationships, or professional affiliations with any *clinician special registrant* and Online Pharmacy and their respective registration numbers on the Form 224S. Likewise, proposed § 1301.13(k)(2)(ii) would require *clinician practitioners* applying for the *Telemedicine Prescribing Registration* or the *Advanced Telemedicine Prescribing Registration* to attest to all employment, contractual relationships, and professional affiliations, including but not limited to those with *covered online telemedicine platforms* (and the respective online telemedicine platform's *Telemedicine Platform Special Registration number,* if applicable) on the Form 224S. By understanding each prescriber's professional associations, DEA can more effectively evaluate the prescriber's qualifications, conflicts of interest, and compliance with DEA regulations.[64] Second, proposed § 1301.13(k)(2)(iii) would require that *clinician practitioners* and *platform practitioners* applying for a *Special Registration* to attest that they have devised, and are committed to maintaining, anti-diversion policies and procedures.

Third, proposed § 1301.13(k)(2)(iv) would require *clinician practitioners* applying for the *Advanced Telemedicine Prescribing Registration* to disclose their practice specialties, *e.g. hospice care* or *palliative care.* DEA would use this information in conjunction with other investigative information to help detect and prevent diversion of controlled substances via telemedicine. This would include circumstances where *clinician practitioners* appear to be prescribing medications for conditions unrelated to their practice specialties. DEA would also use this information as needed to check the applicant's eligibility for the *Advanced Telemedicine Prescribing Registration,* which is limited to certain specialized physicians and *mid-level practitioners* treating vulnerable patient populations who have a legitimate need to prescribe Schedule II controlled substances.

As discussed above, under the proposed 21 CFR 1301.11(c)(3), only psychiatrists, *hospice care* physicians, *palliative care* physicians, physicians rendering treatment at *long term care facilities,* pediatricians, neurologists, and *mid-level practitioners* board certified in the treatment of psychiatric or psychological disorders, *hospice care, palliative care,* pediatric care, or neurological disorders unrelated to the treatment and management of pain, would be eligible for the *Advanced Telemedicine Prescribing Registration.* Lastly, proposed § 1301.13(k)(2)(v) would require that, for each type of *Special Registration,* the applicant required to attest to their legitimate need on their *special registration* application. If, however, it is later discovered that practitioner provided false information to obtain the *Special Registration* or used it for unlawful or inappropriate purposes, they could be found in violation of 21 U.S.C. 824(a), which could lead to penalties such as revocation or suspension of registration.

c. Notification of Application Changes; Modifications (Form 224S–M)

Proposed 21 CFR 1301.13(l) would require *special registrants* to promptly notify DEA of any changes to the information provided in their original *Special Registration* application (Form 224S) within 14 business days on a Form 224S–M (*Application for Changes and Modifications to Special Registration*). For example, if a *clinician special registrant* began employment with, or otherwise entered an arrangement with, a new DTC online telemedicine platform not previously disclosed on their original Form 224S, the *clinician special registrant* would be required to submit a Form 224S–M to DEA within 14 business days of any such change. The Form 224S–M would also be used by *clinician special registrants* and *platform special registrants* to make modifications to their *Special Registration.* For example, the *special registrant* would submit a Form 224S–M to apply for additional *State Telemedicine Registrations* to engage in telemedicine in states for which the *special registrant* did not originally apply on their Form 224S.

[62] Pursuant to 21 U.S.C. 821, DEA is authorized to charge reasonable fees relating to registration and control of the dispensing (including prescribing) of controlled substances. Furthermore, 21 U.S.C. 886a(1)(C) requires those fees to be set at a level that ensures the recovery of the full costs of operating the various aspects of the Diversion Control. Program. For more information on fee scheduling, see Registration and Reregistration Fees for Controlled Substance and List I Chemical Registrants, 85 FR 44710–44734 (July 24, 2020).

[63] *See* Proposed 21 CFR 1304.04(j).

[64] *See* Telemedicine Listening Sessions, Dr. Shabana Khan (American Psychiatric Association and American Academy of Child and Adolescent Psychiatry), 38:16–19 (Sept. 12, 2023) (recommending that DEA could require the reporting of the prescriber's employer to hold the telemedicine employers accountable).

4. Special Registration for Telemedicine Actions

a. Approval and Denial of Special Registration Applications

Proposed amendments to 21 CFR 1301.35 address the approval and denial criteria that would be considered on an application for *Special Registration* under 21 U.S.C. 831(h). The proposed amendment to § 1301.35(a) states that the Administrator shall issue a Certificate of Registration (DEA Form 223) to a *Special Registration* applicant if: (1) the *Special Registration* applicant satisfies the eligibility requirements specified at proposed 21 CFR 1301.11(c)(2) (*Telemedicine Prescribing Registration*), proposed 21 CFR 1301.11(c)(3) (*Advanced Telemedicine Prescribing Registration*), proposed 21 CFR 1301.11(c)(4) (*Telemedicine Platform Registration*) or proposed 21 CFR 1301.11(d) (*State Telemedicine Registration*); and (2) after considering the public interest factors provided at 21 U.S.C. 823(g)(1)(A)–(E), the Administrator has determined that the *Special Registration* will be consistent with the public interest.

By evaluating *Special Registration* applicants on the eligibility requirements and considering the public interest factors under Section 823(g), DEA can ensure that only qualified practitioners, whether a *clinician practitioner* or a *platform practitioner,* who prioritize public safety and regulatory compliance are granted *Special Registrations for Telemedicine.* As is required for applications for other registrations (issued under 21 U.S.C. 823 and 21 U.S.C. 958), proposed 21 CFR 1301.35(a) requires the Administrator—if intending to deny an application—to issue an *Order to Show Cause* pursuant to 21 CFR 1301.37,[65] and, if requested by the applicant, hold a hearing on the application pursuant to 21 CFR 1301.31 for *Special Registration* Applications.

Proposed 21 CFR 1301.35(d) would specify what information a Certificate of Registration (DEA Form 223) issued for a *Special Registration* shall contain: name; *special registered location; Special Registration for Telemedicine* (*Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration,* or *Telemedicine Platform Registration*), and *State Telemedicine Registration(s);* the activity authorized by the *Special Registration,* the Schedules and/or Administration Controlled Substances Code Number (as set forth in part 1308 of this chapter) of the controlled substances which the registrant is authorized to handle; the amount of fee paid (or exemption) for each registration, and the expiration date of each registration. Proposed 21 CFR 1301.35(d) would also require a special registrant to maintain the Certificate of Registration at the *special registered location* in a readily retrievable manner and to permit inspection of the certificate by any official, agent or employee of the DEA or of any Federal, State, or local agency engaged in enforcement of laws relating to controlled substances.

b. Suspension and Revocation of Special Registrations

The proposed amendments to 21 CFR 1301.36 outline when *Special Registrations for Telemedicine* (*Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration,* and *Telemedicine Platform Registration*), and *State Telemedicine Registrations* may be suspended or revoked. Proposed 21 CFR 1301.36(c) would provide that such *Special Registrations for Telemedicine* can be suspended or revoked based on the grounds specified in 21 U.S.C. 824(a), which are fundamentally designed to authorize DEA to intervene when registrants jeopardize the responsible handling of controlled substances. A *Special Registration* is contingent on the good standing of the registrant's other DEA registrations; therefore, proposed 21 CFR 1301.36(k) stipulates that the suspension or revocation of any registration under 21 U.S.C. 823 will trigger an automatic suspension or revocation of any registration issued under 21 U.S.C. 831. These automatic suspensions and revocations are designed to prevent registrants who have had one registration suspended or revoked due to non-compliance or risk to patient safety, from exploiting alternate registrations.

B. Special Registration Prescriptions Issued by Clinician Special Registrants Under 21 CFR Part 1306

Proposed 21 CFR 1306.41 through 1306.47 provide heightened requirements for *clinician special registrants* when they issue *special registration prescriptions.* Along with these heightened *special registration prescription* requirements, *clinician special registrants* would remain obligated to comply with all prescription regulations required under their 21 U.S.C. 823(g) registration. The combination of heightened telemedicine standards and continued adherence to existing regulations ensures that the quality and integrity of medical practice are maintained, even in the evolving landscape of remote healthcare services. Generally, these proposed regulations address the manner in which prescriptions are issued by *clinician special registrants,* and certain elements required to be a part of *special registration prescriptions.*

1. Manner of Issuance of Special Registration Prescriptions

Prescription Origination within the United States. Proposed 21 CFR 1306.41 would require that the *clinician special registrant* be physically present in the United States when conducting a telemedicine encounter and issuing a *special registration prescription.* Additionally, proposed 21 CFR 1306.41 would require that the *clinician special registrant* hold the proper licensure and authorization within the state and territory where the practitioner is located when the telemedicine encounter takes place.[66] For the purposes of this proposed rule, the ''United States'' means the 50 states of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, America Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, and any other trust territory or possession of the United States. This proposed requirement ensures that DEA retains jurisdictional control over *special registration prescriptions* and maintains clear boundaries on where these prescriptions are issued, ensuring compliance with U.S. laws and regulations. Restricting *clinician special registrants* from operating outside the U.S. also minimizes the risk associated with international boundaries, such as different regulatory frameworks and potential challenges in oversight and accountability.

Electronic Prescribing for Controlled Substances (EPCS). Proposed 21 CFR 1306.42 requires all *special registration prescriptions* be issued through EPCS.[67] For the practice of telemedicine, in which physical practitioner-patient interactions do not exist, EPCS would be instrumental in securing the prescription process. It would establish a traceable and secure platform that reduces the risk of unauthorized access

[65] 28 CFR Pt. 0, Subpt. R., App., Sec. 7 delegates the authority to sign final orders connected with the suspension, denial, or revocation of registration to the Deputy Assistant Administrator of the DEA Office of Diversion Control.

[66] The practitioner would also be required to be licensed and authorized to practice telemedicine in the state where the patient is located pursuant to the relevant *State Telemedicine Registration. See* proposed 21 CFR 1301.11(d).

[67] *Electronic Prescriptions for Controlled Substances,* 75 FR 16236 (March 31, 2010).

and forgeries. Moreover, the majority of states have enacted EPCS mandates to combat the opioid crisis by focusing on opioid access and enhanced oversight of possible misuse.[68] According to one 2021 study of New York's e-prescribing mandate, the mandate reduced the rate of overdoses involving natural and semi-synthetic opioids by 22 percent.[69] EPCS offers a robust and accountable system that prevents misuse and diversion of controlled substances, helping to maintain the integrity of prescribing among *clinician special registrants.*

Nationwide Prescription Drug Monitoring Program (PDMP) Check. Proposed 21 CFR 1306.43 requires that *clinician special registrants* perform a check of relevant PDMPs. For a period of three (3) years from the date that a final rule becomes effective, before issuing any *special registration prescription* for controlled substance to a patient, the *individual special registrant* would be required to check the PDMPs for: (1) the state or territory where the patient is located; (2) state or territory where the *clinician practitioner* is located; and (3) any state or territory with PDMP reciprocity agreements with either the state or territory where the patient is located or the state or territory where the *clinician practitioner* is located. While the proposed regulation would require, at a minimum, that *clinician special registrants* check these three categories, DEA encourages *clinician special registrants* to check any other state PDMP that the registrant determines to be clinically appropriate.

After three years, however, the *individual special registrant* would be required, before issuing any *special registration prescription* for controlled substances to a patient, to check the PDMPs of all 50 states of the United States and any other U.S. district or territory that maintains its own PDMP. This requirement for a broader, nationwide PDMP check would not begin until three (3) years after the final rule's effective date, to allow registrants and industry sufficient time to comply with the new requirement. If, however, there is no mechanism to perform such a nationwide check after these three years, then *individual special registrants* would remain required to continue performing PDMPs checks of the states in the three categories described above, and *individual special registrants* would only be able to issue *special registration prescriptions* for Schedule II controlled substances to patients located within the same state as the *individual special registrant, i.e.,* where there is an intra-state practitioner-patient relationship. The proposed nationwide PDMP check requirement is intended to ensure that *clinician practitioners* and pharmacists have full visibility of a patient's controlled substance prescription history, not to proactively furnish DEA with access to this data. Accordingly, this rule does not propose that DEA would gain any new avenues, by means of this rule, to collect information from state PDMPs beyond what is otherwise authorized by federal and state laws.

This delayed nationwide PDMP check requirement also reflects that the fragmented nature of PDMPs across states and territories has created challenges for healthcare providers in obtaining comprehensive patient data, particularly in cases involving telemedicine. In the context of telemedicine, the extension of medical services across state boundaries increases the complexity of controlling diversion of controlled substances. Telemedicine allows patients to consult *clinician practitioners* located in different states, creating a scenario where patients might seek multiple prescriptions from different *clinician practitioners* practicing in different regions, *i.e.* ''doctor shop,'' by exploiting the current fragmented nature of PDMPs across the states. Moreover, the absence of in-person interaction with telemedicine patients may limit the practitioner's ability to gauge whether patients are being honest about their medical history, potentially enabling the concealment of pertinent information related to controlled substances. During the Telemedicine Listening Sessions, various speakers highlighted the challenges resulting from the fragmented nature of PDMPs across states and territories and called for enhanced interoperability of PDMPs nationwide; some speakers also advocated for a unified national or federal PDMP to address these concerns more effectively.[70]

To address these risks to public health and safety, it is imperative that *clinician special registrants* ultimately be required to perform this comprehensive PDMP check of all 50 states, and any other U.S. district or territory that maintains its own PDMP. This comprehensive nationwide PDMP check would provide the *clinician special registrants* a comprehensive view of the patient's prescription history, helping to prevent over-prescribing and mitigating the risk of patients engaging in ''doctor shopping'' to obtain multiple controlled substance prescriptions across state lines. DEA acknowledges that it is currently unlikely that any one healthcare provider has access to all PDMPs nationwide. However, DEA also recognizes that current efforts to standardize, centralize, and interconnect PDMP data are making headway. These initiatives, aimed at creating a more unified and accessible system, offer a feasible future solution to bridge the gap and improve the accessibility of vital prescription information.

Special Registration Prescriptions and Audio-Video Telecommunication Systems. Proposed 21 CFR 1306.44(a) mandates that a *clinician special registrant* utilize both audio and video components of an *audio-video telecommunications system* to prescribe under the *Special Registration* framework for every telemedicine encounter whether an initial visit or subsequent visit or follow-up. This requirement underscores the critical need to not only audibly, but visually, assess patients when prescribing controlled substances. Controlled substances, which often carry a substantial risk of misuse or diversion, require a more comprehensive evaluation. Visual observation of the patient is crucial for providers, because it communicates valuable information that cannot be obtained through other means and allows for more effective identity verification.[71] By observing a

[68] *EPCS Mandates: Ultimate Guide to 2023 Deadlines √ RXNT (Available: https://www.rxnt.com/epcs-mandates/).*

[69] Abouk R, Powell D. *Can Electronic Prescribing Mandates Reduce Opioid-Related Overdoses?* Econ Hum Biol. 2021 Aug;42:101000. doi: 10.1016/j.ehb.2021.101000. Epub 2021 Apr 9. PMID: 33865194; PMCID: PMC8222172 (Available: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8222172/*).

[70] Telemedicine Listening Sessions, Dr. Shabana Khan (American Psychiatric Association and American Academy of Child and Adolescent Psychiatry), 36:21–37:1, 38:6–10, 41:20–42:6 (Sept. 12, 2023); Dr. Helen Hughes (John Hopkins Medicine) 69:3–10 (Sept. 12, 2023); Jodi Sullivan (Investigations Medicare Drug Integrity Contractor), 197:5–13, 197:24–198:21 (Sept. 12, 2023); and Dr. Jeffrey Chester, 256:22–257:10 (Sept. 12, 2023); Telemedicine Listening Sessions, Dr. Felicia Bailey, 19:6–13 (Sept. 13, 2023); Dr. Connie Guille (Medical University of South Carolina), 52:11–20 (Sept. 13, 2023); Christa Natoli (CTel), 151:15–152:3 (Sept. 13, 2023); John Wells (Louisiana State University), 160:4–8 (Sept. 13, 2023); Dan Golden (East Coast Telepsychiatry), 215:6–216:23 (Sept. 13, 2023); Dr. Shirley Reddoch, 235:14–18 (Sept. 13, 2023); Dr. Stephen Martin (Boulder Care), 128:24–129:10 (Sept. 13, 2023); and Dr. Ujjal Ramtekkar (Quartet Health), 142:10–18 (Sept. 13, 2023).

[71] *See* Faustinella F. *The Power of Observation in Clinical Medicine.* Int J Med Educ. 2020 Nov 30;11:250–251. doi: 10.5116/ijme.5fb9.1c9b. PMID: 33254147; PMCID: PMC7883801 (Available: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7883801/*); and Bramstedt, Katrina, Ph.D., MA. *The Use of Visual Arts as a Window to Diagnosing Medical Pathologies.* AMA J Ethics. 2016;18(8):843–854. doi: 10.1001/journalofethics.2016.18.8.imhl1–1608 (Available: *https://journalofethics.ama-assn.org/article/use-visual-arts-window-diagnosing-medical-pathologies/2016-08*).

patient's physical appearance, demeanor, and body language, providers can gather important indications of misuse or diversion of controlled substances. Though DEA has permitted audio-only telemedicine on a temporary basis for patients during and immediately after the COVID–19 PHE, the current landscape calls for a reevaluation. The Department of Health and Human Services (HHS) declared an end to the Federal PHE for COVID–19 under section 319 of the Public Health Service Act on May 11, 2023,[72] and as pointed out by some researchers, the ''risk benefit calculation of audio-only visits has changed, and it is increasingly important to protect patients from potentially lower-quality audio-only visits,'' especially when visual observations are critical.[73] At the Telemedicine Listening Sessions, various speakers advocated for the use of audio-video telemedicine specifically.[74] Expressing their concerns about the use of audio-only telemedicine, one speaker said, ''we require video visits. On rare occasions we do the telephone. Just for the fact you can lay eyes on the people. They may tell you they're perfectly fine, but they may have tears coming down their face. They may have physical problems. They may have meth marks. You know, things that people need to see. So video's important.'' [75]

The utilization of *audio-video telecommunication systems*—as opposed to audio-only communication technology—not only offers advantages in helping prevent diversion, but it also allows the *clinician special registrant* to visually confirm the patient's identity in real time. This would be achieved by comparing the patient to their existing photo identification on file, which will exist in the vast majority of cases given the requirements under proposed 21 CFR 1304.04(i). This direct visual verification serves as a further safeguard against the diversion of controlled substances during telemedicine encounters.[76]

Schedule III–V Special Registration Prescriptions for Opioid Use Disorder. Proposed 21 CFR 1306.44(b) would allow *clinician special registrants* to issue *special registration prescriptions* for, and *platform special registrants* to dispense, Schedule III–V controlled substances approved by the FDA for the treatment of Opioid Use Disorder (''OUD'') through the use of an *audio-only telecommunications system* as described in 42 CFR 410.78(a)(3), provided that the treatment was initiated through the use of an *audio-video telecommunications system* as defined in the proposed 1300.04 of this chapter. According to one survey of 866 mental health (MH), primary care (PC), and specialty care (SC) clinicians in the Department of Veterans Affairs New England Healthcare System (VANEHS), less than one-third of the clinicians surveyed rated phone as equivalent to or higher in quality when treating new patients. However, the survey indicated that support for such audio-only telecommunications increased significantly when treating established patients. These results highlight the importance of visual assessments for new patients, while showing that audio-only telecommunications may be more acceptable or useful once a patient is established.[77]

Currently, the only Schedule III–V narcotic drug approved by the FDA for the treatment of OUD is buprenorphine.[78] DEA's proposed authorization for the use of *audio-only telecommunications systems* for the treatment of OUD is rooted in the unique nature of OUD treatment. The complex and long-term management of OUD often necessitates a continuum of care that might be best accommodated through flexibility in telecommunication methods. Expanding the circumstances under which *clinician practitioners* are authorized to prescribe buprenorphine via telemedicine encounters, including audio-only encounters, would increase access to treatment for those individuals with OUD who may not want to seek treatment, or are unable to seek treatment, due to various economic, geographical, sociological, and logistical reasons.

Many OUD patients may lack the financial means to obtain in-person treatment traditionally or through audio-video telemedicine encounters. OUD patients who are unhoused, unemployed, or facing other challenges may find it prohibitive to afford devices capable of audio-video telemedicine encounters or consistent access to wireless internet and/or data plans adequate to support bandwidth demands of telemedicine encounters.[79] The estimated number of deaths from opioid overdoses for the 12-month period ending in October 2023 were 79,695, with a peak of 83,985 opioid overdose deaths for the 12-month period ending in May 2023.[80] Access to buprenorphine decreases the risk of overdosing,[81] and increasing access to buprenorphine after a drug overdose has also been associated with a reduced risk of death.[82] This allowance acknowledges the specific challenges faced by OUD patients and the importance of ensuring consistent therapeutic relationships with limited interruptions.

It also important to highlight that the *Expansion of Buprenorphine Treatment via Telemedicine Encounter* final rule (RIN 1117–AB78), jointly promulgated with HHS elsewhere in this issue of the **Federal Register**, allows a DEA-registered practitioner without a *Special Registration* to issue a prescription for a Schedule III–V controlled substance approved by the FDA for the treatment of OUD via audio-only or audio-video telemedicine for an initial consecutive six-month supply. Following the initial six-month supply, practitioners may prescribe the controlled substance by other forms of the *practice of telemedicine* authorized under the CSA (such as pursuant to a *Special*

[72] *Fact Sheet: End of the COVID–19 Public Health Emergency,* Press Release, U.S. Dept. of Health and Human Services (HHS)(May 9, 2023), *https://www.hhs.gov/about/news/2023/05/09/fact-sheet-end-of-the-covid-19-public-health-emergency.html*.

[73] *Rethinking the Impact of Audio-Only Visits on Health Equity,* RAND Corp. (Dec. 17, 2021),), *https://www.rand.org/blog/2021/12/rethinking-the-impact-of-audio-only-visits-on-health.html*.

[74] Telemedicine Listening Sessions, Melanie Melville (Legacy Community Health), 96:1–16 (Sept. 12, 2023); Bruce Bassi, M.D., 29:18–30:3 (Sept. 13, 2023); Connie Guille (Medical University of South Carolina), M.D., 53:21–54:1 (Sept. 13, 2023).

[75] Telemedicine Listening Sessions, Dan Golden, 218:15–219:6 (Sept. 13, 2023).

[76] *See* Telemedicine Listening Sessions, Kevin Duane. 202:21–203:9 (Sept. 12, 2023); and Bruce Bassi, M.D., 31:12–20 (Sept. 13, 2023).

[77] Connolly SL, Miller CJ, Gifford AL, Charness ME. Perceptions and Use of Telehealth Among Mental Health, Primary, and Specialty Care Clinicians During the COVID–19 Pandemic. *JAMA Netw Open*. 2022;5(6):e2216401. doi:10.1001/jamanetworkopen.2022.16401.

[78] 42 CFR 8.12(h)(2)(ii).

[79] DeLaCruz et al., *Telemental Health for the Homeless Population: Lessons Learned when Leveraging Care,* (Dec. 8, 2022) *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9734763/*.

[80] Provisional Drug Overdose Death Counts, National Center for Health Statistics, Centers for Disease Control and Prevention. *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm*. Updated March 3, 2024. Last accessed April 12, 2024.

[81] Dadiomov, *et al., Buprenorphine and naloxone access in pharmacies within high overdose areas of Los Angeles during the COVID–19 pandemic,* Harm Reduction Journal (June 29, 2022), *https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-022-00651-3*. Last accessed April 11, 2024.

[82] Larochelle, *et al., Medication for Opioid Use Disorder After Nonfatal Opioid Overdose and Association with Mortality,* Annals of Internal Medicine, (August 07, 2018), *https://www.acpjournals.org/doi/10.7326/M17-3107*. Last accessed April 11, 2024.

Registration) or after conducting an in-person medical evaluation.

This proposed Special Registration NPRM would not preclude a *clinician special registrant* from utilizing the authority under the *Expansion of Buprenorphine Treatment via Telemedicine Encounter* final rule (RIN 1117–AB78) for the prescription of buprenorphine for the treatment of OUD. However, after the six-month supply has been completed, a *clinician special registrant* would need to initiate further prescribing of the controlled substance through an *audio-video telecommunications system.* After this initial audio-video telemedicine encounter, the *clinician special registrant* may then use *audio-only telecommunications systems* to prescribe buprenorphine for the treatment of OUD to the patient for the duration of the practitioner-patient relationship.

DEA's proposed authorization of audio-only telemedicine follow-ups under the *Special Registration* framework does not or should not be taken to imply that buprenorphine cannot be or is not diverted. Some presenters spoke to these issues during the Telemedicine Listening Sessions. According to one presentation, there is a ''robust illicit market for buprenorphine,'' and anecdotal reports of patients are selling buprenorphine to fund abuse of other controlled substances.[83] Another presenter said that drugs like suboxone and buprenorphine, prescribed to treat OUD, are used as a ''currency'' to purchase other drugs like methamphetamines, and that in his community, ''if methamphetamine is involved, you can pretty much be assured the diversion of buprenorphine is involved.'' [84]

Such anecdotal information, however, must be considered in the context of the nation's opioid crisis, as well as recent data showing a lower risk of diversion for buprenorphine relative to other controlled substances. In November 2023, a report by the Office of the Inspector General of HHS found that 97 percent of Part D enrollees received the recommended amounts or less of buprenorphine for OUD in 2022, suggesting that the risk of misuse or diversion of buprenorphine in Medicare Part D may be low.[85] Considering this data and the additional proposed safeguards in this rule for *special registration prescriptions,* including the initiation of buprenorphine through audio-video telemedicine encounters, DEA believes that expanding access to buprenorphine through audio-only follow-ups outweighs the relatively lower risk of misuse and diversion of buprenorphine.

Schedule II Controlled Substance Prescriptions. Proposed 21 CFR 1306.45 requires that every *special registration prescription* for a Schedule II controlled substance be issued by a *clinician special registrant* that maintains the *Advanced Telemedicine Prescribing Registration,* who is issuing the prescription while the *clinician special registrant* is practicing within their given medical specialty. Proposed 21 CFR 1306.45(a) imposes further conditions on *clinician special registrants* who are pediatricians or board-certified in pediatric care and requires the mandatory presence of the minor's parent or guardian when the *clinician special registrant* prescribes a Schedule II controlled substance to the minor. This proposed provision is rooted in DEA's commitment to safeguarding the well-being of minors, particularly given the substantial risks associated with Schedule II controlled substances, including opioids.

This safeguard aligns with the broader intent of the *Ryan Haight Act,* which was enacted following the death of Ryan Haight, who tragically died after obtaining prescription opioids online without a valid prescription and without having ever been seen by the prescribing physician. Ryan Haight was only 17 years old when he purchased the opioids, and 18 years old when he died.[86] The direct parental or guardian supervision would help to discourage any potential misuse or attempts to acquire a Schedule II controlled substance for non-medical reasons. While DEA acknowledges potential concerns of minors who may perceive this as an intrusion on their privacy, it is crucial to balance this consideration against the inherent risks associated with Schedule II controlled substances in particular. It should also be noted that this proposed requirement would not extend to cases where a pediatrician prescribes a Schedule III through V controlled substance under the *Special Registration* framework.

Given the higher potential for abuse and dependence of Schedule II controlled substances, 21 CFR 1306.45 proposes two additional requirements when issuing a *special registration prescription* for a Schedule II controlled substance; DEA anticipates imposing one or both of the proposed requirements based on the comments received by stakeholders. The first of the two proposed requirements, under proposed 21 CFR 1306.45(b), would require that the *clinician special registrant* be physically located in the same state as the patient when issuing a *special registration prescription* for a Schedule II controlled substance. Under this same-state limitation, when issuing a Schedule II *special registration prescription,* a *clinician special registrant* would not only have to have the *Advanced Telemedicine Prescribing Registration,* and a *State Telemedicine Registration* in the state in which the patient is located, but the *clinician special registrant* would also have to be physically located in the same state as the patient.[87] Requiring the *clinician special registrant* to be in the same state as the patient helps mitigate the risks associated with the prescribing of Schedule II controlled substances across state lines. Geographical proximity enables more effective oversight by state regulatory agencies to ensure compliance with state laws governing the prescription of these high-risk medications and will make it more likely that the *clinician special registrant* can see the patient in-person should any medical or diversion concerns arise.

The second of the two proposed requirements, under proposed 21 CFR 1306.45(c), would require that the average number of *special registration prescriptions* for Schedule II controlled substances constitutes less than 50 percent of the total number of Schedule II prescriptions issued by the *clinician special registrant* in their telemedicine and non-telemedicine practice in a calendar month. Limiting the proportion of Schedule II prescriptions issued through telemedicine would help to manage the risks associated with the prescribing of Schedule II controlled substances by ensuring that a significant portion of these prescriptions are issued following in-person medical evaluations, which can provide a more comprehensive assessment of the

[83] Telemedicine Listening Sessions, Daniel Reck (Matclinics), 104:3–9. (Sept. 12, 2023).

[84] Telemedicine Listening Sessions, Jerome Cohan (Catalyst Health Solutions), 268:2–20. (Sept. 12, 2023).

[85] U.S. Dept. of Health and Human Services, Office of Inspector General, OEI–02–24–00130, *Data in Brief: The Risk of Misuse and Diversion of Buprenorphine for Opioid Use Disorder in Medicare Part D Continues to Appear Low: 2022* (Nov. 2023) (Available: *https://oig.hhs.gov/oei/reports/OEI-02-24-00130.pdf*).

[86] U.S. Drug Enforcement Administration, Prescription for Disaster: How Teens Abuse Medicine (Accessed: Dec. 13, 2023) (Available: *https://www.dea.gov/sites/default/files/resource-center/Publications/DEA_Prescription-For-Disaster_508ver.pdf*).

[87] It should be noted, however, that the *Special Registered Location* associated with the *Advanced Telemedicine Prescribing Registration* would not have to be in the same state in which the patient was issued the Schedule II controlled substance.

patient's medical history and condition than can be done remotely.

State Laws Applicable to Special Registration Prescriptions. Proposed 21 CFR 1306.46 would require special registrants, when issuing a *special registration prescription,* to comply with the laws and regulations of the state in which the special registrant is located during the telemedicine encounter resulting in the *special registration prescription*; the state in which the patient is located during the telemedicine encounter resulting in the *special registration prescription*; and any state or states in which the special registrant maintains a DEA registration to dispense controlled substances or a medical license, to the extent that the law or regulation applies to telemedicine encounters between practitioners and patients located in the states in which the special registrant and the patient are each located during the telemedicine encounter resulting in the *special registration prescription.* This provision would require that the practice of telemedicine be conducted in accordance with applicable state laws set forth in 21 U.S.C. 802(54).

2. Additional Elements on a Special Registration Prescription

A prescription for controlled substances, whether issued via telemedicine or not, must contain the elements specified in 21 CFR 1306.05(a), which encompass the signature of the prescriber, issue date, patient's full name and address, drug details (name, strength, dosage form, and quantity), directions for use, and the practitioner's name, address, and registration number.[88] Proposed 21 CFR 1306.47 would require two additional elements for *special registration prescriptions:* (1) the *Special Registration* numbers of the *clinician practitioner* and, if a *platform practitioner* facilitated the prescription, the *platform practitioner*; and (2) *State Telemedicine Registration* numbers of the *clinician practitioner* and, if a *platform practitioner* facilitated the prescription, the *platform practitioner* (unless exempted from obtaining a *State Telemedicine Registration* under proposed 21 CFR 1301.11(d)).[89] Proposed 21 CFR 1306.47(c) would add a corresponding liability provision for these new requirements, to track the current provision in 21 CFR 1306.05(f) that imposes a corresponding liability on a pharmacist who fills a prescription not prepared in the form prescribed in 21 CFR 1306.05(a).

The inclusion of the *Special Registration* numbers of the *clinician practitioner* and the *platform practitioner* (if a platform practitioner facilitated the prescription) would provide the pharmacist the information necessary to determine whether the *clinician practitioner* has the authority to prescribe a Schedule II controlled substance under the *Special Registration* framework, and that the *platform practitioner* (if a *platform practitioner* facilitated the prescription) has the authority to dispense a Schedule II controlled substance. The inclusion of *State Telemedicine Registration* numbers would provide pharmacists the information necessary to verify that patients are only being prescribed *special registration prescriptions* by *special registrants* authorized to practice in the specific state where the patient is located; registered pharmacists would be able to verify these registration numbers on DEA's *CSA Registration Validation Tool*.

Pharmacists occasionally encounter what they may perceive as ''red flags'' for certain telemedicine prescriptions, which can stem from the nature of telemedicine itself, where patients may receive prescriptions from prescribers located at distances far away (both inside and outside the state where the patient is located). The geographical distance can raise doubts about the legitimacy of the prescription and could lead pharmacists to question its validity and refuse to fill the prescription. By verifying the *State Telemedicine Registration* numbers, pharmacists would be provided a level of assurance that a *special registration prescription* is legitimate when it originates from a prescriber located a significant distance from the patient. For *clinician special registrants* exempted from obtaining *State Telemedicine Registrations,* proposed 21 CFR 1306.47(a) would require them to instead provide a notation on the prescription identifying the state in which the patient is located.

C. Recordkeeping and Reporting Under 21 CFR Part 1304

Clinician special registrants would remain subject to their existing recordkeeping and reporting obligations under their 21 U.S.C. 823(g) registrations; however, they would also be subject to supplementary requirements within the *Special Registration* framework. *Clinician special registrants* would be required to establish and maintain photographic records for patient verification and maintain their *special registration prescription* records at their designated *special registered location. Platform special registrants,* on the other hand, would be required to maintain and update credential verification and documentation records. As to data reported to DEA, pharmacies dispensing *special registration prescriptions* would be required to report monthly aggregated *special registration prescription* data on Schedule II controlled substances and certain Schedule III–V controlled substances, and *special registrants* would be required to report annually aggregated information about their telemedicine practice, including the number of new patients they treat through telemedicine, and the total number of *special registration prescriptions* for Schedule II controlled substances, and certain Schedule III–V controlled substances, they dispensed for the preceding year.

1. Patient Verification Photographic Record

Proposed 21 CFR 1304.04(i) would generally require that a *clinician special registrant,* or a delegated employee or contractor under the direct supervision of the *clinician special registrant,* verify the identity of a patient seeking treatment via telemedicine by requiring that the patient present a state or federal government-issued photo identification card through the camera of the *audio-video telecommunications system.* At the first telemedicine encounter, the *clinician special registrant* would also be required to capture a photographic record of the patient presenting their federal or state-issued photo identification card or other acceptable documents and use the photographic records to confirm the patient's identity in subsequent telemedicine encounters.

If for some reason the patient does not consent to their photo being captured, proposed 21 CFR 1304.04 would allow the *clinician special registrant* (or their delegated employee or contractor under their direct supervision) to accept a copy of the patient's federal or state government-issued photo identification card or other forms of documentation provided by the patient. To ensure that patient privacy is protected, the patient verification photographic records would be securely stored in the patient's medical record or chart, separate from the *special registration prescription* records/data reported to DEA under proposed 21 CFR 1304.40.

Recognizing that not all persons may have a photo identification card,

[88] *https://www.fda.gov/drugs/development-approval-process-drugs/national-drug-code-database-background-information; https://www.fda.gov/drugs/drug-approvals-and-databases/national-drug-code-directory.*

[89] Proposed 21 CFR 1306.47(b) would not require that the Special Registrant provide the registration number associated with their conventional registration under 21 U.S.C. 823(g).

proposed 21 CFR 1304.04(i)(1) would allow a *clinician special registrant,* or a delegated employee or contractor under the direct supervision of the *clinician special registrant,* to verify the identity of the patient with other forms of documentation, and would require the *clinician special registrant* to maintain a record of how they verified the patient's identity and what documents were used to verify the patient's identity. For example, a *clinician special registrant* (or their delegated employee or contractor under their direct supervision) might verify patient identity by observing a patient's pay stub and/or a bill with the patient's home address, a letter provided by a shelter employee if the patient is unhoused, or a patient's school identification card or report card if the patient is a minor.

This proposed requirement would ensure that the patient's identity is verified at each telemedicine encounter, reducing the risk of unauthorized individuals diverting controlled substances. Throughout the Telemedicine Listening Sessions, various presenters underscored the importance of implementing strong patient identification measures in the context of telemedicine.[90] According to some physicians who presented during the Telemedicine Listening Sessions, identity verification of telemedicine patients is currently a typical practice and constitutes a component of good care.[91] Furthermore, the photographic record provides a clear link between the patient's identity and the telemedicine encounter, supporting accurate recordkeeping under the *Special Registration* framework.[92]

2. Special Registration Telemedicine Encounter Record

For every telemedicine encounter resulting in a *special registration prescription,* proposed 21 CFR 1304.04(j) would require that *clinician special registrants* maintain a record of the date and time of the telemedicine encounter, the address of the patient during the telemedicine encounter, and the home address of the patient. Like patient verification photographic records, the *clinician special registrant* would be required to maintain *Special Registration* telemedicine encounter records for a minimum of two (2) years from the date of the telemedicine encounter. The proposed *Special Registration* telemedicine encounter record provides an additional layer of verification for the telemedicine encounter, detailed documentation that can be referenced by the *clinician special registrant* in the future and helps ensure that the patient is located in a state in which the *clinician special registrant* is authorized to prescribe controlled substances under the proposed *Special Registration* framework.

3. Credential Verification and Conduct-Related Documentation

Proposed 21 CFR 1304.04(k) would require *platform special registrants* to maintain records related to *clinician special registrants* with whom they enter and maintain a *covered platform relationship,* including:[93] (1) verification of the *clinician special registrant* credentials, including but not limited to records on education, training, board or specialty certifications, and their *Special Registration* number and *State Telemedicine Registration* number(s); (2) the employment contract and any other contract between the *platform special registrant* and the *clinician special registrant;* and (3) any disciplinary actions or sanctions, or documentation of complaints, disputes, or incidents involving the *practice of telemedicine*. The *platform special registrant* would be required to maintain and update the credential verification and conduct-related records for a minimum of every two (2) years, which should be readily available for inspection by DEA.

This proposed requirement is intended to address DEA's concerns regarding the adequacy of the screening of the prescribers utilizing the services of the *covered online telemedicine platforms* as discussed above. By mandating the verification and documentation of *clinician registrants'* qualifications and credentials, these records should serve as evidence of thorough screening processes by the *platform special registrants,* helping to ensure that only qualified and vetted *clinician practitioners* are practicing telemedicine under the *Special Registration* framework and reducing the risk of improper remote prescribing of controlled substances. Furthermore, by requiring that *platform special registrants* maintain such records, they are compelled to assume responsibility for the conduct and prescribing practices of the *clinician special registrants* whose telemedicine prescribing is facilitated by their platform.

4. Centralized Recordkeeping at the *Special Registered Location*

Proposed 21 CFR 1304.04(l) mandates that records arising from telemedicine encounters under the *Special Registration* framework be kept at the *special registered location.* Given the nationwide reach of telemedicine—where a *special registrant* could serve patients in any state—it would pose an unreasonable administrative burden to require the *special registrant* to maintain records in every state where telemedicine patients are located. By consolidating these records, DEA investigations are more efficient, enhancing the detection of diversion patterns, which is vital for preventing the diversion and misuse of controlled substances. This approach enhances public safety while ensuring a practical burden for practitioners. Furthermore, this proposed regulation keeps pace with modern recordkeeping practices, as the majority of healthcare providers already maintain electronic records, which can be easily centralized and accessed when required.

5. Pharmacy Reporting of *Special Registration Prescription* Data

Proposed 21 CFR 1304.60 would require that a pharmacy report aggregate data, within the first seven (7) days of the start of every month, for the *special registration prescriptions* filled during the preceding month for each Schedule II controlled substance and certain Schedule III–V controlled substances, including Ketamine, Tramadol, and any depressants that constitute a benzodiazepine (including their salts, isomers, and salt of isomers).[94] For each

[90] Telemedicine Listening Sessions: Lori Uscher-Pines (RAND Corporation), 131:15–19 (Sept. 12, 2023); Bruce Bassi, M.D., 29:18–30:3 (Sept. 13, 2023); Dr. Phillip Moore (Gaudenzia), 85:10–16, 86:14–87:8 (Sept. 13, 2023); and Dan Golden (East Coast Telepsychiatry), 218:9–14 (Sept. 13, 2023).

[91] Telemedicine Listening Sessions: Dr. Shabana Khan (American Psychiatric Association and American Academy of Child and Adolescent Psychiatry), 33:20–34:5, 43:9–19 (Sept. 12, 2023); Dr. Brian Clear (Bicycle Health), 77:13–22 (Sept. 12, 2023); Telemedicine Listening Sessions: Lori Uscher-Pines (RAND Corporation), 131:15–19 (Sept. 12, 2023); Bruce Bassi, M.D., 29:18–30:3 (Sept. 13, 2023); Dr. Phillip Moore (Gaudenzia), 85:10–16, 86:14–87:8 (Sept. 13, 2023); and Dan Golden (East Coast Telepsychiatry), 218:9–14 (Sept. 13, 2023).

[92] *See* Telemedicine Listening Sessions, Bruce Bassi, M.D., 31:12–20 (Sept. 13, 2023).

[93] Proposed 21 CFR 1300.04 would define a *covered platform relationship* to mean ''the formal association between the online telemedicine platform, in its capacity as a *platform practitioner,* and the *clinician practitioner* it directly employs, contracts with, or is otherwise professionally affiliated with to introduce or facilitate connections between patients seeking remote medical consultations and the *clinician practitioner,* via an audio-video telecommunications system, for the diagnosis, treatment, and prescription of controlled substances.''

[94] DEA has identified 36 depressants that constitute a benzodiazepine Scheduled in 21 CFR 1308.14(c) at the time of this publication.

of these controlled substances, the pharmacy would provide the following information, organized by the different *State Telemedicine Registration numbers* of the *individual special registrants* who prescribed the controlled substance, and organized by the National Drug Code (NDC) for each formulation of the controlled substance dispensed: the number of prescriptions filled, the volume of the controlled substance dispensed, and the number of patients prescribed the controlled substance. A NDC is a unique, 10-digit three-segment number that serves as a universal product identifier for human drugs, including controlled substances. It is used by drug establishments, such as manufacturers and distributors, to report all drugs made, prepared, propagated, compounded or processed for sale in the U.S. to the Food and Drug Administration (FDA).[95] At this time, Schedule III–V controlled substances subject to this proposed requirement under 21 CFR 1304.60 are limited to those specifically identified. However, additional Schedule III–V controlled substances may be included in the future via regulation based on trends in diversion and misuse.

Requiring timely collection and reporting of aggregate patient-anonymized prescription data ensures that DEA has current information on the prescribing of controlled substances via telemedicine, vital for protecting public health and safety, especially amid the national opioid overdose epidemic. Following the COVID–19 PHE, the opioid overdose epidemic has only worsened. According to the Centers for Disease Control and Prevention (CDC), the ''number of people who died from a drug overdose in 2021 was over six times the number in 1999. The number of drug overdose deaths increased more than 16% from 2020 to 2021. Over 75% of the nearly 107,000 drug overdose deaths in 2021 involved an opioid.'' [96]

While the opioid overdose epidemic has, in recent years, been largely fueled by illicitly manufactured *fentanyl,* a synthetic opioid, the diversion of prescribed opioids exacerbates the opioid crisis by increasing the overall opioid supply available on the illicit market. Proposed 21 CFR 1304.60 would arm DEA with the data necessary to timely intervene in cases of diversion or other acts in violation of the law.

Recognizing the importance of data to combat diversion, various stakeholders speaking at the Telemedicine Listening Sessions—many of whom were practitioners—advocated for DEA to collect prescription data to help identify potential exploitative practices.[97] One physician said, ''I urge DEA to design any new process to improve [its] ability to oversee and audit prescribing patterns and to intervene when exploitative practice is identified. . . .'' [98]

The aggregation of prescription data would also allow DEA to employ advanced data analytics to further combat diversion. With such data, for example, DEA could detect outliers, irregular prescription volumes, and abnormal geographic concentrations of controlled substances. As identified by the Government Accountability Office (GAO) in its 2020 recommendations to DEA, which encouraged the enhanced utilization of data analytics to identify problematic patterns and trends to combat the opioid epidemic, ''data-analytics activities can include a variety of techniques to prevent and detect diversion, including data matching and data mining. Data matching is the largescale comparison of records and files to detect errors or incorrect information. It can be used to verify information provided by recipients or detect unreported changes. Data mining is the use of automated computer algorithms to detect patterns, including those that are otherwise not obvious, correlations, or anomalies within large data sets indicative of potential diversion.'' [99] At the Telemedicine Listening Sessions, similar recommendations to those of the GAO were echoed.[100] Various stakeholders advocated for the leveraging of data analytics as a tool to be used by DEA to address bad actors or exploitative practices.[101]

Data analytics could help recognize patterns in how controlled substances are combined to provide DEA with critical information about emerging trends in polysubstance abuse.[102] Recent examples highlight the dangers of such combinations, underscoring the need for proactive measures. Benzodiazepines, Schedule IV depressants, have been used to amplify the effect of opioids, especially when injected.[103] The combination of opioids and benzodiazepines can have dire consequences, as their use together increases the risk of overdose as both drugs cause sedation and suppress breathing.[104] According to one study, overdose death rates among patients taking both drugs was 10 times higher than among those only receiving opioids.[105] By staying informed about emerging drug use trends, particularly polysubstance abuse, DEA can take proactive measures to prevent these trends from evolving into widespread problems. This information not only aids in prevention but could also guide DEA in strategically directing resources and investigative efforts to ensure the most effective responses to emerging challenges.

Lastly, DEA could use the aggregated data to make more informed, evidence-based policy decisions. For instance, DEA could timely monitor controlled substance prescription patterns and demand indicators to make informed quota decisions to prevent or mitigate shortages and ensure a steady and reliable supply of controlled substances for legitimate medical purposes. The data could also be used to better retrospectively assess the impact of DEA's policy positions and promulgated

[95] National Drug Code Directory, U.S. Food & Drug Administration (FDA) (July 22,2022) (*https://www.fda.gov/drugs/drug-approvals-and-databases/national-drug-code-directory*).

[96] *Understanding the Opioid Overdose Epidemic,* Centers for Disease Control and Prevention (CDC) (Aug. 8, 2023), *https://www.cdc.gov/opioids/basics/epidemic.html.*

[97] Telemedicine Listening Sessions, Robert Krayn (Talkiatry), 26:4–21 (Sept. 12, 2023); Dr. Shabana Khan (American Psychiatric Association and American Academy of Child and Adolescent Psychiatry), 37:2–11 (Sept. 12, 2023); Dr. Brian Clear (Bicycle Health), 79:8–13, 87:3–8 (Sept. 12, 2023); Chris Adamec (Alliance for Connected Care), 143–18–144:11, 146:5–8 (Sept. 12, 2023); Kevin Duane, PharmD, 207:3–9, 213:13–214:9 (Sept. 12, 2023); Felicia Baily (Nurse Practitioner, Avaesen Healthcare), 17:25–18:21 (Sept. 13, 2023); and John Heaphy (New York Dept. of Health), 78:25–79:6 (Sept. 13, 2023).

[98] Telemedicine Listening Sessions, Dr. Brian Clear (Bicycle Health), 79:8–13 (Sept. 12, 2023).

[99] *Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders,* U.S. Gen. Accounting Office, GAO–20–118, (Jan. 29, 2020),), *https://www.gao.gov/products/gao-20-118#summary_recommend.*

[100] Telemedicine Listening Sessions, Dr. Shabana Khan (American Psychiatric Association and American Academy of Child and Adolescent Psychiatry), 37:18–23 (Sept. 12, 2023); Dr. Brian Clear (Bicycle Health), 79:8–13 (Sept. 12, 2023); and Laura Jantos (Healthcare Technology and Digital Healthcare Management Consultant), 14:25–15:21 (Sept. 13, 2023).

[101] *Id.*

[102] Centers for Disease Control and Prevention (CDC). *What is Polysubstance Use?* (February 23, 2022) (Available: *https://www.cdc.gov/stopoverdose/polysubstance-use/index.html*).

[103] Jones JD, Mogali S, Comer SD. *Polydrug abuse: a review of opioid and benzodiazepine combination use.* Drug Alcohol Depend. 2012 Sep 1;125(1–2):8–18. doi: 10.1016/j.drugalcdep.2012.07.004. Epub 2012 Aug 2. PMID: 22857878; PMCID: PMC3454351 (Available: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3454351/*).

[104] National Institute on Drug Abuse (NIDA). *Benzodiazepines and Opioids.* (November 7, 2022), Available: *https://nida.nih.gov/research-topics/opioids/benzodiazepines-opioids.*

[105] Dasgupta N, Funk MJ, Proescholdbell S, Hirsch A, Ribisl KM, Marshall S. *Cohort Study of the Impact of High-Dose Opioid Analgesics on Overdose Mortality.* Pain Med. 2016 Jan;17(1):85–98. doi: 10.1111/pme.12907. Erratum in: Pain Med. 2016 Apr;17(4):797–8. PMID: 26333030, *https://pubmed.ncbi.nlm.nih.gov/26333030/*).

regulations.[106] For example, DEA could use the prescription data to evaluate: patient outcomes associated with *special registration prescriptions*; the impact of the proposed *Special Registration* regulations on patient access to controlled substances (especially in remote or rural areas); the efficacy of the proposed *Special Registration* regulations on preventing and detecting diversion associated with remote prescribing; and trends or changes to telemedicine prescription practices that might necessitate regulatory reforms.

It should be emphasized that the prescription data reporting would be aggregated and patient-anonymized, and will not be shared with persons or entities outside of DEA. Like all data provided to, and handled by, DEA, the security and privacy of such data will be handled with the highest standards of security and privacy. All data transmitted to and stored by DEA is encrypted, including data transmitted between external systems and internal databases. Furthermore, all data transmitted from registrants to DEA is additionally protected by Department of Justice firewalls and network monitoring. Access to the data is limited to certain authorized persons, employed or contracted by DEA. External user access to applications receiving and providing data require a unique username and a strong, complex password, internal users of the data are vetted by DEA and its Diversion Control Division's security and privacy processes, and access is restricted according to a need-to-know-basis.

6. Annual Special Registrant Reporting of Special Registration Prescription Data

Proposed 21 CFR 1304.61 would require that *individual special registrants* and *platform special registrants* report annual data on the total number of new patients in each state for which they issued at least one *special registration prescription* for a Schedule II controlled substance or certain Schedule III–V controlled substances, including Ketamine, Tramadol, and any depressant constituting a benzodiazepine; the total number of *special registration prescriptions* for Schedule II controlled substances issued by the *special registrant,* in aggregate and across all states; and the total number of *special registration prescriptions* for certain Schedule III–V controlled substances, including Ketamine, Tramadol, and any depressant constituting a benzodiazepines (including their salts, isomers, and salt of isomers), which were issued by the *special registrant,* in aggregate and across all states.

This proposed reporting requirement would provide DEA with necessary data to proactively monitor for concerning trends that may signal the existence of digital pill mills exploiting the proposed *special registration* framework to provide patients with medically unnecessary controlled substances.[107] Data on new patients and distribution of Schedule IIs and certain Schedule III–V controlled substances on an annual basis would allow DEA to assess prescribing behaviors of controlled substances, identify spikes and anomalies in prescription volume, and take timely action against suspicious activity. At this time, Schedule III–V controlled substances subject to this proposed requirement under 21 CFR 1304.61 are limited to those specifically identified. However, additional Schedule III–V controlled substances may be included in the future via regulation based on trends in diversion and misuse.

D. Regulatory Definitions Under 21 CFR part 1300

This last section provides an overview of proposed regulatory definitions and revisions to 21 CFR part 1300. These proposed definitions are intended to provide clarity as to the authorities and obligations of *special registrants* under the registration requirements (21 CFR 1301), prescription requirements (21 CFR 1306), and the recordkeeping and reporting requirements (21 CFR 1304). The proposed amendments offer definitions for the different, relevant registrations under the *Special Registration* framework, including the: *Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration, Telemedicine Platform Registration, State Telemedicine Registration,* and *special registered location*. The core aspects of these proposed definitions have largely been addressed in the preceding sections, requiring minimal discussion of many of them here.

That said, the proposed term and definition of a *covered online telemedicine platform* warrants further discussion. A *covered online telemedicine platform* means an entity that facilitates connections between patients and *clinician practitioners,* via an *audio-video telecommunications system,* for the diagnosis and treatment of patients that may result in the prescription of controlled substances, but is not a hospital, clinic, *local in-person medical practice,* or insurance provider, and meets one or more of the following criteria:

(1) the entity explicitly promotes or advertises the prescribing of controlled substances through the platform;

(2) the entity has financial interests, whether direct incentives or otherwise, tied to the volume or types of controlled substance prescriptions issued through the platform, including but not limited to, ownership interest in pharmacies used to fill patients' prescriptions, or rebates from those pharmacies;

(3) the entity exerts control or influence on clinical decision-making processes or prescribing related to controlled substances, including, but not limited to: prescribing guidelines or protocols for *clinician practitioners* employed or contracted by the platform; consideration of *clinician practitioner* prescribing rates in the entity's hiring, retention, or compensation decisions; imposing explicit or de facto prescribing quotas; directing patients to preferred pharmacies; and/or

(4) the entity has control or custody of the prescriptions or medical records of patients who are prescribed controlled substances through the platform.

When any one of the four factors are present, it solidifies the platform's role as an integral intermediary in the remote dispensing of controlled substances. The proposed definition and criteria are intended to provide a practical and clear framework for identifying when a DTC online telemedicine platform's conduct qualifies them as a *covered online telemedicine platform,* mandating registration as a dispenser with DEA. As proposed, this definition is intended to limit the *Special Registration* requirements only to those DTC online telemedicine platforms that play a substantial and integral role as intermediaries in the remote dispensing of controlled substances.

Under the first criterion, when an entity explicitly promotes or advertises the prescribing of controlled substances through the platform, it is directly influencing patient behavior and decision-making. This targeted promotion guides patients to seek medical consultations and prescriptions for controlled substances through the platform, effectively influencing the

[106] *See* Administrative Conference of the United States (ACUS), *Administrative Conference Recommendation 2021–2: Periodic Retrospective Review* (June 17, 2021) (Available: *https://www.acus.gov/document/periodic-retrospective-review*).

[107] Stevens, Morgan. *Click Here for Adderall: Fixing Telehealth Advertising and Services to Prevent Stimulant Misuse,* Center for Data Innovation (Dec. 5, 2022), *https://www2.datainnovation.org/2022-telehealth-stimulant-abuse.pdf*.

demand and supply of this service. This active role in attracting and managing patient flow makes the platform more involved as an integral intermediary in the remote prescribing of controlled substances. Under the second criterion, when an entity has financial interests tied to the volume or types of controlled substances prescriptions issued through the platform, the platform's role extends beyond mere facilitation—it becomes a key player that directly affects the flow and distribution of controlled substances. The financial ties ensure that the platform's operations are closely linked to the outcome of prescription activities, making it an integral intermediary in the process of remote prescribing of controlled substances.

Under the third criterion, when an entity exerts control or influence on clinical decision-making processes or prescribing related to controlled substances, including but not limited to prescribing guidelines or protocols for *clinician practitioner*s employed or contracted by the platform, imposing explicit or de facto prescribing quotas, or directing patients to preferred pharmacies, it plays a direct and active role in the decision-making processes that affect patient care and the distribution of controlled substances. The platform becomes an essential link in the chain between the *clinician practitioner* and the patient, making it an integral intermediary in the process of remote prescribing of controlled substances. Under the fourth and last criterion, when an entity has control or custody of the prescriptions or medical records of patients who are prescribed controlled substances through the platform, it has significant control over sensitive and regulated information, actively involving the platform in the handling and processing of controlled substances. Moreover, control or custody of such information allows a platform to influence patient treatment plans, underscoring their position as an intermediary, and thus dispenser, in the process of remote prescribing of controlled substances.

It is important to clarify that ownership and operation of the online or digital system or platform on which the virtual visit takes places are not mandatory criteria within the proposed definition of a *covered online telemedicine platform*. Similarly, an entity solely operating a platform or system that merely provides the technological service or conduit for a telemedicine encounter to occur, without the presence of one of the additional four factors, would not constitute a *covered online telemedicine platform*. As discussed above, the definition is also drafted to exclude entities that engage in conduct that could potentially fall under the definition's criteria but are not the types of entities whose primary business operations rely on, or center around, telemedicine services.

The definition of *covered online telemedicine platform* also explicitly excludes certain types of entities, including hospitals, clinics, insurance providers, and *local in-person medical practices. Local in-person medical practice* is, in turn, defined by this rule to be a medical practice where less than 50 percent of the total prescriptions for controlled substances collectively issued by the practice's physicians and *mid-level practitioners* are issued via telemedicine in any given calendar month, but is not a hospital, clinic, or insurance provider. The type of entities excluded from the definition of *covered online telemedicine platform* are entities that engage in conduct that could potentially fall under the definition's criteria but are not the types of entities whose primary business operations rely on, or center around, telemedicine services.

Determining whether an entity dispenses controlled substances and meets the criteria of a *covered online telemedicine platform* is a fact-specific inquiry. If there is any uncertainty regarding the entity's role as a dispenser, particularly concerning its involvement in the practitioner-patient relationship, registering may be advisable to avert the risk of enforcement action based on potential unregistered, and thus illegal, dispensing of controlled substances.

Turning elsewhere, DEA is incorporating CMS's current definitions and standards for the terms *hospice care* and *palliative care.*[108] DEA acknowledges that its core expertise and mission revolve around combating the diversion of controlled substances, and therefore is leveraging the medical expertise of CMS by adopting its healthcare standards as to these terms. Lastly, the rulemaking rule proposes to revise the DEA regulatory definition of ''practice of telemedicine'' to mean practice in accordance with applicable federal and state laws by a practitioner (other than a pharmacist) who is at a remote location from the patient and communicates with the patient, or health care professional who is treating the patient, using a telecommunications system defined in 42 CFR 410.78(a)(3), which practice falls within a category specified in the definition.[109]

[108] *See* 42 CFR 418.3.

E. Request for Comments

With respect to the proposed rule, DEA invites comments regarding the need for any clarifications or suggested modifications to the proposed regulations, which are consistent with the public health and safety. The public's input and insights are instrumental in achieving the appropriate balance between expanding access to care and implementing the necessary safeguards to prevent diversion of controlled substances effectively. In particular, DEA seeks the public's input on the newly introduced *Special Registrations* (*Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration,* and *Telemedicine Platform Registration*), and the *State Telemedicine Registrations.* Again, DEA recognizes the broad nature of the proposed requirements, and highly encourages the public to provide input on appropriate implementation timelines, or on-ramps for phased or gradual adoption, to help ensure a smoother transition when the final rule takes effect. Practitioners, pharmacies, and industry are encouraged to provide their input on the time necessary to operationalize the proposed requirements.

Furthermore, DEA is considering the inclusion of a severability clause in the final rule. Under such a clause, if any specific provision of the rule is found to be invalid or unenforceable by a court, the remaining provisions would continue to be operative and enforceable. We encourage public comments on the inclusion of such a clause, as well as whether any particular provisions of the proposed rule are especially integral to its overall implementation. All public insight, including responsive data, as to the effectiveness or appropriateness of the proposed safeguards is also encouraged. However, the public is asked to refrain from commenting on provisions that are simply republished existing regulatory definitions. These are included to provide context to the newly proposed definitions and to reduce editorial resources required for publishing the proposed rule.

[109] Proposed 21 CFR 1300.04. The current regulatory definition, 21 CFR 1300.04, initially implemented the *Ryan Haight Act's* statutory definition by repeating the statutory provision and requiring the use of a ''telecommunications system referred to in section 1834(m) of the Social Security Act'' [codified at 42 U.S.C. 1395m(m)].

Appendices:

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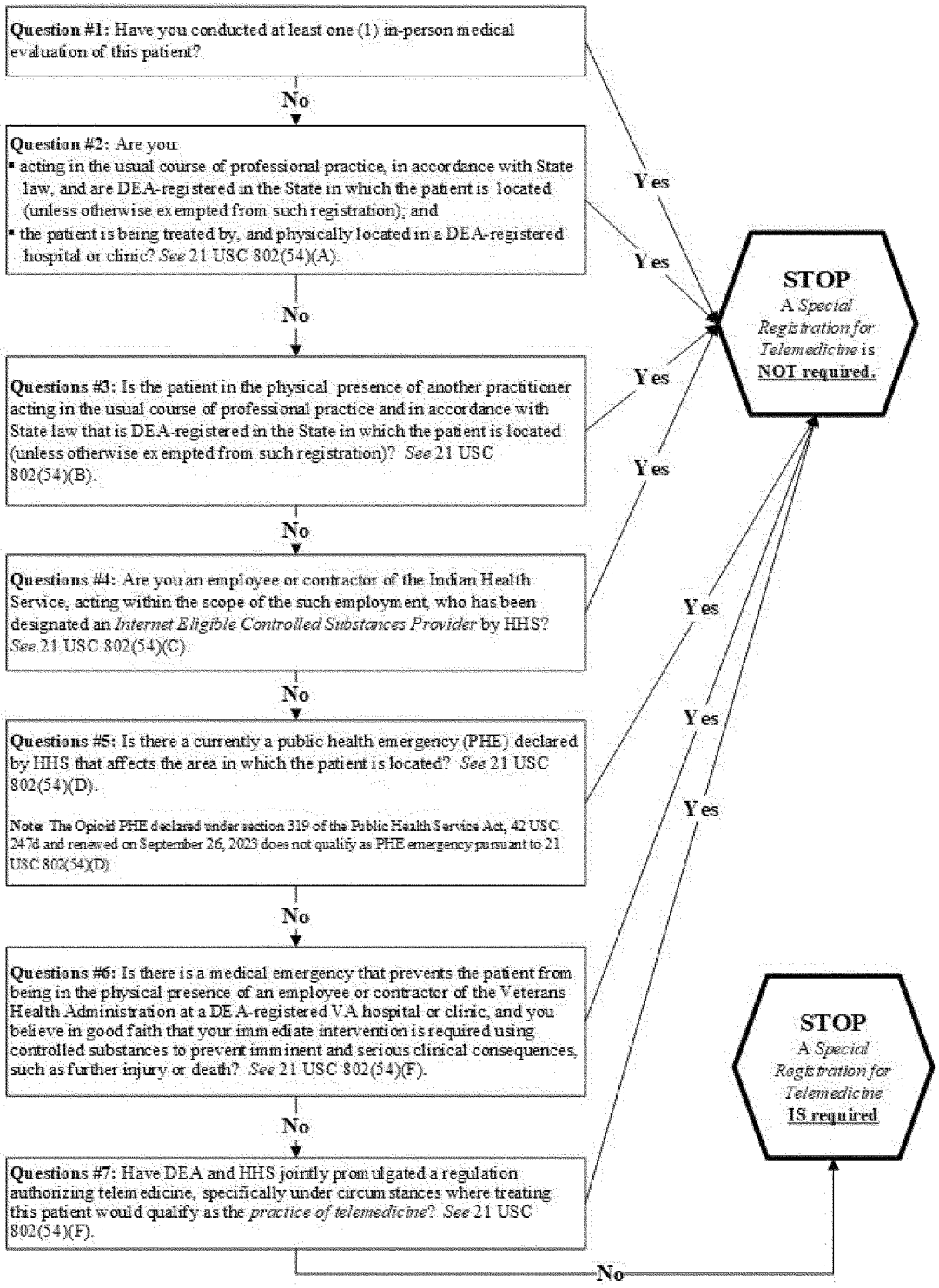
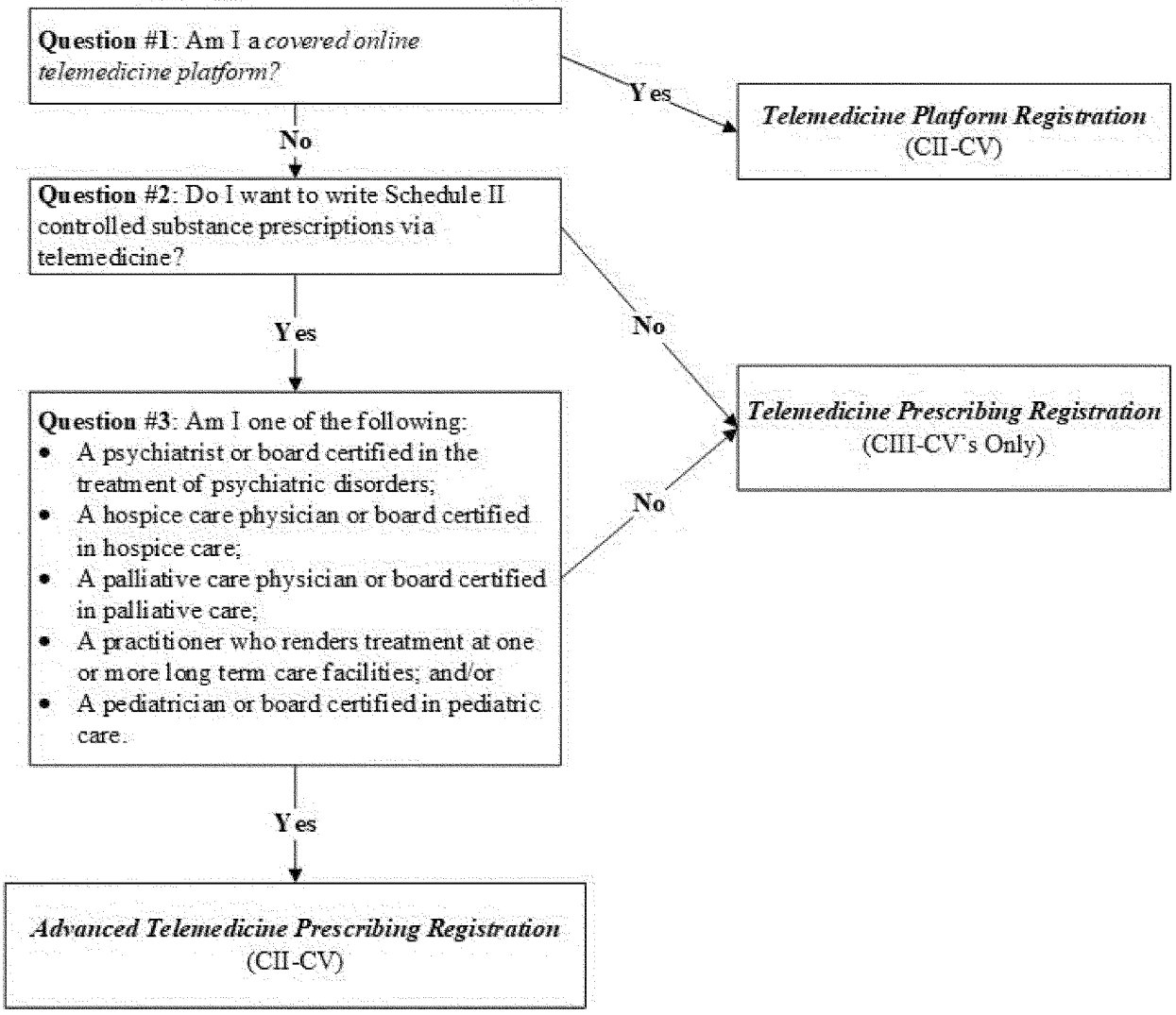
Appendix A

Chart: As a *Clinician Practitioner*, Is a *Special Registration for Telemedicine* Required to Treat This Patient?



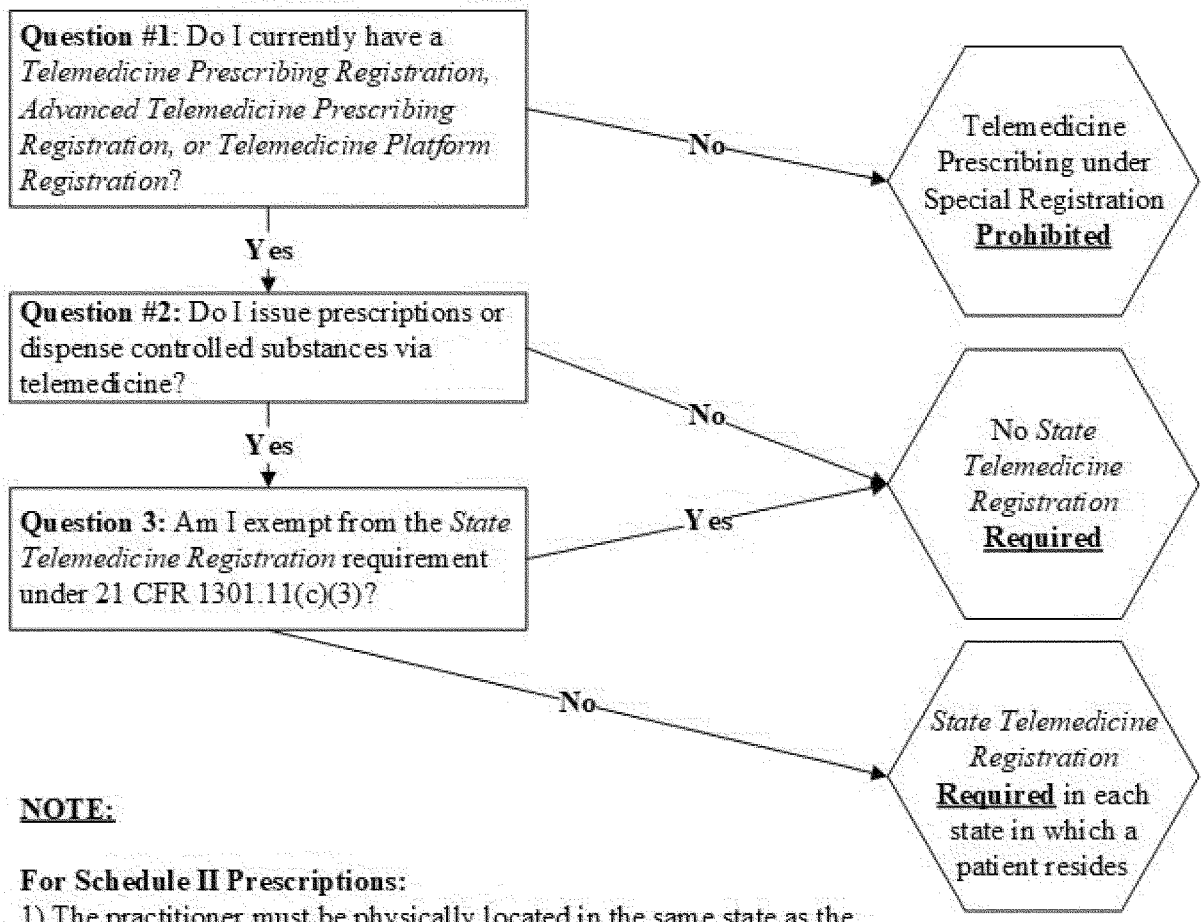
Appendix B

Chart: Which *Special Registration for Telemedicine* Do I Need?



Appendix C

Chart: Do I Need a *State Telemedicine Registration*?



NOTE:

For Schedule II Prescriptions:
1) The practitioner must be physically located in the same state as the patient; and
2) No more than 50% of the practitioners total telemedicine and non-telemedicine prescriptions for Schedule II controlled substances were prescribed under my *Advanced Telemedicine Prescribing Registration*.

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V. Regulatory Analyses

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

DEA has determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of *Executive Order (E.O.) 12866, Regulatory Planning and Review* and is also a section 3(f)(1) significant action. Accordingly, this proposed rule has been submitted to the Office of Management and Budget (OMB) for review. This proposed rule has been drafted and reviewed in accordance with E.O. 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation; E.O. 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation; and E.O. 14094, ''Modernizing Regulatory Review.''

Due to many uncertainties, DEA made a range of estimates: a low estimate, a moderate (primary) estimate, and a high estimate. Based on the moderate (primary) estimate, DEA projects that this proposed rule will result in a total annualized cost of $16 million, a total annualized cost savings of $23 million, for a net annualized cost savings of $7 million. The low estimate results in a total annualized cost of $0.60 million, a total annualized cost savings of $0.85 million, for a net annualized cost savings of $0.25 million. The high estimate results in a total annualized cost of $86 million, a total annualized cost savings of $122 million, for a net annualized cost savings of $36 million. Additionally, the proposed rule is estimated to increase annualized transfers (registration fees) to the federal government by $0.90 million, $24 million, and $128 million per year, for the low, moderate (primary), and high estimates, respectively. Fees paid to the federal government are considered transfer payments and not costs.[110] The full analysis of cost savings, costs, transfers, and benefits is provided below.

[110] OMB Circular A–4.

Overview

I. Regulatory Alternatives Considered
II. Patient Costs, Cost Savings, and Benefits
a. Patient's Cost of Time per Practitioner Visit
b. Patient's Cost of Travel per Practitioner Visit
c. Total Number of Telemedicine Visits
i. Total Number of Telemedicine Visits Under the Current Telemedicine Rate
ii. Forecasted Total Numbers of Telemedicine Visits
d. Total Patient Cost Savings
e. Patient Benefit: Increased Access to Care
III. Practitioner and Mid-Level Practitioners (''MLP'') Costs, Cost Savings, and Transfers
A. Number of Conventional Registrations, Special Registrations, and State Telemedicine Registrations
B. Practitioner and MLP Cost To Apply for Special Registration
C. Practitioner and MLP Cost To Report to DEA
D. Practitioner and MLP Cost To Check PDMP per Visit
E. Practitioner and MLP Total Costs; Cost Savings
F. Practitioner and MLP Transfers
G. Summary of Practitioner Costs, Cost Savings, Benefits, and Transfers
IV. Pharmacy Costs
V. Healthcare System Costs and Cost Savings
VI. State Costs
VII. Diversion
VIII. Summary of Economic Impact

I. Regulatory Alternatives Considered

DEA considered three alternatives, including the selected alternative: (1) finalizing the proposed March 2023 General Telemedicine NPRM and Buprenorphine NPRM; (2) an alternative that would allow the prescribing of Schedules III–V controlled substances under a single *Special Registration for Telemedicine* pursuant to 21 U.S.C. 802(54)(E) and 831(h); and (3) the selected alternative.

First, DEA considered promulgating final rules based on the proposed March 2023 General Telemedicine NPRM and Buprenorphine NPRM pursuant to 21 U.S.C. 802(54)(G). The proposed General Telemedicine NPRM would have allowed for an initial prescription of non-narcotic Schedules III–V controlled substances for no more than a 30-day supply in instances where the patient has never had an in-person medical evaluation, and additional prescriptions beyond the initial 30-day prescription would require that the patient undergo an in-person medical evaluation. The proposed General Telemedicine NPRM generally would have required that a patient undergo an initial in-person medical evaluation prior to the prescription of Schedule II controlled substances, and Schedule III–V narcotic controlled substances (with the exception of buprenorphine for opioid use disorder (''OUD'') treatment), unless there was a *qualifying referral.*

Generally, the Buprenorphine NPRM would have allowed practitioners to prescribe buprenorphine for the induction of OUD treatment for no more than a 30-day supply through audio-only telemedicine. To obtain an additional supply of buprenorphine however, the patient would have to undergo an in-person medical evaluation within 30 days of the induction of the OUD treatment. Ultimately, DEA determined that final rules of the proposed regulations would have been potentially too burdensome on practitioners and patients, leading to reduced access to care.

The second alternative considered by DEA would have allowed practitioners—irrespective of their medical specialty or the patients they treat—to prescribe Schedule III–V controlled substances under a single *Special Registration for Telemedicine* pursuant to 21 U.S.C. 802(54)(E) and 831(h). Under this alternative, practitioners would not be authorized to prescribe Schedule II controlled substances. While this alternative could have established a more streamlined *Special Registration* framework, it would not take into consideration the diverse *legitimate needs* that practitioners may have to prescribe other controlled substances through telemedicine based on their medical specialties or the patients they serve. Additionally, it does not consider the fact that certain practitioners possess the necessary qualifications to prescribe Schedule II controlled substances through telemedicine, despite the heightened risk of abuse associated with Schedule II controlled substances. Consequently, DEA opted against this alternative.

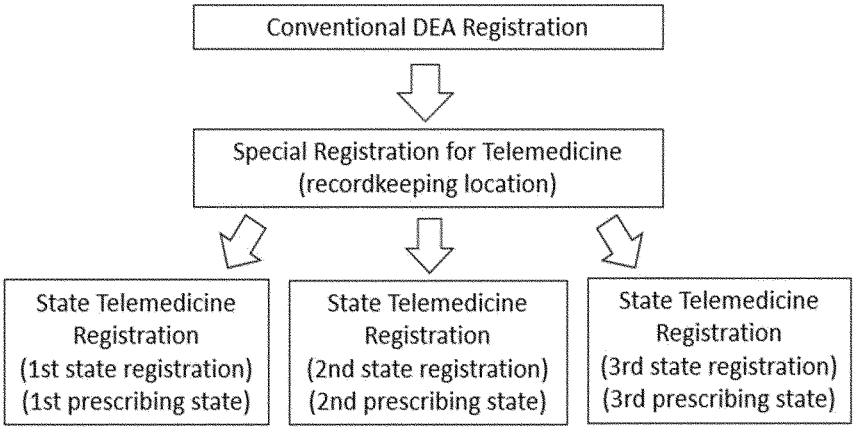
Finally, DEA is proposing the selected alternative, which would not require an in-person medical evaluation such as required under the first alternative and would allow certain qualified practitioners who demonstrate a *legitimate need* to prescribe Schedule II controlled substances through telemedicine unlike the second alternative. The selected, proposed alternative would establish a *Special Registration* framework pursuant to 21 U.S.C. 802(54)(E) and 21 U.S.C. 831(h), and authorize three types of *Special Registrations:* the (1) *Telemedicine Prescribing Registration* allowing qualified *clinician practitioners* to prescribe Schedule III–V controlled substances via telemedicine; the (2) *Advanced Telemedicine Prescribing Registration,* allowing qualified specialized *clinician practitioners* (*e.g.,* psychiatrists, *hospice care* physicians) and board-certified *mid-level practitioners* to prescribe Schedule II–V controlled substances via telemedicine, and (3) the *Telemedicine Platform Registration* for *covered online telemedicine platforms* in their capacity as *platform practitioners.*

Baseline. For our analysis of the economic impact of the selected alternative, the baseline for the selected alternative is the period before the temporary COVID–19 PHE exceptions to the *Ryan Haight Act.* During the baseline period, under 21 U.S.C. 829(e), the *Ryan Haight Act* has generally required an in-person medical evaluation prior to the prescription of controlled substances.

Proposed Requirements. The *Ryan Haight Act* does, however, provide an exception to this in-person medical evaluation requirement, where the practitioner is ''engaged in the practice of telemedicine.'' The *Ryan Haight Act* generally provides seven (7) distinct categories of the *practice of telemedicine* in which a prescribing practitioner might be unable to satisfy the *Ryan Haight Act's* in-person medical evaluation requirement, yet nonetheless may be able to prescribe a controlled substance for a legitimate medical purpose in the usual course of professional practice. The proposed requirements would allow a practitioner to obtain a *Special Registration for Telemedicine,* which is one of the seven categories of the *practice of telemedicine* as defined under the *Ryan Haight Act.* To engage in the *practice of telemedicine* under the proposed Special Registration framework, the practitioner must possess each of the following:

- An existing conventional DEA registration under 21 U.S.C. 823(g);
- One of the three types of *Special Registration for Telemedicine* authorizing the prescribing of controlled substances via telemedicine; and
- A *State Telemedicine Registration* allowing the prescribing of controlled substances via telemedicine for each state in which a patient is located.

Graphic 1: Necessary Registrations



As Graphic 1 shows, these types of DEA registrations are interconnected for the purposes of prescribing controlled substances under the Special Registration framework. To issue a *special registration prescription* to a patient located in a particular state, the practitioner must first obtain a *State Telemedicine Registration* for that state. However, a *State Telemedicine Registration* can only be obtained if the practitioner already holds or is simultaneously applying for a *Special Registration for Telemedicine.* In turn, the *Special Registration for Telemedicine* requires that the practitioner have an existing conventional DEA registration under 21 U.S.C. 823(g). The proposed rule has certain requirements for:

1. *The application process:* such as reporting professional affiliations with employers (21 CFR 1301.13(k)(2)(i)–(ii)), medical specialty (as mentioned above) (21 CFR 1301.13(k)(2)(iv)), that the practitioner will maintain anti-diversion policies (21 CFR 1301.13(k)(2)(iii)); and the facts and circumstances that form the basis for a legitimate need for a *Special Registration for Telemedicine* (21 CFR 1301.13(k)(2)(v)).

2. *The prescription process:* such as PDMP checks for the patient state, special registrant state, and any states with reciprocity agreement with either state (21 CFR 1306.43(a), a comprehensive nationwide PDMP check for all 50 states and any U.S. districts and territories that maintain a PDMP, if possible, starting three years from the effective date of the final rule (21 CFR 1306.43(b)), all prescriptions issued through EPCS (21 CFR 1306.42), telemedicine encounters being audio-visual with limited exception (21 CFR 1306.44), the inclusion of additional elements on special registration prescriptions (21 CFR 1306.47) and, for Schedule II controlled substances, prescriptions issued for care under an appropriate specialty and other safeguards (21 CFR 1306.45).

3. *Recordkeeping and reporting requirements:* such as patient verification using photographic records (21 CFR 1304.04(i)), *Special Registration* telemedicine encounter records (21 CFR 1304.04(j)), credential verifications of *clinician special registrants* (21 CFR 1304.04(k)), centralized recordkeeping at the *special registered location* (21 CFR 1304.04(l)), pharmacy reporting of telemedicine prescription data to DEA (21 CFR 1304.60) and special registrant reporting of the number of new telemedicine patients and prescription aggregated data to DEA (21 CFR 1304.61).

The costs, cost savings, benefits, and transfers associated with the proposed rule were evaluated from the perspective of the following impacted parties: patients, practitioners (including *mid-level practitioners*), pharmacies, healthcare systems, states, and society at large. The high and low ranges of economic impact are based on two factors: the rate of telemedicine visits resulting from this proposed rule and the level of participation by registrants under the proposed rule.

II. Patient Costs, Cost Savings, and Benefits

The proposed rule would benefit patients by reducing transportation costs, travel time costs, and expanding access to medical care. The cost savings associated with the proposed rule predominantly stem from reductions in two costs: (1) the cost of time, and (2) the cost of transportation.

A. Patient's Cost of Time per Practitioner Visit

To derive patients' cost of time, DEA needed to assess two factors: the *average length of time* to travel and wait for a practitioner's appointment, and the *average opportunity cost* (*i.e.,* forgone wages) to travel and wait for a practitioner's appointment. Simply put, (*average length of the time*) × (*opportunity cost*) = *patient's cost of time.* To determine an appropriate *average length of time,* DEA consulted relevant medical articles. While the *practice of telemedicine* proposed in this rule is a subset of telehealth that focuses on clinical services by practitioners, broader telehealth research can inform our understanding of telemedicine and provide a greater array of research to use in our analysis. It is also common for research to indicate it relates to ''telehealth,'' even when it may be more appropriate to call it a ''telemedicine'' study.[111]

To determine the *average length of time* to be used in this analysis, DEA consulted various studies. A 2023 study focused on cancer (non-elderly) telehealth patients treated between April 1, 2020, and June 30, 2021. This study found that telehealth patients saved about 2.9 hours of round-trip driving time and 1.2 hours of in-clinic time per visit, including time spent with a practitioner.[112] However, as this study focused on non-elderly cancer patients, it did not adequately represent the broader scope of telehealth patients considered in this analysis. In contrast, a 2019 study indicated that the *average length of time* (combining travel and waiting time) was 45 minutes (0.75 hours) per visit.[113] Given that 68.2 percent of all current telehealth claims are related to mental health, not non-elderly cancer patients, DEA believes that the 45-minute average is more

[111] Accordingly, in discussing such studies, DEA will use the word the word ''telehealth'' instead of telemedicine.

[112] Patel KB, Turner K, Alishahi Tabriz A, et al. Estimated Indirect Cost Savings of Using Telehealth Among Nonelderly Patients with Cancer. JAMA Netw Open. 2023;6(1):e2250211.

[113] Rhyan C. *Travel and Wait Times are Longest for Health Care Services and Result in an Annual Opportunity Cost of $89 Billion.* Altarum. (Feb. 22, 2019), *https://altarum.org/travel-and-wait* (accessed 9/5/2023).

relevant for this analysis.[114] DEA, however, acknowledges that there may be significant variability in the *average lengths of time* across different patient populations.

To determine an appropriate *average opportunity cost* (*i.e.,* forgone wages) to travel and wait for a practitioner's appointment, DEA consulted relevant data from the U.S. Bureau of Labor Statistics (BLS). DEA used median hourly wage data for all occupations ($23.11) as a proxy for the hourly *average opportunity cost* of travel and wait time for all patients, as can be seen in Table 1 below.[115] Additionally, BLS reports that average wages and salaries for civilians are 68.8 percent of total compensation. The 68.8 percent of total compensation equates to 45.3 percent (100 percent/68.8 percent—1) load on wages and salaries.[116] The load of 45.3 percent, or $10.47 (0.453 x $23.11), is added to the hourly rate to estimate the loaded hourly rates. As can be seen in Table 1, the loaded hourly wage for patients is $33.58 ($23.11 + $10.47). Therefore, the $33.58 loaded hourly wage represents the hourly *average opportunity cost* to travel and wait for a practitioner's appointment.

TABLE 1—PATIENTS LOADED HOURLY WAGE

Occupation	Hourly wage ($)	Load for benefits ($)	Loaded hourly wage ($)
All Occupations	23.11	10.47	33.58

Therefore, the patient's *cost of time* to travel and wait for a practitioner's visit—and thus the time cost savings achieved by telemedicine patients who could forego such a trip—equals $25.19 ($0.75 \times \$33.58$), as can be seen in Table 2 below.

TABLE 2—PATIENT COST OF TIME

[per Practitioner's Appointment]

Cost savings	Hourly opportunity cost ($)	Travel and wait time (hours)	Cost per appointment ($)
Time cost savings	33.58	0.75	25.19

B. Patient's Cost of Travel per Practitioner Visit

To determine the *cost of travel* to and from a practitioner's appointment, DEA used data from the *Southwest Rural Health Research Center* in the *Texas A&M School of Public Health,* and mileage reimbursement rates from the U.S. Internal Revenue Service (IRS). According to a 2017 survey by the *Southwest Rural Health Research Center,* the average national round-trip travel distance for a doctor's visit was 9.9 miles, or 19.8 miles round-trip.[117] The IRS travel reimbursement rate for businesses is 67 cents per mile.[118] Therefore, the patient's *cost of travel* to and from a practitioner's appointment—and thus the travel cost savings achieved by telemedicine patients who could forego such a trip—equals $13.27 (19.8 miles x $0.67 per mile), as can be seen in Table 3 below.

TABLE 3—PATIENT TRAVEL COST SAVINGS PER TRIP

Cost savings	Travel cost per mile ($)	Travel distance (miles)	Per appointment cost ($)
Travel cost savings	0.67	19.8	13.27

[114] Fair Health, ''Monthly Telehealth Regional Tracker.'' *https://www.fairhealth.org/fh-trackers/telehealth*. (accessed 8/4/2023 selecting Jan 2020, which had Jan 2019 data, and May 2023 using National Statistics data dropdown menu).

[115] Bureau of Labor Statistics, Occupational Employment and Wages, May 2023 National Occupational Employment and Wage Estimates, Occupation code: 00–0000 All Occupations, *https://www.bls.gov/oes/2023/may/oes_nat.htm.*

[116] Bureau of Labor Statistics, Employer Costs for Employee Compensation—June 2024, *https://www.bls.gov/news.release/archives/ecec_09102024.pdf.* (accessed 11/13/2024).

[117] Akinlotan, M., Khodakarami, N., Primm, K., Bolin, J., and Ferdinand, A.O. (Yen W. Rhyan C. Rural-Urban Variations in Travel Burdens for Care: Findings from the 2017 National Household Travel July 2021. *https://srhrc.tamu.edu/publications/travel-burdens-07.2021.pdf. https://ofm.wa.gov/sites/default/files/public/legacy/researchbriefs/2013/brief070.pdf* (accessed 9/24/2024).

[118] Internal Revenue Service. Standard Mileage Rates, Notice 2024–08, *https://www.irs.gov/pub/irs-drop/n-24-08.pdf.* (accessed 10/18/2024).

C. Total Number of Telemedicine Visits

The proposed rule's patient cost savings result from eliminating the need for an initial in-person medical evaluation or visit. Subsequent telemedicine visits are allowed after that initial in-person medical evaluation or visit, even without the COVID–19 PHE telemedicine flexibilities. So, to calculate the total patient cost savings under the proposed rule, DEA needed to estimate the *total number of first-time telemedicine visits resulting in prescriptions for controlled substances.*[119] Given the absence of direct information on this point, however, it was necessary for DEA to perform a multi-step analysis or derivation using different available data sources at each step to derive an estimate. First, DEA established the *total annual practitioner visits* using available data. Second, the total was further refined to those practitioner visits conducted *via telemedicine.* Third, the total was reduced to those that constituted *first-time* telemedicine visits. Fourth, DEA determined the proportion of the first-time telemedicine visits that would *result in prescriptions.* Fifth, it refined the total number of first-time telemedicine visits resulting in prescriptions of *controlled substances.* And lastly, DEA considered the impact of proposed requirements and determined the total number of first-time telemedicine visits resulting in prescriptions of controlled substances *under the proposed rule.* DEA performed this multi-step analysis to derive the low, moderate (primary), and high estimates of the *number of first-time telemedicine visits resulting in prescriptions for controlled substances,* which resulted in low, moderate (primary), and high values for the total patient cost savings.

i. Total Number of Telemedicine Visits Under the Current Telemedicine Rate

Step 1: Total Annual Practitioner Visits. As described above, DEA initially established the *total annual practitioner visits* using available data. According to the Centers' for Disease Control and Prevention (CDC) 2019 National Ambulatory Medical Care (NAMC) sample survey, it was estimated that there were a total of 1,036,484,000 practitioner visits that year, although not all of these visits resulted in prescriptions, as can be seen in Table 4.[120] An analysis of this survey revealed that a total of 3,476,239,000 prescriptions were issued during medical visits that year, as can be seen in Table 4.[121] This means that for every one practitioner visit, there were approximately 3.35 prescriptions, calculated as a coefficient of roughly 0.2982, which can be seen in Table 5.

TABLE 4—ESTIMATE OF NUMBER OF PRESCRIPTIONS USING VISIT DATA

Number of prescriptions	Number of visits (thousands)	Total number of prescriptions (thousands)
0	291,394	
1	192,488	192,488
2	129,561	259,122
3	84,898	254,694
4	60,766	243,064
5	52,613	263,065
6	34,041	204,246
And 7	28,900	202,300
8	29,043	232,344
9	23,393	210,537
10	15,320	153,200
11	17,034	187,374
12	14,744	176,928
13	13,419	174,447
14	10,635	148,890
15+	38,236	*573,540
Total	**1,036,485	3,476,239

*Used 15 as an approximation for 15+.
**The published total shows 1,036,484, so there is a rounding error of 1.

TABLE 5—ESTIMATE OF VISIT PER PRESCRIPTION COEFFICIENT

NAMC prescriptions	3,476,239,000
Prescriptions per visits ratio	3.35
Visit per prescription coefficient	0.2982

To estimate the total number of practitioner's visits, DEA did not use the NAMC survey because the survey results have been volatile year-to-year, and it only includes ''nonfederal office-based patient care physicians, excluding anesthesiologists, radiologists, and pathologists.'' [122] Instead, DEA used the derived coefficient in conjunction with IQVIA's more comprehensive 2019 prescription data to derive a more representative figure.[123] In 2019, IQVIA reported 4,386,834,000 prescriptions.[124] By multiplying this number by the coefficient 0.2982, DEA estimated that there were approximately *1,308,153,900 practitioner visits,* as can be seen in Table 6.

[119] Total Patient Cost Savings = (number of first-time telemedicine visits resulting in prescriptions for controlled substances) * (patient cost savings).

[120] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics. (2019). *National Ambulatory Medical Care Survey: 2019 National Summary Tables.* Retrieved from *https://www.cdc.gov/nchs/data/ahcd/namcs_summary/2019-namcs-web-tables-508.pdf.*

[121] *Id.*

[122] From the survey: ''Due to uncertainty regarding the true number of out-of-scope physicians in the 2018 NAMCS, the weighted frequency estimates for 2018 should be treated with caution. However, proportional estimates were not found to be significantly different between the 2018 NAMCS and 2019 NAMCS.''

[123] The IQVIA Institute. The Use of Medicines in the U.S. 2023. May 02, 2023. *https://www.iqvia.com/insights/the-iqvia-institute/reports-and-publications/reports/the-use-of-medicines-in-the-us-2023* (accessed 4/23/2024) reports 4,437 million for 2019 unadjusted, but 6,218 million adjusted. A DEA IQVIA query of chain store prescriptions for 2019 was 4,386,834,000 but would be higher if food stores and independent were included. Ultimately, the 3,476,239,000 number from the survey appears low. However, even the number DEA used could be considered low, but DEA has chosen to be conservative.

[124] *Id.*

TABLE 6—ESTIMATE OF NUMBER OF PRACTITIONER VISITS

Coefficient	0.2982
IQVIA prescriptions	4,386,834,000
Visits—IQVIA prescriptions	1,308,153,900

Step 2: Rate of Telemedicine. DEA then further refined the total number of practitioner visits to those *conducted through telemedicine.* According to the *Fair Health Monthly Telehealth Regional Tracker,* as of July 2024, 4.7 percent of medical claims were conducted through telehealth.[125] As can be seen in Table 7, DEA then used this percentage to refine the total 1,308,153,900 practitioner visits to those likely to be conducted through telemedicine once a final rule is promulgated. Applying 4.7 percent, or the current telemedicine rate, to the 1,308,153,900 total practitioner's visits gives a total of *68,024,003 practitioner visits conducted via telemedicine,* as can be seen in Table 7.

TABLE 7—NUMBER OF TELEMEDICINE VISITS

Total practitioner visits	1,308,153,900
Telemedicine rate	0.047
Telemedicine visits	68,024,003

Step 3: First-Time Visits. DEA needed to further refine the total number of telemedicine practitioner visits to those that constituted *first-time* telemedicine visits. DEA's focus on first-time telemedicine practitioner visits, rather than all telemedicine visits, was to prevent an overestimation of the total patient cost savings. Under the status quo, after one bona fide in-person medical evaluation, patients are typically permitted to be seen via telehealth thereafter when receiving prescriptions for controlled substances. A potential overestimate of total patient cost savings arises from the fact that patient cost savings under the proposed rule primarily hinge on the bypassing of a first-time, in-person medical evaluation, but not subsequent telemedicine visits.

A 2022 study analyzing trends between 2017–2020 in interstate telehealth use by Medicare beneficiaries, a subset of the population impacted by the proposed rule, shows that the vast majority of practitioner visits are for returning patients, and approximately 10 percent of those practitioner visits are new visits.[126] This is in line with the CDC's 2019 NAMC nonfederal survey where 16.8 percent of office visits were for new patients. The CDC's 2019 NAMC survey, however, was not limited to telehealth visits, so DEA decided that the 10 percent estimate from the 2022 interstate telehealth study was more applicable to this analysis.[127] Taking 10 percent of 68,024,003 practitioner visits conducted via telemedicine would provide a total of approximately *6,802,400 first-time, telemedicine practitioner visits,* as can be seen in Table 8.

TABLE 8—NUMBER OF FIRST-TIME TELEMEDICINE VISITS

Telemedicine visits	68,024,003
First-time telemedicine visit rate	0.1
First-time telemedicine visits	6,802,400

Step 4: Visits Resulting in Prescriptions. DEA needed to determine the fraction of first-time telemedicine visits that would *result in prescriptions.* Looking again at CDC's 2019 NAMC survey (Table 4 above), DEA determined, as reflected in Table 4, that 291,394,000 visits did not include any prescribing, which means 745,090,000 of the 1,036,484,000 visits, or approximately 72 percent of the visits, did in fact result in the issuance of prescriptions. Because only 72 percent of visits resulted in a prescription, DEA applied the 72 percent to the calculated 6,802,400 first-time, telemedicine visits resulting in approximately a total of *4,889,996 first-time telemedicine visits resulting in the issuance of prescriptions,* as can be seen in Table 9.

[125] Fair Health, ''Monthly Telehealth Regional Tracker.'' *https://www.fairhealth.org/fh-trackers/telehealth.* (accessed 10/19/2024 selecting July 2024 using National Statistics data dropdown menu).

[126] Andino, J. J., Zhu, Z., Surapaneni, M., Dunn, R. L., & Ellimoottil, C. (2022). Interstate Telehealth Use by Medicare Beneficiaries Before and After COVID–19 Licensure Waivers, 2017–20. Health Affairs, 41(6). Appendix Exhibit 1 show that in person level 3 and level 4 new visits are 6.8% (3.5% + 3.3%) and out-of-state new visits are 10.7% (5.6% + 5.1%).

[127] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics. (2019). National Ambulatory Medical Care Survey: 2019 National Summary Tables. Retrieved from *https://www.cdc.gov/nchs/data/ahcd/namcs_summary/2019-namcs-web-tables-508.pdf.*

TABLE 9—ESTIMATE OF NUMBER OF FIRST-TIME TELEMEDICINE VISITS WITH PRESCRIPTIONS

First-time telemedicine visits	.....	6,802,400
NAMC survey visits—total	1,036,484,000	.....
NAMC survey visits—0 prescriptions	291,394,000	.....
NAMC survey rate—0 prescriptions	0.28	.....
NAMC survey rate—with prescriptions	0.72	* 0.72
First-time telemedicine visits with prescriptions	.....	4,889,996

* Rounded.

Step 5: Prescriptions for Controlled Substances. DEA then refined the total number of first-time telemedicine visits resulting in prescriptions for *controlled substances.* According to the Federal Trade Commission (FTC), *Surescripts* has 95% market share in e-prescribing services as of 2023.[128] DEA was able to use 2021 data from the *Surescripts National Progress Report* to determine that approximately 16 percent of all prescriptions (paper and electronic) are for controlled substances.[129] Applying this 16 percent to the total number of 4,889,996 telemedicine visits resulting in the issuance of prescriptions, provides a value of approximately *782,399 first-time telemedicine visits resulting in prescriptions for controlled substances,* as can be seen in Table 10.

TABLE 10—CURRENT ESTIMATE OF NUMBER OF FIRST-TIME TELEMEDICINE VISITS RESULTING IN PRESCRIPTIONS OF CONTROLLED SUBSTANCES

First-time telemedicine visits with prescriptions	4,889,995.73
Controlled substance (CS) rate	0.16
First-time telemedicine visits with CS prescriptions	782,399

Step 6: Effect of the Proposed Rule. Lastly, DEA determined the total number of first-time telemedicine visits resulting in prescriptions of controlled substances *under the proposed rule.* Under the proposed rule, patients would not have an in-person follow-up visit after the first-time telemedicine visit; they would never have to see the prescribing practitioner in person. Based on a study by *Epic Research* of primary care visits between March 1, 2020, and October 15, 2022, 61 percent of telehealth visits did not require an in-person follow-up.[130] A similar study by *Epic Research* on specialty visits provided that 85 percent of mental health and psychiatry telehealth visits did not have an in-person follow-up visit.[131] Because this proposed rule is not limited to mental health, DEA applied the broader and lower 61 percent to the 782,399 first-time telemedicine visits resulting in prescriptions of *controlled substances.* The multi-step analysis ultimately derived a current estimate of *477,264 first-time telemedicine visits resulting in prescriptions of controlled substances under the proposed rule,* as can be seen in Table 11.

TABLE 11—CURRENT ESTIMATE OF NUMBER OF FIRST-TIME TELEMEDICINE VISITS RESULTING IN PRESCRIPTIONS OF CONTROLLED SUBSTANCES UNDER THE PROPOSED RULE

NAMC visits	1,036,484,000	.....	.....	.....	.....
NAMC prescriptions	3,476,239,000	.....	.....	.....	.....
Prescriptions per visits ratio	3.35	.....	.....	.....	.....
Visit per prescription coefficient	*0.2982*	0.2982	.....	.....	.....
IQVIA prescriptions	.....	4,386,834,000	.....	.....	.....
Visits—IQVIA prescriptions	.....	*1,308,153,900*	1,308,153,900	.....	.....
Telemedicine rate	.....	.....	0.047	.....	.....
Telemedicine visits	.....	.....	*68,024,003*	68,024,003	.....
First time telemedicine visit rate	.....	.....	.....	0.1	.....
First-time telemedicine visits	.....	.....	.....	*6,802,400*	.....
NAMC survey visits—total	1,036,484,000	.....	.....	.....	.....
NAMC survey visits—0 prescriptions	291,394,000	.....	.....	.....	.....
NAMC survey rate—0 prescriptions	*0.28*	.....	.....	.....	.....
NAMC survey rate—with prescriptions	*0.72*	.....	.....	0.72	.....
First-time telemedicine visits with prescriptions	.....	.....	.....	*4,889,996*	4,889,996
Controlled substance (CS) rate	.....	.....	.....	.....	0.16
First-time telemedicine visits with CS prescriptions	.....	.....	.....	.....	*782,399*
First-time telemedicine visits that do not have an in-person follow up visit.	.....	.....	.....	.....	0.61

[128] *FTC Reaches Proposed Settlement with Surescripts in Illegal Monopolization Case Federal Trade Commission.* (July 27, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-reaches-proposed-settlement-surescripts-illegal-monopolization-case* (accessed 9/24/2024).

[129] According to the Surescripts National Progress Report, there were 256.9 million prescriptions of controlled substances prescribed through EPCS, accounting for 73 percent of the total number of prescriptions of controlled substances. Using these figures, DEA derived the total number of prescriptions of controlled substances to be 351.9 million ((256.9 million) * (100)/(73) = 351.9 million). There were 2.12 billion prescriptions of controlled substances and non-controlled substances prescribed electronically, accounting for 94 percent of the total number of all prescriptions paper or electronic for controlled substances or non-controlled substances. DEA derived the total number of all prescriptions paper or electronic for controlled substances or non-controlled substances to be 2.26 billion ((2.12 billion) * (100)/(94) = 2.26 billion). Using the total of all controlled substances prescriptions (351.9 million) and the total of all prescriptions (2.26 billion), DEA determined that 16% of all prescriptions are for controlled substances ((256.9 million) * (100)/2.26 billion = 16 percent).

[130] Gerhart J, Piff A, Bartelt K, Barkley E. *Most Primary Care Telehealth Visits Unlikely to Need In-Person Follow-Up. Epic Research. https://www.epicresearch.org/articles/most-primary-care-telehealth-visits-unlikely-to-need-in-person-follow-up* (accessed 10/20/2024).

[131] Gerhart J, Piff A, Bartelt K, Barkley E. *Telehealth Visits Unlikely to Require In-Person Follow-Up Within 90 Days.* Epic Research. *https://epicresearch.org/articles/telehealth-visits-unlikely-to-require-in-person-follow-up-within-90-days.* (accessed 10/20/2024).

TABLE 11—CURRENT ESTIMATE OF NUMBER OF FIRST-TIME TELEMEDICINE VISITS RESULTING IN PRESCRIPTIONS OF CONTROLLED SUBSTANCES UNDER THE PROPOSED RULE—Continued

First-time telemedicine visits under the proposed rule with CS prescriptions					477,264

ii. Forecasted Total Number of Telemedicine Visits

To project the future level of telemedicine visits, a forecast is required, utilizing the usage rate of telemedicine.[132] A forecast has two critical elements:

1. Baseline (or starting) value, and the
2. Growth rate from that baseline value.

A typical forecast relies on the existing value and the historic data to extrapolate an expected growth rate. However, this process becomes more complex with volatile historical data, as fluctuations make it challenging to determine a stable baseline and reliable growth trend.[133] In the case of telemedicine, the past five years have seen significant volatility in usage rates, resulting in baseline level and growth rates that have been significantly distorted, with the rate both increasing and decreasing depending on the time interval, as can be seen in Table 12. Specifically, the rate of telemedicine usage surged from 0.2 percent in 2019 to 13 percent in the April 2020 peak according to Fair Health's analysis of medical claims and to 31.2 percent in the second quarter of 2020 based on an analysis of doctor visits by *Epic Research.* [134] However, this trend reversed in subsequent years, with rates gradually declining. By the third quarter of 2023, the telemedicine usage rate had dropped to 5.8%, and as of July 2024, it stood at 4.7 percent, based on data from Epic Research.[135]

TABLE 12—HISTORICAL TELEMEDICINE RATE

Year	Month	Fair health (claims) (%)	YOY change (%)	Quarter	Epic research (doctor visits) (%)	YOY change (%)
2019	April	0.15		2Q	0.2	
2020	April	13.0	8566.7	2Q	31.2	15500.0
2021				2Q	9.1	−70.8
2022				2Q	7.1	−22.0
2023	May	5.4		2Q	6.0	−15.5
2024	May	4.8	−11.1			
2024	July	4.7				

Uncertainty and Factors that May Affect Future Telemedicine Usage. The future of telemedicine is difficult to predict. Patients may start to embrace telemedicine again, or they may continue to return to in-person visits as pandemic habits recede, especially given the lack of in-person exams and vital sign measurements in telehealth.[136] This uncertainty is reflected in corporate behavior. In March 2023, Walmart announced plans to further expand its telehealth services by opening 28 additional health centers.[137] However, less than a year later, in May 2024, the company reversed course, announcing the closure of all 51 of their health centers and its telehealth service as it no longer believed it a sustainable business model.

Even if the rule proposed in this NPRM were finalized, it remains unclear how state-level regulations will evolve and impact the telemedicine market. While 43 states and the District of Columbia (DC) may require commercial insurers to cover telehealth services (coverage parity), only a handful of states mandate equal reimbursement rates for telehealth and in-person care (payment parity).[138] Further, some states have rolled back telemedicine flexibilities introduced during the pandemic and reverted to pre-pandemic restrictions. As of December 2023, 30 states have banned or heavily restricted telehealth appointments with out-of-state doctors.[139]

Technology could also play a critical role in shaping the telemedicine market.

[132] The usage rate of telemedicine is the percent of medical visits conducted via telemedicine.

[133] For instance, for those who want to understand the potential of an economy, recessions may distort Gross Domestic Product (GDP) data. To counter that distortion interested parties may think in terms of the GDP at full employment and think how that full employment GDP grows every year. For some background see Universities-National Bureau Committee for Economic Research. *The Measurement and Behavior of Unemployment.* 1957. *https://www.nber.org/system/files/chapters/c2638/c2638.pdf* (accessed 10/20/2024).

[134] *Monthly Telehealth Regional Tracker,* Fair Health, *https://www.fairhealth.org/fh-trackers/telehealth.* (accessed 8/4/2023 selecting April 2020, which had April 2019 data, using National Statistics data dropdown menu); Bartelt K, Piff A, Allen S, Barkley E. *Telehealth Utilization Higher Than Pre-Pandemic Levels, but Down from Pandemic Highs.* Epic Research. *https://www.epicresearch.org/articles/telehealth-utilization-higher-than-pre-pandemic-levels-but-down-from-pandemic-highs* (accessed 10/19/2024), S&P Global. Telehealth finds mental health, provider niche as usage drops from pandemic peak. September 9, 2021. *https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/telehealth-finds-mental-health-provider-niche-as-usage-drops-from-pandemic-peak-66229670* (accessed 10/1/2024); The difference in the peak levels of demand could be due to Fair Health looking at claims that include filling prescription drugs and other non-visit related claims. However, Fair Health does look at a much larger volume of claims, possibly over 3 billion each year (*https://www.fairhealth.org/data*), than the Epic Research study, which only studied 475 million claims throughout the entire study period.

[135] *Monthly Telehealth Regional Tracker,* Fair Health, *https://www.fairhealth.org/fh-trackers/telehealth.* (accessed 10/19/2024 selecting July 2024 using National Statistics data dropdown menu).

[136] SteelFisher GK, McMurtry CL, Caporello H, Lubell KM, Koonin LM, Neri AJ, Ben-Porath EN, Mehrotra A, McGowan E, Espino LC, Barnett ML. *Video Telemedicine Experiences In COVID–19 Were Positive, But Physicians and Patients Prefer In-Person Care for The Future.* Health Aff (Millwood). April 2023.

[137] The Associated Press. *Walmart says it will close its 51 health centers and virtual care service.* NPR. May 1, 2024. *https://www.npr.org/2024/05/01/1248397756/walmart-close-health-centers-virtual-care#:~:text=the%20asset%27s%20value.-,Sponsor%20Message,vision%20centers%20in%20the%20U.S.* (accessed 10/31/2024).

[138] Ellimoottil C. *Understanding the Case for Telehealth Payment Parity.* Health Affairs. May 10, 2021. *https://www.healthaffairs.org/content/forefront/understanding-case-telehealth-payment-parity* (accessed 10/31/2024).

[139] Trotter C. In 30 states, you cannot use telehealth with out-of-state doctors. Pacific Legal Foundation. December 13, 2023. *https://pacificlegal.org/30-states-telehealth-rules/* (accessed 10/24/2024).

For example, technological advances could reduce the cost of remote patient monitoring devices, further driving the demand of telemedicine.[140] On the other hand, some communities may still not be able to utilize telemedicine in their homes, because they continue to lack the broadband internet to support the technology either because such broadband service is unavailable or unaffordable.[141] Ultimately, the telemedicine market has been shaped by a shifting landscape of factors, making it difficult to pinpoint any one baseline value or rate of growth with any certainty.

Low, Moderate (Primary), and High Estimates. Given these uncertainties, DEA analyzed a range of possible baseline values and growth rates for telemedicine usage (*i.e.,* rates of telemedicine) to demonstrate a range of possible outcomes. This approach allows for the derivation of a low, moderate, and high estimate of the total number of telemedicine visits over the next 10 years.

- For the low estimate, DEA selected a baseline telemedicine usage rate of 0.2 percent, reflecting the lower levels of use observed in 2019, prior to the COVID–19 pandemic. A growth rate of 2 percent was chosen, corresponding to the projected growth rate of primary care between 2022 and 2026.[142]
- For the moderate (primary) estimate, DEA used a baseline telemedicine usage rate of 4.7 percent, mirroring the current rate of telemedicine. A growth rate of 4.95% was derived by taking the average of two different projections: a robust growth rate of 19 percent and a negative rate of –9.1 percent.[143]
- For the high estimate, DEA selected a baseline telemedicine usage rate of 13 percent, reflecting the usage observed at the April 2020 peak by Fair Health's more comprehensive claims data during the pandemic. A growth rate of 19 percent was chosen based on estimates from one source, *Fortune Business Insights,* which projected that growth rate per year between 2024 and 2032.[144]

The scenarios provided are informed projections, based on factors that could influence telemedicine usage and growth. While these projections draw on available data and insights from healthcare, they are ultimately speculative. The scenarios are summarized in Table 13 below.

TABLE 13—SUMMARY OF THE THREE SCENARIOS

Scenario	Telemedicine Rate (%)	Growth (%)	Demand
Low	0.20	2	Telemedicine usage returns to pre-pandemic level with low growth, corresponding to demand for healthcare services.
Moderate (Primary)	4.70	4.95	Telemedicine usage remains at current level with moderate growth.
High	*13	19	Telemedicine usage surges to the pandemic peak level and grows at high growth rate.

As seen in Table 11, ''telemedicine rate'' of ''0.047'' (4.7 percent) is a key factor in estimating ''first-time telemedicine visits under the proposed rule with [controlled substance] prescriptions'' of 477,264. Varying the ''telemedicine rate'' to 0.2 percent and 13 percent would result in ''first-time telemedicine visits under the proposed rule with [controlled substance] prescriptions'' to 20,309 (477,264 × (0.2/4.7)) and 1,320,092 (477,264 × (13/4.7)), respectively. DEA estimates the number of first-time telemedicine visits under the proposed rule with controlled substance prescriptions would reach these levels in the first year of implementation of this proposed rule. Table 14 below summarizes the first-year numbers and growth rates of first-time telemedicine visits under the proposed rule with controlled substance prescriptions for the low, moderate (primary), and high estimates.

TABLE 14—''YEAR 1'' VISITS AND GROWTH RATES

	Low	Moderate (primary)	High
(Year 1) First-time telemedicine visits under the proposed rule with CS prescriptions	20,309	477,264	1,320,092
Annual Growth Rate	2.00%	4.95%	19.00%

[140] Serrano LP, Maita KC, Avila FR, Torres-Guzman RA, Garcia JP, Eldaly AS, Haider CR, Felton CL, Paulson MR, Maniaci MJ, Forte AJ. *Benefits and Challenges of Remote Patient Monitoring as Perceived by Health Care Practitioners: A Systematic Review.* Perm J. Dec 2023.

[141] U.S. Government Accountability Office. *Closing the Digital Divide for the Millions of Americans without Broadband.* WatchBlog. February 01, 2023. *https://www.gao.gov/blog/closing-digital-divide-millions-americans-without-broadband#:~:text=Closing%20the%20digital%20divide%20is,and%20Information%20Administration%20(NTIA)*(accessed 10/31/2024).

[142] Jain S. *Projected Growth in Demand for Healthcare Services is Tepid. Trilliant Health: The Compass.* 11/6/2022, *https://www.trilliant health.com/market-research/studies/projected-growth-in-demand-for-healthcare-services-is-tepid* (accessed 10/24/2024).

[143] Adjusting the recent decline in the rate of telemedicine of 11.1 percent by the 2.0 percent growth of overall doctor visits means telemedicine visits may have fallen 9.1%. The 19 percent was taken from Fortune Business Insight. Telemedicine Market Size, Share & Industry Analysis, By Type (Products and Services), By Modality (Store-and-forward (Asynchronous), Real-time (Synchronous), and Others), By Application (Teleradiology, Telepathology, Teledermatology, Telecardiology, Telepsychiatry, and Others), By End-User (Healthcare Facilities, Homecare, and Others), and Regional Forecast, 2024–2032 *https://www.fortune businessinsights.com/industry-reports/telemedicine-market-101067* (Accessed 10/20/24); For simplicity a single growth rate was assumed. However, an alternative measure could project the gradual slowing of the annual decline of −22 percent, −15.5 percent, and −11.1 percent from Table 12. Just using the change in decline in latest data of 4.4 percent (15.5 − 11.1) would give −6.7 percent in year 1, −2.3 percent in year 2, 2.1 percent in year 3, 6.5 percent in year 4, 10.9 percent in year 5, 15.3 percent in year 6, and 19.7 percent in year 7. This is probably more in line with the expected course of telemedicine but is still uncertain.

[144] Fortune Business Insight. Telemedicine Market Size, Share & Industry Analysis, By Type (Products and Services), By Modality (Store-and-forward (Asynchronous), Real-time (Synchronous), and Others), By Application (Teleradiology, Telepathology, Teledermatology, Telecardiology, Telepsychiatry, and Others), By End-User (Healthcare Facilities, Homecare, and Others), and Regional Forecast, 2024–2032 *https://www.fortune businessinsights.com/industry-reports/telemedicine-market-101067* (Accessed 10/20/24).

Applying the growth rates to the 'Year 1' patient visit figures, DEA generated a 10-year forecast as shown in Table 15 below.

TABLE 15—NUMBER OF VISITS FORECAST

Year	Low		Moderate (primary)		High	
	Growth rate (%)	Patient visits	Growth rate (%)	Patient visits	Growth rate (%)	Patient visits
1	.....	20,309	.....	477,264	.....	1,320,092
2	2	20,715	4.95	500,889	19	1,570,909
3	2	21,129	4.95	525,683	19	1,869,382
4	2	21,552	4.95	551,704	19	2,224,565
5	2	21,983	4.95	579,013	19	2,647,232
6	2	22,423	4.95	607,674	19	3,150,206
7	2	22,871	4.95	637,754	19	3,748,745
8	2	23,328	4.95	669,323	19	4,461,007
9	2	23,795	4.95	702,454	19	5,308,598
10	2	24,271	4.95	737,225	19	6,317,232

D. Total Patient Cost Savings

Each telemedicine visit saves patients time and travel costs of $25.19 and $13.27, respectively, for a total savings of $38.46. Applying the cost savings of $38.46 to the estimated number of first-time telemedicine visits under the proposed rule with controlled substance prescriptions results in a 10-year forecast of patient cost savings for low, moderate (primary), and high scenarios as shown in Table 16 below.

TABLE 16—PATIENT ANNUAL TOTAL COST SAVINGS

Year	Low ($)	Moderate (primary) ($)	High ($)
1	781,084	18,355,573	50,770,738
2	796,699	19,264,191	60,417,160
3	812,621	20,217,768	71,896,432
4	828,890	21,218,536	85,556,770
5	845,466	22,268,840	101,812,543
6	862,389	23,371,142	121,156,923
7	879,619	24,528,019	144,176,733
8	897,195	25,742,163	171,570,329
9	915,156	27,016,381	204,168,679
10	933,463	28,353,674	242,960,743
Present Value*	7,657,624	205,278,372	1,096,535,599
Annualized Cost*	852,497	22,852,928	122,073,501

* Present value and annualized values are based on a two percent (2%) discount rate.

E. Patient Benefit: Increased Access to Care

DEA believes this proposed rule may improve patient access to care. However, DEA maintains that telemedicine is not as effective as in-person visits. According to a NCHS Data Brief from February 2024, only 4.0 percent of primary care physicians, 6.3 percent of surgical specialty physicians, and 6.0 percent of medical special physicians believe telemedicine is as effective as in-person visits.[145]

Telemedicine has emerged as a vital solution for enhancing healthcare accessibility, especially in the face of healthcare shortages. Notably, it extends its benefits to patients in remote and other underserved areas, including by providing access to specialized care. As of July 2024, telehealth utilization is 4.7 percent of medical claims (Table 12), a significant leap from the 0.17 percent recorded in January 2019, before the COVID–19 pandemic, demonstrating its growing importance.[146] Most notably, mental health claims using telehealth had risen from 39.6 percent to 68.2 percent during this period, demonstrating that the utilization of telemedicine for mental healthcare experienced a significant surge during the pandemic.[147]

The importance of telemedicine becomes even more apparent when considering the acute shortage of mental health professionals. Over 75 percent of all U.S. counties are classified as having mental health shortage areas, with 50 percent lacking any mental health professionals. Long-distance travel for treatment remains a major accessibility barrier for individuals in rural areas with limited transportation options.[148] As of June 2023, there were 6,546 designated ''Mental Health—Health Professional Shortage Areas'' covering a total population of 163,355,252

[145] Myrick K, Mahar M, DeFrances CJ. *Telemedicine Use Among Physicians by Physician Specialty: United States,* 2021. NCHS Data Brief, no 493. February 2024. *https://www.cdc.gov/nchs/data/databriefs/db493.pdf.*

[146] *Monthly Telehealth Regional Tracker,* Fair Health, *https://www.fairhealth.org/fh-trackers/telehealth.* (accessed 8/4/2023 selecting Jan 2020, which had Jan 2019 data, and May 2023 using National Statistics data dropdown menu).

[147] *Id.*

[148] Substance Abuse and Mental Health Services Administration, *Rural Behavioral Health: Telehealth Challenges and Opportunities,* at 4 (2016), *https://store.samhsa.gov/sites/default/files/sma16-4989.pdf.*

people.[149] However, it is crucial to note that the healthcare shortage issue extends beyond mental health professionals. A September 2022 report revealed that 97.6 million Americans live in areas with a primary health professional shortage, highlighting a broad need for enhanced access to a range of specialties.[150]

The utilization of telehealth is more prevalent among urban Americans and Americans between the ages of 31 to 50 with respect to non-hospital-based provider-to-patient telehealth claims, which is the largest category of telehealth.[151] However, when examining discharge-related provider-to-patient telehealth claims, rural Americans and those over age 50 are the most prevalent.[152] DEA is not certain as to why these disparities exist, but they could suggest that limited access to routine and preventative care in rural areas and for older patients result in higher rates of hospitalizations, leading to more discharge-related provider-to-patient telehealth claims. With greater access, rural Americans and older patients may increase their non-hospital-based provider-to-patient telemedicine. With the potential for a broader range of telemedicine practices enabled by the proposed *Special Registration* framework, qualified practitioners and MLPs could effectively reach a larger patient population, ultimately resulting in improved healthcare outcomes and reduced costs for patients across the nation.

As discussed further below, healthcare systems may, instead of lowering costs, be able to provide increased care at a similar cost based on an evaluation of health care systems.[153] While practitioners may be able to reduce travel to and from the office, this time saving is likely much less than patients' since practitioners may still go to the office and may see many patients. However, this travel time savings may allow practitioners to become more available to patients, increasing access to care. While DEA is unable to quantify all the benefits to increased patient access to care, DEA believes it is not negligible.

III. Practitioner and MLP Costs, Cost Savings, and Transfers

The proposed rule would impact qualified practitioners (limited to physicians, *mid-level practitioners,* and *covered online telemedicine platforms*) by imposing registration costs, imposing recordkeeping costs, creating transfer payments, allowing for travel cost savings, and allowing for greater demand for their services. Costs of the proposed rule are specific to the cost of applying for the *conventional registration* (for *covered online telemedicine platforms*), *Special Registration for Telemedicine, State Telemedicine Registration,* and for PDMP checks due to the increased risk of diversion from more practitioners having the authority to prescribe Schedule II–V controlled substances. DEA estimates that there will be no additional infrastructure cost for patients or providers with the *Special Registration for Telemedicine,* as DEA has concluded that most patients and providers will already possess or have ready access to a telecommunications system meeting the requirements of the proposed rule. An analysis of all costs is detailed below.

A. Number of Conventional Registrations, Special Registrations, and State Telemedicine Registrations

When it comes to analyzing the costs, cost savings, benefits, and transfers of practitioners, DEA has to consider that qualified practitioners will need to apply for two new types of registrations, with *covered online telemedicine platforms* needing to first ensure that they have a conventional registration with DEA pursuant to 21 U.S.C. 823(g) in their capacity as a *platform practitioner.* As discussed above, practitioners will have to apply for a *Special Registration* (either the *Telemedicine Prescribing Registration,* the *Advanced Telemedicine Prescribing Registration, or the Telemedicine Platform Registration*), as well as *State Telemedicine Registrations (either State Telemedicine Registration for Clinician Special Registrants* or *State Telemedicine Registration for Platform Special Registrants),* an ancillary type of registration required for each state in which patients are located that will be treated by the practitioner.

The number of conventional registrations under 21 U.S.C. 823(g) will be equal to the number of *Telemedicine Platform Registrations,* because one conventional registration is required to obtain a *Telemedicine Platform Registration;* currently, no online telemedicine platforms have a conventional registration. As a starting point to determine the number of conventional registrations, *Special Registrations* and *State Telemedicine Registrations* to be expected under the proposed rule, DEA first looked at current registrations held by practitioners. For the number of *covered online telemedicine platforms,* DEA used the number of telemedicine companies as a proxy.

As of October 19, 2024, there were 2,153,900 DEA registrants.[154] Among them, 1,122,940 were physicians who fall under this proposed rule (medical doctors and doctors of osteopathy), 403,748 were nurse practitioners (''NPs''), and 168,201 were physician assistants (''PAs''), as shown in Table 17 below.[155] These numbers exceed the actual employment figures in these fields. Specifically, there are 770,850 physicians, 280,140 nurse practitioners, and 145,740 physician assistants according to BLS.[156] This variation can be attributed to the fact that some registrants maintain registrations in multiple states or locations.[157] The number of employed can serve as a proxy for primary registrations, *i.e.* the 823(g) registration predominantly used by a practitioner, while the difference between these two sets of numbers (number of registrants and employment numbers) provides an estimate of non-primary registrations.

[148] Substance Abuse and Mental Health Services Administration, *Rural Behavioral Health: Telehealth Challenges and Opportunities,* at 4 (2016), *https://store.samhsa.gov/sites/default/files/sma16-4989.pdf.*

[149] Health Resources and Services Administration, *Designated Health Professional Shortage Area Statistics, Third Quarter of Fiscal Year 2023 Designated HRSA Quarterly Summary* (2023).

[150] KFF, ''Primary Care Health Professional Shortage Areas (HPSAs),'' September 30, 2022, *https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.* (accessed 8/4/2023).

[151] Fair Health ''A Multilayered Analysis of Telehealth,'' July 2019.

[152] *Id.*

[154] DEA estimate based on registrations.

[155] *Id.*

[156] Bureau of Labor Statistics, Occupational Employment and Wages, May 2023 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2023/may/oes_nat.htm.* (accessed 10/18/2024). The following occupation codes were used: 29–1210 Physicians and 29–1240 Surgeons (for ''physician''), 29–1171 Nurse Practitioners, and 29–1071 Physician Assistants.

[157] IBISWorld. Telehealth Services in the US—Number of Businesses. February 15, 2024. *https://www.ibisworld.com/industry-statistics/number-of-businesses/telehealth-services-united-states/* (accessed 4/20/2024).

TABLE 17—REGISTRATIONS BY OCCUPATION

Occupation	Number of employed	Number of registrants	Registrations per employed	Primary registrations	Non-primary registrations
Physicians	770,850	1,122,940	1.46	770,850	352,090
Nurse Practitioner	280,140	403,748	1.44	280,140	123,608
Physician Assistant	145,740	168,201	1.15	145,740	22,461
Total	1,196,730	1,694,889	1.42	1,196,730	498,159

* Non-Primary Registrations figures are the differences between the Number of Registrants and Number of Employed.

DEA believes *covered online telemedicine platforms* are best represented by telemedicine companies. IBISWorld estimates that as of 2023 there were 1,306 such companies in the United States.[158]

Current Telemedicine Rate Estimate of Number of Registrations. According to the Fair Health Monthly Telehealth Regional Tracker, as of July 2024, 4.7 percent of medical claims were conducted through telehealth.[159] There may be some variation in how Physicians, Nurse Practitioners, and Physician Assistants prescribe.[160] Telemedicine prescribing also may not be at the exact same rate as in-person.[161] However, given the uncertainty in the exact difference and for simplicity, DEA has assumed that each practitioner type prescribes at the same rate and uses telemedicine to prescribe at the same rate as in-person. DEA applied the 'telemedicine rates' in Table 13 to the total number of employed physicians, nurse practitioners, and physician assistants to estimate the number of individual practitioner *Special Registrations* there will be under the proposed rule. Applying the 'telemedicine rates' of 0.2 percent, 4.7 percent, and 13 percent to the total number of physicians, nurse practitioners, and physician assistants of 1,196,730, the estimated number of individual telemedicine prescribing registrations are 2,393, 56,246, and 155,575 for low, moderate (primary), and high estimates, respectively.[162] Using the 2023 IBISWorld estimate of telemedicine companies of 1,306 provides an estimate of 1,306 *Telemedicine Platform Registrations*.[163] The number of conventional registrations would then also be 1,306, in line with *Telemedicine Platform Registrations.* Applying the relationship between the low (0.2 percent), moderate (primary) (4.7 percent), and high (13 percent) ''telemedicine rates'' to the moderate (primary) estimate of 1,306 *Telemedicine Platform Registrations* from IBISWorld, results in a low estimate of 56 ($1{,}306 \times (0.2/4.7)$) and a high estimate of 3,612 ($1{,}306 \times (13/4.7)$).

Assuming the rate of registrants obtaining DEA registrations are in line with the rate of those that will obtain clinician *State Telemedicine Registrations,* DEA used 0.2 percent, 4.7 percent, and 13 percent of the total number of registrations to provide the low, moderate (primary), and high estimates of how many clinician *State Telemedicine Registrations* there will be under the proposed rule. Multiplying the total number of registrations of 1,694,889 (from Table 17) by 0.2 percent, 4.7 percent, and 13 percent, results in 3,390, 79,660, and 220,336 clinician *State Telemedicine Registrations* for low, moderate (primary), and high estimates, respectively. Assuming a similar relationship holds for platforms, the number of platform *State Telemedicine Registrations* are estimated to be 42 percent (from Table 17, 1.42 registrations per employed minus 1) higher than the level of *Telemedicine Platform Registrations.* However, platforms are expected to be registered in more states than *clinician practitioners.* Based on a DEA analysis of the distributions of other national registrant types, a rate of 10 times the *clinician practitioner* rate was chosen.[164] The number of platform *State Telemedicine Registrations* is then estimated to be 420% ($42\% \times 10$) higher than the level of *Telemedicine Platform Registrations,* or 291 (56×5.20), 6,791 ($1{,}306 \times 5.20$), and 18,782 ($3{,}612 \times 5.20$) for low, moderate (primary), and high estimates respectively. DEA estimates the number of special registrations would reach these levels in the first year of implementation of this proposed rule. Table 18 below summarizes the first-year numbers and growth rates of special registrations for the low, moderate (primary), and high estimates.

TABLE 18—''YEAR 1'' SPECIAL REGISTRATIONS AND GROWTH RATES

	Low	Moderate (primary)	High
''Telemedicine rate''	0.20%	4.70%	13.00%
Year 1 Patient Visits	20,309	477,264	1,320,092
Year 1 Telemedicine Prescribing-Individual	2,393	56,246	155,575
Year 1 State Telemedicine-Individual	3,390	79,660	220,336
Year 1 Conventional-Platform	56	1,306	3,612

[158] IBISWorld. Telehealth Services in the US—Number of Businesses. February 15, 2024. *https://www.ibisworld.com/industry-statistics/number-of-businesses/telehealth-services-united-states/* (accessed 4/20/2024).

[159] Fair Health, ''Monthly Telehealth Regional Tracker.'' *https://www.fairhealth.org/fh-trackers/telehealth.* (accessed 10/19/2024 selecting July 2024 using National Statistics data dropdown menu).

[160] Cipher DJ, Hooker RS, Guerra P. *Prescribing trends by nurse practitioners and physician assistants in the United States.* J Am Acad Nurse Pract. 2006 June. *https://pubmed.ncbi.nlm.nih.gov/16719848/.*

[161] Wabe N, Thomas J, Sezgin G, Sheikh MK, Gault E, Georgiou A. *Medication prescribing in face-to-face versus telehealth consultations during the COVID–19 pandemic in Australian general practice: a retrospective observational study.* BJGP Open. 2022 March, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8958736/pdf/bjgpopen-6-0132.pdf.*

[162] Employment was used because practitioner commonly have multiple conventional registrations to cover each practice location, but only need one special registration.

[163] IBISWorld. *Telehealth Services in the US—Number of Businesses.* Feb. 15, 2024. *https://www.ibisworld.com/industry-statistics/number-of-businesses/telehealth-services-united-states/* (accessed 4/20/2024).

[164] DEA manufacturers and distributors with the most registrations have ten, with the median being one. Assuming platforms have a similar distribution, but have a max of 50, it would imply a median of five. This is approximately 10 times the *clinician practitioner* rate of 0.42.

TABLE 18—"YEAR 1" SPECIAL REGISTRATIONS AND GROWTH RATES—Continued

	Low	Moderate (primary)	High
Year 1 Telemedicine Platform	56	1,306	3,612
Year 1 State Telemedicine-Platform	291	6,791	18,782
Year 1 Total Registrations	6,186	145,309	401,917
Annual Growth Rate	2.00%	4.95%	19.00%

Applying the growth rates to the 'Year 1' registration figures, DEA generated 10-year forecasts for the low, moderate (primary), and high estimates as shown in Tables 19, 20, and 21 below.

TABLE 19—REGISTRATIONS FORECAST (LOW, 0.2 PERCENT "TELEMEDICINE RATE")

Year	Growth rate (%)	Telemedicine prescribing-individual	State telemedicine-individual	Conventional-platform	Telemedicine platform	State telemedicine-platform
1		2,393	3,390	56	56	291
2	2	2,441	3,458	57	57	297
3	2	2,490	3,527	58	58	303
4	2	2,540	3,598	59	59	309
5	2	2,591	3,670	60	60	315
6	2	2,643	3,743	61	61	321
7	2	2,696	3,818	62	62	327
8	2	2,750	3,894	63	63	334
9	2	2,805	3,972	64	64	341
10	2	2,861	4,051	65	65	348

TABLE 20—REGISTRATIONS FORECAST (MODERATE (PRIMARY), 4.7 PERCENT "TELEMEDICINE RATE")

Year	Growth rate (%)	Telemedicine prescribing-individual	State telemedicine-individual	Conventional-platform	Telemedicine platform	State telemedicine-platform
1		56,246	79,660	1,306	1,306	6,791
2	4.95	59,030	83,603	1,371	1,371	7,127
3	4.95	61,952	87,741	1,439	1,439	7,480
4	4.95	65,019	92,084	1,510	1,510	7,850
5	4.95	68,237	96,642	1,585	1,585	8,239
6	4.95	71,615	101,426	1,663	1,663	8,647
7	4.95	75,160	106,447	1,745	1,745	9,075
8	4.95	78,880	111,716	1,831	1,831	9,524
9	4.95	82,785	117,246	1,922	1,922	9,995
10	4.95	86,883	123,050	2,017	2,017	10,490

TABLE 21—REGISTRATIONS FORECAST (HIGH, 13.0 PERCENT "TELEMEDICINE RATE")

Year	Growth rate (%)	Telemedicine prescribing-individual	State telemedicine-individual	Conventional-platform	Telemedicine platform	State telemedicine-platform
1		155,575	220,336	3,612	3,612	18,782
2	19	185,134	262,200	4,298	4,298	22,351
3	19	220,309	312,018	5,115	5,115	26,598
4	19	262,168	371,301	6,087	6,087	31,652
5	19	311,980	441,848	7,244	7,244	37,666
6	19	371,256	525,799	8,620	8,620	44,823
7	19	441,795	625,701	10,258	10,258	53,339
8	19	525,736	744,584	12,207	12,207	63,473
9	19	625,626	886,055	14,526	14,526	75,533
10	19	744,495	1,054,405	17,286	17,286	89,884

DEA also expects that *State Telemedicine Registrations* could potentially be much greater than this estimate given the fact that *State Telemedicine Registrations* will not require a physical location. However, based on an analysis done on Medicare beneficiaries using 2020 data, only 5 percent of telemedicine takes place across state lines and most of this out-of-state care was for established patient care.[165] To the extent established patient care was a practitioner-patient relationship established following an in-person medical evaluation it would also not be considered telemedicine per the proposed rule. Further, out of state telehealth represented only 0.8 percent of all visits.[166] It is unclear how willing practitioners will be to register in multiple states to handle a very limited number of their patients who need telemedicine across state lines, and which represents such a small share of their total patient load. However, DEA believes these numbers could grow substantially based on having permanent telemedicine flexibilities in place around which practitioners can restructure their practices without comparable worry of future removal or expiration. This would be in line with an increasing number of practitioners working for platforms that serve a much broader geographical region compared to a typical physician office.

B. Practitioner and MLP Cost to Apply for Special Registration

In order to estimate the time cost for applying for the conventional registration, *Special Registration* (*Telemedicine Prescribing Registration* and the *Advanced Telemedicine Prescribing Registration,* or the *Telemedicine Platform Registration*) and the *State Telemedicine Registration* (*State Telemedicine for Individual Special Registrants* or *State Telemedicine for Platform Special Registrants*), DEA used an estimate of the amount of time and the value of that time for a practitioner to apply for the registration. To calculate the labor cost of applying for either the conventional registration, *Special Registration* or the *State Telemedicine Registration,* DEA estimates that on average it will take ten minutes (0.17 hours) to complete the registration application.[167] Should the application for a *Special Registration* or the *State Telemedicine Registration* be completed at the same time, the extra cost would be minimal. However, erring on the side of caution, DEA has assumed applications will be done separately and therefore has not made such a reduction.

Typically, practitioners delegate the task of completing DEA registration applications to their medical office administration or secretarial staff, or they may opt to use a credentialing company. For this reason, DEA has used the BLS median hourly wages for Medical Secretaries and Administrative Assistants, occupational code 43–6013, of $19.54.[168] Additionally, BLS reports that average wages and salaries for civilians are 69 percent of total compensation. The 68.8 percent of total compensation equates to 45.3 percent (100 percent/68.8 percent—1) load on wages and salaries.[169] The load of 45.3 percent, or $8.85 ($0.453 \times \$19.54$), is added to the hourly rate to estimate the loaded hourly rates. As can be seen in Table 22, the loaded hourly wage for completing DEA registration applications is $28.39 ($19.54 + $8.85).

To calculate the labor cost of applying for either the *Special Registration* or the *State Telemedicine Registration,* DEA estimates that on average it will take ten minutes (0.17 hours) for an applicant to apply for any of them.[170] The estimated labor cost to complete the application is $4.83 ($\$28.39 \times 0.17$). These registrations are for three years, so the annualized labor cost of registration is $1.61 ($4.83/3). This calculation is shown in Table 22 below.

TABLE 22—PER APPLICATION COST

Occupation	Hourly wage ($)	Load for benefits ($)	Loaded hourly wage ($)	Application time (hours)	Cost per application ($)	Annualized cost per application ($)
Medical Secretaries and Administrative Assistants	19.54	8.85	28.39	0.17	4.83	1.61

[165] Andino, J., Zhu, Z., Surapaneni, M., Dunn, R. L., & Ellimoottil, C. (2022). *Interstate Telehealth Use by Medicare Beneficiaries Before and After COVID–19 Licensure Waivers,* 2017–20. Health Affairs, 41(6).

[166] *Id.*

[167] This estimate is based on the time required to complete the new DEA Form 224S and DEA Form 224S–M, which will be used as the application for a Special Registration for Telemedicine and State Telemedicine Registration.

[168] Bureau of Labor Statistics, Occupational Employment and Wages, May 2023 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2023/may/oes_nat.htm.* (Accessed 10/18/2024).

[169] Bureau of Labor Statistics, Employer Costs for Employee Compensation –June 2024, *https://www.bls.gov/news.release/archives/ecec_09102024.pdf.* (accessed 10/18/2024).

[170] This estimate is based on the time required to complete DEA Form 224A, which would be modified to also be used as the application for the *Special Registration for Telemedicine* and *State Telemedicine Registration.*

C. Practitioner and MLP Cost to Report to DEA

The proposed rule requires special registrants to report to DEA, on an annual basis, the total number of new patients in each state treated under their *Special Registration for Telemedicine,* the total number of prescriptions for Schedule II controlled substances issued by the special registrant, and the total number of prescriptions for qualified Schedule III–V controlled substances issued by the special registrant for the preceding year. The special registrant would be required to electronically report this data through the DEA Office of Diversion Control's secure network application.

DEA believes the creation of this report by the registrant's electronic prescription controlled substance (EPCS) system will be a minimal one-time expense. EPCS systems already are required by CFR 1311.120(b)(27)(i) to track controlled substance transactions. The new piece of data that will be needed for this to be fully automated is tracking which patients fall under the proposed rule's telemedicine requirements. DEA believes this can be added to these existing systems during routine operation and maintenance and tracked with minimal cost and effort.

DEA believes the annual running of this report and submitting electronically to DEA can be done in six minutes (0.10 hours). Using the previously calculated loaded hourly wage for Medical Secretaries and Administrative Assistants of $28.39, the cost per report is $2.84 ($28.39 × 0.1), as can be seen in Table 23 below.

TABLE 23—PER REPORT COST

Occupation	Hourly wage ($)	Load for benefits ($)	Loaded hourly wage ($)	Reporting time (hours)	Cost per report ($)
Medical Secretaries and Administrative Assistants	19.54	8.85	28.39	0.10	2.84

D. Practitioner and MLP Cost to Check PDMP per Visit

The proposed rule immediately requires practitioners to complete a PDMP check of (1) the state/territory where the patient is located; (2) the state/territory where the practitioner is located; and (3) any state/territory with PDMP reciprocity agreements with either the state/territory where the patient is located or the state/territory where the practitioner is located. With a delayed effective date of three years, it requires a PDMP review of all 50 states and any U.S. districts and territories that maintain a PDMP prior to issuing a telemedicine prescription under the *Special Registration.* While a single comprehensive system that can check all 50 states and any U.S. districts and territories that maintain a PDMP is not currently available, once that system is in place, DEA believes it will perform similarly to existing PDMP checks. Based on a 2018 study, it takes a practitioner 27 seconds to log in and 37 seconds to retrieve a report once logged in.[171] The total time it takes to retrieve a PDMP report is roughly a minute (27 + 37 = 64 seconds) or 0.017 of an hour (1/60).

From BLS data, DEA used the weighted average of the mean hourly wages for Physicians (occupation code 29–1210) and Surgeons (occupation code 29–1240) to represent the wages for all practitioners. For Physicians, the mean hourly wage and employment are $126.85 and 716,950, and for Surgeons, the mean hourly wage and employment are $167.74 and 53,900; the weighted average of the median hourly wages is $129.71.[172] DEA also used the average of the median hourly wages for Physician Assistants (occupation code 29–1071) of $62.51 and Nurse Practitioners (occupation code 29–1171) of $60.70 to represent the hourly wages of MLPs. As calculated earlier, a load of 45.3 for benefits is added to these wages to calculate loaded wages. The loaded wages for physicians, PAs, and NPs are $188.47 ($129.71 × 1.453), $90.83 ($62.51 × 1.453), and $88.20 ($60.70 × 1.453), respectively. The estimated labor cost to complete the review for physicians is $3.20 ($188.47 × 0.017), for physician assistants is $1.54 ($90.83 × 0.017), and for nurse practitioners is $1.50 ($88.20 × 0.017).

TABLE 24—PDMP CHECK TIME COST

Occupation	Hourly wage ($)	Load for benefits ($)	Loaded hourly wage ($)	PDMP check time (hours)	Cost per PDMP check ($)
Physicians	129.71	58.76	188.47	0.017	3.20
Physician Assistants	62.51	28.32	90.83	0.017	1.54
Nurse Practitioners	60.70	27.50	88.20	0.017	1.50

For simplicity, DEA calculated a single cost of a PDMP check based on the weighted average of the three occupations. Using the 'Number of Registrants' from Table 17 to calculate weights, the weighted average of the PDMP check is $2.63.[173]

Recordkeeping and Infrastructure Costs. This proposed rule requires practitioners to maintain records relating to the *Special Registration for Telemedicine*. DEA believes that the recordkeeping requirements related to the *Special Registration for Telemedicine* will not impose major

[171] Bachhuber MA, Saloner B, LaRochelle M, Merlin JS, Maughan BC, Polsky D, Shaparin N, Murphy SM. Physician Time Burden Associated with Querying Prescription Drug Monitoring Programs. Pain Med. 2018 Oct.

[172] Bureau of Labor Statistics, Occupational Employment and Wages, May 2023 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2023/may/oes_nat.htm*. (accessed 10/18/2024). Employment figures for Physicians and Surgeons are 716,950 and 53,900, respectively, for a total of 770,850. Weighted average = $126.85 × (716,950/770,850) + $167.74 × (53,900/770,850) = $129.71.

[173] The number of physician, physician assistant, and nurse practitioner registrants are 1,122,940, 168,201, and 403,748, respectively, for a total of 1,694,889. The weighted average is $3.20 × (1,122,940/1,694,889) + $1.54 × (168,201/1,694,889) + $1.50 × (403,748/1,694,889) = $2.63.

additional costs on registrants. Practitioners who prescribe using a *Special Registration* would face additional recordkeeping requirements; but, given that the photographic record, *Special Registration* telemedicine encounter record, credential verification and conduct-related recordkeeping, and centralized recordkeeping required by proposed 21 CFR 1304.04(i)–(l) is not extensive, DEA does not anticipate it imposes a major burden on registrants. DEA also examined the cost of technology for telemedicine, both capital investment and operational expenses, in order to operate under the proposed *Special Registration for Telemedicine* framework. DEA believes that these initial investments have already been made by the practitioners most likely to apply for the *Special Registration for Telemedicine* and that there will be no additional technology or infrastructure cost to these practitioners to use the *Special Registration for Telemedicine*.

E. Practitioner and MLP Total Costs; Cost Savings

Total Cost. As mentioned previously, the three types of costs to practitioners are: (1) registration time costs, (2) reporting time costs, and (3) PDMP check costs. In summary, these costs are listed in Table 25 below.

TABLE 25—UNIT COST SUMMARY

	Unit costs
Registration application labor cost, annualized (applies to all registrations)	1.61
Reporting cost (applies to the number of primary special registration)	2.84
PDMP check cost (applies to all visit)	2.63

Unlike patient travel time and cost savings, since the PDMP check is required for all visits and not just first-time visits, there will not be a first-time visit adjustment. While PDMP checks will be required for all *special registration prescriptions* under this proposed rule, many practitioners already conduct PDMP checks. Due to a combination of the following factors, this would lower the additional burden imposed by this proposed rule:

(1) 45 out of 50 states require PDMP checks in some form,[174]

(2) Some states, such as California and New York, require PDMP checks for Schedule II–IV drugs (excluding Schedule V),[175]

(3) Other states have requirements that focus on the initial visit and do not always require checks for all follow-up visits.[176]

(4) Compliance with existing state laws is not 100 percent and the proposed rule may have an impact, but there will also be instances of non-compliance.[177]

However, to be conservative, DEA applied the full cost of $2.63 to all telemedicine visits leading to a *special registration prescription* by backing out the 0.1 factor applied for first-time visits in Table 8, in other words by multiplying the number of first-time telemedicine visits (Table 11) under the proposed rule with controlled substance prescriptions by 10. The proposed rule intends for there to be a nationwide PDMP that would allow for one PDMP check per visit. However, until such a system is put in place, for the first three years practitioners will only be required under the proposed rule to check the state location of the patient, the state location of the practitioner, and all states with reciprocity agreements with either of those two states. This could increase the number of checks per visit to two for some practitioners.

However, patients and practitioners may be in the same state. Also, based on a September 2023 analysis done by DEA of state PDMP participation, the average state, including the District of Columbia, only shares PDMP data with 30 other states.[178] Both factors could substantially reduce the number of PDMP checks from two to something much closer to one. For simplicity, DEA will assume there will be only one PDMP check required, in line with its long-term expectation.

Applying the annualized registration application labor cost of $1.61 to the number of registrations in Table 19, 20, and 21, the reporting cost of $2.84 to the number of primary (non-state) special registrations in Table 19, 20, and 21, and the PDMP check cost of $2.63 to all telemedicine visits that result in a controlled substances prescription (10 times the number of first-time visits from Table 15), the 10-year cost forecast is shown in Tables 26, 27, and 28 below for the low, moderate (primary), and high estimates.

TABLE 26—TOTAL PRACTITIONER AND MLP COST (LOW)

Year	Registration application labor cost ($)	Reporting cost ($)	PDMP check cost ($)
1	9,959	6,955	534,127
2	10,159	7,094	544,805
3	10,362	7,236	555,693
4	10,570	7,381	566,818
5	10,781	7,529	578,153
6	10,995	7,679	589,725
7	11,214	7,833	601,507
8	11,437	7,989	613,526
9	11,666	8,148	625,809
10	11,898	8,310	638,327
Present Value *	97,631	68,185	5,236,494

[174] DrFirst. *State Mandates Driving EPCS and PDMP Utilization*. *https://drfirst.com/resources/regulatory-mandates/* (Accessed 11/2/2023).

[175] New York State Department of Health. *Frequently Asked Questions for the NYS PMP*. June 2017. *https://www.health.ny.gov/professionals/narcotic/prescription_monitoring/docs/pmp_registry_faq.pdf* (Accessed 11/2/2023), and Health Services Advisory Group. California's Prescription Drug Monitoring Program (PDMP). *https://hsag.com/contentassets/d1483fc74ad34b60b14cc1116e8cb14c/surscapdmpworkflow2020508.pdf* (Accessed 11/2/2023).

[176] *Id.*

[177] Delcher C, Pauly N, Moyo P. *Advances in prescription drug monitoring program research: a literature synthesis* (June 2018 to December 2019). Curr Opin Psychiatry. 2020 Jul.

[178] Data from Pdmpassist.org (Accessed September 2023).

TABLE 26—TOTAL PRACTITIONER AND MLP COST (LOW)—Continued

Year	Registration application labor cost ($)	Reporting cost ($)	PDMP check cost ($)
Annualized Cost*	10,869	7,591	582,961

*Present value and annualized values are based on a two percent (2%) discount rate.

TABLE 27—TOTAL PRACTITIONER AND MLP COST (MODERATE—PRIMARY)

Year	Registration application labor cost ($)	Reporting cost ($)	PDMP check cost ($)
1	233,947	163,448	12,552,043
2	245,528	171,539	13,173,381
3	257,682	180,030	13,825,463
4	270,437	188,942	14,509,815
5	283,824	198,294	15,228,042
6	297,873	208,110	15,981,826
7	312,617	218,410	16,772,930
8	328,089	229,219	17,603,195
9	344,331	240,568	18,474,540
10	361,376	252,476	19,389,018
Present Value*	2,616,334	1,827,907	140,374,966
Annualized Cost*	291,267	203,495	15,627,458

*Present value and annualized values are based on a two percent (2%) discount rate.

TABLE 28—TOTAL PRACTITIONER AND MLP COST (HIGH)

Year	Registration application labor cost ($)	Reporting cost ($)	PDMP check cost ($)
1	647,086	452,091	34,718,420
2	770,032	537,987	41,314,907
3	916,340	640,204	49,164,747
4	1,090,445	761,844	58,506,060
5	1,297,631	906,596	69,622,202
6	1,544,180	1,078,848	82,850,418
7	1,837,575	1,283,831	98,591,994
8	2,186,713	1,527,758	117,324,484
9	2,602,188	1,818,032	139,616,127
10	3,096,603	2,163,458	166,143,202
Present Value*.	13,975,657	9,764,161	749,841,038
Annualized Cost*.	1,555,861	1,087,010	83,477,199

*Present value and annualized values are based on a two percent (2%) discount rate.

Cost Savings. The following sections summarize the expected cost savings related to the *Special Registration for Telemedicine* and *State Telemedicine Registration* that are realized by practitioners. As discussed in the healthcare system section, there may not be a cost savings on the healthcare system side based on an evaluation of health care systems.[179] While practitioners may be able to reduce travel to and from the office, this time savings is likely much less than patients since practitioners may still go to the office and may see many patients, each of whom would be saving travel time. Practitioners may also become more available to patients which may offset any travel time and cost savings. In line with this, DEA believes the net cost savings for practitioners will be $0.

F. Practitioner and MLP Transfers

The following sections summarize the changes in transfers related to the expected new conventional registrations, the *Special Registration for Telemedicine* (*Telemedicine Prescribing Registration,* the *Advanced Telemedicine Prescribing Registration* and *Telemedicine Platform Registration*) and the *State Telemedicine Registration* (*State Telemedicine for Individual Special Registrants* and *State Telemedicine for Platform Special Registrants*) realized by practitioners. As discussed earlier, registrations fees paid to DEA are considered to be ''transfers.''

DEA proposes to set Special Registration fees to recover the cost of administering the registrations and operating the diversion control aspect of the proposed new business activities. Due to a myriad of unknowns, DEA is unable to calculate a cost that would need to be recovered. Therefore, DEA proposed to set the *State Telemedicine*

[179] Snoswell CL, Taylor ML, Comans TA, Smith AC, Gray LC, Caffery LJ. *Determining if Telehealth Can Reduce Health System Costs: Scoping Review.* J Med internet Res. Oct 19, 2020.

for Individual Special Registration fee at $50 per three years and other *Special Registration* fees at the same rate as the ''dispensing or instructing'' business activity (currently $888 per three years) as discussed further below. 21 CFR 1301.13(e)(1)(iv). Other than the *State Telemedicine for Individual Special Registration,* the *Special Registration* provides authority to dispense controlled substances similar to the various registrants in the ''dispensing or instructing'' business activity. DEA's cost of administering the registrations and operating the diversion control aspect of the Special Registrations are expected to be similar to that of registrations in the ''dispensing or instructing'' business activity.

Conventional Registration Transfers. In order to prescribe controlled substances using a *Special Registration for Telemedicine,* practitioners generally must have three registrations. First, a practitioner must be registered under 21 U.S.C. 823(g), *i.e.* a conventional registration, unless exempt from requirement of registration pursuant to 21 CFR 1301.23(a). The fee for such 823(g) registrations, ''dispensing or instructing'' business activity, is currently $888 for a three-year cycle ($296/year) pursuant to 21 CFR 1301.13(e)(1)(iv), unless exempt from fees pursuant to 21 CFR 1301.21(a). Unless subject to an exemption, all *clinician practitioners* that prescribe or dispense controlled substances must have this registration; therefore, the proposed rule does not impact this registration category or fee for *clinician practitioners*.

Covered online telemedicine platforms must also be registered as practitioners. DEA applied the annualized registration fee calculated previously of $296 to the number of conventional registrations from Tables 19, 20, and 21 to estimate the conventional registration transfers for low, moderate (primary), and high estimates.

Special Registration Transfers. The proposed rule adds two new DEA registrations (and fees) that practitioners must obtain: a *Special Registration for Telemedicine* (either the *Telemedicine Prescribing Registration,* the *Advanced Telemedicine Prescribing Registration* and *Telemedicine Platform Registration*), and *State Telemedicine Registrations* (*State Telemedicine for Individual Special Registrants* and *State Telemedicine for Platform Special Registrants*).[180]

As discussed earlier, DEA proposes to set the fee for the individual *Special Registration for Telemedicine* (*Telemedicine Prescribing Registration* and *Advanced Telemedicine Prescribing Registration*) at the same fee as the ''dispensing or instructing'' business activity, currently $888 per three years pursuant to 21 CFR 1301.13(e)(1)(iv). For now, DEA proposes to set the registration fee for *Platform Special Registrants* at the same fee as the *Individual Special Registrants* and registrants under the conventional registration of institutions, such as hospitals and clinics. As DEA gathers more data (such as pharmacy and practitioner reports included in this proposed rule) on the burden DEA incurs from *Platform Special Registrants,* this fee will be reevaluated. DEA applied the annualized registration fee of $296 to the number of Special Registrations, labeled ''Telemedicine Prescribing-Individual'' (which includes ''Telemedicine Prescribing'' and ''Advanced Telemedicine Prescribing'' registrations) and ''Telemedicine Platform'' in Tables 19, 20, and 21, to estimate the primary special registration transfers for low, moderate (primary), and high estimates.

State Telemedicine Registration Transfers. It is also statutorily required that a practitioner ''is registered under section 823(g) of this title in the State in which the patient will be located when receiving the telemedicine treatment. . . .'' 21 U.S.C. 831(h)(B). Therefore, the proposed rule would create the *State Telemedicine Registration* (*State Telemedicine for Individual Special Registrants* and *State Telemedicine for Platform Special Registrants*) to satisfy this requirement.

Registration fees generally cover two primary costs: (1) costs associated with processing and administering registrations, and (2) costs associated with general oversight and enforcement of controlled substance laws and regulations. The *State Telemedicine for Individual Special Registration* is an ancillary registration to the Special Registration and DEA proposes to set the fee at a level to recover DEA's cost of processing and administering the registration only. Based on an internal DEA 2021 study, as can be seen in Table 29 below, the total annual registration cost to DEA was $28,930,063.[181] This equates to a registration cost per registration of $45.[182]

TABLE 29—HISTORICAL REGISTRATION COST OF CONVENTIONAL DEA REGISTRATION

Annual cost categories	Annual cost ($)	Registrations per year	Cost per registration ($)
Labor cost of processing registrations	17,107,968	645,734	26.49
Labor cost of pre-registration investigations	2,955,422	645,734	4.58
Cost to maintain the registration IT system	8,866,672	645,734	13.73
Total	28,930,062	.....	45

Adjusting the $45 cost for inflation, from 2020 to current (end of 2023) dollars, the current estimated cost to process and administer a registration is $50.[183] Since the registration is a three-year registration, the annualized registration fee is $17 ($50/3).

The cost to DEA of administering the platform *State Telemedicine Registration* (*State Telemedicine for Platform Special Registrants*) is not

[180] A non-VA practitioner would not be required to have a 21 U.S.C. 823(g)registration in his or her own State or a State Telemedicine Registration in the patient's state if exempt from registration in all States under DEA regulations. *See* 21 U.S.C. 831(h)(1)(B)(i), *proposed* 21 CFR 1301.61(b)(4).

[181] This includes the annual cost of labor to process registrations ($17,107,968), the annual cost of labor to conduct liability pre-registration investigations ($2,955,422), and the annual cost to maintain the registration IT system ($8,866,672). Figures are rounded as shown.

[182] Dividing the total annual cost of $28,930,063 by the average number of new registrations and registration renewals processed annually from FY2018 to FY2020 of 645,734 yields a per registration cost of $45 (rounded). Practitioners pay this registration fee on a triennial basis.

[183] Office of Management and Budget, Historical Tables, Table 10.1-Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2029. *https://www.whitehouse.gov/omb/budget/historical-tables.* (*https://www.whitehouse.gov/wp-content/uploads/2024/03/hist10z1_fy2025.xlsx*). (Accessed November 1, 2024). Using the ''GDP (Chained) Price Index'' of 1.05547 for 2020 and 1.2207 for 2023, $45 in 2020 is adjusted for inflation to $52 ($45 × 1.2207/1.0547) in 2023. $52 is rounded down to $50.

limited to the marginal registration cost. An individual doctor's time is finite, whether they are serving patients in one state or multiple states. However, for a platform there can be a much greater number of patients, number of doctors, and risk of diversion given the broader scope of practice as compared to an individual practitioner. Each additional state creates access to a new pool of patients and a diversion risk that cannot be fully covered from the fees from the *Telemedicine Platform Registration* and other *State Telemedicine for Platform Special Registrations*. DEA is proposing a $888 platform *State Telemedicine Registration* (*State Telemedicine for Platform Special Registrants*) fee with an annual rate over three years of $296 (888/3). Three-year registration fees and annualized fees are summarized in Table 30 below.

TABLE 30—REGISTRATION FEES AND ANNUALIZED REGISTRATION FEES

	Registration fee/transfer ($)	Annualized registration fee/transfer ($)
Telemedicine Prescribing-Individual	888	296
State Telemedicine-Individual	50	17
Conventional-Platform	888	296
Telemedicine Platform	888	296
State Telemedicine-Platform	888	296

As with the *Telemedicine Platform Registration* fee, as DEA gathers more data (such as from pharmacy and practitioner reporting included in this proposed rule) on the burden from these registrants this fee may be adjusted in the future. DEA applied the annualized registration fee of $17 to the number of individual state registrations and the annualized registration fee of $296 to the number of platform state registrations from Tables 19, 20, and 21 to estimate the state registration transfers for low, moderate (primary), and high estimates.

Furthermore, based on review of DEA's registration data, approximately 8.2 percent of physicians, nurse practitioners, and physician assistants are exempt from paying registration fees. Therefore, a factor of 91.8 percent (100 − 8.2) was applied to the number of individual primary and state registrations to estimate the number of fee-paying registrations. The annualized fees and fee-paying percentages for the various registrations are summarized in Table 31 below.

TABLE 31—ANNUALIZED REGISTRATION FEES AND FEE-PAYING PERCENTAGES

	Annualized registration fee/transfer ($)	Fee paying
Telemedicine Prescribing-Individual	296	91.8%
State Telemedicine-Individual	17	91.8%
Conventional-Platform	296	100%
Telemedicine Platform	296	100%
State Telemedicine-Platform	296	100%

Summary of Practitioner Transfers. Applying the annualized registration fees and fee-paying percentages (Table 31) to the number of registrations from Table 19, 20, and 21, results in registration fee transfers as shown in Tables 32, 33, and 34 for low, moderate (primary), and high estimates respectively.

TABLE 32—TOTAL TRANSFER PAYMENTS BY REGISTRATION

[Low]

Year	Telemedicine prescribing-individual ($)	State telemedicine-individual ($)	Conventional-platform ($)	Telemedicine platform ($)	State telemedicine-platform ($)
1	650,245	51,867	16,576	16,576	86,136
2	663,288	52,907	16,872	16,872	87,912
3	676,603	53,963	17,168	17,168	89,688
4	690,189	55,049	17,464	17,464	91,464
5	704,047	56,151	17,760	17,760	93,240
6	718,177	57,268	18,056	18,056	95,016
7	732,579	58,415	18,352	18,352	96,792
8	747,252	59,578	18,648	18,648	98,864
9	762,197	60,772	18,944	18,944	100,936
10	777,414	61,980	19,240	19,240	103,008
Present Value *	6,376,680	508,519	160,426	160,426	844,385

TABLE 32—TOTAL TRANSFER PAYMENTS BY REGISTRATION—Continued

[Low]

Year	Telemedicine prescribing-individual ($)	State telemedicine-individual ($)	Conventional-platform ($)	Telemedicine platform ($)	State telemedicine-platform ($)
Annualized Cost*	709,894	56,612	17,860	17,860	94,002

*Present value and annualized values are based on a two percent (2%) discount rate.

TABLE 33—TOTAL TRANSFER PAYMENTS BY REGISTRATION

[Moderate—Primary]

Year	Telemedicine prescribing-individual ($)	State Telemedicine-Individual ($)	Conventional-platform ($)	Telemedicine platform ($)	State telemedicine-platform ($)
1	15,283,613	1,218,798	386,576	386,576	2,010,136
2	16,040,104	1,279,126	405,816	405,816	2,109,592
3	16,834,093	1,342,437	425,944	425,944	2,214,080
4	17,667,483	1,408,885	446,960	446,960	2,323,600
5	18,541,904	1,478,623	469,160	469,160	2,438,744
6	19,459,801	1,551,818	492,248	492,248	2,559,512
7	20,423,076	1,628,639	516,520	516,520	2,686,200
8	21,433,905	1,709,255	541,976	541,976	2,819,104
9	22,495,002	1,793,864	568,912	568,912	2,958,520
10	23,608,544	1,882,665	597,032	597,032	3,105,040
Present Value*	170,923,255	13,630,288	4,323,434	4,323,434	22,480,387
Annualized Cost*	19,028,293	1,517,413	481,313	481,313	2,502,663

*Present value and annualized values are based on a two percent (2%) discount rate.

TABLE 34—TOTAL TRANSFER PAYMENTS BY REGISTRATION

[High]

Year	Telemedicine prescribing-individual ($)	State telemedicine-individual ($)	Conventional-platform ($)	Telemedicine platform ($)	State telemedicine-platform ($)
1	42,274,084	3,371,141	1,069,152	1,069,152	5,559,472
2	50,306,092	4,011,660	1,272,208	1,272,208	6,615,896
3	59,864,124	4,773,875	1,514,040	1,514,040	7,873,008
4	71,238,386	5,680,905	1,801,752	1,801,752	9,368,992
5	84,773,701	6,760,274	2,144,224	2,144,224	11,149,136
6	100,880,650	8,044,725	2,551,520	2,551,520	13,267,608
7	120,048,072	9,573,225	3,036,368	3,036,368	15,788,344
8	142,857,192	11,392,135	3,613,272	3,613,272	18,788,008
9	170,000,102	13,556,642	4,299,696	4,299,696	22,357,768
10	202,300,137	16,132,397	5,116,656	5,116,656	26,605,664
Present Value*	913,025,030	72,809,126	23,092,483	23,092,483	120,077,218
Annualized Cost*	101,643,906	8,105,587	2,570,806	2,570,806	13,367,780

*Present value and annualized values are based on a two percent (2%) discount rate.

G. Summary of Practitioner Costs, Cost Savings, Benefits, and Transfers

The costs to practitioners and MLPs and registration fees (transfers) are summarized in Table 35 below.

TABLE 35—SUMMARY OF PRACTITIONER AND MLP COSTS AND TRANSFERS

Year	Low		Moderate (primary)		High	
	Cost to practitioners and MLPS ($ million)	Transfers ($ million)	Cost to practitioners and MLPs ($ million)	Transfers ($ million)	Cost to practitioners and MLPs ($ million)	Transfers ($ million)
1	0.55	0.82	13	19	36	53
2	0.56	0.84	14	20	43	63
3	0.57	0.85	14	21	51	76
4	0.58	0.87	15	22	60	90
5	0.60	0.89	16	23	72	107
6	0.61	0.91	16	25	85	127
7	0.62	0.92	17	26	102	151
8	0.63	0.94	18	27	121	180
9	0.65	0.96	19	28	144	215
10	0.66	0.98	20	30	171	255
Present Value*	5.40	8.05	145	216	774	1,152
Annualized Cost**	0.60	0.90	16	24	86	128

* Present value and annualized values are based on a two percent (2%) discount rate.
** Figures are rounded as shown.

IV. Pharmacy Costs

Under the proposed rule, pharmacies would be required to submit monthly reports in accordance with proposed § 1304.60. DEA assumes similar reports are already being submitted to state PDMPs electronically and pharmacies would be able to submit reports as required by § 1304.60 with minimal additional costs.

V. Healthcare System Costs and Cost Savings

Based on the available research, DEA anticipates that there will be no significant net economic impact on healthcare systems due to the proposed rule. According to one peer-reviewed medical journal article from 2020, telehealth is expected to reduce costs in health systems between 32 percent to 53 percent of the time. However, evidence suggests that it does not routinely reduce the cost of care delivery for the health system as a whole.[184] A more recent 2023 study, focused on payment analysis for telehealth and in-person care, comes to a similar conclusion, noting the lack of cost differential and concluding that the primary benefit of telehealth is increased access and convenience, not cost savings.[185]

VI. State Costs

The proposed rule immediately requires practitioners to complete a PDMP check of: (1) the state/territory where the patient is located; (2) the state/territory where the practitioner is located; and (3) any state/territory with PDMP reciprocity agreements with either the state/territory where the patient is located or the state/territory where the practitioner is located. However, three years after the proposed rule's effective date, in order for Schedule II prescribing to continue across state lines, DEA is requiring that practitioners conduct PDMP checks for patients in all 50 states and any U.S. districts and territories that maintain a PDMP. Based on a September 2023 analysis conducted by DEA of State PDMP participation, the average state, including the District of Columbia, only shares PDMP data with 30 other states, as can be seen in Table 36.[186] Based on that study, California was the only state that does not share data with any other state or a U.S. district and territory. However, California now does share PDMP data with Oregon. Guam and Northern Mariana Islands both share with Nebraska and each other. Puerto Rico shares with 30 states plus the District of Columbia.

TABLE 36—PDMP SHARING AMONG 50 STATES AND THE DISTRICT OF COLUMBIA

	Number of states sharing with
Minimum	1
Minimum*	10
Average	30
Median	32
Maximum	45

* Excluding California.

This is a significant improvement since practitioners first gained access to PDMPs in 1990 and electronic sharing of PDMP data was started in 2010.[187] Further, most states use the same PDMP interconnectivity hub, with the two primary ones being PMP InterConnect and RxCheck.[188] However, even with these improvements and similarities, ''there are some variances when it comes to data sharing and integration (*i.e.,* assigned user roles, patient matching methods, percentage of provider population integrated, retention of PDMP data or reports) that pose challenges'' according to a report by the Prescription Drug Monitoring Program Training and Technical Assistance Center.[189]

[184] Snoswell CL, Taylor ML, et al. *Determining if Telehealth Can Reduce Health System Costs: Scoping Review.* J Med internet Res. October 2020.

[185] Amin K, Rae M, et al. *Early in the pandemic, private insurer payments for telehealth and in-person claims were similar.* Peterson-KFF Health System Tracker. January 18, 2023; and *https://www.healthsystemtracker.org/brief/telehealth-payments-similar-early-in-the-pandemic/#Average%20payment%20for%20evaluation%20and%20management%20professional%20claims%20by%20telehealth%20and%20in-person,%20among%20privately%20insured,%202020* (Accessed 9/5/2023).

[186] Data from Pdmpassist.org (Accessed September 2023).

[187] *Interstate PDMP Access and Data Sharing Alignment,* Prescription Drug Monitoring Program Training and Technical Assistance Center (Jan. 2021), *https://www.pdmpassist.org/pdf/resources/Interstate_PDMP_Access_and_Data_Sharing_Alignment_20210125.pdf* (Accessed October 23, 2023).

[188] Data from Pdmpassist.org (Accessed October 2023).

[189] *Interstate PDMP Access and Data Sharing Alignment,* Prescription Drug Monitoring Program Training and Technical Assistance Center (Jan. 2021), *https://www.pdmpassist.org/pdf/resources/*

DEA does not have a basis to determine what the cost and coordination hurdles are in trying to implement 50-state sharing of PDMP data or how much more PDMP data sharing would have happened without this rule. Based on a 2016 study, there is evidence that states who have implemented PDMPs had a decline in the rate of opioid-related deaths in the year after their inauguration and that those declines were strongest in states whose PDMPs had the most comprehensive and efficient features, such as more frequently updated data.[190] DEA believes increased state sharing will produce similar results and that any costs associated with implementation will be surpassed by the benefit of lower opioid-related deaths.

From 2012 to 2016, SAMHSA funded projects across nine states to, among other things, increase PDMP access across states.[191] Based on a report from the CDC, these projects were successful in increasing interstate PDMP data sharing, and this sharing brought about a decrease in prescription opioid abuse. Accordingly, there is reason for optimism that states can implement sharing and that outside groups can have a positive impact as well. This proposed rule would not create any mandate for states. Any costs incurred in PDMP data sharing among states are incurred outside of this rule. Therefore, any cost to states as a result of this rule would be minimal.

VII. Diversion

Requiring an in-person medical evaluation serves as a safeguard against diversion, consistent with the *Ryan Haight Act*. Certain signs of diversion or misuse of controlled substances may go undetected without an in-person assessment, as some indicators are either essential to observe personally or are more reliably detected when face-to-face. Without this safeguard, new diversion paradigms have emerged in telemedicine.[192] Therefore, in the absence of an in-person medical evaluation requirement, DEA believes that other anti-diversion safeguards—such as those proposed in this NPRM—are necessary, beyond the measures that have been in place since March 2020, to address the ongoing risks of diversion.

Admittedly, there is little quantified data on diversion since the onset of the COVID–19 pandemic. However, the intentionally concealed and frequently underreported nature of drug diversion makes these illicit activities inherently difficult to track.[193] By design, illegal activities like diversion are meant to evade detection, which complicates the collection of comprehensive and reliable quantitative data. Furthermore, diversion of controlled substances can take on many forms, from theft and fraud to improper prescribing making it difficult to quantify in a standardized method. Arguably, data shedding more light on diversion rates could be pulled from state PDMPs; however, as discussed above, the fragmented nature of PDMPs across the states fails to provide a comprehensive set of standardized data.

Given the dearth of comprehensive standardized data on diversion, DEA has had to rely on qualitative information and insights, such as anecdotal information, expert testimony from industry, and the specialized experience and knowledge of DEA's diversion investigators to identify emerging trends and inform enforcement strategies. Under the proposed NPRM, DEA would be implementing a system requiring pharmacies to inform DEA monthly about practitioner *special registration prescriptions* in accordance with proposed § 1304.60, which will allow DEA to collect more uniform and comprehensive data in order to carry out more quantitative analyses to evaluate the diversion of controlled substances via telemedicine.

VIII. Summary of Economic Impact

DEA estimates a cost savings to patients of $38.46 per first-time telemedicine visit that results in a controlled substance prescription. DEA estimates an annualized cost to practitioners, MLPs, and platforms of $1.61 for the labor cost of a registration application. DEA estimates a cost to practitioners and MLPs of $2.84 for annual reporting. DEA estimates a cost to practitioners and MLPs of $2.63 for PDMP checks. These unit costs were applied to the 10-year forecast of visits and registrations to develop a 10-year forecast of the cost savings, costs, and transfers. Furthermore, the annualized registration fees (transfers) were applied to the 10-year forecast of registrations to develop a 10-year forecast of transfers. The resulting cost savings, costs, and transfers for low, moderate (primary), and high estimates are shown in Table 37 below.

TABLE 37—SUMMARY OF ECONOMIC IMPACT ($ MILLIONS)

Year	1	2	3	4	5	6	7	8	9	10
Low Estimate										
Patient cost savings	0.78	0.80	0.81	0.83	0.85	0.86	0.88	0.90	0.92	0.93
Costs	0.55	0.56	0.57	0.58	0.60	0.61	0.62	0.63	0.65	0.66
Net Cost Savings	0.23	0.23	0.24	0.24	0.25	0.25	0.26	0.26	0.27	0.27

Interstate_PDMP_Access_and_Data_Sharing_Alignment_20210125.pdf (Accessed October 23, 2023).

[190] Patrick, S.W., Fry, C.E., Jones, T.F., & Buntin, M.B. (2016). *Implementation of prescription drug monitoring programs associated with reductions in opioid-related death rates.* Health Affairs, 35(7), 1324–1332.

[191] *Integration & Expanding Prescription Drug Monitoring Program Data: Lessons from Nine States,* CDC (Feb. 2017), *https://www.cdc.gov/drugoverdose/pdf/pehriie_report-a.pdf* (Accessed 10/23/2023).

[192] *See, e.g., Founder/CEO and Clinical President of Digital Health Company Arrested for $100M Adderall Distribution and Health Care Fraud Scheme,* U.S. Department of Justice, Press Release Number: 24–752 (June 13, 2024), *https://www.justice.gov/opa/pr/founderceo-and-clinical-president-digital-health-company-arrested-100m-adderall-distribution.*

[193] In some comments to the March 2023 NPRMs and during some of the presentations during the Telemedicine Listening Sessions, individuals cited studies demonstrating a lack of increased proportion of overdose deaths involving buprenorphine during the initial months of the pandemic, when the telemedicine flexibilities were first put in place, as evidence of a lack of diversion of controlled substances more generally. However, it is important to note that these studies focused solely on buprenorphine, and it would be inappropriate to extrapolate their findings to all controlled substances given the unique characteristics of buprenorphine, particularly the combination buprenorphine product (*Suboxone*), which adds naloxone designed to deter diversion and misuse. Consistent with this data, buprenorphine has been provided unique treatment under this proposed NPRM and under the separate *Expansion of Buprenorphine Treatment via Telemedicine Encounter* final rule (RIN 1117–AB78). *See, e.g.,* Tanz LJ, Jones CM, Davis NL, Compton WM, Baldwin GT, Han B, Volkow ND. *Trends and Characteristics of Buprenorphine-Involved Overdose Deaths Prior to and During the COVID–19 Pandemic.* JAMA Netw Open. 2023 Jan 3;6(1): e2251856. doi: 10.1001/jamanetworkopen.2022.51856. PMID: 36662523; PMCID: PMC9860517; and Sade E. Johns, Mary Bowman, F. Gerard Moeller, *Utilizing Buprenorphine in the Emergency Department after Overdose,* Trends in Pharmacological Sciences, Volume 39, Issue 12, (2018), *https://doi.org/10.1016/j.tips.2018.10.002* (Available: *https://www.sciencedirect.com/science/article/pii/S0165614718301809.*

TABLE 37—SUMMARY OF ECONOMIC IMPACT ($ MILLIONS)—Continued

Year	1	2	3	4	5	6	7	8	9	10
Transfers	0.82	0.84	0.85	0.87	0.89	0.91	0.92	0.94	0.96	0.98
Moderate (Primary) Estimate										
Patient cost savings	18	19	20	21	22	23	25	26	27	28
Costs	13	14	14	15	16	16	17	18	19	20
Net Cost Savings	5	6	6	6	7	7	7	8	8	8
Transfers	19	20	21	22	23	25	26	27	28	30
High Estimate										
Patient cost savings	51	60	72	86	102	121	144	172	204	243
Costs	36	43	51	60	72	85	102	121	144	171
Net Cost Savings	15	18	21	25	30	36	42	51	60	72
Transfers	53	63	76	90	107	127	151	180	215	255

* Figures are rounded as shown, Net Cost Savings may not add exactly in the table.

DEA calculated the present value and annualized figures for the cost savings, costs and transfers shown in Table 37. The resulting present value and annualized figures are shown in Table 38 below.

TABLE 38—NET PRESENT VALUE AND ANNUALIZED COST SAVINGS/COSTS ($ MILLIONS)

	Low	Moderate (Primary)	High			
			h	PV*	A*	PV*
Patient—Cost Savings	7.7	0.85	205	23	1,097	122
Practitioner cost	5.4	0.60	145	16	774	86
NPV (Cost Savings)	2.3	0.25	60	7	323	36
Registration fee (Transfers)	8.1	0.90	216	24	1,152	128

* Present value (PV) and annualized (A) values are based on a two percent (2%) discount rate.

While DEA believes that the benefits of increased availability for treatment outweigh the dangers of a potential increase in diversion—so long as prescribers using the *Special Registration for Telemedicine* adhere to the safeguards inherent in the requirements of the proposed rule—the data system DEA is implementing will allow DEA to monitor the actual impact of the rule and be able to proactively make any necessary changes, either on the enforcement side or the regulatory side.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (''RFA''), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

In accordance with the RFA, DEA evaluated the impact of this proposed rule on small entities. The proposed rule allows for DEA-registered physicians and MLPs, or practitioners, to apply for three types of *Special Registrations:* the (1) *Telemedicine Prescribing Registration* authorizing qualified practitioners to prescribe Schedule III–V controlled substances via telemedicine; (2) the *Advanced Telemedicine Prescribing Registration,* authorizing qualified specialized practitioners (*e.g.,* psychiatrists, *hospice care* physicians) to prescribe Schedule II–V controlled substances via telemedicine, and (3) a *Telemedicine Platform Registration,* authorizing *covered online telemedicine platforms,* in their capacity as *platform practitioners,* to dispense Schedule II–V controlled substances.

The proposed rule immediately requires practitioners to complete a PDMP check of (1) the state/territory where the patient is located; (2) the state/territory where the practitioner is located; and (3) any state/territory with PDMP reciprocity agreements with either the state/territory where the patient is located or the state/territory where the practitioner is located. With a delayed effective date of three years, it requires a PDMP review of all 50 states and any U.S. districts and territories that maintain a PDMP prior to issuing a telemedicine prescription under the *Special Registration.*

A significant number of physicians and MLPs work in offices and institutions that meet the RFA's definition of small entities. To estimate the number of affected entities, DEA first determined the North American Industry Classification System (''NAICS'') codes that most closely represent businesses that employ the potential applicants for the Special Registrations for Telemedicine. Then, DEA researched economic data for those codes. The source of the economic data is the Small Business Administration (''SBA''), Office of Advocacy, and is based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses (''SUSB'').[194] The following business NAICS codes are estimated to represent businesses that employ the affected persons (potential applicants):

- 621111—Offices of Physicians, Except Mental Health Specialists
- 621112—Offices of Physicians, Mental Health Specialists
- 621420—Outpatient Mental Health and Substance Abuse Centers
- 622210—Psychiatric and Substance Abuse Hospitals

SUSB data contains the number of firms by size ranges for each of the NAICS codes. For the purposes of this analysis, the term ''firm'' as defined in the SUSB is used interchangeably with ''entity'' as defined in the RFA.

To estimate the number of affected entities that are small entities, DEA compared the SUSB data for the number

[194] SUSB's employer data contain the number of firms, number of establishments, employment, and annual payroll for employment size of firm categories by location and industry. A ''firm'' is defined as an aggregation of all establishments owned by a parent company (within a geographic location and/or industry) with some annual payroll.

of firms in various firm size ranges with SBA size standards for each of the representative NAICS codes. The SBA size standard is the firm size based on the number of employees or annual receipts depending on industry. The SBA size standards for NAICS codes 621111, 621112, 621420, and 622210 are annual receipts of $16.0 million, $13.5 million, $19.0 million, and $47.0 million, respectively.[195]

The firms in each size range below the SBA size standard are small firms. The number of firms below the SBA size standard was added to determine the total number of small firms in each NAICS code. DEA estimates that a total of 175,503 entities are affected by this proposed rule, of which 172,436 (98.25 percent) are small entities. The analysis is summarized in Table 39 below.[196]

TABLE 39—NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES

NAICS Code	Number of firms	SBA size standard ($)	Number of small firms
621111—Offices of Physicians, Except Mental Health Specialists	161,286	16,000,000	157,563
621112—Offices of Physicians, Mental Health Specialists	10,561	13,500,000	10,400
621420—Outpatient Mental Health and Substance Abuse Centers	6,523	19,000,000	5,849
622210—Psychiatric and Substance Abuse Hospitals	396	47,000,000	200
Total	178,766		174,012
Percent of Total			97.3 percent

The cost of the proposed rule impacts the affected entities and small entities on a ''per person'' basis. Rather than estimating the number of physicians and MLPs per firm, then the cost per firm, then whether the cost is significant, DEA employed a more direct approach based on the following logic:

- In order to continue as a financially stable entity, the affected firms must generate enough revenue to pay the wages of physicians and MLPs, and other operating expenses.
- Therefore, revenue for firms must be greater than the wages paid to practitioners.
- Therefore, if the cost of the proposed rule is not economically significant when compared to individual wages for practitioners, the cost of the proposed rule is not economically significant when compared to the annual revenue of the firms.

In this analysis DEA has assumed a practitioner falls under the platform registration even though that registration is designed for telemedicine companies who are serving as intermediaries between patients and *clinician practitioners,* which is expected to exclude physician offices that have only one physician. If the cost is not burdensome for a single physician office, then it would not, presumably, be a burden for larger offices as well.

As covered above, DEA estimates the cost to apply at $4.83 per application and that each registrant would apply for 2.5 individual Special Registrations (1 initial and 1.5 state) and 3.5 platform registrations (1 conventional, 1 initial telemedicine, and 1.5 state) for a total of 6 (2.5 + 3.5), at an annual rate of 2 Special Registrations per year (6/3), giving a total cost of $9.66 ($4.83 × 2). This would also mean there would be fees of $888 for the platform conventional registration, $1,776 (888 × 2) for both the individual and platform initial *Special Registration* and $150 ($50 × 3) for 3 special state registrations, for a total of $2,814 ($888 + $1,776 + $150), or $938 per year ($2,814/3).

DEA estimates the cost for reporting to DEA would be $2.84 per report. With one report per year, that would be an annual cost of $2.84. DEA estimates the cost per PDMP check for physicians, physician assistants, and nurse practitioners is $3.20, $1.54, and $1.50, respectively. DEA estimates the number of new PDMP checks per year by taking the total number of new PDMP checks and dividing by the number of Special Registrations. For the high estimate, the number of new PDMP checks per year is 83 (63,172,320/761,781). Being conservative, DEA used the year 10 figures. The total annual cost of the new PDMP checks per year is $266 (84 × $3.20), $128 (83 × $1.54), and $125 (83 × 1.50), respectively for physicians, physician assistants, and nurse practitioners.

The average annual total economic impact for each registrant who prescribes under this proposed rule is then the combination of the PDMP check cost, registration time cost, reporting cost, and annualized registration fee. For physicians, physician assistants, and nurse practitioners, this is $1,210 ($266 + $3.22 + $2.84 + $938), $1,072 ($128 + $3.22 + $2.84 + $938), and $1,069 ($125 + $3.22 + $2.84 + $938), respectively.

The average annual total economic impacts are compared to the loaded annual mean wages for physicians and MLPs (physician assistants and nurse practitioners). Based on the Bureau of Labor Statistics' (BLS) Occupational Employment and Wages data, DEA estimates an annual mean wage of $263,840 for physicians (occupation code 29–1210),[197] $130,490 for physician assistants (occupation code 29–1071),[198] and $128,490 for nurse practitioners (occupation code 29–1171).[199] Based on the previously calculated load of 45.3 percent, the loaded annual mean wages are then $383,360 ($263,840 × 1.453), $189,602 ($130,490 × 1.453), and $186,696 ($128,490 × 1.453), respectively.

The total annual fees and costs are then 0.32 percent ($1,210/$383,360),

[195] U.S. Small Business Administration, Table of size standards, Effective March 17, 2023, *https://www.sba.gov/document/support-table-size-standards* (*https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023_.xlsx*) (Accessed October 18, 2024).

[196] SUSB, 2017 SUSB Annual Data Tables by Establishment Industry, U.S., Data by Enterprise Receipts Size, 6-digit NAICS, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html* (*https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_rcptsize_2017.xlsx*) (Accessed October 20, 2024).

[197] Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023* (29–1210 Physicians), annual mean wage, *https://www.bls.gov/oes/2023/may/oes_nat.htm* (Accessed 10/18/2024). While the weighted average of the 29–1210 Physicians and 29–1240 Surgeons is used to calculate costs earlier in the document, here, the total costs and fees is compared to the loaded median annual wages for 29–1210 Physicians only. 29–1210 is the large majority and this analysis examines the impact on this occupation with the lower wage.

[198] Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023, 29–1071 Physician Assistants,* median hourly wage *https://www.bls.gov/oes/2023/may/oes_nat.htm.* (Accessed 10/18/2024).

[199] Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023, 29–1171 Nurse Practitioners,* annual mean wage, *https://www.bls.gov/oes/2023/may/oes_nat.htm.* (Accessed 10/18/2024).

0.57 percent ($1,072/$189,602), and 0.57 percent ($1,069/$186,696) of loaded annual wages for physicians, physician assistants, and nurse practitioners, respectively. Table 40 presents the details of the calculation.

TABLE 40—COSTS AND FEES AS PERCENT OF WAGES

	Registration cost ($)	Reporting cost ($)	PDMP check cost ($)	Annualized registration fee cost ($)	Total cost and fees ($)	Loaded annual mean wage ($)	Costs and fees as percent of wage (percent)
Physicians	3.22	2.84	266	938	1,210	383,360	0.32
Physician Assistants	3.22	2.84	128	938	1,072	189,602	0.57
Nurse Practitioners	3.22	2.84	125	938	1,069	186,696	0.57

The economic impact of applying for the *Special Registration for Telemedicine* represents a small fraction (0.32 percent, 0.57 percent, and 0.57 percent) of annual wages. DEA estimates the proposed rule will not have a significant economic impact on individual physicians and MLPs. The small entities that employ the potentially affected physicians and MLPs are expected to generate enough revenue to pay their wages. Therefore, DEA concludes the proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

DEA has determined that this proposed rule may have Tribal implications, as defined by Executive Order 13175. The determination that this proposed rule will have Tribal implications is, in part, based off the several public comments made by Tribal organizations on the 2023 General Telemedicine NPRM and the Buprenorphine NPRM, stating that the requirements in those two proposed rules would have a substantial impact on Tribal communities. The most prominent concerns of the Tribal organizations involved the extreme remoteness and practitioner shortages faced by some Tribal communities. Specifically, as a result of these obstacles to care, the Tribal communities noted the challenges posed by, as proposed in the 2023 NPRMs, necessitating an in-person medical examination to obtain prescriptions for certain substances, as well as the 30-day telemedicine prescription supply limit. On June 13 and 27, 2024, OTJ and DEA hosted two Tribal consultations to have broad discussions regarding the practice of telemedicine with Tribal communities. Many of the Tribal organizations that participated in the two Tribal consultations reiterated their concerns about any telemedicine rule that would require an in-person medical examination to obtain prescriptions for certain substances and a 30-day telemedicine prescription supply limit.

After carefully considering the information and insights shared in the public comments to the two 2023 NPRMs, during the Telemedicine Listening Sessions, and during the June 2024 Tribal Consultations, DEA reevaluated its approach and determined that the best course of action was to proceed with the promulgation of a *Special Registration* rule. Notably, this proposed *Special Registration* rule no longer contains an in-person medical examination requirement for certain substances and no longer contains a 30-day telemedicine prescription supply limit requirement; DEA believes these changes have largely addressed the prominent concerns raised by Tribes. DEA encourages Tribal members and entities to submit public comments on this *Special Registration* NPRM. Furthermore, it intends to continue Tribal consultations on Telemedicine, including the proposed requirements of the *Special Registration* NPRM, to ensure meaningful collaboration with Tribal governments impacted by DEA's telemedicine policies.

Paperwork Reduction Act of 1995

This proposed rule would impose new collections and modify existing collections of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521. DEA has identified the following collection(s) of information related to this proposed rule. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. Copies of existing information collections approved by OMB may be obtained at *http://www.reginfo.gov/public/do/PRAMain.*

A. Collections of Information Associated With the Proposed Rule

1. Title: Application for Registration, Registration Renewal, *Special Registration for Telemedicine,* and Changes and Modifications to *Special Registration for Telemedicine,* Forms DEA–224/224A/224S/224S–M
OMB Control Number: 1117–0014
Form Number: DEA–224/DEA–224A/DEA–224S/224S–M

DEA is proposing to amend its regulations by creating two new forms for all *Special Registration* applicants to use when applying for or modifying a *Special Registration for Telemedicine* and a *State Telemedicine Registration.* DEA Form 224S (*Application for Special Registration for Telemedicine Under the Controlled Substances Act*) will allow *Special Registration* applicants to use one form to apply for the *Telemedicine Prescribing Registration* (CS III–V), the *Advanced Telemedicine Prescribing Registration* (CS II–V), the *Telemedicine Platform Registration* (CS II–V), and the *State Telemedicine Registration* for each state in which a patient will be located. *Special Registration* applicants will be required to provide one *Special Registered Location. Platform practitioners* will be required to disclose all employment, contractual relationships, or professional affiliations with any *clinician special registrant* and Online Pharmacy and their respective registration numbers. *Clinician practitioners* will be required to disclose all employment, contractual relationships, and professional affiliations, including with any *covered online telemedicine platforms* and the respective *covered online telemedicine platform's Telemedicine Platform Special Registration* number; their practice specialties; and attest to their ability and intention to check relevant state PDMPs prior to issuing a *special registration prescription.* All *Special Registration* applicants will also be required to attest to having devised, and committing to maintain, anti-diversion

policies and procedures and to the facts and circumstances that form the basis for their legitimate need for a *Special Registration for Telemedicine.* Additionally, those practitioners that are exempt from obtaining *State Telemedicine Registrations* will be required to identify all states in which patients will be located when being treated via telemedicine.

DEA Form 224S–M (*Application for Changes and Modifications to Special Registration*) provides *special registrants* with a means to comply with the proposed requirement of notifying DEA, within 14 business days, of any changes to the information provided in the *Special Registration* application (Form 224S); such changes include if a *clinician special registrant* becomes employed by, contracts with, or otherwise becomes professionally affiliated with a new DTC online telemedicine platform not previously disclosed on the original Form 224S or if any *clinician special registrant* or *platform special registrant* needs to make modifications to their *Special Registration.* The information submitted on these two forms will enhance transparency, patient safety, and anti-diversion efforts.

The below estimates are based on the ''moderate (primary)'' estimates made in the E.O. 12866 section above. DEA estimates the following number of respondents and burden associated with this collection of information:

- Number of respondents: 670,916
- Frequency of response: 1 per year
- Number of responses: 718,917
- Burden per response: 0.20 hours (calculated)
- Total annual hour burden: 144,200 hours

2. Title: Special Registration Recordkeeping and Prescribing Requirements

OMB Control Number: 1117–New

Form Number: N/A

Clinician special registrants will remain subject to existing recordkeeping and prescribing requirements. However, under this rule, DEA is proposing additional requirements under the *Special Registration* framework.

Clinician special registrants would be required to maintain all records arising from telemedicine encounters under the *Special Registration* framework at the *special registered location* for a minimum of two (2) years. The *clinician special registrant* will be required to maintain a record of the date and time of the telemedicine encounter, the address of the patient during the telemedicine encounter, and the home address of the patient. This proposed requirement enhances public safety by making detection of diversion patterns and illegitimate prescribing practices easier to spot during DEA investigations. It will also alleviate the practical burden for *special registrants* by centralizing recordkeeping at the *special registered location* rather than requiring *special registrants* to maintain records in every state where telemedicine patients are located. Additionally, this proposed rule will require, in addition to the requirements of a prescription found in 21 CFR 1306.05(a), two additional elements for *special registration prescriptions* to include: (1) the *Special Registration* numbers of the *clinician practitioner* and, if a *platform practitioner* facilitated the prescription, the *platform practitioner;* and (2) *State Telemedicine Registration* number of the *clinician practitioner* and, if a *platform practitioner* facilitated the prescription, the *platform practitioner.* If a *clinician special registrant* is exempt from obtaining a *State Telemedicine Registration,* the *clinician special registrant* will be required to instead provide a notation on the prescription identifying the state in which the patient is located. This information will provide the pharmacist with the necessary information to determine whether the *clinician practitioner* has the authority to prescribe, and the *platform practitioner* has the authority to dispense, Schedule II controlled substances, and provide the pharmacist with the information necessary to verify that *special registration prescriptions* are prescribed and dispensed by *special registrants* authorized within the appropriate state.

This proposed rule requires that *clinician special registrants,* or a delegated employee or contractor under the direct supervision of the *clinician special registrant,* verify the identity of patients seeking treatment via telemedicine by requiring that the patient present a state or federal government-issued photo identification card or acceptable alternative forms of identification through the camera of the *audio-video telecommunications system.* The *clinician special registrant* will be required to photograph the patient presenting their photo identification card or other acceptable documents during an initial telemedicine encounter or accept a copy of such identification card or document and will be required to maintain this photographic record for a minimum of two (2) years. The photographic records, or copies of such, will be securely stored in the patient's medical record or chart to ensure patient privacy. This requirement ensures that patients' identities are verified, and the photographic record establishes a clear link between the patient's identity and the *special registration prescription.*

Platform special registrants will be required to maintain certain *clinician special registrant* records insomuch as that *platform special registrant* has a *covered platform relationship* with the *clinician special registrant.* Such records include documents related to verification of the *clinical special registrant's* credentials; employment contracts and any other contract between the *platform special registrant* and *clinician special registrant;* and any disciplinary actions or sanctions, or documentation of complaints, disputes, or incidents involving the *practice of telemedicine.* The *platform special registrant* will be required to maintain and update the credential verification and conduct-related records for a minimum of two (2) years. This requirement will help to address any potential issues of diversion, misconduct, or inadequate screening procedures and provides additional regulatory oversight over remote prescribing.

This proposed rule will require, in addition to the requirements of a prescription found in 21 CFR 1306.05(a), two additional elements for *special registration prescriptions* to include: (1) the *Special Registration* numbers of the *clinician practitioner* and, if a *platform practitioner* facilitated the prescription, the *platform practitioner;* and (2) *State Telemedicine Registration* number of the *clinician practitioner* and, if a *platform practitioner* facilitated the prescription, the *platform practitioner.* If a *clinician special registrant* is exempt from obtaining a *State Telemedicine Registration,* the *clinician special registrant* will be required to instead provide a notation on the prescription identifying the state in which the patient is located. This information will provide the pharmacist with the necessary information to determine whether the *clinician practitioner* has the authority to prescribe, and the *platform practitioner* has the authority to dispense, Schedule II controlled substances, and provide the pharmacist with the information necessary to verify that *special registration prescriptions* are prescribed and dispensed by *special registrants* authorized within the appropriate state.

The below estimates are based on the ''moderate (primary)'' estimates made in the E.O. 12866 section above. DEA estimates the following number of

respondents and burden associated with this collection of information:

- Number of respondents: 57,552
- Frequency of response: 174.26562 (as needed, calculated)
- Number of responses: 10,029,335
- Burden per response: 0.0008602 (calculated)
- Total annual hour burden: 8,627 hours

3. Title: Special Registration Reporting Requirements
OMB Control Number: 1117-New
Form Number: N/A

This proposed rule will require both *individual special registrants* and *platform special registrants* to electronically report to DEA under 21 CFR 1304.61, on an annual basis, the total number of new patients in each state where at least one *special registration prescription* for a Schedule II controlled substance and certain Schedule III–V controlled substances, including Ketamine, Tramadol, and any depressant constituting a benzodiazepine, has been issued; the total number of *special registration prescriptions* for Schedule II controlled substances issued by the *special registrant* in aggregate and across all states; and the total number of *special registration prescriptions* for certain Schedule III–V controlled substances, including Ketamine, Tramadol, and any depressants constituting a benzodiazepines, which were issued by the *special registrant,* in aggregate and across all states. Amid the ongoing opioid epidemic, this vital information will provide DEA with accurate and up to date data on the prescribing of controlled substances via telemedicine.

This proposed rule will also require pharmacies to electronically report, within the first seven (7) days of the start of every month, aggregate data for the *special registration prescriptions* filled during the preceding month for each Schedule II controlled substance and certain Schedule III–V controlled substances, including Ketamine, Tramadol, and any depressant constituting a benzodiazepine. For each of these controlled substances, the pharmacy will be required to report the number of prescriptions filled, the volume of the controlled substance dispensed, and the number of patients prescribed the controlled substance. These requirements provide valuable oversight of telemedicine prescriptions under the *Special Registration,* enable the detection of irregularities or suspicious prescribing and dispensing practices, and will help DEA understand any shifts in demand for medications via telemedicine.

The below estimates are based on the ''moderate (primary)'' estimates made in the E.O. 12866 section above. DEA estimates the following number of respondents and burden associated with this collection of information:

- Number of respondents: 69,134
- Frequency of response: 6.950774 (calculated)
- Number of responses: 871,488
- Burden per response: 0.006863 hours (calculated)
- Total annual hour burden: 5,981 hours

B. Request for Comments Regarding the Proposed Collections of Information

Written comments and suggestions from the public and affected entities concerning the proposed collections of information are encouraged. Under the PRA, DEA is required to provide a notice regarding the proposed collections of information in the **Federal Register** with the notice of proposed rulemaking and solicit public comment. Pursuant to section 3506(c)(2) of the PRA (44 U.S.C. 3506(c)(2)), DEA solicits comment on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the functions of DEA, including whether the information will have practical utility.
- The accuracy of DEA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Recommendations to enhance the quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comments refer to RIN 1117–AB40/Docket No. DEA–407. All comments must be submitted to OMB on or before March 18, 2025. [''The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.'']

If you need a copy of the proposed information collection instrument(s) with instructions or additional information, please contact the Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 776–3882.

Unfunded Mandates Reform Act of 1995

The estimated annual impact of this proposed rule is minimal. Thus, DEA has determined in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) that this action would not result in any federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Exports, Imports, Prescription
drugs, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1306

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

For the reasons set out above, the Drug Enforcement Administration proposes to amend 21 CFR parts 1300, 1301, 1304, and 1306 as follows:

PART 1300—DEFINITIONS

■ 1. Revise the authority citation for part 1300 to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 829, 831(h), 871(b), 951, 958(f).

■ 2. In § 1300.01(b) the add the term ''Clinician practitioner'' and revise the term ''Institutional practitioner'' shall be revised, as follows:

§ 1300.01 Definitions related to controlled substances

* * * * *

Clinician practitioner is an individual practitioner who provides direct patient care or assesses, diagnoses, or treats medical conditions.

* * * * *

Institutional practitioner means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it

practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy or covered online telemedicine platform.

* * * * *

■ 3. Revise and republish § 1300.04 to read as follows:

§ 1300.04 Definitions relating to the dispensing of controlled substances by means of the internet.

Any term not defined in this part or elsewhere in this chapter shall have the definition set forth in sections 102 and 309 of the Act (21 U.S.C. 802, 829).

Advanced Telemedicine Prescribing Registration means a type of *Special Registration for Telemedicine* in which the registered practitioner is authorized to prescribe Schedules II through V controlled substances through the practice of telemedicine under 21 U.S.C. 802(54)(E).

Audio-video telecommunications system means the multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and practitioner, mid-level practitioner, or pharmacist.

Clinician special registrant means a special registrant issued either the Telemedicine Prescribing Registration or the Advanced Telemedicine Prescribing Registration under 1301.11(c)(2) and (3) of this chapter, respectively.

Covered online telemedicine platform means an entity that facilitates connections between patients and clinician practitioners, via an *audio-video telecommunications system,* for the diagnosis and treatment of patients that may result in the prescription of controlled substances, but is not a hospital, clinic, local in-person medical practice, or insurance provider, and meets one or more of the following criteria:

(1) The entity explicitly promotes or advertises the prescribing of controlled substances through the platform;

(2) The entity has financial interests, whether direct incentives or otherwise, tied to the volume or types of controlled substance prescriptions issued through the platform, including but not limited to, ownership interest in pharmacies used to fill patients' prescriptions, or rebates from those pharmacies;

(3) The entity exerts control or influence on clinical decision-making processes or prescribing related to controlled substances, including, but not limited to: prescribing guidelines or protocols for clinician practitioners employed or contracted by the platform; consideration of clinician practitioner prescribing rates in the entity's hiring, retention, or compensation decisions; imposing explicit or de facto prescribing quotas; directing patients to preferred pharmacies; and/or

(4) The entity has control or custody of the prescriptions or medical records of patients who are prescribed controlled substances through the platform.

Covered platform relationship means the formal association between a covered online telemedicine platform and a clinician practitioner it directly employs, contracts with, or is otherwise professionally affiliated with to introduce or facilitate connections between patients seeking remote medical consultations and the individual practitioner, via an audio-video telecommunications system, for the diagnosis of patients and the treatment of those patients via prescription of controlled substances.

Covering practitioner means, with respect to a patient, a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who:

(1) Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and

(2) Is temporarily unavailable to conduct the evaluation of the patient.

Deliver, distribute, or dispense by means of the internet refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the internet.

Filling new prescriptions for controlled substances in Schedule III, IV, or V means filling a prescription for an individual for a controlled substance in Schedule III, IV, or V, if:

(1) The pharmacy dispensing that prescription has previously dispensed to the patient a controlled substance other than by means of the internet and pursuant to the valid prescription of a practitioner that meets the applicable requirements of subsections (b) and (c) of section 309 of the Act (21 U.S.C. 829) and §§ 1306.21 and 1306.22 of this chapter (for purposes of this definition, such a prescription shall be referred to as the ''original prescription'');

(2) The pharmacy contacts the practitioner who issued the original prescription at the request of that individual to determine whether the practitioner will authorize the issuance of a new prescription for that individual for the controlled substance described in paragraph (d)(1) of this section (*i.e.,* the same controlled substance as described in paragraph (d)(1)); and

(3) The practitioner, acting in the usual course of professional practice, determines there is a legitimate medical purpose for the issuance of the new prescription.

Homepage means the opening or main page or screen of the website of an online pharmacy that is viewable on the internet.

Hospice care means a set of special services that are provided to individuals who are terminally ill. The focus is on comfort, not on curing an illness. Hospice programs can be delivered in a person's home or in a hospice center.

In-person medical evaluation means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals. Nothing in this paragraph shall be construed to imply that one in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

Internet means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

Local in-person medical practice means a medical practice where all its offices are within 100 miles of each other, and where less than 50 percent of the total prescriptions for controlled substances collectively issued by the practice's physicians and mid-level practitioners are issued via telemedicine, in any given calendar month, but is not a hospital, clinic, or insurance provider.

Online pharmacy means a person, entity, or internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver, distribute, or dispense, a controlled substance by means of the internet. The term includes, but is not limited to, a pharmacy that has obtained a modification of its registration pursuant to §§ 1301.13 and 1301.19 of this chapter that currently authorizes it to dispense controlled substances by means of the internet, regardless of whether the pharmacy is currently dispensing controlled substances by

means of the internet. The term does not include:

(1) Manufacturers or distributors registered under subsection (a), (b), (d), or (e) of section 303 of the Act (21 U.S.C. 823(a), (b), (d), or (e)) (§ 1301.13 of this chapter) who do not dispense controlled substances to an unregistered individual or entity;

(2) Nonpharmacy practitioners who are registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§ 1301.13 of this chapter) and whose activities are authorized by that registration;

(3) Any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§ 1301.13 of this chapter);

(4) A health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility is carrying out a contract or compact under the Indian Self–Determination and Education Assistance Act;

(5) Any agent or employee of any hospital or facility referred to in paragraph (h)(3) or (h)(4) of this section, provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in paragraph (h)(4) of this section, only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such paragraph;

(6) Mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;

(7) A person, entity, or internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the internet to any person in the United States;

(8) A pharmacy registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§ 1301.13 of this chapter) whose dispensing of controlled substances via the internet consists solely of:

(i) Refilling prescriptions for controlled substances in Schedule III, IV, or V, as defined in paragraph (k) of this section; or

(ii) Filling new prescriptions for controlled substances in Schedule III, IV, or V, as defined in paragraph (d) of this section;

(9)(i) Any registered pharmacy whose delivery, distribution, or dispensing of controlled substances by means of the internet consists solely of filling prescriptions that were electronically prescribed in a manner authorized by this chapter and otherwise in compliance with the Act.

(ii) A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than those referred to in paragraph (h)(9)(i) of this section, it would fall outside the definition of an online pharmacy;

(10)(i) Any registered pharmacy whose delivery, distribution, or dispensing of controlled substances by means of the internet consists solely of the transmission of prescription information between a pharmacy and an automated dispensing system located in a long term care facility when the registration of the automated dispensing system is held by that pharmacy as described in §§ 1301.17 and 1301.27 and the pharmacy is otherwise complying with this chapter.

(ii) A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than those referred to in paragraph (h)(10)(i) of this section, it would fall outside the definition of an online pharmacy; or

(11) A covered online telemedicine platform as defined in this section.

Palliative care means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. *Palliative care* throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice.

Platform practitioner means a covered online telemedicine platform that dispenses controlled substances by virtue of its central involvement as an intermediary in the remote prescribing of controlled substances by an individual practitioner. Platform practitioners are subject to the requirements imposed upon non-pharmacist practitioners under the Controlled Substances Act, 21 U.S.C. 801–904, and its regulations.

Platform special registrant means a special registrant issued the Telemedicine Platform Registration under 1301.11(c)(4) of this chapter.

Practice of telemedicine means the practice of medicine in accordance with applicable federal and state laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system defined in 42 CFR 410.78(a)(3), which practice falls within a category listed in paragraphs (1) through (7) of this definition:

(1) *Treatment in a hospital or clinic.* The practice of telemedicine is being conducted while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f) of the Act (21 U.S.C. 823(f)) by a practitioner acting in the usual course of professional practice, who is acting in accordance with applicable State law, and who is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in the State in which the patient is located, unless the practitioner:

(i) Is exempted from such registration in all States under section 302(d) of the Act (21 U.S.C. 822(d); or

(ii) Is an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract, and registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(2) *Treatment in the physical presence of a practitioner.* The practice of telemedicine is being conducted while the patient is being treated by, and in the physical presence of, a practitioner acting in the usual course of professional practice, who is acting in accordance with applicable State law, and who is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in the State in which the patient is located, unless the practitioner:

(i) Is exempted from such registration in all States under section 302(d) of the Act (21 U.S.C. 822(d)); or

(ii) Is an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract, and registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(3) *Indian Health Service or Tribal organization.* The practice of telemedicine is being conducted by a practitioner who is an employee or contractor of the Indian Health Service, or is working for an Indian Tribe or Tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act; who is acting within the scope of the employment, contract, or compact; and who is designated as an internet Eligible Controlled Substances Provider by the Secretary of Health and Human Services under section 311(g)(2) of the Act (21 U.S.C. 831(g)(2));

(4) *Public health emergency declared by the Secretary of Health and Human Services.* The practice of telemedicine is being conducted during a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d), and involves patients located in such areas, and such controlled substances, as the Secretary of Health and Human Services, with the concurrence of the Administrator, designates, provided that such designation shall not be subject to the procedures prescribed by the Administrative Procedure Act (5 U.S.C. 551–559 and 701–706);

(5) *Special registration.* The practice of telemedicine is being conducted by a practitioner who has obtained from the Administrator a special registration under section 311(h) of the Act (21 U.S.C. 831(h));

(6) *Department of Veterans Affairs medical emergency.* The practice of telemedicine is being conducted:

(i) In a medical emergency situation:

(A) That prevents the patient from being in the physical presence of a practitioner registered under section 303(f) of the Act (21 U.S.C. 823(f)) who is an employee or contractor of the Veterans Health Administration acting in the usual course of business and employment and within the scope of the official duties or contract of that employee or contractor;

(B) That prevents the patient from being physically present at a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) of the Act (21 U.S.C. 823(f));

(C) During which the primary care practitioner of the patient or a practitioner otherwise practicing telemedicine within the meaning of this paragraph is unable to provide care or consultation; and

(D) That requires immediate intervention by a health care practitioner using controlled substances to prevent what the practitioner reasonably believes in good faith will be imminent and serious clinical consequences, such as further injury or death; and

(ii) By a practitioner that:

(A) Is an employee or contractor of the Veterans Health Administration acting within the scope of that employment or contract;

(B) Is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f); and

(C) Issues a controlled substance prescription in this emergency context that is limited to a maximum of a five-day supply which may not be extended or refilled; or

(7) *Other circumstances specified by regulation.* The practice of telemedicine is being conducted under any other circumstances that the Administrator and the Secretary of Health and Human Services have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.

Refilling prescriptions for controlled substances in Schedule III, IV, or V: (1) Means the dispensing of a controlled substance in Schedule III, IV, or V in accordance with refill instructions issued by a practitioner as part of a valid prescription that meets the requirements of subsections (b) and (c) of section 309 of the Act (21 U.S.C. 829) and §§ 1306.21 and 1306.22 of this chapter, as appropriate; and

(2) Does not include the issuance of a new prescription to an individual for a controlled substance that individual was previously prescribed.

Special registered location means the physical address of record for a Special Registration for Telemedicine. The special registered location shall be the same address as one of the special registrant's 1301.13(e)(1)(iv) registered locations, unless exempted by § 1301.13(k)(1) of this chapter, in which case the *special registered location* shall be the physical address provided on the special registrant's Form 224S.

Special registrant means a practitioner who has been issued a Special Registration for Telemedicine (either a Telemedicine Prescribing Registration, an Advanced Telemedicine Prescribing Registration, or a Telemedicine Platform Registration).

Special Registration for Telemedicine means a registration issued by the Administrator pursuant to section 311(h) of the Act (21 U.S.C. 831(h)) to a practitioner who seeks to engage in the practice of telemedicine pursuant to section 102(54)(E) of the Act (21 U.S.C. 802(54)(E)) and 1300.04 of this chapter, which may be used to prescribe controlled substances by means of the internet (within the meaning of section 102(51) of the Act (21 U.S.C. 802(51)) without having first conducted an in-person medical evaluation with patients to whom such prescriptions are being issued. The three types of *Special Registration for Telemedicine* are the Telemedicine Prescribing Registration, the Advanced Telemedicine Prescribing Registration, and the Telemedicine Platform Registration.

Special registration prescription means a prescription, defined under § 1300.01 of this chapter, for controlled substances issued under a practitioner's Special Registration for Telemedicine for a legitimate medical purpose in the usual course of professional practice through the utilization of an audio-video telecommunications system defined in this section. A special registration prescription is facilitated if:

(1) The prescription is issued to a patient who was introduced to the prescribing practitioner through a covered platform relationship; or

(2) A covered online telemedicine platform facilitated the telemedicine encounter that resulted in the prescription, including by providing audio-visual communication services.

State Telemedicine Registration means a limited type of 21 U.S.C. 823(g) registration authorizing an individual special registrant to prescribe special registration prescriptions to patients located within the state or a platform special registrant to dispense Schedule II–V controlled substances to patients located within the state, as required by section 311(h)(1)(B) of the Act (21 U.S.C. 831(h)(1)(B)).

Telemedicine Platform Registration means a type of Special Registration for Telemedicine in which the registered covered online telemedicine platform is authorized to dispense Schedules II through V controlled substances through the practice of telemedicine under 21 U.S.C. 802(54)(E).

Telemedicine Prescribing Registration means a type of Special Registration for Telemedicine in which the registered practitioner is authorized to prescribe Schedules III through V controlled substances through the practice of telemedicine under 21 U.S.C. 802(54)(E).

Valid prescription means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by:

(1) A practitioner who has conducted at least one in-person medical evaluation of the patient; or

(2) A covering practitioner.

(3) The definition of *valid prescription* shall not be construed to imply that one in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 4. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965 unless otherwise noted.

■ 5. In § 1301.11, revise the section heading and add paragraphs (c) and (d) to read as follows:

§ 1301.11 Persons required to register; requirement of modification of registration authorizing activity as an online pharmacy; Eligibility Requirements for Special Registration for Telemedicine; State Telemedicine Registrations.

* * * * *

(c) *Eligibility for Special Registration for Telemedicine.* Clinician practitioners and covered online telemedicine platforms are eligible for the Special Registration for Telemedicine under § 1300.04 of this chapter. Clinician practitioners are eligible for either the Telemedicine Prescribing Registration or Advanced Telemedicine Prescribing Registration, and platform practitioners are eligible for the Telemedicine Platform Registration pursuant to 21 U.S.C. 802(54)(E) and 21 U.S.C. 831(h) subject to the following:

(1) *In general.* (i) A clinician practitioner applicant or a covered online telemedicine platform applicant shall be required to hold one or more registrations under § 1301.13(e)(1)(iv) of this chapter in a state in which they are licensed, registered, or otherwise permitted to prescribe or dispense controlled substances through telemedicine. Clinician practitioners exempted from obtaining a State Telemedicine Registration for every state in which patients to whom they will issue special registration prescriptions are located under § 1301.11(d) of this chapter are exempted from this requirement.

(ii) Notwithstanding § 1301.23(a) of this chapter, all clinician practitioners must apply for and obtain a Telemedicine Prescribing Registration or Advanced Telemedicine Prescribing Registration before issuing special registration prescriptions.

(2) *Telemedicine Prescribing Registration (Schedules III–V).* If the condition required in paragraph (c)(1) of this section is satisfied, a Practitioner or Mid-Level Practitioner, as defined under § 1300.01(b) of this chapter, may have a legitimate need under 21 U.S.C. 831(h) for the Telemedicine Prescribing Registration and may apply for the registration to prescribe Schedules III–V controlled substances when they anticipate that they will be treating patients for whom requiring in-person medical evaluations could impose significant burdens on the patients to maintain a bona fide practitioner-patient relationships.

(3) *Advanced Telemedicine Prescribing Registration (Schedules II–V).* If the condition required in paragraph (c)(1) of this section is satisfied, a Practitioner or Mid-Level Practitioner may have a legitimate need under 21 U.S.C. 831(h) for the Advanced Telemedicine Prescribing Registration, and may apply for the registration to prescribe Schedules II–V controlled substances, when they anticipate that they will be treating patients for whom requiring in-person medical evaluations could impose significant burdens on the patient to maintain bona fide practitioner-patient relationships, and the practitioner or Mid-Level Practitioner is one or more of the following:

(i) The practitioner is a psychiatrist or is board certified in the treatment of psychiatric or psychological disorders;

(ii) The practitioner is a hospice care physician or is board certified in hospice care;

(iii) The practitioner is a palliative care physician or is board certified in palliative care;

(iv) The practitioner renders treatment at one or more long term care facilities;

(v) The practitioner is a pediatrician or is board certified in pediatric care; and/or

(vi) The practitioner is a neurologist or is board certified in the treatment of neurological disorders unrelated to the treatment and management of pain.

(4) *Telemedicine Platform Registration (Schedules II–V).* A covered online telemedicine platform, as defined under § 1300.04 of this chapter, may have a legitimate need under 21 U.S.C. 831(h) for the Telemedicine Platform Registration, and shall apply for the registration to dispense Schedules II–V controlled substances, when the covered online telemedicine platform:

(i) Anticipates being compensated for introducing or facilitating connections between patients seeking remote medical consultations and practitioners, via an audio-video telecommunications system, for the diagnosis of patients and the treatment of those patients via prescription of controlled substances;

(ii) Is compliant with federal and state regulations;

(iii) Provides oversight over *clinician practitioners'* prescribing practices; and

(iv) Takes measures to prioritize patient safety and prevent diversion, abuse, or misuse of controlled substances.

(d) *State Telemedicine Registrations.* Practitioners issued any of the three types of Special Registration for Telemedicine shall obtain a State Telemedicine Registration defined under § 1300.04 of this chapter, for every state in which patients to whom special registration prescriptions will be issued are located. As a limited type of 21 U.S.C. 823(g) registration, the Administrator shall issue the State Telemedicine Registration when it is consistent with the public interest pursuant 21 U.S.C. 823(g)(1). The following clinician practitioners are exempted from obtaining a State Telemedicine Registration for every state:

(1) Officials of the U.S. Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, Public Health Service, or Bureau of Prisons who are authorized to prescribe via telemedicine in the course of their official duties;

(2) Veterans Health Administration (VHA) covered health care professionals under 38 U.S.C. 1730C(b), acting within the scope of their employment who are utilizing the registration of a hospital or clinic operated by the VHA registered under 21 U.S.C. 823(g) after having obtained the approval of the Secretary of the Veterans Affairs (VA) to utilize the 823(g) registration of a VHA-operated hospital or clinic; and

(3) Health care professionals acting within the scope of their contract with VHA and who have access to, and chart patient records within, the VHA's electronic health records, are subject to all policies of the VHA, and are utilizing the registration of a hospital or clinic operated by the VHA registered under 21 U.S.C. 823(g) after having obtained the approval of the Secretary of the Veterans Affairs (VA) to utilize the 823(g) registration of a VA-operated hospital or clinic; and

(4) Any practitioner otherwise exempted from registration under 21 U.S.C. 822(d).

■ 6. In § 1301.13, add paragraphs (e)(1)(xi), (xii), (xiii), (xiv), and (xv), (k), (l) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1)

Business activity	Controlled substances	DEA application forms	Application fees ($)	Registration period (years)	Coincident activities allowed
*	* *	*	*	*	*
(xi) Telemedicine Prescribing (Special Registration).	Schedules III–V	New—224S Renewal—224S Modification—224S(M).	888	3	
(xii) Advanced Telemedicine Prescribing (Special Registration).	Schedules II–V	New—224S Renewal—224S Modification—224S(M).	888	3	
(xiii) Telemedicine Platform (Special Registration).	Schedules II–V	New—224S Renewal—224S Modification—224S(M).	888	3	
(xiv) State Telemedicine for Individual Special Registrants (Ancillary Registration to a Special Registration).	(Determined by the Special Registration held).	New—224S Renewal—224S Modification—224S(M).	50	3	
(xv) State Telemedicine for Platform Special Registrants (Ancillary Registration to a Special Registration).	(Determined by the Special Registration held).	New—224S Renewal—224S Modification—224S(M).	888	3	

* * * * *

(k) *Special Registration application (Form 224S) requirements.* Form 224S will require the following:

(1) *Special registered location.* Special Registration applicants shall designate one of their existing registered locations under paragraph (e)(1)(iv) of this section as the registered location/physical address of their Special Registration. Special Registration applicants that would be exempted under § 1301.11(d) are exempted from this requirement however, such exempted persons shall be required to provide another physical address.

(2) *Required disclosures and attestations.* Special Registration applicants shall provide the following specific disclosures and attestations on the Form 224S:

(i) If the applicant is a platform practitioner applying for the Telemedicine Platform Registration, it shall disclose all employment, contractual relationships, or professional affiliations with any clinician special registrant and Online Pharmacy and their respective registration numbers.

(ii) If the applicant is a clinician practitioner applying for the Telemedicine Prescribing Registration or the Advanced Telemedicine Prescribing Registration, the applicant shall disclose all employment, contractual relationships, or professional affiliations, including with any covered online telemedicine platform and the respective covered online telemedicine platform's Telemedicine Platform Special Registration number, if applicable; and the applicant's practice specialties (*e.g.,* hospice care or palliative care);

(iii) The applicant for a Special Registration for Telemedicine, whether a clinician practitioner or a covered online telemedicine platform, shall attest that they have devised and are committed to maintaining anti-diversion policies and procedures;

(iv) The applicant for an Advanced Telemedicine Prescribing Registration shall disclose their practice specialties; and

(v) The applicant for any type of Special Registration for Telemedicine shall attest that they have a legitimate need for a Special Registration for Telemedicine and to the facts and circumstances that form the basis for their legitimate need.

(3) *State Telemedicine Registration-exempted practitioner disclosures.* Practitioners exempted from State Telemedicine Registration under § 1301.11(d) are required to identify all the states in which patients will be located when being treated via telemedicine on the practitioners' registration applications for the Telemedicine Prescribing Registration, the Advanced Telemedicine Prescribing Registration, and the Telemedicine Platform Registration.

(l) *Notification of application changes; Modifications (Form 224S–M).* The special registrant shall use Form 224S–M for the following purposes:

(1) To promptly notify DEA of any changes to the information provided on their Special Registration Application (Form 224S) within 14 business days on the Form 224S–M (*e.g.,* the special registrant becomes employed by, contracts with, or otherwise professionally affiliated with a new entity); and

(2) To make any modifications to their Special Registration (*e.g.,* applying for additional State Telemedicine Registrations to practice telemedicine in additional states).

■ 7. In § 1301.35, revise paragraph (a) and add paragraph (d) to read as follows:

§ 1301.35 Certificate of registration; denial of registration.

(a) The Administrator shall issue a Certificate of Registration (DEA Form 223) to an applicant under the applicable provisions of sections 102(54)(E) or 311(h) of the Act (21 U.S.C. 802(54)(E) and 831(h)) when:

(1) The applicant for the Special Registration for Telemedicine meets the eligibility requirements outlined in § 1301.11(c) of this subpart; and

(2) The Administrator has determined that the Special Registration is consistent with the public interest pursuant to the factors stipulated in 21 U.S.C. 823(g)(1).

* * * * *

(d) The Certificate of Registration (DEA Form 223) issued for a Special Registration shall contain the following information: name; Special Registered Location; Special Registration for Telemedicine (either a Telemedicine Prescribing Registration, Advanced Telemedicine Prescribing Registration, or Telemedicine Platform Registration), and State Telemedicine Registration(s);

the activity authorized by the Special Registration, the Schedules and/or Administration Controlled Substances Code Number (as set forth in part 1308 of this chapter) of the controlled substances which the registrant is authorized to handle; the amount of fee paid (or exemption) for each registration, and the expiration date of each registration. The special registrant shall maintain the Certificate of Registration at the Special Registered Location in a readily retrievable manner and shall permit inspection of the certificate by any official, agent or employee of the Administration or of any Federal, State, or local agency engaged in enforcement of laws relating to controlled substances.

■ 8. In § 1301.36:

■ a. Redesignate paragraphs (c) through (i) as paragraphs (d) through (j), respectively; and

■ b. Add paragraphs (c) and (k).

The additions read as follows:

§ 1301.36 Suspension or revocation of registration; suspension of registration pending final order; extension of registration pending final order.

* * * * *

(c) For any registration issued under sections 102(54)(E) or 311(h) of the Act (21 U.S.C. 802(54)(E) and 831(h)), the Administrator may:

(1) Suspend the registration under the grounds stipulated in section 304(a) of the Act (21 U.S.C. 824(a)) for any period of time; and

(2) Revoke the registration under the grounds stipulated in section 304(a) of the Act (21 U.S.C. 824(a)).

* * * * *

(k) The suspension or revocation of any registration issued under 21 U.S.C. 823(g) shall result in the automatic suspension or revocation of all registrations issued under 21 U.S.C. 831(h), including all Special Registrations for Telemedicine and State Telemedicine Registrations.

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

■ 9. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 831, 871(b), 958(e)–(g), and 965, unless otherwise noted.

■ 10. In § 1304.04, add paragraphs (i), (j), (k), and (l) to read as follows:

§ 1304.04 Maintenance of records and inventories.

* * * * *

(i) For patient verification photographic records, an individual special registrant, with a Special Registration for Telemedicine pursuant to 1301.11(c)(2) or (3) of this chapter, or a delegated employee or contractor under the direct supervision of the individual special registrant, shall verify the identity of patients prior to issuing a special registration prescription via an audio-video telecommunications system, as defined under § 1300.04 of this chapter. At the first telemedicine encounter, the individual special registrant, or a delegated employee or contractor under the direct supervision of the individual special registrant, shall confirm the identity of the patient, and capture a photographic record of the patient presenting their federal or state-issued photo identification card or other acceptable documents as described in paragraph (i)(1) of this section; or verify, accept and maintain a copy of the patient's federal or state government-issued photo identification card or a document described in paragraph (i)(1) of this section provided by the patient. The photographic record shall be maintained by the individual special registrant and renewed a minimum of every two (2) years. After the first telemedicine encounter, the individual special registrant, or the individual special registrant's delegee, shall confirm the patient's identity against the initial or renewed photographic record at every telemedicine encounter that results in a special telemedicine prescription.

(1) If the individual special registrant or a delegated employee or contractor under the direct supervision of the individual special registrant reasonably determines that a patient lacks a federal or state-issued photo identification card, the individual special registrant or their delegee must verify the identity of the patients in the manner described in this paragraph (i) using other forms of documentation to verify the identity of the patient, and maintain a photographic record of what documents were used to verify the patient's identity.

(2) The photographic records must be securely stored within the patient's medical record or chart, separate from the special registration prescription data reported to DEA under § 1304.60 of this subpart to ensure that patient privacy is protected.

(j) For the purpose of maintaining special registration telemedicine encounter record, every telemedicine encounter that results in a special registration prescription, the prescribing individual special registrant shall maintain a record of the date and time of the telemedicine encounter, the address of the patient during the telemedicine encounter, and the home address of the patient. The individual special registrant must maintain the special registration telemedicine encounter record for a minimum of two (2) years from the date of the telemedicine encounter.

(k) For credential verification and conduct-related records, a platform special registrant, with a Special Registration for Telemedicine pursuant to 1301.11(c)(4) of this chapter, shall maintain the following records related to individual special registrants with whom they enter and maintain a covered platform relationship:

(1) Verification of the individual practitioner's credentials, including but not limited to records on education, training, board or specialty certifications;

(2) The employment contract and any other contract between the platform practitioner and the individual practitioner; and

(3) Any disciplinary actions or sanctions, or documentation of complaints, disputes, or incidents involving the practice of telemedicine engaged in by the individual practitioner. The platform practitioner must maintain and update the credential verification and conduct-related records for a minimum of two (2) years.

(l) For the purpose of maintaining centralized recordkeeping at the special registered location, a special registrant, with a Special Registration for Telemedicine pursuant to 1301.11(c)(2)–(4) shall maintain all records arising from telemedicine encounters at the special registrant's Special Registered Location.

■ 10. Add § 1304.60 under the undesignated center heading ''Prescription Reporting'' to read as follows:

§ 1304.60 Pharmacy reporting of special registration prescription data.

(a) A pharmacy shall, within seven (7) days of the start of every month, report aggregate data for the special registration prescriptions filled during the preceding month for each Schedule II controlled substance and each Schedule III–V controlled substance identified in paragraph (b). For each of these controlled substances, the pharmacy shall provide the following information, organized by the different State Telemedicine Registration numbers of the individual special registrants who prescribed the controlled substance, and organized by the National Drug Code (NDC) for each formulation of the controlled substance dispensed: the number of prescriptions filled, the volume of the controlled substance dispensed, and the number of

patients prescribed the controlled substance. If the individual special registrant is exempted from State Telemedicine Registration under § 1301.11(d) of this chapter, the pharmacy shall instead provide the Special Registration number for either the Telemedicine Prescribing Registration or Advanced Telemedicine Prescribing Registration of the individual special registrant in lieu of a State Telemedicine Registration number. The pharmacy shall electronically report this data through DEA Office of Diversion Control's secure network application.

(b) The Schedule III–V controlled substances subject to the reporting requirement in paragraph (a) of this section are:

(1) Ketamine, its salts, isomers, and salts of isomers (DEA Controlled Substances Code Number (CSCN) 7285);

(2) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers (including tramadol) (CSCN 9752); and

(3) The following depressants as described in 1308.14(c) of this chapter, and their salts, isomers, and salt of isomers: Alprazolam (CSCN 2882); Bromazepam (CSCN 2748); Camazepam (CSCN 2749; Chlordiazepxide (CSCN 2744); Clobazam (CSCN 2751); Clonazepam (CSCN 2737); Clorazepate (CSCN 2768); Clotiazepam (CSCN 2752); Cloxazolam (CSCN 2753); Delorazepam (CSCN 2754); Diazepam (CSCN 2765); Estazolam (CSCN 2756); Ethyl loflazepate (CSCN 2758); Fludiazepam (CSCN 2759); Flunitrazepam (CSCN 2763); Flurazepam (CSCN 2767); Halazepam (CSCN 2762); Haloxazolam (CSCN 2771); Ketazolam (CSCN 2772); Loprazolam (CSCN 2773); Lorazepam (CSCN 2885); Lormetazepam (CSCN 2774); Medazepam (CSCN 2836); Midazolam (CSCN 2884); Nimetazepam (CSCN 2837); Nitrazepam (CSCN 2834); Nordiazepam (CSCN 2838); Oxazepam (CSCN 2835); Oxazolam (CSCN 2839); Pinazepam (CSCN 2883); Prazepam (CSCN 2764); Quazepam (CSCN 2881); Remimazolam (CSCN 2846); Temazepam (CSCN 2925); Tetrazepam (CSCN 2886); and Triazolam (CSCN 2887).

■ 12. Add § 1304.61 to read as follows:

§ 1304.61 Special registrant reporting of special registration prescription data.

A special registrant, either an individual special registrant or a platform special registrant, shall report to DEA on an annual basis within the seven (7) days of the start of every year the following information for the preceding year: the total number of new patients in each state where at least one special registration prescription for a Schedule II controlled substance, or a Schedule III–V controlled substance identified in § 1304.60(b) has been issued; the total number of special registration prescriptions for Schedule II controlled substances issued by the special registrant, in aggregate and across all states; and the total number of special registration prescriptions for Schedule III–V controlled substances identified in § 1304.60(b) issued by the special registrant, in aggregate and across all states. The individual special registrant shall electronically report this data through DEA Office of Diversion Control's secure network application.

PART 1306—PRESCRIPTIONS AND DISPENSING

■ 14. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 831, 871(b), unless otherwise noted.

■ 15. Add an undesignated center heading ''Special Registration Prescriptions Prescribed by Individual Special Registrants'' and §§ 1306.41 through 1306.47 to read as follows:

Special Registration Prescriptions Prescribed by Individual Special Registrants

§ 1306.41 Prescription origination within the United States.

The individual special registrant shall be physically located within the United States when conducting a telemedicine encounter and issuing a special registration prescription; and have any necessary licensure and authorization within the U.S. state or territory where the practitioner is located when the telemedicine encounter takes place. For the purposes of this chapter, the United States shall mean the 50 states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, America Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

§ 1306.42 Electronic Prescribing for Controlled Substances (EPCS) of Special Registration Prescriptions.

The individual special registrant shall issue special registration prescriptions for controlled substances through Electronic Prescribing for Controlled Substances (EPCS).

§ 1306.43 Nationwide Prescription Drug Monitoring Program (PDMP) Check

(a) Effective immediately, on [EFFECTIVE DATE OF FINAL RULE], prior to issuing a special registration prescription for controlled substances, including Schedules II through V controlled substances, the individual special registrant shall perform a check of the state Prescription Drug Monitoring Program(s) (PDMPS) in:

(1) The state or territory where the patient is located;

(2) The state or territory where the individual special registrant is located; and

(3) Any state or territory with PDMP reciprocity agreements with either the state or territory where the patient is located or the state or territory where the individual special registrant is located, for data regarding any controlled substance prescriptions issued to the patient in the last year, or, if less than one year of data is available, in the entire available period, prior to issuing a special registration prescription for controlled substances.

(b) Effective three (3) years from [EFFECTIVE DATE OF FINAL RULE], the individual special registrant shall perform a comprehensive nationwide check of all 50 state Prescription Drug Monitoring Programs (PDMPs) and PDMPs in any U.S. district and territory that maintains its own PDMP for data regarding any controlled substance prescriptions issued to the patient in the last year, or, if less than one year of data is available, in the entire available period, prior to issuing a special registration prescription for controlled substances. If there is no means to perform this comprehensive nationwide check three (3) years from [the date of the promulgation of the final rule], then the individual special registrant shall continue to perform the PDMPs checks as described in paragraph (a) if this section, and special registration prescriptions for Schedule II controlled substances shall only be issued to patients located within the same state as the individual special registrant, *i.e.,* where there is an intra-state practitioner-patient relationship.

§ 1306.44 Required Use of Audio-Video Telecommunication System

(a) Every special registration prescription, as defined in § 1300.04 of this chapter, shall be issued through the use of an audio-video telecommunication system defined in § 1300.04 of this chapter.

(b) Notwithstanding paragraph (a) of this section and § 1300.04 of this chapter, special registrants may issue special registration prescriptions for

Schedule III–V narcotic controlled substances approved by the Food and Drug Administration for the treatment of Opioid Use Disorder through the use of an audio-only telecommunications system as described in 42 CFR 410.78(a)(3), provided that the treatment was initiated through the use of an audio-video telecommunications system as defined in § 1300.04 of this chapter, the practitioner has conducted at least one medical evaluation of the patient through the use of an audio-video telecommunication system defined in § 1300.04 of this chapter, and the prescription is being issued for the treatment of Opioid Use Disorder.

§ 1306.45 Requirements for Issuing a Special Registration Prescription for Schedule II Controlled Substances

(a) A special registration prescription may not be issued for a controlled substance listed in Schedule II unless the individual special registrant has an Advanced Telemedicine Prescribing Registration and the individual special registrant is: a psychiatrist or board certified in the treatment of psychiatric and psychological disorders, and issuing the prescription for the treatment of mental health; a hospice care physician or board certified in hospice care, and issuing the prescription for hospice care; a palliative care physician or board certified in palliative care, and issuing the prescription for palliative care; a physician rendering treatment to a patient who resides and is present in a long term care facility at the time the prescription is issued; a pediatrician or board certified in pediatric care, and is issuing the prescription to a patient under the age of 18 while the parent or guardian of the patient is present in the room with the patient at the time the prescription is issued; or a neurologist or board certified in the treatment of neurological disorders unrelated to the treatment and management of pain

(b) A special registration prescription may not be issued for a controlled substance listed in Schedule II unless the individual special registrant is physically located in the same state in which the patient was located at the time of the telemedicine encounter that resulted in the issuance of the prescription when issuing the prescription for the Schedule II controlled substance.

(c) The number of special registration prescriptions issued by the individual special registrant in a calendar month for Schedule II controlled substances shall constitute less than 50 percent of the total number of Schedule II prescriptions issued in that calendar month by the individual special registrant in their telemedicine and non-telemedicine practice. The average number of special registration prescriptions shall be calculated from the first day of the month through the last day of the month.

§ 1306.46 State Laws Applicable to Special Registration Prescriptions

When issuing a special registration prescription, a special registrant must comply with the laws and regulations of:

(a) The state in which the special registrant is located during the telemedicine encounter resulting in the special registration prescription;

(b) The state in which the patient is located during the telemedicine encounter resulting in the special registration prescription; and

(c) Any state or states in which the special registrant maintains a DEA registration to dispense controlled substances or a medical license, to the extent that the law or regulation applies to telemedicine encounters between practitioners and patients located in the states described in paragraphs (a) and (b) of this section.

§ 1306.47 Additional Elements on a Special Registration Prescription

(a) A special registration prescription shall contain: the individual special registrant's Special Registration for Telemedicine number and State Telemedicine Registration number, unless exempted from State Telemedicine Registration under § 1301.11(d) of this chapter; and, if the prescription is facilitated by a platform registrant, the covered online telemedicine platform's Special Registration for Telemedicine number and State Telemedicine Registration number. If exempted from State Telemedicine Registration, the special registrant shall notate on the prescription the state in which the patient was located at the time of the telemedicine encounter that resulted in the issuance of the prescription.

(b) A special registration prescription shall contain all the information required on a prescription under § 1306.05(a) of this chapter, with the exception that the number associated with a registration under 1301.13(e)(1)(iv) of this chapter shall not be required.

(c) A corresponding liability rests upon the pharmacist who fills a special registration prescription that is not prepared in the form required by this regulation.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 13, 2025, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

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Part VII

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005 et al.
Milk in the Northeast and Other Marketing Areas; Uniform Pricing Formula Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, 1131, and 1170

[Doc. No. AMS–DA–23–0031]

Milk in the Northeast and Other Marketing Areas; Uniform Pricing Formula Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the pricing provisions in the 11 Federal Milk Marketing Orders (FMMOs). Separate producer referenda held in each of the 11 FMMOs obtained the necessary two-thirds vote in favor of adoption of the amendments as proposed. Accordingly, the Agricultural Marketing Service (AMS) is issuing this final rule amending all 11 FMMOs in accordance with the Agricultural Marketing Agreement Act of 1937, as amended (AMAA).

DATES: This final rule is effective June 1, 2025, except for in amendatory instruction 3a (7 CFR 1000.50(f), (i), (k), and (q)(1) and (2)), which is effective December 1, 2025.

ADDRESSES: To review the hearing record or obtain information on the amendments, please see *https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing.*

FOR FURTHER INFORMATION CONTACT: Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Division, STOP 0231–Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0231, Telephone: (202) 720–4392, Email address: *Erin.Taylor@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule, in accordance with 7 CFR 900.14(c), is the Secretary's final rule in this proceeding amending the pricing provisions applicable to milk regulated in the Northeast and other marketing areas as defined in 7 CFR 900.2(j) and issued under 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131. This final rule adopts the amendments detailed in the proposed rule (89 FR 95466) (final decision), as follows:

1. *Milk Composition Factors.* FMMO milk prices are based on three primary components: protein, other solids, and nonfat solids. Skim milk composition factors in the current price formulas codified in the FMMO regulations were adopted in 2000: 3.1 percent protein, 5.9 percent other solids, and 9 percent nonfat solids. This final rule increases the milk composition factors to 3.3 percent protein, 6.0 percent other solids, and 9.3 percent nonfat solids. Actual component tests of skim milk have increased since 2000, with more significant increases beginning in 2016. The amendments will more accurately represent component levels in milk produced. In the final decision, AMS proposed a 6-month implementation lag for the amended composition factors. As such, the amendments to the regulations at 7 CFR 1000.50(f), (i), (k), (q)(1) and (2) relative to skim milk composition factors, will be implemented on December 1, 2025. See the subsequent implementation section for further detail.

2. *Surveyed Commodity Products.* Milk prices under FMMOs are related to wholesale prices for butter, cheese, nonfat dry milk, and dry whey. The formulas use U.S. Department of Agriculture (USDA)-surveyed average wholesale prices to calculate milk component prices (butterfat, protein, nonfat solids, and other solids) that are converted to Class III and IV milk prices. The protein value in cheese is a component of the Class III price. Currently, the prices of commodity cheddar cheese packaged in 40-lb blocks (''blocks'') and 500-lb barrels (''barrels'') are collected weekly by AMS through the Dairy Products Mandatory Reporting Program (DPMRP) survey. A monthly average of those prices is used to represent commodity cheese in the Class III price formula. The butterfat value in commodity salted butter is the driver of the butterfat price used in all classified prices. This final rule eliminates 500-lb barrels from the DPMRP survey. DPMRP will rely solely on the 40-pound block cheddar cheese price to determine the monthly average cheese price used in the formulas. The amendment will provide for more orderly marketing through a survey of only one product. These changes will be implemented on June 1, 2025.

3. *Class III and Class IV Formula Factors.* Make allowances are a factor in the FMMO pricing formulas representing the cost of converting raw milk into the four manufactured dairy products surveyed by the USDA (butter, cheese, nonfat dry milk (NFDM), and dry whey). Make allowances were last updated in 2008 following a rulemaking proceeding in 2007. This final rule updates the make allowances in the FMMO Class III and IV formulas as follows: $0.2519 for cheese; $0.2272 for butter; $0.2393 for NFDM; and $0.2668 for dry whey. This final rule also updates the butterfat recovery factor in the Class III formula to 91 percent. The amendments will update the formula factors to be more representative of current costs and butterfat recovery observed in dairy product manufacturing. These changes will be implemented on June 1, 2025.

4. *Base Class I Skim Milk Price (Class I mover).* The Class I mover is the base price for the skim milk portion of raw milk used in the production of Class I products. The Agriculture Improvement Act of 2018 (2018 Farm Bill) amended the Class I skim milk price mover from the ''higher of'' Class III or Class IV skim prices to a simple average of the two classes plus $0.74, referred to as the ''average of'' mover. This final rule returns the base Class I skim milk price calculation to the higher-of Class III or Class IV skim prices. This final rule also adopts a rolling monthly Class I ESL adjustment equating to a Class I price for all ESL products equal to the average-of the Class III and Class IV advance prices, plus a 24-month rolling average adjuster, with a 12-month lag. The monthly Class I ESL adjustment will be calculated as the average of the differences between the higher-of and the average-of calculations for the prior 13 to 36 months. The amendments will provide for more orderly marketing by returning to the higher-of mover; while the Class I ESL adjustment will provide better price equity for ESL products whose marketing characteristics are distinct from other Class I products. These changes will be implemented on June 1, 2025.

5. *Class I and Class II differentials.* FMMO Class I prices are calculated as the average of the advanced Class III and Class IV prices, plus $0.74, plus a location-specific differential referred to as a Class I differential. As the value of milk varies by location, Class I differentials have been determined for every county in the continental U.S. Current Class I differential levels were implemented January 1, 2000, with updates to the differentials in the three southeastern orders taking effect May 1, 2008. This final rule retains the $1.60 base differential and adopts modified location-specific Class I differential values. The amendments recognize the evolution of the dairy industry since 2000 and the increased cost of servicing the Class I market given current transportation costs and plant and producer locations. These changes will be implemented on June 1, 2025.

The amendments to the FMMOs are based on the record of a 49-day public hearing held August 23–October 11, 2023, November 27–December 8, 2023, January 16–19, 2024, and January 29–

31, 2024, in Carmel, Indiana. The hearing was held to receive evidence on 21 proposals in the 5 pricing subject areas submitted by dairy farmers, handlers, and other interested parties. Notice of this hearing was published in the **Federal Register** on July 24, 2023 (88 FR 47396), pursuant to the provisions of the AMAA and the applicable rules of practice and procedure (7 CFR part 900). Notices of the reconvened hearing were subsequently published on November 6, 2023 (88 FR 76143) and December 29, 2023 (88 FR 90134). During the hearing, AMS received testimony from a total of 165 witnesses. Witnesses provided an overview of the complexity of the U.S. dairy industry and submitted 511 exhibits containing supporting data, analyses, and historical information.

Considering record evidence, AMS published its recommended and final decisions in the **Federal Register** on the proposed amendments to the milk pricing formulas on July 15, 2024 (89 FR 57580) and December 2, 2024 (89 FR 95466), respectively. AMS also considered proposed findings submitted in post-hearing briefs, officially noticed documents, and comments and exceptions filed in response to the recommended decision when preparing its recommended and final decisions.

In conjunction with the final decision, AMS conducted a Regulatory Economic Impact Analysis to determine the potential impact of amending FMMO pricing formulas on producer revenue and marketwide pool values. The full Regulatory Economic Impact Analysis may be accessed at *https://www.regulations.gov* or *https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing*.

Following publication of the final decision, AMS conducted separate producer referenda in each of the 11 FMMOs to determine support for or opposition to the proposed amendments to the milk pricing formulas. The referendum period ending December 31, 2024, confirmed support for the proposed amendments in all 11 FMMOs. More specifically, all referenda resulted in the necessary two-thirds approval of eligible producers participating in the referendum. As explained in the final decision, eligible producers were those engaged in the production of milk for sale, as defined under the terms of the orders, within the marketing areas of the Northeast, Appalachian, Florida, Southeast, Upper Midwest, Central, Mideast, California, Pacific Northwest, Southwest, and Arizona FMMOs during January 2024, the representative period.

Prior Documents in This Proceeding

Notice of Hearing: Published July 24, 2023 (88 FR 47396).

Notice of Reconvened Hearing: Published November 6, 2023 (88 FR 76143).

Notice of Reconvened Hearing: Published December 29, 2023 (88 FR 90134).

Recommended Decision: Published July 15, 2024 (89 FR 57580).

Final Decision: Published December 2, 2024 (89 FR 95466).

This administrative action is governed by sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, 13175, and 14094.

The amendments to the regulations adopted herein have also been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. The amendments do not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The AMAA provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing a petition with the USDA stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Civil Rights Impact Analysis

AMS has reviewed this rulemaking in accordance with USDA Departmental Regulation 4300–004, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on FMMO participants on the basis of race, color, national origin, disability, sex, gender identity, political beliefs, age, marital, family/parental status, religion, sexual orientation, reprisal, or because an individual's income is derived from any public assistance program. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Tribes or persons with disabilities, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) (NAICS Code 112120) is one that has an annual gross revenue of $3.75 million or less, and a small dairy products manufacturer is one that has no more than the number of employees listed in the chart below:

NAICS code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,150
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	1,000

To determine which dairy farms are ''small businesses,'' the $3.75 million per year income limit was used to establish an annual milk marketing threshold of 18.3 million pounds. Although this threshold does not factor in additional monies that may be received by dairy producers, it should be an accurate standard for most ''small'' dairy farmers. Based on the U.S. 2023 average yield per cow and 2023 National Agricultural Statistics Service (NASS) average All-Milk price, a dairy farm with approximately 780 cows or fewer meets the definition of small business. In 2022, the most recent year with statistics available, there were 24,470 dairy farms with milk sales, of which approximately 19,576 had milk regulated on an FMMO for at least one month of the year. Based on the 2022 Census of Agriculture, Milk Cow Herd Size by Inventory and Sales, an estimated 89 percent of operations with milk sales are likely to be small businesses.

To determine a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 750-employee limit for creamery butter manufacturing; the 1,000-employee limit for dry, condensed, and evaporated dairy product manufacturing; the 1,150-employee limit for fluid milk manufacturing; or the 1,250-employee limit for cheese manufacturing; the plant was considered a large business even if the local plant does not exceed the 750, 1,000, 1,150, or 1,250-employee limit, respectively.

In 2022, the following number of plants were regulated for at least one month of the year in each FMMO: 66 plants on the Northeast, 19 plants on the Appalachian, 9 plants on the Florida, 20 plants on the Southeast, 58 plants on the Upper Midwest, 32 plants on the Central, 43 plants on the Mideast, 24 plants on California, 17 plants on the Pacific Northwest, 26 plants on the Southwest, and 8 plants on Arizona. According to the 2022 Census of Agriculture, approximately 86 percent of fluid milk manufacturing plants, approximately 96 percent of cheese plants, approximately 82 percent of dry products plants, and approximately 78 percent of butter plants met the SBA definition of small businesses.

Impact on Small Businesses

An economic analysis was performed and issued in conjunction with the final decision on impacts the amendments will have on industry participants, including producers and handlers. It can be found on the AMS website at *https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing*. The amendments are applied identically to all proprietary and cooperative handlers regulated by FMMOs, regardless of their size. The amendments implement prices that more accurately reflect current market conditions, providing for more orderly marketing for both small and large producers and handlers.

AMS considered alternatives to each of the amendments. Over 49 days of hearing, dozens of witnesses from 9 industry stakeholder groups presented testimony and evidence on 21 proposals in the 5 pricing subject areas. AMS considered all evidence and testimony, including alternative proposals presented, in making its recommendations.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). It was determined that these amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they will remain identical to the current requirements. No new forms are proposed, and no additional reporting requirements will be necessary.

This final rule does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, since the information is already provided, no new information collection requirements are needed, and the current information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

No other burdens are expected to fall on the dairy industry as a result of this rulemaking. This rulemaking does not duplicate, overlap, or conflict with any existing Federal rules.

Implementation

This final rule amends the 11 FMMOs with an implementation date of June 1, 2025, except for the amendments to skim milk composition factors, which have a later implementation date. Therefore, all milk marketed on or after the month of June 1, 2025, will reflect the amendments to surveyed commodity products, Class III and Class IV formula factors, base Class I Skim Milk Price, and Class I differentials in both the advanced prices and pricing factors released before the start of the month and the class and component prices announced after the close of the month. Advanced prices and pricing factors for the month of June 2025 will be announced on May 21, 2025, and class and component pricing for June 2025 will be announced on July 2, 2025.

The amendments to 7 CFR 1000.50(f), (i), (k), (q)(1) and (2) which pertain to skim milk composition factors have an implementation date of December 1, 2025. Therefore, as of December 1, 2025, all milk marketed on or after December 1, 2025, will reflect all the amendments made effective by this rule. Advanced prices and pricing factors for the month of December 2025 will be announced on November 19, 2025, and class and component prices for December 2025 will be announced on December 31, 2025. Additional information regarding implementation is available on the AMS website.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the FMMOs were first issued and when they have been amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Northeast, Southeast, Appalachian, Florida, Upper Midwest, Central, Mideast, California, Southwest, Pacific Northwest, and Arizona FMMOs:

(a) *Findings upon the basis of the hearing record.*

A public hearing was held upon certain proposed amendments to the marketing agreements and to the orders regulating the handling of milk in the Northeast, Southeast, Appalachian, Florida, Upper Midwest, Central, Mideast, California, Southwest, Pacific Northwest, and Arizona marketing areas. The hearing was held pursuant to the provisions of the AMAA, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at the hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and

conditions thereof, will tend to effectuate the declared policy of the AMAA;

(2) The parity prices of milk, as determined pursuant to section 2 of the AMAA, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Additional Findings.* The amendments to these orders are known to handlers. The final decision containing the proposed amendments to this order was issued on November 12, 2024, and published in the **Federal Register** on December 2, 2024 (89 FR 95466).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative association specific in section 8c(9) of the AMAA) of more than 50 percent of the milk marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the AMAA;

(2) The issuance of this order amending the Northeast, Southeast, Appalachian, Florida, Upper Midwest, Central, Mideast, California, Southwest, Pacific Northwest, and Arizona FMMOs is the only practical means pursuant to the declared policy of the AMAA of advancing the interests of producers as defined in the orders as hereby amended; and

(3) The issuance of this order amending the Northeast, Southeast, Appalachian, Florida, Upper Midwest, Central, Mideast, California, Southwest, Pacific Northwest, and Arizona FMMOs is favored by at least two-thirds of the producers engaged in the production of milk for sale, as defined under the terms of the orders, within the aforementioned marketing areas during January 2024, the representative period.

Order Amending the Orders Regulating the Handling of Milk in the Northeast, Appalachian, Florida, Southeast, Upper Midwest, Central, Mideast, California, Pacific Northwest, Southwest, and Arizona Marketing Areas

List of Subjects in 7 CFR Part 1000

Milk marketing orders, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131

Milk marketing orders.

List of Subjects in 7 CFR Part 1170

Dairy products, Reporting and recordkeeping requirements.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast, Southeast, Appalachian, Florida, Upper Midwest, Central, Mideast, California, Southwest, Pacific Northwest, and Arizona marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

■ 1. The authority citation for part 1000 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 2. Amend § 1000.43 by:
■ a. In paragraphs (a) and (b) introductory text, removing the text ''and § 1135.11 of this chapter''; and
■ b. In paragraph (b)(2) removing the words ''or § 1135.11 of this chapter''; and
■ c. Adding paragraph (e).

The addition reads as follows:

§ 1000.43 General classification rules.

* * * * *

(e) Any skim milk used in ultra-pasteurized or aseptically processed and packaged fluid milk products shall be allocated in combination with Class I milk and the quantity of producer milk eligible to be priced shall be limited to available Class I producer milk classified pursuant to § 1000.44(a).

■ 3. Revise and republish § 1000.50 to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a) through (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the Agriculture Marketing Service (AMS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (p) of this section shall be based on a weighted average for the preceding month of weekly prices announced by AMS on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies, and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52, plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section rounded to the nearest cent.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

(d) *Class II price.* The Class II price per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

(e) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the advanced Class IV skim milk price computed in paragraph (q)(2) of this section plus 70 cents.

(f) *Class II nonfat solids price.* The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $0.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class III skim milk price plus 3.5 times the butterfat price.

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight,

rounded to the nearest cent, shall be the protein price per pound times 3.1 plus the other solids price per pound times 5.9.

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class IV skim milk price plus 3.5 times the butterfat price.

(k) *Class IV skim milk price.* The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average AMS AA Butter survey price reported by the Department for the month, less 22.72 cents, with the result multiplied by 1.211.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average AMS nonfat dry milk survey price reported by the Department for the month, less 23.93 cents and multiplying the result by 0.99.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) The U.S. average AMS survey price for 40-lb. block cheese reported by the Department for the month;

(2) Subtract 25.19 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 25.19 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.589; and

(ii) Subtract 0.91 times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average AMS dry whey survey price reported by the Department for the month minus 26.68 cents, with the result multiplied by 1.03.

(p) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight of milk shall be determined as follows:

(1) Multiply 0.0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

(2) Subtract the somatic cell count of the milk (reported in thousands) from 350; and

(3) Multiply the amount computed in paragraph (p)(1) of this section by the amount computed in paragraph (p)(2) of this section and round to the nearest full cent.

(q) *Advanced pricing factors.* For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent AMS U.S. average weekly survey prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and an other solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.1;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 5.9; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average AMS AA Butter survey prices announced before the 24th day of the month, subtracting 22.72 cents from this average, and multiplying the result by 1.211.

(r) *Class I Extended Shelf Life (ESL) adjustment.* The Class I ESL adjustment, whether positive or negative, rounded to the nearest cent, shall be computed as follows:

(1) Compute the simple average of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section;

(2) Add the following:

(i) Determine the higher of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section, for each of the preceding 13 to 36 months;

(ii) Calculate the average of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section, for each of the preceding 13 to 36 months;

(iii) For each of the preceding 13 to 36 months, subtract the amount computed in paragraph (r)(2)(ii) of this section from the amount computed in paragraph (r)(2)(i) of this section; and

(iv) Compute the average of the differences computed in paragraph (r)(2)(iii) of this section.

(3) Subtract the higher of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section.

3a. Effective December 1, 2025, amend § 1000.50 by revising paragraphs (f), (i), (k), and (q)(1) and (2) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(f) Class II nonfat solids price. The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.3.

* * * * *

(i) Class III skim milk price. The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.30 plus the other solids price per pound times 6.00.

* * * * *

(k) Class IV skim milk price. The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.30.

* * * * *

(q) * * *

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the 2 most recent AMS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and an other solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.30;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 6.0; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent AMS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.30.

■ 4. Revise and republish § 1000.52 to read as follows:

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

County/parish/city	State	FIPS code	Class I differential adjusted for location
AUTAUGA	AL	01001	5.80
BALDWIN	AL	01003	5.80
BARBOUR	AL	01005	5.80
BIBB	AL	01007	5.60
BLOUNT	AL	01009	5.40
BULLOCK	AL	01011	5.80
BUTLER	AL	01013	5.80
CALHOUN	AL	01015	5.60
CHAMBERS	AL	01017	5.60
CHEROKEE	AL	01019	5.40
CHILTON	AL	01021	5.60
CHOCTAW	AL	01023	5.80
CLARKE	AL	01025	5.80
CLAY	AL	01027	5.60
CLEBURNE	AL	01029	5.60
COFFEE	AL	01031	5.80
COLBERT	AL	01033	4.90
CONECUH	AL	01035	5.80
COOSA	AL	01037	5.60
COVINGTON	AL	01039	5.80
CRENSHAW	AL	01041	5.80
CULLMAN	AL	01043	5.40
DALE	AL	01045	5.80
DALLAS	AL	01047	5.80
DE KALB	AL	01049	5.40
ELMORE	AL	01051	5.80
ESCAMBIA	AL	01053	5.80
ETOWAH	AL	01055	5.40
FAYETTE	AL	01057	5.40
FRANKLIN	AL	01059	5.20
GENEVA	AL	01061	5.80
GREENE	AL	01063	5.60
HALE	AL	01065	5.60
HENRY	AL	01067	5.80
HOUSTON	AL	01069	5.80
JACKSON	AL	01071	5.20
JEFFERSON	AL	01073	5.60
LAMAR	AL	01075	5.40
LAUDERDALE	AL	01077	4.90
LAWRENCE	AL	01079	5.20
LEE	AL	01081	5.80
LIMESTONE	AL	01083	5.20
LOWNDES	AL	01085	5.80
MACON	AL	01087	5.80
MADISON	AL	01089	5.20
MARENGO	AL	01091	5.80
MARION	AL	01093	5.20
MARSHALL	AL	01095	5.40
MOBILE	AL	01097	5.80
MONROE	AL	01099	5.80
MONTGOMERY	AL	01101	5.80
MORGAN	AL	01103	5.40
PERRY	AL	01105	5.60
PICKENS	AL	01107	5.40
PIKE	AL	01109	5.80
RANDOLPH	AL	01111	5.60
RUSSELL	AL	01113	5.80
ST. CLAIR	AL	01115	5.60
SHELBY	AL	01117	5.60
SUMTER	AL	01119	5.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
TALLADEGA	AL	01121	5.60
TALLAPOOSA	AL	01123	5.60
TUSCALOOSA	AL	01125	5.60
WALKER	AL	01127	5.40
WASHINGTON	AL	01129	5.80
WILCOX	AL	01131	5.80
WINSTON	AL	01133	5.40
APACHE	AZ	04001	2.30
COCHISE	AZ	04003	2.40
COCONINO	AZ	04005	2.40
GILA	AZ	04007	2.40
GRAHAM	AZ	04009	2.40
GREENLEE	AZ	04011	2.40
LA PAZ	AZ	04012	2.50
MARICOPA	AZ	04013	2.60
MOHAVE	AZ	04015	2.50
NAVAJO	AZ	04017	2.30
PIMA	AZ	04019	2.40
PINAL	AZ	04021	2.60
SANTA CRUZ	AZ	04023	2.40
YAVAPAI	AZ	04025	2.40
YUMA	AZ	04027	2.50
ARKANSAS	AR	05001	4.60
ASHLEY	AR	05003	4.90
BAXTER	AR	05005	3.60
BENTON	AR	05007	3.20
BOONE	AR	05009	3.30
BRADLEY	AR	05011	4.60
CALHOUN	AR	05013	4.60
CARROLL	AR	05015	3.30
CHICOT	AR	05017	4.90
CLARK	AR	05019	4.00
CLAY	AR	05021	4.30
CLEBURNE	AR	05023	4.00
CLEVELAND	AR	05025	4.60
COLUMBIA	AR	05027	4.30
CONWAY	AR	05029	4.00
CRAIGHEAD	AR	05031	4.30
CRAWFORD	AR	05033	3.30
CRITTENDEN	AR	05035	4.60
CROSS	AR	05037	4.30
DALLAS	AR	05039	4.30
DESHA	AR	05041	4.90
DREW	AR	05043	4.60
FAULKNER	AR	05045	4.00
FRANKLIN	AR	05047	3.60
FULTON	AR	05049	4.00
GARLAND	AR	05051	4.00
GRANT	AR	05053	4.30
GREENE	AR	05055	4.30
HEMPSTEAD	AR	05057	4.00
HOT SPRING	AR	05059	4.30
HOWARD	AR	05061	4.00
INDEPENDENCE	AR	05063	4.00
IZARD	AR	05065	4.00
JACKSON	AR	05067	4.30
JEFFERSON	AR	05069	4.60
JOHNSON	AR	05071	3.60
LAFAYETTE	AR	05073	4.30
LAWRENCE	AR	05075	4.30
LEE	AR	05077	4.60
LINCOLN	AR	05079	4.60
LITTLE RIVER	AR	05081	3.60
LOGAN	AR	05083	3.60
LONOKE	AR	05085	4.30
MADISON	AR	05087	3.30
MARION	AR	05089	3.60
MILLER	AR	05091	4.00
MISSISSIPPI	AR	05093	4.30
MONROE	AR	05095	4.60
MONTGOMERY	AR	05097	4.00

County/parish/city	State	FIPS code	Class I differential adjusted for location
NEVADA	AR	05099	4.30
NEWTON	AR	05101	3.60
OUACHITA	AR	05103	4.30
PERRY	AR	05105	4.00
PHILLIPS	AR	05107	4.60
PIKE	AR	05109	4.00
POINSETT	AR	05111	4.30
POLK	AR	05113	3.60
POPE	AR	05115	3.60
PRAIRIE	AR	05117	4.30
PULASKI	AR	05119	4.30
RANDOLPH	AR	05121	4.00
ST. FRANCIS	AR	05123	4.60
SALINE	AR	05125	4.30
SCOTT	AR	05127	3.60
SEARCY	AR	05129	3.60
SEBASTIAN	AR	05131	3.60
SEVIER	AR	05133	3.60
SHARP	AR	05135	4.00
STONE	AR	05137	4.00
UNION	AR	05139	4.60
VAN BUREN	AR	05141	4.00
WASHINGTON	AR	05143	3.30
WHITE	AR	05145	4.30
WOODRUFF	AR	05147	4.30
YELL	AR	05149	3.60
ALAMEDA	CA	06001	2.40
ALPINE	CA	06003	1.80
AMADOR	CA	06005	1.80
BUTTE	CA	06007	2.00
CALAVERAS	CA	06009	1.80
COLUSA	CA	06011	2.20
CONTRA COSTA	CA	06013	2.40
DEL NORTE	CA	06015	2.20
EL DORADO	CA	06017	1.80
FRESNO	CA	06019	2.20
GLENN	CA	06021	2.20
HUMBOLDT	CA	06023	2.20
IMPERIAL	CA	06025	2.50
INYO	CA	06027	2.20
KERN	CA	06029	2.50
KINGS	CA	06031	2.20
LAKE	CA	06033	2.20
LASSEN	CA	06035	2.00
LOS ANGELES	CA	06037	2.80
MADERA	CA	06039	2.20
MARIN	CA	06041	2.40
MARIPOSA	CA	06043	1.80
MENDOCINO	CA	06045	2.20
MERCED	CA	06047	2.20
MODOC	CA	06049	2.00
MONO	CA	06051	2.00
MONTEREY	CA	06053	2.50
NAPA	CA	06055	2.40
NEVADA	CA	06057	2.00
ORANGE	CA	06059	2.80
PLACER	CA	06061	2.00
PLUMAS	CA	06063	2.00
RIVERSIDE	CA	06065	2.80
SACRAMENTO	CA	06067	2.20
SAN BENITO	CA	06069	2.50
SAN BERNARDINO	CA	06071	2.60
SAN DIEGO	CA	06073	2.80
SAN FRANCISCO	CA	06075	2.50
SAN JOAQUIN	CA	06077	2.20
SAN LUIS OBISPO	CA	06079	2.50
SAN MATEO	CA	06081	2.50
SANTA BARBARA	CA	06083	2.50
SANTA CLARA	CA	06085	2.50
SANTA CRUZ	CA	06087	2.50
SHASTA	CA	06089	2.00

County/parish/city	State	FIPS code	Class I differential adjusted for location
SIERRA	CA	06091	2.00
SISKIYOU	CA	06093	2.00
SOLANO	CA	06095	2.40
SONOMA	CA	06097	2.40
STANISLAUS	CA	06099	2.20
SUTTER	CA	06101	2.20
TEHAMA	CA	06103	2.20
TRINITY	CA	06105	2.00
TULARE	CA	06107	2.20
TUOLUMNE	CA	06109	1.80
VENTURA	CA	06111	2.60
YOLO	CA	06113	2.20
YUBA	CA	06115	2.00
ADAMS	CO	08001	2.70
ALAMOSA	CO	08003	2.50
ARAPAHOE	CO	08005	2.70
ARCHULETA	CO	08007	2.30
BACA	CO	08009	2.50
BENT	CO	08011	2.50
BOULDER	CO	08013	2.50
BROOMFIELD	CO	08014	2.50
CHAFFEE	CO	08015	2.50
CHEYENNE	CO	08017	2.50
CLEAR CREEK	CO	08019	2.50
CONEJOS	CO	08021	2.50
COSTILLA	CO	08023	2.50
CROWLEY	CO	08025	2.70
CUSTER	CO	08027	2.70
DELTA	CO	08029	2.30
DENVER	CO	08031	2.70
DOLORES	CO	08033	2.30
DOUGLAS	CO	08035	2.70
EAGLE	CO	08037	2.50
ELBERT	CO	08039	2.70
EL PASO	CO	08041	2.70
FREMONT	CO	08043	2.70
GARFIELD	CO	08045	2.30
GILPIN	CO	08047	2.50
GRAND	CO	08049	2.50
GUNNISON	CO	08051	2.50
HINSDALE	CO	08053	2.30
HUERFANO	CO	08055	2.70
JACKSON	CO	08057	2.50
JEFFERSON	CO	08059	2.70
KIOWA	CO	08061	2.50
KIT CARSON	CO	08063	2.50
LAKE	CO	08065	2.50
LA PLATA	CO	08067	2.30
LARIMER	CO	08069	2.50
LAS ANIMAS	CO	08071	2.50
LINCOLN	CO	08073	2.70
LOGAN	CO	08075	2.50
MESA	CO	08077	2.30
MINERAL	CO	08079	2.50
MOFFAT	CO	08081	2.30
MONTEZUMA	CO	08083	2.30
MONTROSE	CO	08085	2.30
MORGAN	CO	08087	2.50
OTERO	CO	08089	2.70
OURAY	CO	08091	2.30
PARK	CO	08093	2.70
PHILLIPS	CO	08095	2.50
PITKIN	CO	08097	2.50
PROWERS	CO	08099	2.50
PUEBLO	CO	08101	2.70
RIO BLANCO	CO	08103	2.30
RIO GRANDE	CO	08105	2.50
ROUTT	CO	08107	2.50
SAGUACHE	CO	08109	2.50
SAN JUAN	CO	08111	2.30
SAN MIGUEL	CO	08113	2.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
SEDGWICK	CO	08115	2.50
SUMMIT	CO	08117	2.50
TELLER	CO	08119	2.70
WASHINGTON	CO	08121	2.50
WELD	CO	08123	2.50
YUMA	CO	08125	2.50
FAIRFIELD	CT	09001	5.00
HARTFORD	CT	09003	4.80
LITCHFIELD	CT	09005	4.80
MIDDLESEX	CT	09007	4.80
NEW HAVEN	CT	09009	4.80
NEW LONDON	CT	09011	4.80
TOLLAND	CT	09013	4.80
WINDHAM	CT	09015	4.80
KENT	DE	10001	4.60
NEW CASTLE	DE	10003	4.40
SUSSEX	DE	10005	4.80
DISTRICT OF COLUMBIA	DC	11001	4.70
ALACHUA	FL	12001	6.40
BAKER	FL	12003	6.40
BAY	FL	12005	6.00
BRADFORD	FL	12007	6.40
BREVARD	FL	12009	6.80
BROWARD	FL	12011	7.40
CALHOUN	FL	12013	6.00
CHARLOTTE	FL	12015	7.00
CITRUS	FL	12017	6.80
CLAY	FL	12019	6.40
COLLIER	FL	12021	7.40
COLUMBIA	FL	12023	6.40
DE SOTO	FL	12027	7.00
DIXIE	FL	12029	6.40
DUVAL	FL	12031	6.40
ESCAMBIA	FL	12033	5.80
FLAGLER	FL	12035	6.80
FRANKLIN	FL	12037	6.00
GADSDEN	FL	12039	6.00
GILCHRIST	FL	12041	6.40
GLADES	FL	12043	7.00
GULF	FL	12045	6.00
HAMILTON	FL	12047	6.40
HARDEE	FL	12049	7.00
HENDRY	FL	12051	7.40
HERNANDO	FL	12053	6.80
HIGHLANDS	FL	12055	7.00
HILLSBOROUGH	FL	12057	6.80
HOLMES	FL	12059	6.00
INDIAN RIVER	FL	12061	7.00
JACKSON	FL	12063	6.00
JEFFERSON	FL	12065	6.00
LAFAYETTE	FL	12067	6.40
LAKE	FL	12069	6.80
LEE	FL	12071	7.00
LEON	FL	12073	6.00
LEVY	FL	12075	6.40
LIBERTY	FL	12077	6.00
MADISON	FL	12079	6.00
MANATEE	FL	12081	7.00
MARION	FL	12083	6.80
MARTIN	FL	12085	7.00
MIAMI–DADE	FL	12086	7.40
MONROE	FL	12087	7.40
NASSAU	FL	12089	6.40
OKALOOSA	FL	12091	5.80
OKEECHOBEE	FL	12093	7.00
ORANGE	FL	12095	6.80
OSCEOLA	FL	12097	6.80
PALM BEACH	FL	12099	7.40
PASCO	FL	12101	6.80
PINELLAS	FL	12103	6.80
POLK	FL	12105	6.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
PUTNAM	FL	12107	6.40
ST. JOHNS	FL	12109	6.40
ST. LUCIE	FL	12111	7.00
SANTA ROSA	FL	12113	5.80
SARASOTA	FL	12115	7.00
SEMINOLE	FL	12117	6.80
SUMTER	FL	12119	6.80
SUWANNEE	FL	12121	6.40
TAYLOR	FL	12123	6.40
UNION	FL	12125	6.40
VOLUSIA	FL	12127	6.80
WAKULLA	FL	12129	6.00
WALTON	FL	12131	6.00
WASHINGTON	FL	12133	6.00
APPLING	GA	13001	6.00
ATKINSON	GA	13003	6.00
BACON	GA	13005	6.00
BAKER	GA	13007	5.80
BALDWIN	GA	13009	5.80
BANKS	GA	13011	5.60
BARROW	GA	13013	5.80
BARTOW	GA	13015	5.60
BEN HILL	GA	13017	6.00
BERRIEN	GA	13019	6.00
BIBB	GA	13021	5.80
BLECKLEY	GA	13023	5.80
BRANTLEY	GA	13025	6.00
BROOKS	GA	13027	6.00
BRYAN	GA	13029	6.00
BULLOCH	GA	13031	6.00
BURKE	GA	13033	6.00
BUTTS	GA	13035	5.80
CALHOUN	GA	13037	5.80
CAMDEN	GA	13039	6.00
CANDLER	GA	13043	6.00
CARROLL	GA	13045	5.60
CATOOSA	GA	13047	5.40
CHARLTON	GA	13049	6.00
CHATHAM	GA	13051	6.00
CHATTAHOOCHEE	GA	13053	5.80
CHATTOOGA	GA	13055	5.40
CHEROKEE	GA	13057	5.60
CLARKE	GA	13059	5.80
CLAY	GA	13061	5.80
CLAYTON	GA	13063	5.80
CLINCH	GA	13065	6.00
COBB	GA	13067	5.60
COFFEE	GA	13069	6.00
COLQUITT	GA	13071	6.00
COLUMBIA	GA	13073	5.80
COOK	GA	13075	6.00
COWETA	GA	13077	5.80
CRAWFORD	GA	13079	5.80
CRISP	GA	13081	5.80
DADE	GA	13083	5.40
DAWSON	GA	13085	5.60
DECATUR	GA	13087	6.00
DE KALB	GA	13089	5.80
DODGE	GA	13091	5.80
DOOLY	GA	13093	5.80
DOUGHERTY	GA	13095	5.80
DOUGLAS	GA	13097	5.60
EARLY	GA	13099	5.80
ECHOLS	GA	13101	6.00
EFFINGHAM	GA	13103	6.00
ELBERT	GA	13105	5.80
EMANUEL	GA	13107	6.00
EVANS	GA	13109	6.00
FANNIN	GA	13111	5.60
FAYETTE	GA	13113	5.80
FLOYD	GA	13115	5.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
FORSYTH	GA	13117	5.60
FRANKLIN	GA	13119	5.60
FULTON	GA	13121	5.80
GILMER	GA	13123	5.60
GLASCOCK	GA	13125	5.80
GLYNN	GA	13127	6.00
GORDON	GA	13129	5.60
GRADY	GA	13131	6.00
GREENE	GA	13133	5.80
GWINNETT	GA	13135	5.80
HABERSHAM	GA	13137	5.60
HALL	GA	13139	5.60
HANCOCK	GA	13141	5.80
HARALSON	GA	13143	5.60
HARRIS	GA	13145	5.80
HART	GA	13147	5.60
HEARD	GA	13149	5.60
HENRY	GA	13151	5.80
HOUSTON	GA	13153	5.80
IRWIN	GA	13155	6.00
JACKSON	GA	13157	5.80
JASPER	GA	13159	5.80
JEFF DAVIS	GA	13161	6.00
JEFFERSON	GA	13163	5.80
JENKINS	GA	13165	6.00
JOHNSON	GA	13167	5.80
JONES	GA	13169	5.80
LAMAR	GA	13171	5.80
LANIER	GA	13173	6.00
LAURENS	GA	13175	5.80
LEE	GA	13177	5.80
LIBERTY	GA	13179	6.00
LINCOLN	GA	13181	5.80
LONG	GA	13183	6.00
LOWNDES	GA	13185	6.00
LUMPKIN	GA	13187	5.60
MCDUFFIE	GA	13189	5.80
MCINTOSH	GA	13191	6.00
MACON	GA	13193	5.80
MADISON	GA	13195	5.80
MARION	GA	13197	5.80
MERIWETHER	GA	13199	5.80
MILLER	GA	13201	5.80
MITCHELL	GA	13205	5.80
MONROE	GA	13207	5.80
MONTGOMERY	GA	13209	6.00
MORGAN	GA	13211	5.80
MURRAY	GA	13213	5.40
MUSCOGEE	GA	13215	5.80
NEWTON	GA	13217	5.80
OCONEE	GA	13219	5.80
OGLETHORPE	GA	13221	5.80
PAULDING	GA	13223	5.60
PEACH	GA	13225	5.80
PICKENS	GA	13227	5.60
PIERCE	GA	13229	6.00
PIKE	GA	13231	5.80
POLK	GA	13233	5.60
PULASKI	GA	13235	5.80
PUTNAM	GA	13237	5.80
QUITMAN	GA	13239	5.80
RABUN	GA	13241	5.60
RANDOLPH	GA	13243	5.80
RICHMOND	GA	13245	6.00
ROCKDALE	GA	13247	5.80
SCHLEY	GA	13249	5.80
SCREVEN	GA	13251	6.00
SEMINOLE	GA	13253	6.00
SPALDING	GA	13255	5.80
STEPHENS	GA	13257	5.60
STEWART	GA	13259	5.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
SUMTER	GA	13261	5.80
TALBOT	GA	13263	5.80
TALIAFERRO	GA	13265	5.80
TATTNALL	GA	13267	6.00
TAYLOR	GA	13269	5.80
TELFAIR	GA	13271	6.00
TERRELL	GA	13273	5.80
THOMAS	GA	13275	6.00
TIFT	GA	13277	5.80
TOOMBS	GA	13279	6.00
TOWNS	GA	13281	5.60
TREUTLEN	GA	13283	6.00
TROUP	GA	13285	5.60
TURNER	GA	13287	5.80
TWIGGS	GA	13289	5.80
UNION	GA	13291	5.60
UPSON	GA	13293	5.80
WALKER	GA	13295	5.40
WALTON	GA	13297	5.80
WARE	GA	13299	6.00
WARREN	GA	13301	5.80
WASHINGTON	GA	13303	5.80
WAYNE	GA	13305	6.00
WEBSTER	GA	13307	5.80
WHEELER	GA	13309	6.00
WHITE	GA	13311	5.60
WHITFIELD	GA	13313	5.40
WILCOX	GA	13315	5.80
WILKES	GA	13317	5.80
WILKINSON	GA	13319	5.80
WORTH	GA	13321	5.80
ADA	ID	16001	1.70
ADAMS	ID	16003	2.00
BANNOCK	ID	16005	2.00
BEAR LAKE	ID	16007	2.20
BENEWAH	ID	16009	2.40
BINGHAM	ID	16011	2.00
BLAINE	ID	16013	1.80
BOISE	ID	16015	1.70
BONNER	ID	16017	2.40
BONNEVILLE	ID	16019	2.00
BOUNDARY	ID	16021	2.40
BUTTE	ID	16023	2.00
CAMAS	ID	16025	1.80
CANYON	ID	16027	1.70
CARIBOU	ID	16029	2.00
CASSIA	ID	16031	1.70
CLARK	ID	16033	2.00
CLEARWATER	ID	16035	2.00
CUSTER	ID	16037	1.80
ELMORE	ID	16039	1.70
FRANKLIN	ID	16041	2.00
FREMONT	ID	16043	2.00
GEM	ID	16045	1.70
GOODING	ID	16047	1.70
IDAHO	ID	16049	2.00
JEFFERSON	ID	16051	2.00
JEROME	ID	16053	1.70
KOOTENAI	ID	16055	2.40
LATAH	ID	16057	2.20
LEMHI	ID	16059	1.80
LEWIS	ID	16061	2.00
LINCOLN	ID	16063	1.70
MADISON	ID	16065	2.00
MINIDOKA	ID	16067	1.70
NEZ PERCE	ID	16069	2.00
ONEIDA	ID	16071	2.00
OWYHEE	ID	16073	1.80
PAYETTE	ID	16075	1.70
POWER	ID	16077	2.00
SHOSHONE	ID	16079	2.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
TETON	ID	16081	2.00
TWIN FALLS	ID	16083	1.70
VALLEY	ID	16085	1.80
WASHINGTON	ID	16087	1.70
ADAMS	IL	17001	3.20
ALEXANDER	IL	17003	4.00
BOND	IL	17005	3.60
BOONE	IL	17007	3.10
BROWN	IL	17009	3.40
BUREAU	IL	17011	3.40
CALHOUN	IL	17013	3.60
CARROLL	IL	17015	3.20
CASS	IL	17017	3.40
CHAMPAIGN	IL	17019	3.60
CHRISTIAN	IL	17021	3.60
CLARK	IL	17023	3.60
CLAY	IL	17025	3.60
CLINTON	IL	17027	3.60
COLES	IL	17029	3.60
COOK	IL	17031	3.20
CRAWFORD	IL	17033	3.60
CUMBERLAND	IL	17035	3.60
DE KALB	IL	17037	3.20
DE WITT	IL	17039	3.40
DOUGLAS	IL	17041	3.60
DU PAGE	IL	17043	3.20
EDGAR	IL	17045	3.60
EDWARDS	IL	17047	3.60
EFFINGHAM	IL	17049	3.60
FAYETTE	IL	17051	3.60
FORD	IL	17053	3.60
FRANKLIN	IL	17055	3.60
FULTON	IL	17057	3.40
GALLATIN	IL	17059	4.00
GREENE	IL	17061	3.60
GRUNDY	IL	17063	3.40
HAMILTON	IL	17065	3.60
HANCOCK	IL	17067	3.20
HARDIN	IL	17069	4.00
HENDERSON	IL	17071	3.20
HENRY	IL	17073	3.20
IROQUOIS	IL	17075	3.60
JACKSON	IL	17077	3.60
JASPER	IL	17079	3.60
JEFFERSON	IL	17081	3.60
JERSEY	IL	17083	3.60
JO DAVIESS	IL	17085	3.10
JOHNSON	IL	17087	4.00
KANE	IL	17089	3.20
KANKAKEE	IL	17091	3.40
KENDALL	IL	17093	3.20
KNOX	IL	17095	3.40
LAKE	IL	17097	3.10
LA SALLE	IL	17099	3.40
LAWRENCE	IL	17101	3.60
LEE	IL	17103	3.20
LIVINGSTON	IL	17105	3.40
LOGAN	IL	17107	3.40
MCDONOUGH	IL	17109	3.40
MCHENRY	IL	17111	3.10
MCLEAN	IL	17113	3.40
MACON	IL	17115	3.40
MACOUPIN	IL	17117	3.60
MADISON	IL	17119	3.60
MARION	IL	17121	3.60
MARSHALL	IL	17123	3.40
MASON	IL	17125	3.40
MASSAC	IL	17127	4.00
MENARD	IL	17129	3.40
MERCER	IL	17131	3.20
MONROE	IL	17133	3.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
MONTGOMERY	IL	17135	3.60
MORGAN	IL	17137	3.40
MOULTRIE	IL	17139	3.60
OGLE	IL	17141	3.20
PEORIA	IL	17143	3.40
PERRY	IL	17145	3.60
PIATT	IL	17147	3.40
PIKE	IL	17149	3.40
POPE	IL	17151	4.00
PULASKI	IL	17153	4.00
PUTNAM	IL	17155	3.40
RANDOLPH	IL	17157	3.60
RICHLAND	IL	17159	3.60
ROCK ISLAND	IL	17161	3.20
ST. CLAIR	IL	17163	3.60
SALINE	IL	17165	4.00
SANGAMON	IL	17167	3.40
SCHUYLER	IL	17169	3.40
SCOTT	IL	17171	3.40
SHELBY	IL	17173	3.60
STARK	IL	17175	3.40
STEPHENSON	IL	17177	3.10
TAZEWELL	IL	17179	3.40
UNION	IL	17181	4.00
VERMILION	IL	17183	3.60
WABASH	IL	17185	3.60
WARREN	IL	17187	3.20
WASHINGTON	IL	17189	3.60
WAYNE	IL	17191	3.60
WHITE	IL	17193	3.60
WHITESIDE	IL	17195	3.20
WILL	IL	17197	3.20
WILLIAMSON	IL	17199	4.00
WINNEBAGO	IL	17201	3.10
WOODFORD	IL	17203	3.40
ADAMS	IN	18001	3.30
ALLEN	IN	18003	3.30
BARTHOLOMEW	IN	18005	3.70
BENTON	IN	18007	3.60
BLACKFORD	IN	18009	3.30
BOONE	IN	18011	3.60
BROWN	IN	18013	3.70
CARROLL	IN	18015	3.60
CASS	IN	18017	3.30
CLARK	IN	18019	4.00
CLAY	IN	18021	3.60
CLINTON	IN	18023	3.60
CRAWFORD	IN	18025	4.00
DAVIESS	IN	18027	3.70
DEARBORN	IN	18029	3.70
DECATUR	IN	18031	3.70
DEKALB	IN	18033	3.30
DELAWARE	IN	18035	3.60
DUBOIS	IN	18037	3.70
ELKHART	IN	18039	3.30
FAYETTE	IN	18041	3.60
FLOYD	IN	18043	4.00
FOUNTAIN	IN	18045	3.60
FRANKLIN	IN	18047	3.70
FULTON	IN	18049	3.30
GIBSON	IN	18051	3.70
GRANT	IN	18053	3.30
GREENE	IN	18055	3.70
HAMILTON	IN	18057	3.60
HANCOCK	IN	18059	3.60
HARRISON	IN	18061	4.00
HENDRICKS	IN	18063	3.60
HENRY	IN	18065	3.60
HOWARD	IN	18067	3.60
HUNTINGTON	IN	18069	3.30
JACKSON	IN	18071	3.70

County/parish/city	State	FIPS code	Class I differential adjusted for location
JASPER	IN	18073	3.60
JAY	IN	18075	3.30
JEFFERSON	IN	18077	4.00
JENNINGS	IN	18079	3.70
JOHNSON	IN	18081	3.60
KNOX	IN	18083	3.70
KOSCIUSKO	IN	18085	3.30
LAGRANGE	IN	18087	3.30
LAKE	IN	18089	3.30
LA PORTE	IN	18091	3.30
LAWRENCE	IN	18093	3.70
MADISON	IN	18095	3.60
MARION	IN	18097	3.60
MARSHALL	IN	18099	3.30
MARTIN	IN	18101	3.70
MIAMI	IN	18103	3.30
MONROE	IN	18105	3.70
MONTGOMERY	IN	18107	3.60
MORGAN	IN	18109	3.60
NEWTON	IN	18111	3.60
NOBLE	IN	18113	3.30
OHIO	IN	18115	3.70
ORANGE	IN	18117	3.70
OWEN	IN	18119	3.60
PARKE	IN	18121	3.60
PERRY	IN	18123	4.00
PIKE	IN	18125	3.70
PORTER	IN	18127	3.30
POSEY	IN	18129	3.70
PULASKI	IN	18131	3.30
PUTNAM	IN	18133	3.60
RANDOLPH	IN	18135	3.60
RIPLEY	IN	18137	3.70
RUSH	IN	18139	3.60
ST. JOSEPH	IN	18141	3.30
SCOTT	IN	18143	4.00
SHELBY	IN	18145	3.60
SPENCER	IN	18147	4.00
STARKE	IN	18149	3.30
STEUBEN	IN	18151	3.30
SULLIVAN	IN	18153	3.70
SWITZERLAND	IN	18155	4.00
TIPPECANOE	IN	18157	3.60
TIPTON	IN	18159	3.60
UNION	IN	18161	3.60
VANDERBURGH	IN	18163	3.70
VERMILLION	IN	18165	3.60
VIGO	IN	18167	3.60
WABASH	IN	18169	3.30
WARREN	IN	18171	3.60
WARRICK	IN	18173	3.70
WASHINGTON	IN	18175	4.00
WAYNE	IN	18177	3.60
WELLS	IN	18179	3.30
WHITE	IN	18181	3.60
WHITLEY	IN	18183	3.30
ADAIR	IA	19001	2.70
ADAMS	IA	19003	2.90
ALLAMAKEE	IA	19005	2.90
APPANOOSE	IA	19007	2.90
AUDUBON	IA	19009	2.70
BENTON	IA	19011	2.90
BLACK HAWK	IA	19013	2.90
BOONE	IA	19015	2.70
BREMER	IA	19017	2.90
BUCHANAN	IA	19019	2.90
BUENA VISTA	IA	19021	2.60
BUTLER	IA	19023	2.90
CALHOUN	IA	19025	2.70
CARROLL	IA	19027	2.70
CASS	IA	19029	2.70

County/parish/city	State	FIPS code	Class I differential adjusted for location
CEDAR	IA	19031	3.10
CERRO GORDO	IA	19033	2.90
CHEROKEE	IA	19035	2.60
CHICKASAW	IA	19037	2.90
CLARKE	IA	19039	2.90
CLAY	IA	19041	2.60
CLAYTON	IA	19043	2.90
CLINTON	IA	19045	3.10
CRAWFORD	IA	19047	2.60
DALLAS	IA	19049	2.70
DAVIS	IA	19051	2.90
DECATUR	IA	19053	2.90
DELAWARE	IA	19055	2.90
DES MOINES	IA	19057	3.10
DICKINSON	IA	19059	2.70
DUBUQUE	IA	19061	3.10
EMMET	IA	19063	2.70
FAYETTE	IA	19065	2.90
FLOYD	IA	19067	2.90
FRANKLIN	IA	19069	2.70
FREMONT	IA	19071	2.70
GREENE	IA	19073	2.70
GRUNDY	IA	19075	2.90
GUTHRIE	IA	19077	2.70
HAMILTON	IA	19079	2.70
HANCOCK	IA	19081	2.70
HARDIN	IA	19083	2.70
HARRISON	IA	19085	2.60
HENRY	IA	19087	2.90
HOWARD	IA	19089	2.80
HUMBOLDT	IA	19091	2.70
IDA	IA	19093	2.60
IOWA	IA	19095	2.90
JACKSON	IA	19097	3.10
JASPER	IA	19099	2.90
JEFFERSON	IA	19101	2.90
JOHNSON	IA	19103	2.90
JONES	IA	19105	3.10
KEOKUK	IA	19107	2.90
KOSSUTH	IA	19109	2.70
LEE	IA	19111	3.10
LINN	IA	19113	2.90
LOUISA	IA	19115	3.10
LUCAS	IA	19117	2.90
LYON	IA	19119	2.60
MADISON	IA	19121	2.70
MAHASKA	IA	19123	2.90
MARION	IA	19125	2.90
MARSHALL	IA	19127	2.90
MILLS	IA	19129	2.70
MITCHELL	IA	19131	2.80
MONONA	IA	19133	2.60
MONROE	IA	19135	2.90
MONTGOMERY	IA	19137	2.70
MUSCATINE	IA	19139	3.10
O'BRIEN	IA	19141	2.60
OSCEOLA	IA	19143	2.70
PAGE	IA	19145	2.90
PALO ALTO	IA	19147	2.70
PLYMOUTH	IA	19149	2.60
POCAHONTAS	IA	19151	2.70
POLK	IA	19153	2.70
POTTAWATTAMIE	IA	19155	2.70
POWESHIEK	IA	19157	2.90
RINGGOLD	IA	19159	2.90
SAC	IA	19161	2.60
SCOTT	IA	19163	3.10
SHELBY	IA	19165	2.60
SIOUX	IA	19167	2.60
STORY	IA	19169	2.70
TAMA	IA	19171	2.90

County/parish/city	State	FIPS code	Class I differential adjusted for location
TAYLOR	IA	19173	2.90
UNION	IA	19175	2.90
VAN BUREN	IA	19177	2.90
WAPELLO	IA	19179	2.90
WARREN	IA	19181	2.70
WASHINGTON	IA	19183	2.90
WAYNE	IA	19185	2.90
WEBSTER	IA	19187	2.70
WINNEBAGO	IA	19189	2.70
WINNESHIEK	IA	19191	2.80
WOODBURY	IA	19193	2.60
WORTH	IA	19195	2.80
WRIGHT	IA	19197	2.70
ALLEN	KS	20001	2.90
ANDERSON	KS	20003	2.90
ATCHISON	KS	20005	2.90
BARBER	KS	20007	2.60
BARTON	KS	20009	2.60
BOURBON	KS	20011	3.20
BROWN	KS	20013	2.90
BUTLER	KS	20015	2.90
CHASE	KS	20017	2.70
CHAUTAUQUA	KS	20019	2.90
CHEROKEE	KS	20021	3.20
CHEYENNE	KS	20023	2.50
CLARK	KS	20025	2.60
CLAY	KS	20027	2.70
CLOUD	KS	20029	2.70
COFFEY	KS	20031	2.90
COMANCHE	KS	20033	2.60
COWLEY	KS	20035	2.90
CRAWFORD	KS	20037	3.20
DECATUR	KS	20039	2.50
DICKINSON	KS	20041	2.70
DONIPHAN	KS	20043	2.90
DOUGLAS	KS	20045	2.90
EDWARDS	KS	20047	2.60
ELK	KS	20049	2.90
ELLIS	KS	20051	2.50
ELLSWORTH	KS	20053	2.60
FINNEY	KS	20055	2.50
FORD	KS	20057	2.50
FRANKLIN	KS	20059	2.90
GEARY	KS	20061	2.70
GOVE	KS	20063	2.50
GRAHAM	KS	20065	2.50
GRANT	KS	20067	2.50
GRAY	KS	20069	2.50
GREELEY	KS	20071	2.50
GREENWOOD	KS	20073	2.90
HAMILTON	KS	20075	2.50
HARPER	KS	20077	2.90
HARVEY	KS	20079	2.90
HASKELL	KS	20081	2.50
HODGEMAN	KS	20083	2.50
JACKSON	KS	20085	2.90
JEFFERSON	KS	20087	2.90
JEWELL	KS	20089	2.60
JOHNSON	KS	20091	3.20
KEARNY	KS	20093	2.50
KINGMAN	KS	20095	2.90
KIOWA	KS	20097	2.60
LABETTE	KS	20099	3.20
LANE	KS	20101	2.50
LEAVENWORTH	KS	20103	2.90
LINCOLN	KS	20105	2.60
LINN	KS	20107	3.20
LOGAN	KS	20109	2.50
LYON	KS	20111	2.90
MCPHERSON	KS	20113	2.70
MARION	KS	20115	2.70

County/parish/city	State	FIPS code	Class I differential adjusted for location
MARSHALL	KS	20117	2.70
MEADE	KS	20119	2.50
MIAMI	KS	20121	3.20
MITCHELL	KS	20123	2.60
MONTGOMERY	KS	20125	3.20
MORRIS	KS	20127	2.70
MORTON	KS	20129	2.50
NEMAHA	KS	20131	2.70
NEOSHO	KS	20133	2.90
NESS	KS	20135	2.50
NORTON	KS	20137	2.50
OSAGE	KS	20139	2.90
OSBORNE	KS	20141	2.50
OTTAWA	KS	20143	2.70
PAWNEE	KS	20145	2.50
PHILLIPS	KS	20147	2.50
POTTAWATOMIE	KS	20149	2.70
PRATT	KS	20151	2.60
RAWLINS	KS	20153	2.50
RENO	KS	20155	2.90
REPUBLIC	KS	20157	2.60
RICE	KS	20159	2.60
RILEY	KS	20161	2.70
ROOKS	KS	20163	2.50
RUSH	KS	20165	2.50
RUSSELL	KS	20167	2.50
SALINE	KS	20169	2.70
SCOTT	KS	20171	2.50
SEDGWICK	KS	20173	2.90
SEWARD	KS	20175	2.50
SHAWNEE	KS	20177	2.90
SHERIDAN	KS	20179	2.50
SHERMAN	KS	20181	2.50
SMITH	KS	20183	2.50
STAFFORD	KS	20185	2.60
STANTON	KS	20187	2.50
STEVENS	KS	20189	2.50
SUMNER	KS	20191	2.90
THOMAS	KS	20193	2.50
TREGO	KS	20195	2.50
WABAUNSEE	KS	20197	2.90
WALLACE	KS	20199	2.50
WASHINGTON	KS	20201	2.70
WICHITA	KS	20203	2.50
WILSON	KS	20205	2.90
WOODSON	KS	20207	2.90
WYANDOTTE	KS	20209	3.20
ADAIR	KY	21001	4.20
ALLEN	KY	21003	4.20
ANDERSON	KY	21005	4.20
BALLARD	KY	21007	4.00
BARREN	KY	21009	4.20
BATH	KY	21011	4.20
BELL	KY	21013	4.80
BOONE	KY	21015	4.00
BOURBON	KY	21017	4.20
BOYD	KY	21019	4.20
BOYLE	KY	21021	4.20
BRACKEN	KY	21023	4.00
BREATHITT	KY	21025	4.50
BRECKINRIDGE	KY	21027	4.00
BULLITT	KY	21029	4.00
BUTLER	KY	21031	4.20
CALDWELL	KY	21033	4.00
CALLOWAY	KY	21035	4.20
CAMPBELL	KY	21037	4.00
CARLISLE	KY	21039	4.00
CARROLL	KY	21041	4.00
CARTER	KY	21043	4.20
CASEY	KY	21045	4.20
CHRISTIAN	KY	21047	4.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
CLARK	KY	21049	4.20
CLAY	KY	21051	4.50
CLINTON	KY	21053	4.50
CRITTENDEN	KY	21055	4.00
CUMBERLAND	KY	21057	4.50
DAVIESS	KY	21059	4.00
EDMONSON	KY	21061	4.20
ELLIOTT	KY	21063	4.20
ESTILL	KY	21065	4.20
FAYETTE	KY	21067	4.20
FLEMING	KY	21069	4.20
FLOYD	KY	21071	4.50
FRANKLIN	KY	21073	4.00
FULTON	KY	21075	4.00
GALLATIN	KY	21077	4.00
GARRARD	KY	21079	4.20
GRANT	KY	21081	4.00
GRAVES	KY	21083	4.20
GRAYSON	KY	21085	4.00
GREEN	KY	21087	4.20
GREENUP	KY	21089	4.20
HANCOCK	KY	21091	4.00
HARDIN	KY	21093	4.20
HARLAN	KY	21095	4.80
HARRISON	KY	21097	4.20
HART	KY	21099	4.20
HENDERSON	KY	21101	4.00
HENRY	KY	21103	4.00
HICKMAN	KY	21105	4.00
HOPKINS	KY	21107	4.00
JACKSON	KY	21109	4.20
JEFFERSON	KY	21111	4.00
JESSAMINE	KY	21113	4.20
JOHNSON	KY	21115	4.50
KENTON	KY	21117	4.00
KNOTT	KY	21119	4.50
KNOX	KY	21121	4.50
LARUE	KY	21123	4.20
LAUREL	KY	21125	4.50
LAWRENCE	KY	21127	4.20
LEE	KY	21129	4.20
LESLIE	KY	21131	4.50
LETCHER	KY	21133	4.80
LEWIS	KY	21135	4.20
LINCOLN	KY	21137	4.20
LIVINGSTON	KY	21139	4.00
LOGAN	KY	21141	4.20
LYON	KY	21143	4.00
MCCRACKEN	KY	21145	4.00
MCCREARY	KY	21147	4.50
MCLEAN	KY	21149	4.00
MADISON	KY	21151	4.20
MAGOFFIN	KY	21153	4.50
MARION	KY	21155	4.20
MARSHALL	KY	21157	4.00
MARTIN	KY	21159	4.50
MASON	KY	21161	4.20
MEADE	KY	21163	4.00
MENIFEE	KY	21165	4.20
MERCER	KY	21167	4.20
METCALFE	KY	21169	4.20
MONROE	KY	21171	4.50
MONTGOMERY	KY	21173	4.20
MORGAN	KY	21175	4.20
MUHLENBERG	KY	21177	4.00
NELSON	KY	21179	4.20
NICHOLAS	KY	21181	4.20
OHIO	KY	21183	4.00
OLDHAM	KY	21185	4.00
OWEN	KY	21187	4.00
OWSLEY	KY	21189	4.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
PENDLETON	KY	21191	4.00
PERRY	KY	21193	4.50
PIKE	KY	21195	4.50
POWELL	KY	21197	4.20
PULASKI	KY	21199	4.50
ROBERTSON	KY	21201	4.20
ROCKCASTLE	KY	21203	4.20
ROWAN	KY	21205	4.20
RUSSELL	KY	21207	4.50
SCOTT	KY	21209	4.00
SHELBY	KY	21211	4.00
SIMPSON	KY	21213	4.20
SPENCER	KY	21215	4.00
TAYLOR	KY	21217	4.20
TODD	KY	21219	4.20
TRIGG	KY	21221	4.20
TRIMBLE	KY	21223	4.00
UNION	KY	21225	4.00
WARREN	KY	21227	4.20
WASHINGTON	KY	21229	4.20
WAYNE	KY	21231	4.50
WEBSTER	KY	21233	4.00
WHITLEY	KY	21235	4.50
WOLFE	KY	21237	4.20
WOODFORD	KY	21239	4.20
ACADIA	LA	22001	5.20
ALLEN	LA	22003	4.90
ASCENSION	LA	22005	5.20
ASSUMPTION	LA	22007	5.20
AVOYELLES	LA	22009	5.20
BEAUREGARD	LA	22011	4.90
BIENVILLE	LA	22013	4.60
BOSSIER	LA	22015	4.30
CADDO	LA	22017	4.30
CALCASIEU	LA	22019	4.90
CALDWELL	LA	22021	4.90
CAMERON	LA	22023	4.90
CATAHOULA	LA	22025	5.20
CLAIBORNE	LA	22027	4.30
CONCORDIA	LA	22029	5.20
DE SOTO	LA	22031	4.30
EAST BATON ROUGE	LA	22033	5.20
EAST CARROLL	LA	22035	5.20
EAST FELICIANA	LA	22037	5.20
EVANGELINE	LA	22039	4.90
FRANKLIN	LA	22041	4.90
GRANT	LA	22043	4.90
IBERIA	LA	22045	5.20
IBERVILLE	LA	22047	5.20
JACKSON	LA	22049	4.60
JEFFERSON	LA	22051	5.60
JEFFERSON DAVIS	LA	22053	4.90
LAFAYETTE	LA	22055	5.20
LAFOURCHE	LA	22057	5.60
LA SALLE	LA	22059	4.90
LINCOLN	LA	22061	4.60
LIVINGSTON	LA	22063	5.40
MADISON	LA	22065	5.20
MOREHOUSE	LA	22067	4.90
NATCHITOCHES	LA	22069	4.60
ORLEANS	LA	22071	5.60
OUACHITA	LA	22073	4.90
PLAQUEMINES	LA	22075	5.60
POINTE COUPEE	LA	22077	5.20
RAPIDES	LA	22079	4.90
RED RIVER	LA	22081	4.60
RICHLAND	LA	22083	4.90
SABINE	LA	22085	4.60
ST. BERNARD	LA	22087	5.60
ST. CHARLES	LA	22089	5.60
ST. HELENA	LA	22091	5.40

County/parish/city	State	FIPS code	Class I differential adjusted for location
ST. JAMES	LA	22093	5.20
ST. JOHN THE BAPTIST	LA	22095	5.60
ST. LANDRY	LA	22097	5.20
ST. MARTIN	LA	22099	5.20
ST. MARY	LA	22101	5.20
ST. TAMMANY	LA	22103	5.60
TANGIPAHOA	LA	22105	5.40
TENSAS	LA	22107	5.20
TERREBONNE	LA	22109	5.60
UNION	LA	22111	4.60
VERMILION	LA	22113	5.20
VERNON	LA	22115	4.60
WASHINGTON	LA	22117	5.60
WEBSTER	LA	22119	4.30
WEST BATON ROUGE	LA	22121	5.20
WEST CARROLL	LA	22123	4.90
WEST FELICIANA	LA	22125	5.20
WINN	LA	22127	4.60
ANDROSCOGGIN	ME	23001	4.20
AROOSTOOK	ME	23003	3.90
CUMBERLAND	ME	23005	4.50
FRANKLIN	ME	23007	4.20
HANCOCK	ME	23009	3.90
KENNEBEC	ME	23011	4.20
KNOX	ME	23013	4.20
LINCOLN	ME	23015	4.20
OXFORD	ME	23017	4.20
PENOBSCOT	ME	23019	3.90
PISCATAQUIS	ME	23021	3.90
SAGADAHOC	ME	23023	4.20
SOMERSET	ME	23025	3.90
WALDO	ME	23027	3.90
WASHINGTON	ME	23029	3.90
YORK	ME	23031	4.50
ALLEGANY	MD	24001	4.10
ANNE ARUNDEL	MD	24003	4.60
BALTIMORE	MD	24005	4.40
CALVERT	MD	24009	4.80
CAROLINE	MD	24011	4.60
CARROLL	MD	24013	4.40
CECIL	MD	24015	4.40
CHARLES	MD	24017	4.80
DORCHESTER	MD	24019	4.80
FREDERICK	MD	24021	4.40
GARRETT	MD	24023	4.10
HARFORD	MD	24025	4.40
HOWARD	MD	24027	4.60
KENT	MD	24029	4.60
MONTGOMERY	MD	24031	4.60
PRINCE GEORGE'S	MD	24033	4.60
QUEEN ANNE'S	MD	24035	4.60
ST. MARY'S	MD	24037	4.80
SOMERSET	MD	24039	4.80
TALBOT	MD	24041	4.60
WASHINGTON	MD	24043	4.20
WICOMICO	MD	24045	4.80
WORCESTER	MD	24047	4.80
BALTIMORE CITY	MD	24510	4.60
BARNSTABLE	MA	25001	5.10
BERKSHIRE	MA	25003	4.50
BRISTOL	MA	25005	5.10
DUKES	MA	25007	5.10
ESSEX	MA	25009	5.10
FRANKLIN	MA	25011	4.70
HAMPDEN	MA	25013	4.70
HAMPSHIRE	MA	25015	4.70
MIDDLESEX	MA	25017	5.10
NANTUCKET	MA	25019	5.10
NORFOLK	MA	25021	5.10
PLYMOUTH	MA	25023	5.10
SUFFOLK	MA	25025	5.10

County/parish/city	State	FIPS code	Class I differential adjusted for location
WORCESTER	MA	25027	4.90
ALCONA	MI	26001	3.30
ALGER	MI	26003	3.00
ALLEGAN	MI	26005	3.30
ALPENA	MI	26007	3.30
ANTRIM	MI	26009	3.30
ARENAC	MI	26011	3.30
BARAGA	MI	26013	3.00
BARRY	MI	26015	3.30
BAY	MI	26017	3.30
BENZIE	MI	26019	3.30
BERRIEN	MI	26021	3.30
BRANCH	MI	26023	3.30
CALHOUN	MI	26025	3.30
CASS	MI	26027	3.30
CHARLEVOIX	MI	26029	3.30
CHEBOYGAN	MI	26031	3.30
CHIPPEWA	MI	26033	3.00
CLARE	MI	26035	3.30
CLINTON	MI	26037	3.30
CRAWFORD	MI	26039	3.30
DELTA	MI	26041	2.80
DICKINSON	MI	26043	2.80
EATON	MI	26045	3.30
EMMET	MI	26047	3.30
GENESEE	MI	26049	3.30
GLADWIN	MI	26051	3.30
GOGEBIC	MI	26053	2.80
GRAND TRAVERSE	MI	26055	3.30
GRATIOT	MI	26057	3.30
HILLSDALE	MI	26059	3.30
HOUGHTON	MI	26061	3.00
HURON	MI	26063	3.30
INGHAM	MI	26065	3.30
IONIA	MI	26067	3.30
IOSCO	MI	26069	3.30
IRON	MI	26071	2.80
ISABELLA	MI	26073	3.30
JACKSON	MI	26075	3.30
KALAMAZOO	MI	26077	3.30
KALKASKA	MI	26079	3.30
KENT	MI	26081	3.30
KEWEENAW	MI	26083	3.00
LAKE	MI	26085	3.30
LAPEER	MI	26087	3.30
LEELANAU	MI	26089	3.30
LENAWEE	MI	26091	3.30
LIVINGSTON	MI	26093	3.30
LUCE	MI	26095	3.00
MACKINAC	MI	26097	3.00
MACOMB	MI	26099	3.30
MANISTEE	MI	26101	3.30
MARQUETTE	MI	26103	3.00
MASON	MI	26105	3.30
MECOSTA	MI	26107	3.30
MENOMINEE	MI	26109	2.80
MIDLAND	MI	26111	3.30
MISSAUKEE	MI	26113	3.30
MONROE	MI	26115	3.30
MONTCALM	MI	26117	3.30
MONTMORENCY	MI	26119	3.30
MUSKEGON	MI	26121	3.30
NEWAYGO	MI	26123	3.30
OAKLAND	MI	26125	3.30
OCEANA	MI	26127	3.30
OGEMAW	MI	26129	3.30
ONTONAGON	MI	26131	2.80
OSCEOLA	MI	26133	3.30
OSCODA	MI	26135	3.30
OTSEGO	MI	26137	3.30
OTTAWA	MI	26139	3.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
PRESQUE ISLE	MI	26141	3.30
ROSCOMMON	MI	26143	3.30
SAGINAW	MI	26145	3.30
ST. CLAIR	MI	26147	3.30
ST. JOSEPH	MI	26149	3.30
SANILAC	MI	26151	3.30
SCHOOLCRAFT	MI	26153	3.00
SHIAWASSEE	MI	26155	3.30
TUSCOLA	MI	26157	3.30
VAN BUREN	MI	26159	3.30
WASHTENAW	MI	26161	3.30
WAYNE	MI	26163	3.30
WEXFORD	MI	26165	3.30
AITKIN	MN	27001	2.80
ANOKA	MN	27003	2.80
BECKER	MN	27005	2.80
BELTRAMI	MN	27007	2.30
BENTON	MN	27009	2.80
BIG STONE	MN	27011	2.70
BLUE EARTH	MN	27013	2.80
BROWN	MN	27015	2.80
CARLTON	MN	27017	2.80
CARVER	MN	27019	2.80
CASS	MN	27021	2.80
CHIPPEWA	MN	27023	2.80
CHISAGO	MN	27025	2.80
CLAY	MN	27027	2.80
CLEARWATER	MN	27029	2.30
COOK	MN	27031	2.30
COTTONWOOD	MN	27033	2.80
CROW WING	MN	27035	2.80
DAKOTA	MN	27037	2.90
DODGE	MN	27039	2.80
DOUGLAS	MN	27041	2.80
FARIBAULT	MN	27043	2.80
FILLMORE	MN	27045	2.80
FREEBORN	MN	27047	2.80
GOODHUE	MN	27049	2.80
GRANT	MN	27051	2.80
HENNEPIN	MN	27053	2.90
HOUSTON	MN	27055	2.80
HUBBARD	MN	27057	2.80
ISANTI	MN	27059	2.80
ITASCA	MN	27061	2.30
JACKSON	MN	27063	2.80
KANABEC	MN	27065	2.80
KANDIYOHI	MN	27067	2.80
KITTSON	MN	27069	2.30
KOOCHICHING	MN	27071	2.30
LAC QUI PARLE	MN	27073	2.70
LAKE	MN	27075	2.30
LAKE OF THE WOODS	MN	27077	2.30
LE SUEUR	MN	27079	2.80
LINCOLN	MN	27081	2.60
LYON	MN	27083	2.70
MCLEOD	MN	27085	2.80
MAHNOMEN	MN	27087	2.60
MARSHALL	MN	27089	2.30
MARTIN	MN	27091	2.80
MEEKER	MN	27093	2.80
MILLE LACS	MN	27095	2.80
MORRISON	MN	27097	2.80
MOWER	MN	27099	2.80
MURRAY	MN	27101	2.70
NICOLLET	MN	27103	2.80
NOBLES	MN	27105	2.70
NORMAN	MN	27107	2.60
OLMSTED	MN	27109	2.80
OTTER TAIL	MN	27111	2.80
PENNINGTON	MN	27113	2.30
PINE	MN	27115	2.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
PIPESTONE	MN	27117	2.60
POLK	MN	27119	2.30
POPE	MN	27121	2.80
RAMSEY	MN	27123	2.90
RED LAKE	MN	27125	2.30
REDWOOD	MN	27127	2.80
RENVILLE	MN	27129	2.80
RICE	MN	27131	2.80
ROCK	MN	27133	2.60
ROSEAU	MN	27135	2.30
ST. LOUIS	MN	27137	2.30
SCOTT	MN	27139	2.90
SHERBURNE	MN	27141	2.80
SIBLEY	MN	27143	2.80
STEARNS	MN	27145	2.80
STEELE	MN	27147	2.80
STEVENS	MN	27149	2.80
SWIFT	MN	27151	2.80
TODD	MN	27153	2.80
TRAVERSE	MN	27155	2.70
WABASHA	MN	27157	2.80
WADENA	MN	27159	2.80
WASECA	MN	27161	2.80
WASHINGTON	MN	27163	2.90
WATONWAN	MN	27165	2.80
WILKIN	MN	27167	2.80
WINONA	MN	27169	2.80
WRIGHT	MN	27171	2.80
YELLOW MEDICINE	MN	27173	2.70
ADAMS	MS	28001	5.20
ALCORN	MS	28003	4.90
AMITE	MS	28005	5.40
ATTALA	MS	28007	5.20
BENTON	MS	28009	4.90
BOLIVAR	MS	28011	4.90
CALHOUN	MS	28013	5.20
CARROLL	MS	28015	5.20
CHICKASAW	MS	28017	5.20
CHOCTAW	MS	28019	5.20
CLAIBORNE	MS	28021	5.20
CLARKE	MS	28023	5.60
CLAY	MS	28025	5.20
COAHOMA	MS	28027	4.90
COPIAH	MS	28029	5.40
COVINGTON	MS	28031	5.60
DE SOTO	MS	28033	4.60
FORREST	MS	28035	5.80
FRANKLIN	MS	28037	5.20
GEORGE	MS	28039	5.80
GREENE	MS	28041	5.80
GRENADA	MS	28043	5.20
HANCOCK	MS	28045	5.80
HARRISON	MS	28047	5.80
HINDS	MS	28049	5.40
HOLMES	MS	28051	5.20
HUMPHREYS	MS	28053	5.20
ISSAQUENA	MS	28055	5.20
ITAWAMBA	MS	28057	5.20
JACKSON	MS	28059	5.80
JASPER	MS	28061	5.60
JEFFERSON	MS	28063	5.20
JEFFERSON DAVIS	MS	28065	5.60
JONES	MS	28067	5.60
KEMPER	MS	28069	5.40
LAFAYETTE	MS	28071	4.90
LAMAR	MS	28073	5.80
LAUDERDALE	MS	28075	5.60
LAWRENCE	MS	28077	5.60
LEAKE	MS	28079	5.40
LEE	MS	28081	5.20
LEFLORE	MS	28083	5.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
LINCOLN	MS	28085	5.40
LOWNDES	MS	28087	5.20
MADISON	MS	28089	5.40
MARION	MS	28091	5.60
MARSHALL	MS	28093	4.90
MONROE	MS	28095	5.20
MONTGOMERY	MS	28097	5.20
NESHOBA	MS	28099	5.40
NEWTON	MS	28101	5.60
NOXUBEE	MS	28103	5.40
OKTIBBEHA	MS	28105	5.20
PANOLA	MS	28107	4.90
PEARL RIVER	MS	28109	5.80
PERRY	MS	28111	5.80
PIKE	MS	28113	5.40
PONTOTOC	MS	28115	4.90
PRENTISS	MS	28117	4.90
QUITMAN	MS	28119	4.90
RANKIN	MS	28121	5.40
SCOTT	MS	28123	5.40
SHARKEY	MS	28125	5.20
SIMPSON	MS	28127	5.60
SMITH	MS	28129	5.60
STONE	MS	28131	5.80
SUNFLOWER	MS	28133	4.90
TALLAHATCHIE	MS	28135	4.90
TATE	MS	28137	4.90
TIPPAH	MS	28139	4.90
TISHOMINGO	MS	28141	4.90
TUNICA	MS	28143	4.60
UNION	MS	28145	4.90
WALTHALL	MS	28147	5.60
WARREN	MS	28149	5.20
WASHINGTON	MS	28151	4.90
WAYNE	MS	28153	5.80
WEBSTER	MS	28155	5.20
WILKINSON	MS	28157	5.20
WINSTON	MS	28159	5.40
YALOBUSHA	MS	28161	4.90
YAZOO	MS	28163	5.20
ADAIR	MO	29001	3.20
ANDREW	MO	29003	2.90
ATCHISON	MO	29005	2.70
AUDRAIN	MO	29007	3.40
BARRY	MO	29009	3.20
BARTON	MO	29011	3.20
BATES	MO	29013	3.20
BENTON	MO	29015	3.20
BOLLINGER	MO	29017	3.60
BOONE	MO	29019	3.40
BUCHANAN	MO	29021	3.20
BUTLER	MO	29023	4.00
CALDWELL	MO	29025	3.20
CALLAWAY	MO	29027	3.40
CAMDEN	MO	29029	3.40
CAPE GIRARDEAU	MO	29031	3.60
CARROLL	MO	29033	3.20
CARTER	MO	29035	4.00
CASS	MO	29037	3.20
CEDAR	MO	29039	3.20
CHARITON	MO	29041	3.20
CHRISTIAN	MO	29043	3.30
CLARK	MO	29045	3.20
CLAY	MO	29047	3.20
CLINTON	MO	29049	3.20
COLE	MO	29051	3.40
COOPER	MO	29053	3.40
CRAWFORD	MO	29055	3.60
DADE	MO	29057	3.20
DALLAS	MO	29059	3.30
DAVIESS	MO	29061	3.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
DE KALB	MO	29063	3.20
DENT	MO	29065	3.60
DOUGLAS	MO	29067	3.30
DUNKLIN	MO	29069	4.30
FRANKLIN	MO	29071	3.60
GASCONADE	MO	29073	3.60
GENTRY	MO	29075	2.90
GREENE	MO	29077	3.20
GRUNDY	MO	29079	3.20
HARRISON	MO	29081	2.90
HENRY	MO	29083	3.20
HICKORY	MO	29085	3.20
HOLT	MO	29087	2.90
HOWARD	MO	29089	3.40
HOWELL	MO	29091	3.60
IRON	MO	29093	3.60
JACKSON	MO	29095	3.20
JASPER	MO	29097	3.20
JEFFERSON	MO	29099	3.60
JOHNSON	MO	29101	3.20
KNOX	MO	29103	3.20
LACLEDE	MO	29105	3.30
LAFAYETTE	MO	29107	3.20
LAWRENCE	MO	29109	3.20
LEWIS	MO	29111	3.20
LINCOLN	MO	29113	3.60
LINN	MO	29115	3.20
LIVINGSTON	MO	29117	3.20
MCDONALD	MO	29119	3.20
MACON	MO	29121	3.20
MADISON	MO	29123	3.60
MARIES	MO	29125	3.60
MARION	MO	29127	3.20
MERCER	MO	29129	2.90
MILLER	MO	29131	3.40
MISSISSIPPI	MO	29133	4.00
MONITEAU	MO	29135	3.40
MONROE	MO	29137	3.40
MONTGOMERY	MO	29139	3.40
MORGAN	MO	29141	3.40
NEW MADRID	MO	29143	4.00
NEWTON	MO	29145	3.20
NODAWAY	MO	29147	2.90
OREGON	MO	29149	4.00
OSAGE	MO	29151	3.60
OZARK	MO	29153	3.60
PEMISCOT	MO	29155	4.30
PERRY	MO	29157	3.60
PETTIS	MO	29159	3.40
PHELPS	MO	29161	3.60
PIKE	MO	29163	3.40
PLATTE	MO	29165	3.20
POLK	MO	29167	3.20
PULASKI	MO	29169	3.40
PUTNAM	MO	29171	2.90
RALLS	MO	29173	3.40
RANDOLPH	MO	29175	3.40
RAY	MO	29177	3.20
REYNOLDS	MO	29179	3.60
RIPLEY	MO	29181	4.00
ST. CHARLES	MO	29183	3.60
ST. CLAIR	MO	29185	3.20
STE. GENEVIEVE	MO	29186	3.60
ST. FRANCOIS	MO	29187	3.60
ST. LOUIS	MO	29189	3.60
SALINE	MO	29195	3.40
SCHUYLER	MO	29197	3.20
SCOTLAND	MO	29199	3.20
SCOTT	MO	29201	4.00
SHANNON	MO	29203	3.60
SHELBY	MO	29205	3.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
STODDARD	MO	29207	4.00
STONE	MO	29209	3.30
SULLIVAN	MO	29211	3.20
TANEY	MO	29213	3.30
TEXAS	MO	29215	3.60
VERNON	MO	29217	3.20
WARREN	MO	29219	3.60
WASHINGTON	MO	29221	3.60
WAYNE	MO	29223	4.00
WEBSTER	MO	29225	3.20
WORTH	MO	29227	2.90
WRIGHT	MO	29229	3.30
ST. LOUIS CITY	MO	29510	3.60
BEAVERHEAD	MT	30001	1.80
BIG HORN	MT	30003	2.40
BLAINE	MT	30005	2.00
BROADWATER	MT	30007	1.80
CARBON	MT	30009	2.40
CARTER	MT	30011	2.40
CASCADE	MT	30013	1.80
CHOUTEAU	MT	30015	1.80
CUSTER	MT	30017	2.40
DANIELS	MT	30019	2.30
DAWSON	MT	30021	2.40
DEER LODGE	MT	30023	1.80
FALLON	MT	30025	2.40
FERGUS	MT	30027	2.00
FLATHEAD	MT	30029	2.00
GALLATIN	MT	30031	2.00
GARFIELD	MT	30033	2.40
GLACIER	MT	30035	1.80
GOLDEN VALLEY	MT	30037	2.00
GRANITE	MT	30039	1.80
HILL	MT	30041	1.80
JEFFERSON	MT	30043	1.80
JUDITH BASIN	MT	30045	2.00
LAKE	MT	30047	2.00
LEWIS AND CLARK	MT	30049	1.70
LIBERTY	MT	30051	1.80
LINCOLN	MT	30053	2.00
MCCONE	MT	30055	2.40
MADISON	MT	30057	1.80
MEAGHER	MT	30059	1.80
MINERAL	MT	30061	2.00
MISSOULA	MT	30063	1.80
MUSSELSHELL	MT	30065	2.40
PARK	MT	30067	2.00
PETROLEUM	MT	30069	2.40
PHILLIPS	MT	30071	2.30
PONDERA	MT	30073	1.70
POWDER RIVER	MT	30075	2.40
POWELL	MT	30077	1.80
PRAIRIE	MT	30079	2.40
RAVALLI	MT	30081	1.80
RICHLAND	MT	30083	2.40
ROOSEVELT	MT	30085	2.30
ROSEBUD	MT	30087	2.40
SANDERS	MT	30089	2.00
SHERIDAN	MT	30091	2.30
SILVER BOW	MT	30093	1.80
STILLWATER	MT	30095	2.40
SWEET GRASS	MT	30097	2.00
TETON	MT	30099	1.70
TOOLE	MT	30101	1.80
TREASURE	MT	30103	2.40
VALLEY	MT	30105	2.30
WHEATLAND	MT	30107	2.00
WIBAUX	MT	30109	2.40
YELLOWSTONE	MT	30111	2.40
ADAMS	NE	31001	2.60
ANTELOPE	NE	31003	2.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
ARTHUR	NE	31005	2.40
BANNER	NE	31007	2.40
BLAINE	NE	31009	2.50
BOONE	NE	31011	2.60
BOX BUTTE	NE	31013	2.40
BOYD	NE	31015	2.50
BROWN	NE	31017	2.50
BUFFALO	NE	31019	2.50
BURT	NE	31021	2.60
BUTLER	NE	31023	2.60
CASS	NE	31025	2.70
CEDAR	NE	31027	2.60
CHASE	NE	31029	2.50
CHERRY	NE	31031	2.40
CHEYENNE	NE	31033	2.40
CLAY	NE	31035	2.60
COLFAX	NE	31037	2.60
CUMING	NE	31039	2.60
CUSTER	NE	31041	2.50
DAKOTA	NE	31043	2.60
DAWES	NE	31045	2.40
DAWSON	NE	31047	2.50
DEUEL	NE	31049	2.40
DIXON	NE	31051	2.60
DODGE	NE	31053	2.60
DOUGLAS	NE	31055	2.70
DUNDY	NE	31057	2.50
FILLMORE	NE	31059	2.60
FRANKLIN	NE	31061	2.60
FRONTIER	NE	31063	2.50
FURNAS	NE	31065	2.50
GAGE	NE	31067	2.70
GARDEN	NE	31069	2.40
GARFIELD	NE	31071	2.50
GOSPER	NE	31073	2.50
GRANT	NE	31075	2.40
GREELEY	NE	31077	2.60
HALL	NE	31079	2.60
HAMILTON	NE	31081	2.60
HARLAN	NE	31083	2.50
HAYES	NE	31085	2.50
HITCHCOCK	NE	31087	2.50
HOLT	NE	31089	2.50
HOOKER	NE	31091	2.40
HOWARD	NE	31093	2.60
JEFFERSON	NE	31095	2.60
JOHNSON	NE	31097	2.70
KEARNEY	NE	31099	2.60
KEITH	NE	31101	2.50
KEYA PAHA	NE	31103	2.50
KIMBALL	NE	31105	2.40
KNOX	NE	31107	2.60
LANCASTER	NE	31109	2.60
LINCOLN	NE	31111	2.50
LOGAN	NE	31113	2.40
LOUP	NE	31115	2.50
MCPHERSON	NE	31117	2.40
MADISON	NE	31119	2.60
MERRICK	NE	31121	2.60
MORRILL	NE	31123	2.40
NANCE	NE	31125	2.60
NEMAHA	NE	31127	2.70
NUCKOLLS	NE	31129	2.60
OTOE	NE	31131	2.70
PAWNEE	NE	31133	2.70
PERKINS	NE	31135	2.50
PHELPS	NE	31137	2.50
PIERCE	NE	31139	2.60
PLATTE	NE	31141	2.60
POLK	NE	31143	2.60
RED WILLOW	NE	31145	2.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
RICHARDSON	NE	31147	2.70
ROCK	NE	31149	2.50
SALINE	NE	31151	2.60
SARPY	NE	31153	2.70
SAUNDERS	NE	31155	2.60
SCOTTS BLUFF	NE	31157	2.40
SEWARD	NE	31159	2.60
SHERIDAN	NE	31161	2.40
SHERMAN	NE	31163	2.50
SIOUX	NE	31165	2.40
STANTON	NE	31167	2.60
THAYER	NE	31169	2.60
THOMAS	NE	31171	2.40
THURSTON	NE	31173	2.60
VALLEY	NE	31175	2.50
WASHINGTON	NE	31177	2.60
WAYNE	NE	31179	2.60
WEBSTER	NE	31181	2.60
WHEELER	NE	31183	2.50
YORK	NE	31185	2.60
CHURCHILL	NV	32001	1.90
CLARK	NV	32003	2.60
DOUGLAS	NV	32005	1.80
ELKO	NV	32007	2.00
ESMERALDA	NV	32009	2.20
EUREKA	NV	32011	2.20
HUMBOLDT	NV	32013	1.90
LANDER	NV	32015	2.00
LINCOLN	NV	32017	2.50
LYON	NV	32019	1.90
MINERAL	NV	32021	2.00
NYE	NV	32023	2.20
PERSHING	NV	32027	1.90
STOREY	NV	32029	1.90
WASHOE	NV	32031	2.00
WHITE PINE	NV	32033	2.20
CARSON CITY	NV	32510	1.90
BELKNAP	NH	33001	4.50
CARROLL	NH	33003	4.50
CHESHIRE	NH	33005	4.50
COOS	NH	33007	4.20
GRAFTON	NH	33009	4.40
HILLSBOROUGH	NH	33011	4.50
MERRIMACK	NH	33013	4.50
ROCKINGHAM	NH	33015	4.50
STRAFFORD	NH	33017	4.50
SULLIVAN	NH	33019	4.50
ATLANTIC	NJ	34001	4.70
BERGEN	NJ	34003	5.00
BURLINGTON	NJ	34005	4.70
CAMDEN	NJ	34007	4.70
CAPE MAY	NJ	34009	4.70
CUMBERLAND	NJ	34011	4.70
ESSEX	NJ	34013	5.00
GLOUCESTER	NJ	34015	4.70
HUDSON	NJ	34017	5.00
HUNTERDON	NJ	34019	4.70
MERCER	NJ	34021	4.70
MIDDLESEX	NJ	34023	4.90
MONMOUTH	NJ	34025	4.90
MORRIS	NJ	34027	4.90
OCEAN	NJ	34029	4.90
PASSAIC	NJ	34031	5.00
SALEM	NJ	34033	4.70
SOMERSET	NJ	34035	4.90
SUSSEX	NJ	34037	4.70
UNION	NJ	34039	5.00
WARREN	NJ	34041	4.70
BERNALILLO	NM	35001	2.50
CATRON	NM	35003	2.30
CHAVES	NM	35005	2.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
CIBOLA	NM	35006	2.30
COLFAX	NM	35007	2.50
CURRY	NM	35009	2.50
DE BACA	NM	35011	2.50
DONA ANA	NM	35013	2.50
EDDY	NM	35015	2.50
GRANT	NM	35017	2.50
GUADALUPE	NM	35019	2.50
HARDING	NM	35021	2.50
HIDALGO	NM	35023	2.50
LEA	NM	35025	2.50
LINCOLN	NM	35027	2.50
LOS ALAMOS	NM	35028	2.50
LUNA	NM	35029	2.50
MCKINLEY	NM	35031	2.30
MORA	NM	35033	2.50
OTERO	NM	35035	2.50
QUAY	NM	35037	2.50
RIO ARRIBA	NM	35039	2.30
ROOSEVELT	NM	35041	2.50
SANDOVAL	NM	35043	2.50
SAN JUAN	NM	35045	2.30
SAN MIGUEL	NM	35047	2.50
SANTA FE	NM	35049	2.50
SIERRA	NM	35051	2.50
SOCORRO	NM	35053	2.50
TAOS	NM	35055	2.50
TORRANCE	NM	35057	2.50
UNION	NM	35059	2.50
VALENCIA	NM	35061	2.50
ALBANY	NY	36001	4.40
ALLEGANY	NY	36003	3.90
BRONX	NY	36005	5.10
BROOME	NY	36007	4.00
CATTARAUGUS	NY	36009	3.90
CAYUGA	NY	36011	3.90
CHAUTAUQUA	NY	36013	3.90
CHEMUNG	NY	36015	4.00
CHENANGO	NY	36017	4.00
CLINTON	NY	36019	4.20
COLUMBIA	NY	36021	4.40
CORTLAND	NY	36023	3.90
DELAWARE	NY	36025	4.20
DUTCHESS	NY	36027	4.70
ERIE	NY	36029	3.90
ESSEX	NY	36031	4.20
FRANKLIN	NY	36033	4.10
FULTON	NY	36035	4.10
GENESEE	NY	36037	3.90
GREENE	NY	36039	4.40
HAMILTON	NY	36041	4.10
HERKIMER	NY	36043	4.00
JEFFERSON	NY	36045	3.90
KINGS	NY	36047	5.10
LEWIS	NY	36049	3.90
LIVINGSTON	NY	36051	3.90
MADISON	NY	36053	3.90
MONROE	NY	36055	3.90
MONTGOMERY	NY	36057	4.10
NASSAU	NY	36059	5.10
NEW YORK	NY	36061	5.10
NIAGARA	NY	36063	3.90
ONEIDA	NY	36065	3.90
ONONDAGA	NY	36067	3.90
ONTARIO	NY	36069	3.90
ORANGE	NY	36071	4.70
ORLEANS	NY	36073	3.90
OSWEGO	NY	36075	3.90
OTSEGO	NY	36077	4.10
PUTNAM	NY	36079	4.70
QUEENS	NY	36081	5.10

County/parish/city	State	FIPS code	Class I differential adjusted for location
RENSSELAER	NY	36083	4.40
RICHMOND	NY	36085	5.10
ROCKLAND	NY	36087	5.00
ST. LAWRENCE	NY	36089	3.90
SARATOGA	NY	36091	4.20
SCHENECTADY	NY	36093	4.20
SCHOHARIE	NY	36095	4.20
SCHUYLER	NY	36097	3.90
SENECA	NY	36099	3.90
STEUBEN	NY	36101	3.90
SUFFOLK	NY	36103	5.10
SULLIVAN	NY	36105	4.40
TIOGA	NY	36107	4.00
TOMPKINS	NY	36109	3.90
ULSTER	NY	36111	4.40
WARREN	NY	36113	4.20
WASHINGTON	NY	36115	4.20
WAYNE	NY	36117	3.90
WESTCHESTER	NY	36119	5.00
WYOMING	NY	36121	3.90
YATES	NY	36123	3.90
ALAMANCE	NC	37001	5.40
ALEXANDER	NC	37003	5.60
ALLEGHANY	NC	37005	5.40
ANSON	NC	37007	5.80
ASHE	NC	37009	5.40
AVERY	NC	37011	5.40
BEAUFORT	NC	37013	5.80
BERTIE	NC	37015	5.60
BLADEN	NC	37017	5.80
BRUNSWICK	NC	37019	6.00
BUNCOMBE	NC	37021	5.40
BURKE	NC	37023	5.60
CABARRUS	NC	37025	5.60
CALDWELL	NC	37027	5.60
CAMDEN	NC	37029	5.60
CARTERET	NC	37031	6.00
CASWELL	NC	37033	5.40
CATAWBA	NC	37035	5.60
CHATHAM	NC	37037	5.60
CHEROKEE	NC	37039	5.40
CHOWAN	NC	37041	5.60
CLAY	NC	37043	5.60
CLEVELAND	NC	37045	5.60
COLUMBUS	NC	37047	6.00
CRAVEN	NC	37049	6.00
CUMBERLAND	NC	37051	5.80
CURRITUCK	NC	37053	5.60
DARE	NC	37055	5.80
DAVIDSON	NC	37057	5.60
DAVIE	NC	37059	5.60
DUPLIN	NC	37061	5.80
DURHAM	NC	37063	5.40
EDGECOMBE	NC	37065	5.60
FORSYTH	NC	37067	5.40
FRANKLIN	NC	37069	5.60
GASTON	NC	37071	5.60
GATES	NC	37073	5.60
GRAHAM	NC	37075	5.40
GRANVILLE	NC	37077	5.40
GREENE	NC	37079	5.80
GUILFORD	NC	37081	5.40
HALIFAX	NC	37083	5.60
HARNETT	NC	37085	5.80
HAYWOOD	NC	37087	5.40
HENDERSON	NC	37089	5.60
HERTFORD	NC	37091	5.60
HOKE	NC	37093	5.80
HYDE	NC	37095	5.80
IREDELL	NC	37097	5.60
JACKSON	NC	37099	5.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
JOHNSTON	NC	37101	5.80
JONES	NC	37103	6.00
LEE	NC	37105	5.60
LENOIR	NC	37107	5.80
LINCOLN	NC	37109	5.60
MCDOWELL	NC	37111	5.60
MACON	NC	37113	5.60
MADISON	NC	37115	5.40
MARTIN	NC	37117	5.80
MECKLENBURG	NC	37119	5.60
MITCHELL	NC	37121	5.40
MONTGOMERY	NC	37123	5.60
MOORE	NC	37125	5.60
NASH	NC	37127	5.60
NEW HANOVER	NC	37129	6.00
NORTHAMPTON	NC	37131	5.60
ONSLOW	NC	37133	6.00
ORANGE	NC	37135	5.40
PAMLICO	NC	37137	6.00
PASQUOTANK	NC	37139	5.60
PENDER	NC	37141	6.00
PERQUIMANS	NC	37143	5.60
PERSON	NC	37145	5.40
PITT	NC	37147	5.80
POLK	NC	37149	5.60
RANDOLPH	NC	37151	5.60
RICHMOND	NC	37153	5.80
ROBESON	NC	37155	5.80
ROCKINGHAM	NC	37157	5.40
ROWAN	NC	37159	5.60
RUTHERFORD	NC	37161	5.60
SAMPSON	NC	37163	5.80
SCOTLAND	NC	37165	5.80
STANLY	NC	37167	5.60
STOKES	NC	37169	5.40
SURRY	NC	37171	5.40
SWAIN	NC	37173	5.40
TRANSYLVANIA	NC	37175	5.60
TYRRELL	NC	37177	5.80
UNION	NC	37179	5.80
VANCE	NC	37181	5.40
WAKE	NC	37183	5.60
WARREN	NC	37185	5.40
WASHINGTON	NC	37187	5.80
WATAUGA	NC	37189	5.40
WAYNE	NC	37191	5.80
WILKES	NC	37193	5.40
WILSON	NC	37195	5.80
YADKIN	NC	37197	5.40
YANCEY	NC	37199	5.40
ADAMS	ND	38001	2.40
BARNES	ND	38003	2.60
BENSON	ND	38005	2.30
BILLINGS	ND	38007	2.40
BOTTINEAU	ND	38009	2.30
BOWMAN	ND	38011	2.40
BURKE	ND	38013	2.30
BURLEIGH	ND	38015	2.40
CASS	ND	38017	2.80
CAVALIER	ND	38019	2.30
DICKEY	ND	38021	2.60
DIVIDE	ND	38023	2.30
DUNN	ND	38025	2.40
EDDY	ND	38027	2.40
EMMONS	ND	38029	2.40
FOSTER	ND	38031	2.40
GOLDEN VALLEY	ND	38033	2.40
GRAND FORKS	ND	38035	2.30
GRANT	ND	38037	2.40
GRIGGS	ND	38039	2.60
HETTINGER	ND	38041	2.40

County/parish/city	State	FIPS code	Class I differential adjusted for location
KIDDER	ND	38043	2.40
LA MOURE	ND	38045	2.60
LOGAN	ND	38047	2.40
MCHENRY	ND	38049	2.30
MCINTOSH	ND	38051	2.40
MCKENZIE	ND	38053	2.40
MCLEAN	ND	38055	2.40
MERCER	ND	38057	2.40
MORTON	ND	38059	2.40
MOUNTRAIL	ND	38061	2.30
NELSON	ND	38063	2.30
OLIVER	ND	38065	2.40
PEMBINA	ND	38067	2.30
PIERCE	ND	38069	2.30
RAMSEY	ND	38071	2.30
RANSOM	ND	38073	2.60
RENVILLE	ND	38075	2.30
RICHLAND	ND	38077	2.60
ROLETTE	ND	38079	2.30
SARGENT	ND	38081	2.60
SHERIDAN	ND	38083	2.40
SIOUX	ND	38085	2.40
SLOPE	ND	38087	2.40
STARK	ND	38089	2.40
STEELE	ND	38091	2.60
STUTSMAN	ND	38093	2.40
TOWNER	ND	38095	2.30
TRAILL	ND	38097	2.60
WALSH	ND	38099	2.30
WARD	ND	38101	2.30
WELLS	ND	38103	2.40
WILLIAMS	ND	38105	2.30
ADAMS	OH	39001	4.00
ALLEN	OH	39003	3.30
ASHLAND	OH	39005	3.80
ASHTABULA	OH	39007	3.80
ATHENS	OH	39009	4.00
AUGLAIZE	OH	39011	3.60
BELMONT	OH	39013	3.80
BROWN	OH	39015	4.00
BUTLER	OH	39017	3.80
CARROLL	OH	39019	3.80
CHAMPAIGN	OH	39021	3.60
CLARK	OH	39023	3.60
CLERMONT	OH	39025	4.00
CLINTON	OH	39027	3.80
COLUMBIANA	OH	39029	4.00
COSHOCTON	OH	39031	3.80
CRAWFORD	OH	39033	3.60
CUYAHOGA	OH	39035	3.80
DARKE	OH	39037	3.60
DEFIANCE	OH	39039	3.30
DELAWARE	OH	39041	3.60
ERIE	OH	39043	3.60
FAIRFIELD	OH	39045	3.80
FAYETTE	OH	39047	3.80
FRANKLIN	OH	39049	3.60
FULTON	OH	39051	3.30
GALLIA	OH	39053	4.30
GEAUGA	OH	39055	3.80
GREENE	OH	39057	3.60
GUERNSEY	OH	39059	3.80
HAMILTON	OH	39061	3.80
HANCOCK	OH	39063	3.60
HARDIN	OH	39065	3.60
HARRISON	OH	39067	3.80
HENRY	OH	39069	3.30
HIGHLAND	OH	39071	4.00
HOCKING	OH	39073	4.00
HOLMES	OH	39075	3.80
HURON	OH	39077	3.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
JACKSON	OH	39079	4.00
JEFFERSON	OH	39081	3.80
KNOX	OH	39083	3.80
LAKE	OH	39085	3.80
LAWRENCE	OH	39087	4.30
LICKING	OH	39089	3.80
LOGAN	OH	39091	3.60
LORAIN	OH	39093	3.80
LUCAS	OH	39095	3.30
MADISON	OH	39097	3.60
MAHONING	OH	39099	4.00
MARION	OH	39101	3.60
MEDINA	OH	39103	3.80
MEIGS	OH	39105	4.30
MERCER	OH	39107	3.30
MIAMI	OH	39109	3.60
MONROE	OH	39111	4.00
MONTGOMERY	OH	39113	3.60
MORGAN	OH	39115	3.90
MORROW	OH	39117	3.60
MUSKINGUM	OH	39119	3.80
NOBLE	OH	39121	3.80
OTTAWA	OH	39123	3.60
PAULDING	OH	39125	3.30
PERRY	OH	39127	3.80
PICKAWAY	OH	39129	3.80
PIKE	OH	39131	4.00
PORTAGE	OH	39133	3.80
PREBLE	OH	39135	3.60
PUTNAM	OH	39137	3.30
RICHLAND	OH	39139	3.60
ROSS	OH	39141	4.00
SANDUSKY	OH	39143	3.60
SCIOTO	OH	39145	4.00
SENECA	OH	39147	3.60
SHELBY	OH	39149	3.60
STARK	OH	39151	3.80
SUMMIT	OH	39153	3.80
TRUMBULL	OH	39155	4.00
TUSCARAWAS	OH	39157	3.80
UNION	OH	39159	3.60
VAN WERT	OH	39161	3.30
VINTON	OH	39163	4.00
WARREN	OH	39165	3.80
WASHINGTON	OH	39167	4.00
WAYNE	OH	39169	3.80
WILLIAMS	OH	39171	3.30
WOOD	OH	39173	3.60
WYANDOT	OH	39175	3.60
ADAIR	OK	40001	3.30
ALFALFA	OK	40003	2.60
ATOKA	OK	40005	3.60
BEAVER	OK	40007	2.50
BECKHAM	OK	40009	2.60
BLAINE	OK	40011	2.90
BRYAN	OK	40013	3.60
CADDO	OK	40015	2.90
CANADIAN	OK	40017	2.90
CARTER	OK	40019	3.30
CHEROKEE	OK	40021	3.30
CHOCTAW	OK	40023	3.60
CIMARRON	OK	40025	2.50
CLEVELAND	OK	40027	3.30
COAL	OK	40029	3.60
COMANCHE	OK	40031	2.90
COTTON	OK	40033	3.30
CRAIG	OK	40035	3.20
CREEK	OK	40037	3.30
CUSTER	OK	40039	2.60
DELAWARE	OK	40041	3.20
DEWEY	OK	40043	2.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
ELLIS	OK	40045	2.60
GARFIELD	OK	40047	2.90
GARVIN	OK	40049	3.30
GRADY	OK	40051	3.30
GRANT	OK	40053	2.90
GREER	OK	40055	2.60
HARMON	OK	40057	2.60
HARPER	OK	40059	2.60
HASKELL	OK	40061	3.60
HUGHES	OK	40063	3.30
JACKSON	OK	40065	2.90
JEFFERSON	OK	40067	3.30
JOHNSTON	OK	40069	3.60
KAY	OK	40071	2.90
KINGFISHER	OK	40073	2.90
KIOWA	OK	40075	2.90
LATIMER	OK	40077	3.60
LE FLORE	OK	40079	3.60
LINCOLN	OK	40081	3.30
LOGAN	OK	40083	3.30
LOVE	OK	40085	3.30
MCCLAIN	OK	40087	3.30
MCCURTAIN	OK	40089	3.60
MCINTOSH	OK	40091	3.30
MAJOR	OK	40093	2.60
MARSHALL	OK	40095	3.60
MAYES	OK	40097	3.20
MURRAY	OK	40099	3.30
MUSKOGEE	OK	40101	3.30
NOBLE	OK	40103	3.20
NOWATA	OK	40105	3.20
OKFUSKEE	OK	40107	3.30
OKLAHOMA	OK	40109	3.30
OKMULGEE	OK	40111	3.30
OSAGE	OK	40113	3.20
OTTAWA	OK	40115	3.20
PAWNEE	OK	40117	3.20
PAYNE	OK	40119	3.30
PITTSBURG	OK	40121	3.60
PONTOTOC	OK	40123	3.30
POTTAWATOMIE	OK	40125	3.30
PUSHMATAHA	OK	40127	3.60
ROGER MILLS	OK	40129	2.60
ROGERS	OK	40131	3.20
SEMINOLE	OK	40133	3.30
SEQUOYAH	OK	40135	3.30
STEPHENS	OK	40137	3.30
TEXAS	OK	40139	2.50
TILLMAN	OK	40141	2.90
TULSA	OK	40143	3.30
WAGONER	OK	40145	3.30
WASHINGTON	OK	40147	3.20
WASHITA	OK	40149	2.60
WOODS	OK	40151	2.60
WOODWARD	OK	40153	2.60
BAKER	OR	41001	2.20
BENTON	OR	41003	2.20
CLACKAMAS	OR	41005	2.70
CLATSOP	OR	41007	2.20
COLUMBIA	OR	41009	2.20
COOS	OR	41011	2.20
CROOK	OR	41013	2.20
CURRY	OR	41015	2.20
DESCHUTES	OR	41017	2.20
DOUGLAS	OR	41019	2.20
GILLIAM	OR	41021	2.20
GRANT	OR	41023	2.20
HARNEY	OR	41025	2.20
HOOD RIVER	OR	41027	2.20
JACKSON	OR	41029	2.20
JEFFERSON	OR	41031	2.20

County/parish/city	State	FIPS code	Class I differential adjusted for location
JOSEPHINE	OR	41033	2.20
KLAMATH	OR	41035	2.20
LAKE	OR	41037	2.20
LANE	OR	41039	2.20
LINCOLN	OR	41041	2.20
LINN	OR	41043	2.20
MALHEUR	OR	41045	1.80
MARION	OR	41047	2.20
MORROW	OR	41049	2.20
MULTNOMAH	OR	41051	2.70
POLK	OR	41053	2.20
SHERMAN	OR	41055	2.20
TILLAMOOK	OR	41057	2.20
UMATILLA	OR	41059	2.20
UNION	OR	41061	2.20
WALLOWA	OR	41063	2.20
WASCO	OR	41065	2.20
WASHINGTON	OR	41067	2.20
WHEELER	OR	41069	2.20
YAMHILL	OR	41071	2.20
ADAMS	PA	42001	4.30
ALLEGHENY	PA	42003	4.00
ARMSTRONG	PA	42005	4.00
BEAVER	PA	42007	4.00
BEDFORD	PA	42009	4.10
BERKS	PA	42011	4.30
BLAIR	PA	42013	4.00
BRADFORD	PA	42015	4.00
BUCKS	PA	42017	4.50
BUTLER	PA	42019	4.00
CAMBRIA	PA	42021	4.00
CAMERON	PA	42023	4.00
CARBON	PA	42025	4.30
CENTRE	PA	42027	4.00
CHESTER	PA	42029	4.30
CLARION	PA	42031	4.00
CLEARFIELD	PA	42033	4.00
CLINTON	PA	42035	4.00
COLUMBIA	PA	42037	4.10
CRAWFORD	PA	42039	4.00
CUMBERLAND	PA	42041	4.20
DAUPHIN	PA	42043	4.20
DELAWARE	PA	42045	4.40
ELK	PA	42047	4.00
ERIE	PA	42049	3.90
FAYETTE	PA	42051	4.00
FOREST	PA	42053	4.00
FRANKLIN	PA	42055	4.20
FULTON	PA	42057	4.10
GREENE	PA	42059	4.00
HUNTINGDON	PA	42061	4.10
INDIANA	PA	42063	4.00
JEFFERSON	PA	42065	4.00
JUNIATA	PA	42067	4.10
LACKAWANNA	PA	42069	4.30
LANCASTER	PA	42071	4.30
LAWRENCE	PA	42073	4.00
LEBANON	PA	42075	4.20
LEHIGH	PA	42077	4.30
LUZERNE	PA	42079	4.20
LYCOMING	PA	42081	4.10
MCKEAN	PA	42083	3.90
MERCER	PA	42085	4.00
MIFFLIN	PA	42087	4.10
MONROE	PA	42089	4.40
MONTGOMERY	PA	42091	4.40
MONTOUR	PA	42093	4.10
NORTHAMPTON	PA	42095	4.40
NORTHUMBERLAND	PA	42097	4.10
PERRY	PA	42099	4.20
PHILADELPHIA	PA	42101	4.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
PIKE	PA	42103	4.40
POTTER	PA	42105	3.90
SCHUYLKILL	PA	42107	4.20
SNYDER	PA	42109	4.10
SOMERSET	PA	42111	4.10
SULLIVAN	PA	42113	4.10
SUSQUEHANNA	PA	42115	4.20
TIOGA	PA	42117	4.00
UNION	PA	42119	4.10
VENANGO	PA	42121	4.00
WARREN	PA	42123	3.90
WASHINGTON	PA	42125	4.00
WAYNE	PA	42127	4.30
WESTMORELAND	PA	42129	4.00
WYOMING	PA	42131	4.20
YORK	PA	42133	4.30
BRISTOL	RI	44001	5.10
KENT	RI	44003	5.10
NEWPORT	RI	44005	5.10
PROVIDENCE	RI	44007	5.10
WASHINGTON	RI	44009	5.10
ABBEVILLE	SC	45001	5.80
AIKEN	SC	45003	6.00
ALLENDALE	SC	45005	6.00
ANDERSON	SC	45007	5.60
BAMBERG	SC	45009	6.00
BARNWELL	SC	45011	6.00
BEAUFORT	SC	45013	6.00
BERKELEY	SC	45015	6.00
CALHOUN	SC	45017	6.00
CHARLESTON	SC	45019	6.00
CHEROKEE	SC	45021	5.60
CHESTER	SC	45023	5.80
CHESTERFIELD	SC	45025	5.80
CLARENDON	SC	45027	6.00
COLLETON	SC	45029	6.00
DARLINGTON	SC	45031	6.00
DILLON	SC	45033	6.00
DORCHESTER	SC	45035	6.00
EDGEFIELD	SC	45037	5.80
FAIRFIELD	SC	45039	5.80
FLORENCE	SC	45041	6.00
GEORGETOWN	SC	45043	6.00
GREENVILLE	SC	45045	5.60
GREENWOOD	SC	45047	5.80
HAMPTON	SC	45049	6.00
HORRY	SC	45051	6.00
JASPER	SC	45053	6.00
KERSHAW	SC	45055	6.00
LANCASTER	SC	45057	5.80
LAURENS	SC	45059	5.80
LEE	SC	45061	6.00
LEXINGTON	SC	45063	6.00
MCCORMICK	SC	45065	5.80
MARION	SC	45067	6.00
MARLBORO	SC	45069	5.80
NEWBERRY	SC	45071	5.80
OCONEE	SC	45073	5.60
ORANGEBURG	SC	45075	6.00
PICKENS	SC	45077	5.60
RICHLAND	SC	45079	6.00
SALUDA	SC	45081	5.80
SPARTANBURG	SC	45083	5.60
SUMTER	SC	45085	6.00
UNION	SC	45087	5.80
WILLIAMSBURG	SC	45089	6.00
YORK	SC	45091	5.60
AURORA	SD	46003	2.60
BEADLE	SD	46005	2.60
BENNETT	SD	46007	2.40
BON HOMME	SD	46009	2.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
BROOKINGS	SD	46011	2.60
BROWN	SD	46013	2.60
BRULE	SD	46015	2.50
BUFFALO	SD	46017	2.50
BUTTE	SD	46019	2.40
CAMPBELL	SD	46021	2.50
CHARLES MIX	SD	46023	2.50
CLARK	SD	46025	2.60
CLAY	SD	46027	2.60
CODINGTON	SD	46029	2.60
CORSON	SD	46031	2.40
CUSTER	SD	46033	2.40
DAVISON	SD	46035	2.60
DAY	SD	46037	2.60
DEUEL	SD	46039	2.60
DEWEY	SD	46041	2.40
DOUGLAS	SD	46043	2.60
EDMUNDS	SD	46045	2.50
FALL RIVER	SD	46047	2.40
FAULK	SD	46049	2.50
GRANT	SD	46051	2.60
GREGORY	SD	46053	2.50
HAAKON	SD	46055	2.40
HAMLIN	SD	46057	2.60
HAND	SD	46059	2.50
HANSON	SD	46061	2.60
HARDING	SD	46063	2.40
HUGHES	SD	46065	2.50
HUTCHINSON	SD	46067	2.60
HYDE	SD	46069	2.50
JACKSON	SD	46071	2.40
JERAULD	SD	46073	2.60
JONES	SD	46075	2.40
KINGSBURY	SD	46077	2.60
LAKE	SD	46079	2.60
LAWRENCE	SD	46081	2.40
LINCOLN	SD	46083	2.60
LYMAN	SD	46085	2.50
MCCOOK	SD	46087	2.60
MCPHERSON	SD	46089	2.50
MARSHALL	SD	46091	2.60
MEADE	SD	46093	2.40
MELLETTE	SD	46095	2.40
MINER	SD	46097	2.60
MINNEHAHA	SD	46099	2.60
MOODY	SD	46101	2.60
OGLALA LAKOTA	SD	46102	2.40
PENNINGTON	SD	46103	2.40
PERKINS	SD	46105	2.40
POTTER	SD	46107	2.50
ROBERTS	SD	46109	2.60
SANBORN	SD	46111	2.60
SHANNON	SD	46113	0.00
SPINK	SD	46115	2.60
STANLEY	SD	46117	2.40
SULLY	SD	46119	2.50
TODD	SD	46121	2.40
TRIPP	SD	46123	2.50
TURNER	SD	46125	2.60
UNION	SD	46127	2.60
WALWORTH	SD	46129	2.50
YANKTON	SD	46135	2.60
ZIEBACH	SD	46137	2.40
ANDERSON	TN	47001	4.90
BEDFORD	TN	47003	4.90
BENTON	TN	47005	4.60
BLEDSOE	TN	47007	4.90
BLOUNT	TN	47009	5.20
BRADLEY	TN	47011	5.20
CAMPBELL	TN	47013	4.90
CANNON	TN	47015	4.90

County/parish/city	State	FIPS code	Class I differential adjusted for location
CARROLL	TN	47017	4.60
CARTER	TN	47019	5.20
CHEATHAM	TN	47021	4.60
CHESTER	TN	47023	4.60
CLAIBORNE	TN	47025	4.90
CLAY	TN	47027	4.60
COCKE	TN	47029	5.20
COFFEE	TN	47031	4.90
CROCKETT	TN	47033	4.30
CUMBERLAND	TN	47035	4.90
DAVIDSON	TN	47037	4.60
DECATUR	TN	47039	4.60
DE KALB	TN	47041	4.90
DICKSON	TN	47043	4.60
DYER	TN	47045	4.30
FAYETTE	TN	47047	4.60
FENTRESS	TN	47049	4.60
FRANKLIN	TN	47051	5.20
GIBSON	TN	47053	4.30
GILES	TN	47055	4.90
GRAINGER	TN	47057	4.90
GREENE	TN	47059	5.20
GRUNDY	TN	47061	4.90
HAMBLEN	TN	47063	5.20
HAMILTON	TN	47065	5.20
HANCOCK	TN	47067	4.90
HARDEMAN	TN	47069	4.60
HARDIN	TN	47071	4.90
HAWKINS	TN	47073	5.20
HAYWOOD	TN	47075	4.60
HENDERSON	TN	47077	4.60
HENRY	TN	47079	4.30
HICKMAN	TN	47081	4.60
HOUSTON	TN	47083	4.60
HUMPHREYS	TN	47085	4.60
JACKSON	TN	47087	4.60
JEFFERSON	TN	47089	5.20
JOHNSON	TN	47091	5.20
KNOX	TN	47093	4.90
LAKE	TN	47095	4.30
LAUDERDALE	TN	47097	4.30
LAWRENCE	TN	47099	4.90
LEWIS	TN	47101	4.90
LINCOLN	TN	47103	5.20
LOUDON	TN	47105	5.20
MCMINN	TN	47107	5.20
MCNAIRY	TN	47109	4.90
MACON	TN	47111	4.60
MADISON	TN	47113	4.60
MARION	TN	47115	5.20
MARSHALL	TN	47117	4.90
MAURY	TN	47119	4.90
MEIGS	TN	47121	5.20
MONROE	TN	47123	5.20
MONTGOMERY	TN	47125	4.30
MOORE	TN	47127	4.90
MORGAN	TN	47129	4.90
OBION	TN	47131	4.30
OVERTON	TN	47133	4.60
PERRY	TN	47135	4.60
PICKETT	TN	47137	4.60
POLK	TN	47139	5.40
PUTNAM	TN	47141	4.60
RHEA	TN	47143	4.90
ROANE	TN	47145	4.90
ROBERTSON	TN	47147	4.60
RUTHERFORD	TN	47149	4.60
SCOTT	TN	47151	4.90
SEQUATCHIE	TN	47153	5.20
SEVIER	TN	47155	5.20
SHELBY	TN	47157	4.60

County/parish/city	State	FIPS code	Class I differential adjusted for location
SMITH	TN	47159	4.60
STEWART	TN	47161	4.30
SULLIVAN	TN	47163	5.20
SUMNER	TN	47165	4.60
TIPTON	TN	47167	4.60
TROUSDALE	TN	47169	4.60
UNICOI	TN	47171	5.40
UNION	TN	47173	4.90
VAN BUREN	TN	47175	4.90
WARREN	TN	47177	4.90
WASHINGTON	TN	47179	5.20
WAYNE	TN	47181	4.90
WEAKLEY	TN	47183	4.30
WHITE	TN	47185	4.90
WILLIAMSON	TN	47187	4.60
WILSON	TN	47189	4.60
ANDERSON	TX	48001	4.00
ANDREWS	TX	48003	2.90
ANGELINA	TX	48005	4.60
ARANSAS	TX	48007	4.60
ARCHER	TX	48009	3.30
ARMSTRONG	TX	48011	2.50
ATASCOSA	TX	48013	4.30
AUSTIN	TX	48015	4.30
BAILEY	TX	48017	2.50
BANDERA	TX	48019	4.00
BASTROP	TX	48021	4.30
BAYLOR	TX	48023	2.90
BEE	TX	48025	4.60
BELL	TX	48027	4.00
BEXAR	TX	48029	4.30
BLANCO	TX	48031	4.00
BORDEN	TX	48033	2.90
BOSQUE	TX	48035	3.60
BOWIE	TX	48037	4.00
BRAZORIA	TX	48039	4.80
BRAZOS	TX	48041	4.30
BREWSTER	TX	48043	3.30
BRISCOE	TX	48045	2.50
BROOKS	TX	48047	4.60
BROWN	TX	48049	3.60
BURLESON	TX	48051	4.30
BURNET	TX	48053	4.00
CALDWELL	TX	48055	4.30
CALHOUN	TX	48057	4.60
CALLAHAN	TX	48059	3.30
CAMERON	TX	48061	4.60
CAMP	TX	48063	3.70
CARSON	TX	48065	2.50
CASS	TX	48067	4.00
CASTRO	TX	48069	2.50
CHAMBERS	TX	48071	4.80
CHEROKEE	TX	48073	4.00
CHILDRESS	TX	48075	2.60
CLAY	TX	48077	3.30
COCHRAN	TX	48079	2.50
COKE	TX	48081	3.30
COLEMAN	TX	48083	3.60
COLLIN	TX	48085	3.70
COLLINGSWORTH	TX	48087	2.60
COLORADO	TX	48089	4.30
COMAL	TX	48091	4.00
COMANCHE	TX	48093	3.60
CONCHO	TX	48095	3.60
COOKE	TX	48097	3.30
CORYELL	TX	48099	4.00
COTTLE	TX	48101	2.60
CRANE	TX	48103	2.90
CROCKETT	TX	48105	3.30
CROSBY	TX	48107	2.60
CULBERSON	TX	48109	2.90

County/parish/city	State	FIPS code	Class I differential adjusted for location
DALLAM	TX	48111	2.50
DALLAS	TX	48113	3.70
DAWSON	TX	48115	2.90
DEAF SMITH	TX	48117	2.50
DELTA	TX	48119	3.70
DENTON	TX	48121	3.70
DE WITT	TX	48123	4.30
DICKENS	TX	48125	2.60
DIMMIT	TX	48127	4.00
DONLEY	TX	48129	2.50
DUVAL	TX	48131	4.60
EASTLAND	TX	48133	3.60
ECTOR	TX	48135	2.90
EDWARDS	TX	48137	3.60
ELLIS	TX	48139	3.70
EL PASO	TX	48141	2.70
ERATH	TX	48143	3.60
FALLS	TX	48145	4.00
FANNIN	TX	48147	3.70
FAYETTE	TX	48149	4.30
FISHER	TX	48151	2.90
FLOYD	TX	48153	2.60
FOARD	TX	48155	2.90
FORT BEND	TX	48157	4.60
FRANKLIN	TX	48159	3.70
FREESTONE	TX	48161	4.00
FRIO	TX	48163	4.30
GAINES	TX	48165	2.60
GALVESTON	TX	48167	4.80
GARZA	TX	48169	2.90
GILLESPIE	TX	48171	4.00
GLASSCOCK	TX	48173	3.30
GOLIAD	TX	48175	4.60
GONZALES	TX	48177	4.30
GRAY	TX	48179	2.50
GRAYSON	TX	48181	3.70
GREGG	TX	48183	4.00
GRIMES	TX	48185	4.60
GUADALUPE	TX	48187	4.30
HALE	TX	48189	2.50
HALL	TX	48191	2.50
HAMILTON	TX	48193	3.60
HANSFORD	TX	48195	2.50
HARDEMAN	TX	48197	2.90
HARDIN	TX	48199	4.80
HARRIS	TX	48201	4.80
HARRISON	TX	48203	4.00
HARTLEY	TX	48205	2.50
HASKELL	TX	48207	2.90
HAYS	TX	48209	4.00
HEMPHILL	TX	48211	2.60
HENDERSON	TX	48213	3.70
HIDALGO	TX	48215	4.60
HILL	TX	48217	3.70
HOCKLEY	TX	48219	2.60
HOOD	TX	48221	3.70
HOPKINS	TX	48223	3.70
HOUSTON	TX	48225	4.00
HOWARD	TX	48227	2.90
HUDSPETH	TX	48229	2.70
HUNT	TX	48231	3.70
HUTCHINSON	TX	48233	2.50
IRION	TX	48235	3.30
JACK	TX	48237	3.30
JACKSON	TX	48239	4.60
JASPER	TX	48241	4.80
JEFF DAVIS	TX	48243	2.90
JEFFERSON	TX	48245	4.80
JIM HOGG	TX	48247	4.60
JIM WELLS	TX	48249	4.60
JOHNSON	TX	48251	3.70

County/parish/city	State	FIPS code	Class I differential adjusted for location
JONES	TX	48253	3.30
KARNES	TX	48255	4.30
KAUFMAN	TX	48257	3.70
KENDALL	TX	48259	4.00
KENEDY	TX	48261	4.60
KENT	TX	48263	2.90
KERR	TX	48265	4.00
KIMBLE	TX	48267	3.60
KING	TX	48269	2.90
KINNEY	TX	48271	4.00
KLEBERG	TX	48273	4.60
KNOX	TX	48275	2.90
LAMAR	TX	48277	3.70
LAMB	TX	48279	2.50
LAMPASAS	TX	48281	4.00
LA SALLE	TX	48283	4.30
LAVACA	TX	48285	4.30
LEE	TX	48287	4.30
LEON	TX	48289	4.00
LIBERTY	TX	48291	4.80
LIMESTONE	TX	48293	4.00
LIPSCOMB	TX	48295	2.60
LIVE OAK	TX	48297	4.30
LLANO	TX	48299	4.00
LOVING	TX	48301	2.90
LUBBOCK	TX	48303	2.60
LYNN	TX	48305	2.90
MCCULLOCH	TX	48307	3.60
MCLENNAN	TX	48309	4.00
MCMULLEN	TX	48311	4.30
MADISON	TX	48313	4.00
MARION	TX	48315	4.00
MARTIN	TX	48317	2.90
MASON	TX	48319	3.60
MATAGORDA	TX	48321	4.80
MAVERICK	TX	48323	4.00
MEDINA	TX	48325	4.00
MENARD	TX	48327	3.60
MIDLAND	TX	48329	2.90
MILAM	TX	48331	4.00
MILLS	TX	48333	3.60
MITCHELL	TX	48335	3.30
MONTAGUE	TX	48337	3.30
MONTGOMERY	TX	48339	4.80
MOORE	TX	48341	2.50
MORRIS	TX	48343	3.70
MOTLEY	TX	48345	2.60
NACOGDOCHES	TX	48347	4.00
NAVARRO	TX	48349	3.70
NEWTON	TX	48351	4.80
NOLAN	TX	48353	3.30
NUECES	TX	48355	4.60
OCHILTREE	TX	48357	2.50
OLDHAM	TX	48359	2.50
ORANGE	TX	48361	4.80
PALO PINTO	TX	48363	3.30
PANOLA	TX	48365	4.00
PARKER	TX	48367	3.70
PARMER	TX	48369	2.50
PECOS	TX	48371	3.30
POLK	TX	48373	4.60
POTTER	TX	48375	2.50
PRESIDIO	TX	48377	2.90
RAINS	TX	48379	3.70
RANDALL	TX	48381	2.50
REAGAN	TX	48383	3.30
REAL	TX	48385	4.00
RED RIVER	TX	48387	3.70
REEVES	TX	48389	2.90
REFUGIO	TX	48391	4.60
ROBERTS	TX	48393	2.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
ROBERTSON	TX	48395	4.00
ROCKWALL	TX	48397	3.70
RUNNELS	TX	48399	3.30
RUSK	TX	48401	4.00
SABINE	TX	48403	4.60
SAN AUGUSTINE	TX	48405	4.60
SAN JACINTO	TX	48407	4.60
SAN PATRICIO	TX	48409	4.60
SAN SABA	TX	48411	3.60
SCHLEICHER	TX	48413	3.60
SCURRY	TX	48415	2.90
SHACKELFORD	TX	48417	3.30
SHELBY	TX	48419	4.60
SHERMAN	TX	48421	2.50
SMITH	TX	48423	3.70
SOMERVELL	TX	48425	3.70
STARR	TX	48427	4.60
STEPHENS	TX	48429	3.30
STERLING	TX	48431	3.30
STONEWALL	TX	48433	2.90
SUTTON	TX	48435	3.60
SWISHER	TX	48437	2.50
TARRANT	TX	48439	3.70
TAYLOR	TX	48441	3.30
TERRELL	TX	48443	3.30
TERRY	TX	48445	2.60
THROCKMORTON	TX	48447	3.30
TITUS	TX	48449	3.70
TOM GREEN	TX	48451	3.30
TRAVIS	TX	48453	4.00
TRINITY	TX	48455	4.60
TYLER	TX	48457	4.80
UPSHUR	TX	48459	3.70
UPTON	TX	48461	3.30
UVALDE	TX	48463	4.00
VAL VERDE	TX	48465	3.60
VAN ZANDT	TX	48467	3.70
VICTORIA	TX	48469	4.60
WALKER	TX	48471	4.60
WALLER	TX	48473	4.60
WARD	TX	48475	2.90
WASHINGTON	TX	48477	4.30
WEBB	TX	48479	4.30
WHARTON	TX	48481	4.60
WHEELER	TX	48483	2.60
WICHITA	TX	48485	2.90
WILBARGER	TX	48487	2.90
WILLACY	TX	48489	4.60
WILLIAMSON	TX	48491	4.00
WILSON	TX	48493	4.30
WINKLER	TX	48495	2.90
WISE	TX	48497	3.30
WOOD	TX	48499	3.70
YOAKUM	TX	48501	2.60
YOUNG	TX	48503	3.30
ZAPATA	TX	48505	4.30
ZAVALA	TX	48507	4.00
BEAVER	UT	49001	2.40
BOX ELDER	UT	49003	2.00
CACHE	UT	49005	2.20
CARBON	UT	49007	2.20
DAGGETT	UT	49009	2.30
DAVIS	UT	49011	2.20
DUCHESNE	UT	49013	2.20
EMERY	UT	49015	2.30
GARFIELD	UT	49017	2.30
GRAND	UT	49019	2.30
IRON	UT	49021	2.40
JUAB	UT	49023	2.20
KANE	UT	49025	2.40
MILLARD	UT	49027	2.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
MORGAN	UT	49029	2.20
PIUTE	UT	49031	2.30
RICH	UT	49033	2.20
SALT LAKE	UT	49035	2.20
SAN JUAN	UT	49037	2.30
SANPETE	UT	49039	2.20
SEVIER	UT	49041	2.30
SUMMIT	UT	49043	2.20
TOOELE	UT	49045	2.20
UINTAH	UT	49047	2.30
UTAH	UT	49049	2.20
WASATCH	UT	49051	2.20
WASHINGTON	UT	49053	2.50
WAYNE	UT	49055	2.30
WEBER	UT	49057	2.20
ADDISON	VT	50001	4.30
BENNINGTON	VT	50003	4.50
CALEDONIA	VT	50005	4.30
CHITTENDEN	VT	50007	4.30
ESSEX	VT	50009	4.20
FRANKLIN	VT	50011	4.20
GRAND ISLE	VT	50013	4.20
LAMOILLE	VT	50015	4.30
ORANGE	VT	50017	4.30
ORLEANS	VT	50019	4.20
RUTLAND	VT	50021	4.30
WASHINGTON	VT	50023	4.30
WINDHAM	VT	50025	4.50
WINDSOR	VT	50027	4.50
ACCOMACK	VA	51001	4.80
ALBEMARLE	VA	51003	4.50
ALLEGHANY	VA	51005	4.50
AMELIA	VA	51007	4.80
AMHERST	VA	51009	4.50
APPOMATTOX	VA	51011	4.80
ARLINGTON	VA	51013	4.60
AUGUSTA	VA	51015	4.30
BATH	VA	51017	4.50
BEDFORD	VA	51019	4.80
BLAND	VA	51021	4.80
BOTETOURT	VA	51023	4.80
BRUNSWICK	VA	51025	5.20
BUCHANAN	VA	51027	4.80
BUCKINGHAM	VA	51029	4.80
CAMPBELL	VA	51031	4.80
CAROLINE	VA	51033	4.80
CARROLL	VA	51035	5.20
CHARLES CITY	VA	51036	5.20
CHARLOTTE	VA	51037	4.80
CHESTERFIELD	VA	51041	4.80
CLARKE	VA	51043	4.30
CRAIG	VA	51045	4.80
CULPEPER	VA	51047	4.50
CUMBERLAND	VA	51049	4.80
DICKENSON	VA	51051	4.80
DINWIDDIE	VA	51053	5.20
ESSEX	VA	51057	4.80
FAIRFAX	VA	51059	4.60
FAUQUIER	VA	51061	4.50
FLOYD	VA	51063	5.20
FLUVANNA	VA	51065	4.50
FRANKLIN COUNTY	VA	51067	4.80
FREDERICK	VA	51069	4.30
GILES	VA	51071	4.80
GLOUCESTER	VA	51073	5.20
GOOCHLAND	VA	51075	4.80
GRAYSON	VA	51077	5.20
GREENE	VA	51079	4.50
GREENSVILLE	VA	51081	5.20
HALIFAX	VA	51083	5.20
HANOVER	VA	51085	4.80

County/parish/city	State	FIPS code	Class I differential adjusted for location
HENRICO	VA	51087	4.80
HENRY	VA	51089	5.20
HIGHLAND	VA	51091	4.30
ISLE OF WIGHT	VA	51093	5.20
JAMES CITY	VA	51095	5.20
KING AND QUEEN	VA	51097	4.80
KING GEORGE	VA	51099	4.80
KING WILLIAM	VA	51101	4.80
LANCASTER	VA	51103	5.20
LEE	VA	51105	4.80
LOUDOUN	VA	51107	4.40
LOUISA	VA	51109	4.50
LUNENBURG	VA	51111	5.20
MADISON	VA	51113	4.50
MATHEWS	VA	51115	5.20
MECKLENBURG	VA	51117	5.20
MIDDLESEX	VA	51119	5.20
MONTGOMERY	VA	51121	4.80
NELSON	VA	51125	4.50
NEW KENT	VA	51127	5.20
NORTHAMPTON	VA	51131	4.80
NORTHUMBERLAND	VA	51133	4.80
NOTTOWAY	VA	51135	4.80
ORANGE	VA	51137	4.50
PAGE	VA	51139	4.30
PATRICK	VA	51141	5.20
PITTSYLVANIA	VA	51143	5.20
POWHATAN	VA	51145	4.80
PRINCE EDWARD	VA	51147	4.80
PRINCE GEORGE	VA	51149	5.20
PRINCE WILLIAM	VA	51153	4.50
PULASKI	VA	51155	4.80
RAPPAHANNOCK	VA	51157	4.50
RICHMOND	VA	51159	4.80
ROANOKE	VA	51161	4.80
ROCKBRIDGE	VA	51163	4.50
ROCKINGHAM	VA	51165	4.30
RUSSELL	VA	51167	4.80
SCOTT	VA	51169	4.80
SHENANDOAH	VA	51171	4.30
SMYTH	VA	51173	5.20
SOUTHAMPTON	VA	51175	5.20
SPOTSYLVANIA	VA	51177	4.50
STAFFORD	VA	51179	4.50
SURRY	VA	51181	5.20
SUSSEX	VA	51183	5.20
TAZEWELL	VA	51185	4.80
WARREN	VA	51187	4.30
WASHINGTON	VA	51191	5.20
WESTMORELAND	VA	51193	4.80
WISE	VA	51195	4.80
WYTHE	VA	51197	5.20
YORK	VA	51199	5.20
ALEXANDRIA CITY	VA	51510	4.50
BRISTOL CITY	VA	51520	5.20
BUENA VISTA CITY	VA	51530	4.50
CHARLOTTESVILLE CITY	VA	51540	4.50
CHESAPEAKE CITY	VA	51550	5.20
COLONIAL HEIGHTS CITY	VA	51570	4.80
COVINGTON CITY	VA	51580	4.50
DANVILLE CITY	VA	51590	5.20
EMPORIA CITY	VA	51595	5.20
FAIRFAX CITY	VA	51600	4.50
FALLS CHURCH CITY	VA	51610	4.50
FRANKLIN CITY	VA	51620	5.20
FREDERICKSBURG CITY	VA	51630	4.50
GALAX CITY	VA	51640	5.20
HAMPTON CITY	VA	51650	5.20
HARRISONBURG CITY	VA	51660	4.30
HOPEWELL CITY	VA	51670	5.20
LEXINGTON CITY	VA	51678	4.50

County/parish/city	State	FIPS code	Class I differential adjusted for location
LYNCHBURG CITY	VA	51680	4.80
MANASSAS CITY	VA	51683	4.50
MANASSAS PARK CITY	VA	51685	4.50
MARTINSVILLE CITY	VA	51690	5.20
NEWPORT NEWS CITY	VA	51700	5.20
NORFOLK CITY	VA	51710	5.20
NORTON CITY	VA	51720	4.80
PETERSBURG CITY	VA	51730	5.20
POQUOSON CITY	VA	51735	5.20
PORTSMOUTH CITY	VA	51740	5.20
RADFORD CITY	VA	51750	4.80
RICHMOND CITY	VA	51760	4.80
ROANOKE CITY	VA	51770	4.80
SALEM CITY	VA	51775	4.80
STAUNTON CITY	VA	51790	4.30
SUFFOLK CITY	VA	51800	5.20
VIRGINIA BEACH CITY	VA	51810	5.20
WAYNESBORO CITY	VA	51820	4.30
WILLIAMSBURG CITY	VA	51830	5.20
WINCHESTER CITY	VA	51840	4.30
ADAMS	WA	53001	2.20
ASOTIN	WA	53003	2.20
BENTON	WA	53005	2.20
CHELAN	WA	53007	2.40
CLALLAM	WA	53009	2.40
CLARK	WA	53011	2.70
COLUMBIA	WA	53013	2.20
COWLITZ	WA	53015	2.40
DOUGLAS	WA	53017	2.40
FERRY	WA	53019	2.40
FRANKLIN	WA	53021	2.20
GARFIELD	WA	53023	2.20
GRANT	WA	53025	2.20
GRAYS HARBOR	WA	53027	2.40
ISLAND	WA	53029	2.40
JEFFERSON	WA	53031	2.40
KING	WA	53033	2.70
KITSAP	WA	53035	2.40
KITTITAS	WA	53037	2.40
KLICKITAT	WA	53039	2.20
LEWIS	WA	53041	2.40
LINCOLN	WA	53043	2.40
MASON	WA	53045	2.40
OKANOGAN	WA	53047	2.40
PACIFIC	WA	53049	2.40
PEND OREILLE	WA	53051	2.40
PIERCE	WA	53053	2.40
SAN JUAN	WA	53055	2.40
SKAGIT	WA	53057	2.40
SKAMANIA	WA	53059	2.40
SNOHOMISH	WA	53061	2.40
SPOKANE	WA	53063	2.40
STEVENS	WA	53065	2.40
THURSTON	WA	53067	2.40
WAHKIAKUM	WA	53069	2.40
WALLA WALLA	WA	53071	2.20
WHATCOM	WA	53073	2.40
WHITMAN	WA	53075	2.20
YAKIMA	WA	53077	2.20
BARBOUR	WV	54001	4.30
BERKELEY	WV	54003	4.30
BOONE	WV	54005	4.50
BRAXTON	WV	54007	4.30
BROOKE	WV	54009	4.00
CABELL	WV	54011	4.30
CALHOUN	WV	54013	4.30
CLAY	WV	54015	4.30
DODDRIDGE	WV	54017	4.30
FAYETTE	WV	54019	4.50
GILMER	WV	54021	4.30
GRANT	WV	54023	4.30

County/parish/city	State	FIPS code	Class I differential adjusted for location
GREENBRIER	WV	54025	4.50
HAMPSHIRE	WV	54027	4.30
HANCOCK	WV	54029	4.00
HARDY	WV	54031	4.30
HARRISON	WV	54033	4.30
JACKSON	WV	54035	4.30
JEFFERSON	WV	54037	4.30
KANAWHA	WV	54039	4.30
LEWIS	WV	54041	4.30
LINCOLN	WV	54043	4.50
LOGAN	WV	54045	4.50
MCDOWELL	WV	54047	4.80
MARION	WV	54049	4.00
MARSHALL	WV	54051	4.00
MASON	WV	54053	4.30
MERCER	WV	54055	4.80
MINERAL	WV	54057	4.10
MINGO	WV	54059	4.50
MONONGALIA	WV	54061	4.10
MONROE	WV	54063	4.80
MORGAN	WV	54065	4.30
NICHOLAS	WV	54067	4.50
OHIO	WV	54069	4.00
PENDLETON	WV	54071	4.30
PLEASANTS	WV	54073	4.00
POCAHONTAS	WV	54075	4.50
PRESTON	WV	54077	4.10
PUTNAM	WV	54079	4.30
RALEIGH	WV	54081	4.50
RANDOLPH	WV	54083	4.30
RITCHIE	WV	54085	4.30
ROANE	WV	54087	4.30
SUMMERS	WV	54089	4.80
TAYLOR	WV	54091	4.30
TUCKER	WV	54093	4.30
TYLER	WV	54095	4.00
UPSHUR	WV	54097	4.30
WAYNE	WV	54099	4.50
WEBSTER	WV	54101	4.50
WETZEL	WV	54103	4.00
WIRT	WV	54105	4.30
WOOD	WV	54107	4.00
WYOMING	WV	54109	4.80
ADAMS	WI	55001	2.90
ASHLAND	WI	55003	2.80
BARRON	WI	55005	2.80
BAYFIELD	WI	55007	2.80
BROWN	WI	55009	2.90
BUFFALO	WI	55011	2.80
BURNETT	WI	55013	2.80
CALUMET	WI	55015	2.90
CHIPPEWA	WI	55017	2.80
CLARK	WI	55019	2.80
COLUMBIA	WI	55021	2.90
CRAWFORD	WI	55023	2.90
DANE	WI	55025	2.90
DODGE	WI	55027	2.90
DOOR	WI	55029	2.90
DOUGLAS	WI	55031	2.80
DUNN	WI	55033	2.80
EAU CLAIRE	WI	55035	2.80
FLORENCE	WI	55037	2.80
FOND DU LAC	WI	55039	2.90
FOREST	WI	55041	2.80
GRANT	WI	55043	2.90
GREEN	WI	55045	2.90
GREEN LAKE	WI	55047	2.90
IOWA	WI	55049	2.90
IRON	WI	55051	2.80
JACKSON	WI	55053	2.80
JEFFERSON	WI	55055	2.90

County/parish/city	State	FIPS code	Class I differential adjusted for location
JUNEAU	WI	55057	2.90
KENOSHA	WI	55059	3.10
KEWAUNEE	WI	55061	2.90
LA CROSSE	WI	55063	2.90
LAFAYETTE	WI	55065	2.90
LANGLADE	WI	55067	2.90
LINCOLN	WI	55069	2.80
MANITOWOC	WI	55071	2.90
MARATHON	WI	55073	2.90
MARINETTE	WI	55075	2.90
MARQUETTE	WI	55077	2.90
MENOMINEE	WI	55078	2.90
MILWAUKEE	WI	55079	3.10
MONROE	WI	55081	2.90
OCONTO	WI	55083	2.90
ONEIDA	WI	55085	2.80
OUTAGAMIE	WI	55087	2.90
OZAUKEE	WI	55089	3.10
PEPIN	WI	55091	2.80
PIERCE	WI	55093	2.80
POLK	WI	55095	2.80
PORTAGE	WI	55097	2.90
PRICE	WI	55099	2.80
RACINE	WI	55101	3.10
RICHLAND	WI	55103	2.90
ROCK	WI	55105	2.90
RUSK	WI	55107	2.80
ST. CROIX	WI	55109	2.80
SAUK	WI	55111	2.90
SAWYER	WI	55113	2.80
SHAWANO	WI	55115	2.90
SHEBOYGAN	WI	55117	2.90
TAYLOR	WI	55119	2.80
TREMPEALEAU	WI	55121	2.80
VERNON	WI	55123	2.90
VILAS	WI	55125	2.80
WALWORTH	WI	55127	3.10
WASHBURN	WI	55129	2.80
WASHINGTON	WI	55131	2.90
WAUKESHA	WI	55133	2.90
WAUPACA	WI	55135	2.90
WAUSHARA	WI	55137	2.90
WINNEBAGO	WI	55139	2.90
WOOD	WI	55141	2.90
ALBANY	WY	56001	2.40
BIG HORN	WY	56003	2.40
CAMPBELL	WY	56005	2.40
CARBON	WY	56007	2.40
CONVERSE	WY	56009	2.40
CROOK	WY	56011	2.40
FREMONT	WY	56013	2.40
GOSHEN	WY	56015	2.40
HOT SPRINGS	WY	56017	2.40
JOHNSON	WY	56019	2.40
LARAMIE	WY	56021	2.50
LINCOLN	WY	56023	2.20
NATRONA	WY	56025	2.40
NIOBRARA	WY	56027	2.40
PARK	WY	56029	2.20
PLATTE	WY	56031	2.40
SHERIDAN	WY	56033	2.40
SUBLETTE	WY	56035	2.20
SWEETWATER	WY	56037	2.40
TETON	WY	56039	2.20
UINTA	WY	56041	2.20
WASHAKIE	WY	56043	2.40
WESTON	WY	56045	2.40

■ 5. Amend § 1000.76 by:
■ a. Removing the text ''and § 1135.11 of this chapter'' wherever it appears; and
■ b. Revising and republishing paragraphs (a)(2) through (4) and paragraph (c).

The revisions and republications read as follows:

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's applicable Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the applicable Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Unless the payment option described in paragraph (d) of this section is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the applicable Class I price at the location of the partially regulated distributing plant (less $1.00 if the reconstituted milk is labeled as such) and the Class IV price.

* * * * *

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in § 1000.90) to the market administrator for the producer-settlement fund an amount computed as follows: after completing the computations described in paragraphs (a)(1)(i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the applicable Federal order Class I price at the location of the plant.

* * * * *

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

■ 6. The authority citation for part 1001 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 7. Amend § 1001.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraph (i) as paragraph (j); and
■ c. Adding new paragraph (i).

The revision and addition read as follows:

§ 1001.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a) through (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(i) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1005—MILK IN THE APPLACHIAN MARKETING AREA

■ 8. The authority citation for part 1005 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 9. Amend § 1005.51 by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 1005.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52 of this chapter. The Class I price shall be the price computed pursuant to § 1000.50(a) of this chapter for Mecklenburg County, North Carolina.

(b) [Reserved]

■ 10. Amend § 1005.60 by:
■ a. Revising the introductory text and paragraph (a);
■ b. Removing paragraph (g);
■ c. Redesignating paragraph (f) as paragraph (g); and
■ d. Adding new paragraph (f).

The revisions and addition read as follows:

§ 1005.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) of this chapter by the applicable skim milk and butterfat prices, and add the resulting amounts;

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 11. The authority citation for part 1006 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 12. Amend § 1006.51 by revising paragraph (a), removing and reserving paragraph (b), and removing paragraph (c) to read as follows:

§ 1006.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52 of this chapter. The Class I price shall be the price computed pursuant to § 1000.50(a) of this chapter for Hillsborough County, Florida.

(b) [Reserved]

■ 13. Amend § 1006.60 by:
■ a. Revising the introductory text and paragraph (a);
■ b. Removing paragraphs (g) through (i);
■ c. Redesignating paragraph (f) as paragraph (g); and
■ d. Adding new paragraph (f).

The revisions and addition read as follows:

§ 1006.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) of this chapter by the applicable skim milk and butterfat prices, and add the resulting amounts;

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 14. The authority citation for part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 15. Amend § 1007.51 by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 1007.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52 of this chapter. The Class I price shall be the price computed pursuant to § 1000.50(a) of this chapter for Fulton County, Georgia.

(b) [Reserved]

■ 16. Amend § 1007.60 by:
■ a. Revising the introductory text and paragraph (a);
■ b. Removing paragraph (g);
■ c. Redesignating paragraph (f) as paragraph (g); and
■ d. Adding new paragraph (f).

The revisions and addition read as follows:

§ 1007.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) of this chapter by the applicable skim milk and butterfat prices, and add the resulting amounts;

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

■ 17. The authority citation for part 1030 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 18. Amend § 1030.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraphs (j) and (k) as paragraphs (k) and (l); and
■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the values computed in paragraphs (k) and (l) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a) through (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

■ 19. The authority citation for part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 20. Amend § 1032.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraph (j) as paragraph (k); and
■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the value computed in paragraph (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a) through (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

■ 21. The authority citation for part 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 22. Amend § 1033.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraph (j) as paragraph (k); and
■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the value computed in paragraph (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a) through (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1051—MILK IN THE CALIFORNIA MARKETING AREA

■ 23. The authority citation for part 1051 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 24. Amend § 1051.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraph (i) as paragraph (j); and
■ c. Adding new paragraph (i).

The revision and addition read as follows:

§ 1051.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a) through (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(i) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1124—MILK IN THE PACIFIC NORTWEST MARKETING AREA

■ 25. The authority citation for part 1124 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 26. Amend § 1124.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraph (i) as paragraph (j); and
■ c. Adding new paragraph (i).

The revision and addition read as follows:

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a) through (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(i) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this

chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

■ 27. The authority citation for part 1126 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 28. Amend § 1126.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraph (j) as paragraph (k); and
■ c. Adding new paragraph (j).

The revision and addition read as follows:

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (j) of this section and subtracting from that total amount the value computed in paragraph (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a) through (c) of this chapter, respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(j) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1131—MILK IN THE ARIZONA MARKETING AREA

■ 29. The authority citation for part 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 30. Amend § 1131.60 by:
■ a. Revising the introductory text;
■ b. Redesignating paragraph (f) as paragraph (g); and
■ c. Adding new paragraph (f).

The revision and addition read as follows:

§ 1131.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) of this chapter with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (f) of this section and subtracting from that total amount the value computed in paragraph (g) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) of this chapter shall be excluded from pricing under this section.

* * * * *

(f) Compute an adjustment for eligible Class I producer milk pursuant to § 1000.43(e) of this chapter by multiplying the Class I skim milk price adjuster computed in § 1000.50(r) of this chapter by the pounds of skim milk eligible in Class I.

* * * * *

PART 1170—DAIRY PRODUCT MANDATORY REPORTING

■ 31. The authority citation for part 1170 continues to read as follows:

Authority: 7 U.S.C. 1637–1637b, as amended by Pub. L. 106–532, 114 Stat. 2541; Pub. L. 107–171, 116 Stat. 207; and Pub. L. 111–239, 124 Stat. 2501.

■ 32. Amend § 1170.8 by revising and republishing paragraph (a) to read as follows:

§ 1170.8 Price reporting specifications.

* * * * *

(a) Specifications for Cheddar Cheese Prices:

(1) *Variety:* Cheddar cheese.

(2) *Style:* 40-pound blocks.

(3) *Age:* Not less than 4 days or more than 30 days on date of sale. Exclude cheese that will be aged.

(4) *Grade:* Product meets Wisconsin State Brand or USDA Grade A or better standards.

(5) *Color:* Colored and within the color range of 6–8 on the National Cheese Institute color chart.

(6) *Packaging:* Price should reflect cheese wrapped in a sealed, airtight package in corrugated or solid fiberboard containers with a reinforcing inner liner or sleeve. Exclude all other packaging costs from the reported price.

(7) *Exclude:* Intra-company sales, resales of purchased cheese, forward pricing sales (sales in which the selling price was set [not adjusted] 30 or more days before the transaction was completed), cheese produced under faith-based close supervision and marketed at a higher price than the manufacturer's wholesale market price for the basic commodity (for example, kosher cheese produced with a rabbi on site who is actively involved in supervision of the production process), sales under the Dairy Export Incentive Program or other premium-assisted sales (for example, export assistance sales through the Cooperatives Working Together program), and cheese certified as organic by a USDA-accredited certifying agent.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2025–00563 Filed 1–16–25; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part VIII

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, et al.

Alcohol Facts Statements in the Labeling of Wines, Distilled Spirits, and Malt Beverages; Proposed Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, 24, 25, and 27

[Docket No. TTB–2025–0002; Notice No. 237]

RIN 1513–AC93

Alcohol Facts Statements in the Labeling of Wines, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to require disclosure of per-serving alcohol, calorie, and nutrient content information in an ''Alcohol Facts'' statement on all alcohol beverage labels subject to TTB's regulatory authority under the Federal Alcohol Administration Act (FAA Act). This rulemaking responds to the Department of the Treasury's February 2022 report on ''Competition in the Markets for Beer, Wine, and Spirits,'' which recommended that TTB revive or initiate rulemaking on alcohol content, nutritional content, and appropriate serving sizes for alcohol beverage labels. Pursuant to its authorities under both the FAA Act and the Internal Revenue Code of 1986, TTB is also proposing mandatory alcohol content statements for certain types of malt beverages, beer, and wine that are not currently required to be labeled with an alcohol content statement. TTB proposes a compliance date of 5 years from the date that a final rule resulting from this proposal is published in the **Federal Register**.

DATES: Comments must be received on or before *April 17, 2025*.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2025–0002 as posted at *https://www.regulations.gov*. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/laws-and-regulations/all-rulemaking* under Notice No. 237. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW. Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Curtis Eilers, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 041.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *https://www.regulations.gov/docket/TTB-2025-0002*.

I. Background

On July 31, 2007, TTB published Notice No. 73, a proposed rule entitled ''Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages'' in the **Federal Register** (72 FR 41860). In that document, TTB proposed to amend the TTB regulations to set forth requirements for mandatory alcohol content labeling and for the presentation of certain calorie and nutrient information in a mandatory ''Serving Facts'' panel. The proposed Serving Facts panel would also have included information about the number of servings per container and the serving size. TTB did not finalize the rulemaking; however, on May 28, 2013, TTB published TTB Ruling 2013–2, Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages. The ruling announced that alcohol beverage labels could include Serving Facts statements on a voluntary basis while the Bureau continued to consider the proposed rule. TTB withdrew the Serving Facts rulemaking from the Unified Agenda of Federal Regulatory and Deregulatory Actions in the fall of 2017.

In 2021, TTB received a letter, dated February 24, 2021, from several consumer groups and public health advocates, urging TTB to finalize the Serving Facts rulemaking. The letter was submitted on behalf of the Center for Science in the Public Interest (CSPI), Alcohol Justice, the American Institute for Cancer Research, Breast Cancer Prevention Partners, the Consumer Federation of America, the National Consumers League, and the U.S. Alcohol Policy Alliance. This rulemaking document will refer to the letter as the ''2021 CSPI letter.''

On February 9, 2022, the Department of the Treasury, in consultation with the Department of Justice and the Federal Trade Commission, released a report entitled ''Competition in the Markets for Beer, Wine, and Spirits'' (Competition Report). The Competition Report was requested by Executive Order 14036, ''Promoting Competition in the American Economy.'' One of the Competition Report's findings was that ''[r]egulatory proposals that could serve public health and foster competition by providing information to consumers, such as mandatory allergen, nutrition, and ingredient labeling proposals, have not been implemented.'' [1] The Competition Report contains several recommendations, including that ''TTB should revive or initiate rulemaking proposing ingredient labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes.'' [2]

Consistent with the Competition Report's recommendations, and considering the February 2021 letter referenced above, TTB decided to revisit the issue of mandatory nutritional information and expanded alcohol content information for alcohol beverages. Because it has been almost 20 years since TTB solicited comments on this issue, TTB published Notice No. 232, which announced two virtual listening sessions, on February 28 and 29, 2024, and the opening of a docket to receive public input on labeling of wine, distilled spirits, and malt beverages with per-serving alcohol and nutritional information, major food allergens, and/or ingredients. TTB received over 5,000 written comments in response to Notice No. 232 and heard from 47 speakers during the listening sessions.

TTB is now publishing for public comment a new proposal that would require ''Alcohol Facts'' labeling for wines, distilled spirits, and malt beverages that provides alcohol and nutritional information, per serving, for these products on labels. TTB is addressing the Competition Report's recommendations and Notice No. 232 comments from the listening sessions on mandatory allergen and ingredient labeling in separate rulemaking projects.

II. TTB's Authority To Regulate Alcohol Beverage Labeling

As set forth below, TTB has broad authority to regulate the labeling of alcohol beverages under Chapter 51 of the Internal Revenue Code of 1986 (IRC) and under the labeling provisions of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e). TTB administers these IRC and FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition,

[1] See page 3 of the report, available at *https://home.treasury.gov/system/files/136/Competition-Report.pdf*.

[2] Id. at page 61.

the Secretary of the Treasury (the Secretary) has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

A. TTB's Authority Under the IRC

Chapter 51 of the IRC (26 U.S.C. 5001 *et seq.*) imposes taxes on distilled spirits, wines, and beer, and provides the Secretary authority to regulate the marking and labeling of containers of these alcohol beverages, to protect the revenue associated with those taxes. The tax rates differ depending on the classification of the product, and the marking and labeling requirements support the proper determination of tax liability based on the identity of the product. Thus, this authority is based, in part, on the Secretary's responsibility to classify, and collect taxes on, alcohol beverages under the IRC.

For example, 26 U.S.C. 5301 authorizes the Secretary to regulate the branding and marking of distilled spirits containers whenever in his or her judgment such action is necessary to protect the revenue. Other provisions authorize the Secretary to regulate the marking, branding, and labeling of wine and beer. See 26 U.S.C. 5368 and 5412.

Section 5555 requires every person liable for any tax imposed by Chapter 51 of the IRC to comply with such rules and regulations as the Secretary may prescribe. Finally, 26 U.S.C. 7805(a) provides the Secretary with the authority to prescribe all needful rules and regulations for the enforcement of the IRC.

B. TTB's Authority Under the FAA Act

Section 105(e) of the FAA Act, 27 U.S.C. 205(e), sets forth standards for the regulation of the labeling of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages that will be sold or otherwise introduced in interstate or foreign commerce. This document generally refers to these products as ''alcohol beverages'' or ''alcohol beverage products.''

This section gives the Secretary the authority to issue labeling regulations to prevent deception of the consumer, to provide the consumer with ''adequate information'' as to the identity, quality, and alcohol content of the product, and to prohibit false or misleading statements. Additionally, the FAA Act authorizes the Secretary to prohibit, irrespective of falsity, labeling statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer. In the case of malt beverages, the labeling provisions of the FAA Act apply only if the laws or regulations of the State into which the malt beverages are to be shipped impose similar requirements.

The FAA Act generally requires bottlers and importers to obtain a certificate of label approval (COLA) from TTB prior to bottling wine, distilled spirits, or malt beverages for introduction into interstate commerce, or removing alcohol beverages from customs custody, in bottles, for sale or any other commercial purpose. The law provides that COLAs are to be issued in such manner and form as the Secretary shall prescribe by regulations.

C. Legislative History of the FAA Act

The legislative history of the FAA Act provides some insight concerning the general purpose of the FAA Act's labeling provisions. In hearings before the House Committee on Ways and Means in 1935, Joseph Choate from the Federal Alcohol Control Administration noted that the purpose of the bill was ''to provide such regulations, not laid down in statute, so as to be inflexible, but laid down under the guidance of Congress, under general principles, by a body which could change them as changes were found necessary.'' Mr. Choate also noted that those regulations were intended to ensure that

> the purchaser should get what he thought he was getting . . . . They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and *all the important factors which were of interest to him about what was in the bottle*. [Emphasis added.]

See Hearings on H.R. 8539 Before the H. Comm. on Ways and Means, 74th Cong., 1st Sess. 10 (1935) (statement of Joseph H. Choate, Jr., Federal Alcohol Control Administration).

D. Calorie and Nutrient Labeling

The FAA Act expressly conveys broad discretion to the agency and leaves it with the flexibility to prescribe such labeling regulations ''as will provide the consumer with adequate information'' as to, among other things, the products' ''identity and quality'' and ''net contents.'' 27 U.S.C. 205(e). In 1986, in the context of ingredient labeling, the D.C. Circuit recognized that the obligation under the FAA Act ''to ensure that disclosure is adequate squarely implicates discretionary judgment on the part of the Secretary.'' *Center for Science in the Public Interest* v. *Department of the Treasury,* 797 F.2d 995, 999 n.2 (D.C. Cir. 1986), citing *Wawszkiewicz* v. *Department of the Treasury,* 670 F.2d 296, 300 (D.C. Cir. 1981) (footnote omitted)).

Accordingly, the D.C. Circuit upheld the actions of TTB's predecessor, the Bureau of Alcohol, Tobacco and Firearms (ATF), in issuing a final rule, T.D. ATF–150 (48 FR 45549, October 6, 1983), which rescinded ingredient labeling regulations that had not yet taken effect. The court held that there was no ''plain meaning of the phrase 'adequate information' which indicates Congress' intent as to whether the FAA Act either requires or prohibits ingredient disclosure regulations.'' *Ctr. for Sci. in the Pub. Int.,* 797 F.2d at 999 n.2. The court upheld ATF's conclusion that the FAA Act ''vests it with a zone of discretion within which it can choose to require or not require ingredient disclosure, as necessary to provide consumers with adequate information.'' *Id.* It is TTB's view that rulemaking on calorie and nutrient labeling similarly falls within the Secretary's discretion to determine whether such information is necessary to provide consumers with ''adequate information'' about the product.

E. Alcohol Content Labeling

The statutory requirements with respect to disclosure of alcohol content on labels differ among the three alcohol beverage categories. The FAA Act authorizes the Secretary to issue regulations that require alcohol content statements on labels of distilled spirits products. 27 U.S.C. 205(e)(2). The FAA Act also authorizes the Secretary to require alcohol content statements only for wines with an alcohol content of over 14 percent alcohol by volume, leaving such statements optional for wines with an alcohol content at or below 14 percent. Finally, the FAA Act contains language that specifically prohibits placement of alcohol content statements on malt beverage labels, unless required by State law, but in 1995 the Supreme Court struck that ban on First Amendment grounds in *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476 (1995).

F. Alcohol Beverages Subject to FDA Labeling Regulations

Alcohol beverages that fall under the definitions of distilled spirits, wine, or malt beverages in the FAA Act are not subject to the Nutrition Facts regulations promulgated by the U.S. Food and Drug Administration (FDA) under 21 U.S.C. 343(q). In 1987, TTB's predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF), and the FDA entered into a Memorandum of Understanding (MOU), which continues in effect. See Notice

No. 648 (52 FR 45502, November 30, 1987). In the MOU, both agencies recognized that ''ATF will be responsible for the promulgation and enforcement of regulations with respect to the labeling of distilled spirits, wine, and malt beverages pursuant to the FAA Act.'' The MOU also stated that ''ATF and FDA will consult on a regular basis concerning the propriety of promulgating regulations concerning the labeling of other ingredients and substances for alcoholic beverages.''

Thus, alcohol beverages that are not distilled spirits, wines, or malt beverages, as defined in the FAA Act, 27 U.S.C. 211, are subject to the ingredient labeling, nutrition labeling, and allergen labeling regulations administered by the FDA. However, these products remain subject to the regulations enforced by TTB under the IRC.[3] Therefore, to the extent that this NPRM addresses the labeling regulations under the FAA Act, which are found in 27 CFR parts 4, 5, and 7, it does not apply to alcohol beverages subject to FDA labeling regulations. However, to the extent that this NPRM proposes to amend the IRC regulations regarding alcohol content statements for certain beers and wines, those amendments would also affect alcohol beverages subject to FDA labeling regulations.

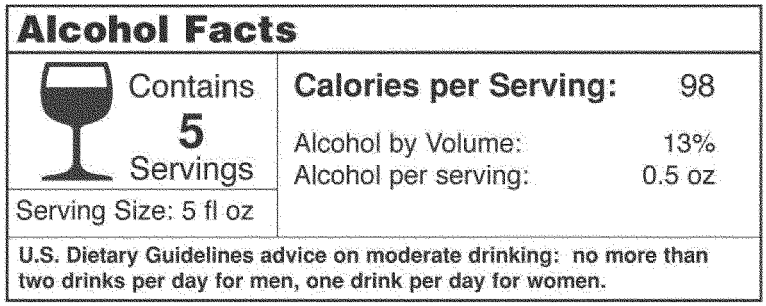
III. Background on ''Alcohol Facts'' Statements

A. 2003 Petition for Alcohol Facts Label and Ingredient Labeling

On December 16, 2003, CSPI, the National Consumers League, 67 other organizations, and 8 individuals, including 4 deans of schools of public health, filed a petition (the ''2003 petition'') requesting that TTB amend the alcohol beverage labeling regulations.[4] After receipt of the 2003 petition, additional individuals wrote to TTB requesting the addition of their names to the petition. The petition requested that TTB require that labels of all TTB-regulated alcohol beverages include the following information in a standardized format:

- The beverage's alcohol content expressed as a percentage of alcohol by volume;
- A standard serving size;
- The amount of alcohol (in fluid ounces) contained within each standard serving;
- The number of calories per standard serving;
- The ingredients (including additives);
- The number of standard drinks per container; and
- The current definitions of moderate drinking for men and women published in the *Dietary Guidelines for Americans,* issued jointly by the Department of Health and Human Services and the Department of Agriculture.

The petitioners proposed that all alcohol beverage containers bear this information on an ''Alcohol Facts'' panel. The petitioners provided the following example for a 750 mL bottle of wine:



The petition asked that the words ''Alcohol Facts'' be immediately followed by a declaration of the number of standard drinks (servings) per container. The petitioners asked, consistent with the then-current version of the *Dietary Guidelines for Americans,* that a serving should be defined as 12 fluid ounces of beer, 5 fluid ounces of wine, and 1.5 fluid ounces of 80-proof distilled spirits. The petitioners further recommended that for alcohol beverages not fitting into one of those standard categories (for example, a malt liquor containing eight percent alcohol by volume), a serving should be defined as an amount of fluid containing approximately 0.5 fluid ounces of ethyl alcohol. The petitioners recommended that a consistent graphic symbol (for example, a beer mug, wine glass, or shot glass) should appear first, followed by the number of drinks in the container (for example, ''Contains 5 Servings''). The petition proposed requiring this information on labels of all malt beverage, wine, and distilled spirits products under TTB jurisdiction, and that the graphics and type size for the Alcohol Facts label should follow the Nutrition Labeling and Education Act of 1990 standards set out in the FDA regulations at 21 CFR 101.9(d). Further, the petitioners stated that ingredient information should appear on the label immediately below, but segregated from, the Alcohol Facts panel, and that ingredient statements should include information about allergens.

According to the petitioners, current TTB regulatory requirements forced consumers to guess about the number of calories in alcohol beverages and their alcohol content. The petitioners summarized the results of a September 2003 telephone study of 600 Americans, ages 18 and older, which they stated was nationally representative.

[3] Alcohol beverages intended for human consumption that contain at least 0.5 percent alcohol by volume are also subject to the health warning statement requirements of the Alcoholic Beverage Labeling Act of 1988 (ABLA). See 27 U.S.C. 215. However, this document does not propose changes to the regulations implementing ABLA.

[4] ATF previously considered the issue of requiring calorie and nutrient information on alcohol beverage labels but did not implement rules on this issue. On August 10, 1993, ATF published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** soliciting comments from the public on whether the regulations should be amended to require nutrition labeling for alcohol beverages. See Notice No. 776 (58 FR 42517). The ANPRM was issued in response to a petition that cited, among other things, the Nutrition Labeling and Education Act of 1990, which mandates nutrition labeling for most FDA-regulated foods. For a detailed description of the rulemaking history concerning nutrition labeling on alcohol beverages, see TTB Notice No. 41, 70 FR 22274 (April 29, 2005).

According to the study, 91 percent of respondents supported requiring ingredient labeling on alcohol beverages; 94 percent supported requiring alcohol content on alcohol beverage labels; 89 percent supported requiring calorie content on alcohol beverage labels; and 84 percent supported requiring serving size information on alcohol beverage labels.

B. 2004 Informal Request for Comments

Following the 2003 petition, an alcohol beverage industry member contacted TTB about voluntarily labeling products with nutrient and other information on a ''Serving Facts'' panel. Subsequently, TTB received other requests from industry members to include similar information on product labels.

In response to these requests, in 2004, TTB twice posted on its website a request for comments on voluntary Serving Facts panels. In response to the two postings, TTB received several comments reflecting strong and varying opinions. A significant proportion of those who commented felt that the issue should be addressed in public notice and comment rulemaking rather than in a TTB ruling. Furthermore, many commenters believed that certain elements of a Serving Facts panel would tend to confuse or mislead consumers about alcohol beverage products. In light of the issues that the commenters raised, TTB decided to publish an advance notice of proposed rulemaking in 2005, as discussed further below.

C. Statements of Average Analysis (TTB Ruling 2004–1)

On April 7, 2004, TTB published guidance to the industry on ways that calorie and carbohydrate references could be provided in a non-misleading way in the labeling and advertising of alcohol beverages. Ruling 2004–1, Caloric and Carbohydrate Representations in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages clarified TTB's position with respect to statements about calorie and carbohydrate content on labels and in advertisements of wines, distilled spirits, and malt beverages and set forth TTB's policy on the use of truthful and non-misleading nutrient statements in the labeling and advertising of alcohol beverages.[5]

TTB Ruling 2004–1 provided, in part, that calorie or carbohydrate representations on product labels or in advertisements would be considered misleading unless they include a ''statement of average analysis'' that lists the number of calories and the number of grams of carbohydrates, protein, and fat contained in the product based on a single serving. In Frequently Asked Questions published on TTB's website shortly after the ruling, TTB clarified that this policy did not apply to advertisements where the only caloric or carbohydrate representation appearing in the advertising materials is a brand name incorporating the term ''light'' or ''lite.'' However, if the brand or product name, or the advertising material in general, included any additional caloric or carbohydrate representations such as ''low carb'' or ''low calorie,'' any specific calorie or carbohydrate claims, or similar representations, the provisions of the ruling regarding a statement of average analysis would apply.

For purposes of inclusion in the statement of average analysis, TTB Ruling 2004–1 defined a single serving as 12 fluid ounces for malt beverages, 5 fluid ounces for wine, and 1.5 fluid ounces for distilled spirits, regardless of the alcohol content of the product. The ruling allowed the statement of average analysis to be stated per container size only if the container is equal to or less than a single serving size. The ruling did not authorize the appearance of additional information in the statement of average analysis.

D. 2005 Advance Notice of Proposed Rulemaking

On April 29, 2005, TTB published an advance notice of proposed rulemaking, Notice No. 41, in the **Federal Register** (70 FR 22274), entitled ''Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages; Request for Public Comment.'' Notice No. 41 sought public comment on a wide range of alcohol beverage labeling and advertising issues to help TTB determine what regulatory changes in alcohol beverage labeling and advertising requirements, if any, TTB should propose in future rulemaking documents. Specifically, TTB sought comments on the 2003 petition's request for Alcohol Facts panels and ingredient labeling, the Serving Facts panel presented in TTB's informal request for comments, and each panel's elements. Additionally, TTB requested comments on allergen labeling and the labeling of calorie and carbohydrate claims, such as ''light'' and ''low-carbohydrate.''

TTB received more than 19,000 comments in response to Notice No. 41 from consumers, consumer advocacy groups, government officials, alcohol beverage industry members and associations, health organizations, and other concerned individuals. This included over 18,500 consumers who responded to Notice No. 41 indicating that they would like to see additional information on alcohol beverage labels.

IV. 2007 Notice of Proposed Rulemaking

Following a review of the comments submitted in response to Notice No. 41, TTB published Notice No. 73, a proposed rule entitled ''Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages'' in the **Federal Register** (72 FR 41860) on July 31, 2007. TTB proposed to amend parts 4, 5, 7, and 24 of the TTB regulations to set forth requirements for mandatory alcohol content labeling and for the presentation of certain calorie and nutrient information in a mandatory Serving Facts panel. The proposed Serving Facts panel would have included information about the number of servings per container and the serving size as well as the number of calories and the number of grams of carbohydrate, fat, and protein per serving. It would also have allowed the mandatory alcohol content statements to appear in the panel as a percentage of alcohol by volume, with or without an additional statement of the fluid ounces of alcohol per serving.

TTB received more than 700 comments on the various issues presented in Notice No. 73. Commenters included consumers, consumer advocacy groups, health professionals, health organizations, State and Federal agencies, and industry members and associations. The comments on the proposals outlined in Notice No. 73 expressed various points of view. A number of comments opposed, or suggested modifications of, the various elements proposed to appear in the Serving Facts panels. TTB received several comments about the costs associated with the mandatory proposals, particularly with regard to mandatory nutrient labeling requirements. TTB also received several comments on regulatory amendments that were not specifically proposed in

[5] References to alcohol beverage products as being low in calories or carbohydrates were considered misleading by TTB's predecessor agency in 1955. See Revenue Ruling 55–404, 1955–1, C.B. 615. In the 1960s, after consultations with FDA, the Alcohol and Tobacco Tax Division determined that products labeled as low calorie or low carbohydrate could include statements of average analysis, as well as truthful comparisons between a low-calorie product and that of an equal volume of the brewer's regular beer. See ATF Ruling 76–1. In subsequent rulings, ATF modified certain policies with respect to malt beverage labeling statements and announced its intention to engage in rulemaking on the use of the terms ''light'' and ''lite'' on malt beverage labels. See ATF Ruling 79–17, ATF Q.B. 1979–3, 3, and ATF Ruling 80–3, ATF Q.B. 1980–2, 13.

that document, such as using the title ''Alcohol Facts'' instead of the title ''Serving Facts,'' and requiring a statement of fluid ounces of alcohol per serving as part of the mandatory alcohol content statement. TTB did not finalize the rulemaking and, following guidance in 2013 allowing voluntary depictions of Serving Facts information (discussed below), withdrew it from the Unified Agenda of Federal Regulatory and Deregulatory Actions in the fall of 2017.

V. TTB Public Guidance on Optional Serving Facts Statements

A. Optional Serving Facts Statements (TTB Ruling 2013–2)

On May 28, 2013, TTB issued Ruling 2013–2 to permit the use of Serving Facts statements on labels and in advertisements. The ruling provided that statements of average analysis that complied with the requirements of TTB Ruling 2004–1 may continue to be used on labels and in advertisements.

In TTB Ruling 2013–2, TTB further stated that it would allow the use of optional Serving Facts statements on labels and in advertisements on an interim basis pending the completion of rulemaking. TTB explained that it was making this change to allow industry members to provide truthful, accurate, and specific information to consumers about the nutrient content of their products on a per-serving basis. Although TTB already allowed nutrient content information to appear on labels and in advertisements in the form of a statement of average analysis, TTB was aware that some alcohol beverage industry members were interested in voluntarily labeling their products with this information in a Serving Facts statement such as the one proposed in Notice No. 73. TTB reminded industry members that the issuance of final regulations on Serving Facts statements might impact their labels.

TTB also noted that the serving sizes recognized by TTB Ruling 2004–1 for wines, distilled spirits, and malt beverages may not always be representative of how all products are typically consumed. For example, a 355 mL (12 fl oz) can containing a distilled spirits specialty product with 5 percent alcohol by volume would not generally be consumed in 1.5 fl oz servings. Although the serving size found in a nutrient content statement is not intended as a recommended serving amount, TTB believed it was appropriate to consider alternative serving sizes for products depending on their alcohol content. The serving size chart provided in the ruling (reproduced below) applies to all voluntary Serving Facts statements.

Serving size	Alcohol percent by volume		
	Wine	Distilled spirits	Malt beverages
1.5 fl oz (44 ml), or 50 ml for 50 ml containers of distilled spirits.	.....	Above 24%	Above 24%.
2.5 fl oz (74 ml)	Above 16 to 24%	Above 16 to 24%	Above 16 to 24%.
5 fl oz (148 ml)	7 to 16%	Above 7 to 16%	Above 7 to 16%.
12 fl oz (355 ml)	.....	Not more than 7%	Not more than 7%.

TTB Ruling 2013–2 reiterated that statements or representations of calorie or carbohydrate content that are made on labels or in advertisements must be truthful, accurate, specific, and non-misleading. TTB stated that such statements are misleading within the meaning of the applicable regulations when not accompanied by a statement of average analysis in accordance with Ruling 2004–1 or a Serving Facts statement in accordance with TTB Ruling 2013–2. The other elements of Ruling 2004–1 continued in force, and statements of average analysis without an accompanying Serving Facts statement may continue to be used.

TTB Ruling 2013–2 also permitted the listing of the number of U.S. fluid ounces of pure ethyl alcohol per serving as part of a Serving Facts statement, as long as the statement also includes the percentage of alcohol by volume. Under this guidance, industry members may also include a Serving Facts statement that provides no alcohol content information, or alcohol content only as a percentage of alcohol by volume. The ruling also noted that the distilled spirits regulations authorize the inclusion of an optional statement of alcohol content in degrees of proof if it appears in direct conjunction with the percent of alcohol by volume statement. As noted above, industry members may also continue to use a statement of average analysis, which does not contain any alcohol content information. Finally, industry members who do not make nutrient content claims on labels or in advertisements are not required to include a Serving Facts statement or a statement of average analysis.

Pursuant to TTB Ruling 2013–2, a Serving Facts statement appearing on a label or advertisement must be stated per serving and specify the serving size as part of the statement (unless the container is equal to or less than a single serving size, in which case the Serving Fact statement may be stated per container size). If a container holds more than a single serving size, the Serving Facts statement may appear in a dual-column format, which provides information both per serving and per container.

The ruling provided that certain Serving Facts statements would not require a new COLA application if the only label change was to provide the voluntary Serving Facts statement, and provided examples of formats for which that exception would apply. Additionally, the ruling did not specify required fonts or type sizes, although it did provide the following graphics to illustrate an acceptable panel display for a 750 mL bottle of wine containing 14 percent alcohol by volume, with and without optional alcohol content information.

Serving Facts	
Serving Size 5 fl oz (148 ml)Servings Per Container 5	
	Amount Per Serving
Alcohol by volume	14%
fl oz of alcohol	0.7
Calories	120
Carbohydrate	3g
Fat	0g
Protein	0g

Serving Facts	
Serving Size 5 fl oz (148 ml)Servings Per Container 5	
	Amount Per Serving
Calories	120
Carbohydrate	3g
Fat	0g
Protein	0g

The following Serving Facts statement is an example from TTB Ruling 2013–2 that illustrates an acceptable linear display for a 50 mL bottle of distilled spirits containing 40 percent alcohol by volume and includes all three optional alcohol content statements.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Amount Per Serving:** Alcohol by volume: 40%; (80 proof); Fl oz of alcohol: 0.7; Calories: 131; Carbohydrates: 0g; Fat: 0g; Protein: 0g

The following graphic illustrates an acceptable Serving Facts statement for a 23.5 fluid ounce malt beverage can containing 12 percent alcohol by volume and includes the optional alcohol content statements.

Serving Facts	
Serving Size 5 fl oz (148 ml)Servings Per Container 4 3/4	
	Amount Per Serving
Alcohol by volume	12%
fl oz of alcohol	0.6
Calories	140
Carbohydrate	14g
Fat	0g
Protein	0g

Finally, the ruling provided the following panel to illustrate an acceptable dual-column display for a 24 fluid ounce malt beverage containing 12 percent alcohol by volume and including the optional percent-by-volume alcohol content declaration as well as the optional declaration of alcohol in fluid ounces.

Serving Facts		
Serving Size 5 fl oz (148 ml)Servings Per Container 4 3/4		
	Amt Per Serv.	**Amt Per Bottle**
Alcohol by volume	12%	12%
fl oz of alcohol	0.6	2.9
Calories	139	660
Carbohydrate	14g	67g
Fat	0g	0g
Protein	0g	0g

B. Frequently Asked Questions on TTB's Website

In Frequently Asked Questions (FAQs) published on the TTB website after publication of TTB Ruling 2013–2, TTB provided further guidance on acceptable formats for Serving Facts statements. Subsequently, TTB also issued FAQs that permitted the use of an optional ''Alcohol Facts'' statement for industry members who wish to provide per-serving alcohol content information without including any nutrient content statements or claims. The FAQs state that this information should be provided under the heading ''Alcohol Facts,'' to distinguish it from a ''Serving Facts'' statement, and must include the serving size (in accordance with TTB Ruling 2013–2), the number of servings per container, and the percentage of alcohol by volume together with a numerical statement of the number of fluid ounces of pure ethyl alcohol per serving (rounded to the nearest tenth). The FAQs note that industry members who wish to make any type of nutrient content statement or claim on the label or advertisement, along with optional per-serving alcohol content information, should use a Serving Facts statement in accordance with TTB Ruling 2013–2.

In 2014, TTB issued FAQs on the use of sugar content statements on labels. The FAQs set forth TTB's policy that truthful, accurate, and non-misleading numerical statements about the sugar content of a product are permitted on alcohol beverage labels and in advertisements.[6] Sugar is a type of carbohydrate; accordingly, a sugar content statement is not considered misleading if the label bears either a statement of average analysis in accordance with TTB Ruling 2004–1, or a Serving Facts statement in accordance with TTB Ruling 2013–2, and the serving size on which the sugar content statement is based is consistent with the applicable serving size under those rulings. If a serving contains less than 0.5 g of sugar, the label may include a claim such as ''Zero Sugar,'' ''No Sugar,'' or ''Sugar Free.''

C. Tolerances and Other Laboratory Procedures

1. TTB Procedure 2004–1

TTB Procedure 2004–1 set forth the methods that TTB used to test the calorie, carbohydrate, protein, and fat content of wine, distilled spirits, and malt beverages in order to verify labeling and advertising claims. This procedure also addressed tolerance ranges with regard to statements of calorie, carbohydrate, protein, and fat content. TTB Procedure 2004–1 applied to statements of average analysis, as well as Serving Facts statements. As described further below, this procedure was superseded by TTB Procedure 2020–1, which updated the lab testing methods as well as the tolerance for calorie statements.

2. 2020 Revisions of Tolerances

In 2020, TTB reviewed its calorie tolerance standards in response to a request from industry members. The industry members suggested that broader tolerances for calorie content would facilitate the increased use of voluntary nutrient content statements in the labeling and advertising of alcohol beverages, both by allowing for expanded variations in calorie content between batches of a product and by facilitating the use of databases and ''typical value'' charts in lieu of laboratory analysis as a basis for nutrient content statements.

TTB decided to expand the tolerances for calories to achieve greater consistency with FDA tolerances for calorie statements on food package labels under FDA's jurisdiction and to facilitate industry members' ability to provide truthful, accurate, and non-misleading voluntary nutrient content information to consumers. However, TTB noted that TTB tolerances and policies will still differ in some ways from FDA labeling regulations, as well as FDA's menu labeling requirements, due to differences in statutory and regulatory authorities.

Accordingly, TTB published TTB Ruling 2020–1 and TTB Procedure 2020–1 (which superseded TTB Procedure 2004–1 in its entirety). Under the new guidance, a calorie statement on a label or in an advertisement is acceptable as long as the calorie content, as determined by TTB analysis, is within a reasonable range below the labeled or advertised amount (within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a labeling or advertising statement of 100 calories per serving will be considered an acceptable understatement if TTB analysis of the product shows a calorie content of not more than 120 calories per serving.

Industry members also asked if they may express calories to the nearest 10-calorie increment for per-serving amounts above 50 calories (and to the nearest 5-calorie increment for per-serving amounts up to and including 50 calories) to be more consistent with FDA requirements. In response to this request, TTB Ruling 2020–1 provides that calorie statements on labels and in advertisements may, but are not required to, be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-calorie increment (for per-serving amounts up to 50 calories), as long as the labeled or advertised calorie content falls within the tolerances described in this ruling. Thus, for example, regardless of whether the calories per serving for a particular product are expressed as 98 calories or 100 calories, the labeled or advertised calorie statement must be within the prescribed tolerance for the value that is expressed. TTB continued to allow

[6] See FAQs SUG1–SUG5, available at *www.ttb.faqs/alcohol.*

amounts less than 5 calories to be expressed as zero.

The 2020 guidance did not change the tolerances for other nutrients. Under TTB Procedure 2004–1, TTB already allowed a 20 percent tolerance for understatements of carbohydrate and fat content, and a 20 percent tolerance for overstatements of protein content. Overstatements of carbohydrate and fat content, and understatements of protein content, are acceptable as long as the actual content, as determined by TTB analysis, is within a reasonable range of the labeled or advertised amount (within good manufacturing practice limitations). TTB Procedure 2020–1 maintained those tolerances. Similarly, the 2020 update did not affect the regulatory tolerances for alcohol content statements, expressed as a percentage of alcohol by volume, which are set forth in the regulations at 27 CFR 4.36, 5.65, and 7.65.

TTB noted that the 2020 guidance would not require any changes to approved labels but would instead allow greater flexibility for industry members who choose to use voluntary nutrient content statements on labels or in advertisements.

At the time TTB was asked to review its calorie tolerance standard in 2020, industry members also asked TTB about the use of databases or typical value charts (rather than laboratory analysis) as a basis for nutrient content statements in the labeling and advertising of alcohol beverages. Although industry members may conduct laboratory analyses to determine nutrient content, they may also choose to rely on an appropriate combination of analyses and other sources to accurately label their products, including databases and typical value charts. TTB's regulations do not require industry members to analyze each batch of a product prior to making voluntary nutrient content statements. Regardless of what approach industry members take, it is their responsibility to ensure that the labeling and advertising statements are reliable and accurate and fall within the tolerances set forth in TTB guidance documents. TTB determines compliance with the tolerances as described in Procedure 2020–1.

VI. Other Developments Since Issuance of the 2007 NPRM

A. Voluntary Use of Serving Facts Statements

Since the issuance of the Serving Facts guidance, the optional use of such statements on labels has increased in the marketplace. For example, in 2016, the Beer Institute announced the Brewers' Voluntary Disclosure Initiative, a coordinated effort by the beer industry to meet consumer demand for increased nutritional transparency. In August 2021,[7] the Beer Institute released the results of an independent survey showing that 95 percent of the beer volume sold by Anheuser-Busch, Molson Coors Beverage Company, Constellation Brands Beer Division, HEINEKEN USA, and FIFCO USA now voluntarily provides nutritional information in the form of a Serving Facts statement. A press release by the Beer Institute also stated that according to July 2021 polling conducted by Quadrant Strategies, 75 percent of Americans aged 21 and older said they believe alcohol beverages should have nutrition labels.[8]

B. Dietary Guidelines for Americans, 2020–2025

Since 1990, the Secretaries of Agriculture and Health and Human Services have been required by law to publish the *Dietary Guidelines for Americans* every five years.[9] The most recent version is the *Dietary Guidelines for Americans, 2020–2025,* 9th Edition, published December 2020.[10] There have been some changes to the recommendations in the guidelines since CSPI submitted its petition in 2003, but the guidelines still provide general information relating to alcohol beverage consumption.

The *Dietary Guidelines* ''do[ ] not recommend that individuals who do not drink alcohol start drinking for any reason'' and note that there are some people who should not drink at all, such as those who are pregnant or under the legal age for drinking.[11] For individuals who do drink, the guidelines state that ''drinking less is better for health than drinking more.'' [12] The guidelines point to evidence that indicates higher average alcohol consumption is associated with an increased risk of death from all causes compared with lower alcohol consumption and state that ''[a]lcohol misuse or consuming alcohol in excess of recommendations increases risk for several other conditions such as liver disease, cardiovascular disease, injuries, and alcohol use disorders.'' [13]

For purposes of evaluating amounts of alcohol that may be consumed, the *Dietary Guidelines* define an ''alcoholic drink equivalent'' as containing 14 grams (0.6 fl oz) of pure alcohol and consider the following as one alcoholic drink equivalent: 12 fluid ounces of beer (at 5 percent alcohol), 5 fluid ounces of wine (at 12 percent alcohol), or 1.5 fluid ounces of distilled spirits (at 40 percent alcohol).

The *Dietary Guidelines* stated that adults of legal drinking age could choose not to drink or to drink in moderation by limiting consumption to two drinks or less per day for men and one drink or less in a day for women. These amounts were not intended to be an average over several days, but rather the amount consumed on any single day. The *Dietary Guidelines* also advised that binge drinking, defined as five or more drinks for the typical adult male or four or more drinks for the typical adult female consumed in about two hours, should be avoided.

The guidelines also note that, according to emerging evidence, even drinking within the limits recommended above may increase overall risk of death from various causes, including several types of cancer and cardiovascular disease. The guidelines state that alcohol has been found to increase the risk for cancer, and for some types of cancer, even low levels of alcohol consumption (less than 1 drink in a day) can increase the risk.

With regard to the calories that come from alcohol consumption, the *Dietary Guidelines* state that alcohol beverages supply calories but few nutrients, and calories from alcohol beverages should be counted for the purpose of keeping total calorie intake at an appropriate level. The guidelines note that alcohol beverages may contain calories from both alcohol and other ingredients, such as soda, juice, and added sugars, and it is important to consider ingredients and portion size.

The guidelines also state that approximately 60 percent of adults report consuming alcohol beverages in the past month, and on days when men and women consume alcohol, their consumption typically exceeds the guidance for daily alcohol consumption. The guidelines state that, among adults who drink, alcohol contributes on average approximately 9 percent of calories consumed. The guidelines stipulate that 85 percent of an individual's total calories per day are

[7] Available at *https://www.beerinstitute.org/policy-responsibility/policy/voluntary-disclosure/,* accessed on November 4, 2024.

[8] Available at *https://www.beerinstitute.org/press-releases/new-report-shows-beer-leads-all-alcohol-categories-in-providing-nutritional-information-to-consumers/.*

[9] See *https://www.dietaryguidelines.gov/about-dietary-guidelines,* accessed on November 4, 2024.

[10] Available at *https://www.DietaryGuidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.*

[11] Id. at page 62.

[12] Id. at page 49.

[13] Id.

needed to meet food group recommendations healthfully with nutrient rich foods, and that the remaining calories are available for other uses (including added sugars, saturated fat, and alcohol). As such, among adults who drink, calories from alcohol account for most of the calories that remain after consuming recommended amounts of nutrient-dense foods in each recommended food group. Accordingly, the *Dietary Guidelines* recommend that ''[a]dults who choose to drink and are not among the individuals listed above who should not drink, are encouraged to limit daily intakes to align with the *Dietary Guidelines*—and to consider calories from alcoholic beverages so as not to exceed daily calorie limits.''

C. 2019 Comments in Response to Notice No. 176

On November 26, 2018, TTB published in the **Federal Register** Notice No. 176 (83 FR 60562), ''Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages.'' TTB explained that the proposed rule would not address Serving Facts statements, which would be addressed in separate rulemaking proceedings. Although one trade association supported TTB's decision to wait to address other complicated regulatory issues such as Serving Facts until the labeling modernization rule was finalized, TTB also received some comments critical of that decision. These commenters suggested that that the labeling modernization rulemaking focused on issues that were not of concern to consumers, while not addressing issues in which consumers were interested, such as Serving Facts.

CSPI, the Consumer Federation of America, and the National Consumers League commented on Notice No. 176 in a letter dated February 22, 2019, which was directed to the Secretary of the Treasury (the 2019 CSPI comment).[14] This comment stated that while the consumer organizations supported the modernization of the labeling regulations, Notice No. 176 ''falls dramatically short of what is needed to truly 'modernize' alcohol labeling by failing to require uniform disclosure of key information—alcohol content, serving size, calories, ingredients, and allergen information—that consumers need to make informed choices.'' The comment stated that the public had expressed ''an overwhelming interest in improved information on the labeling of alcoholic beverages,'' and that TTB should fulfill its statutory obligation under the FAA Act to ensure that labels and advertisements provide the consumer with ''adequate information as to the identity and quality of the products.''

The 2019 CSPI comment referenced the 2003 petition (discussed in Section III.A above) and suggested that the need for this information was even greater today. The comment noted that this ''information is now required on the vast majority of packaged foods and beverages'' and that, as of May 2018, ''calorie and key nutrition information also must be provided at chain restaurants, including for alcohol when it appears on the menu.'' The comment stated that the ''need to protect the public health from negative effects of consuming alcoholic beverages has never been more pressing'' and noted that 70 percent of American adults are now overweight or obese, and alcohol is a ''leading source of calories in the American diet.'' [Citations omitted.]

The 2019 CSPI comment stated that the optional nutrient content labeling allowed by TTB Ruling 2013–2 is ''inadequate'' because it ''fails to provide for uniform disclosures that will allow consumers to make informed choices between products.'' The comment urged the Secretary to instruct TTB to ''issue a new proposal providing a mandatory, standardized declaration covering alcohol content by percentage and amount, serving size, calories, ingredients, allergen information, and other information relevant to consumers.'' The comment suggested that the rule could be based on the prior regulatory dockets and would ''provide much-needed closure to those considerable efforts.'' The comment noted that ''[c]onsumers of alcoholic beverages deserve the clear, consistent labeling that has long been available on other beverages.''

In response to Notice No. 176, TTB also received some comments in favor of expanding mandatory alcohol content requirements. For example, the Wine Institute commented in favor of requiring a numerical alcohol content statement for wines containing up to 14 percent alcohol by volume in lieu of allowing such wines to be simply labeled as ''table wine.'' The Brewers Association commented in favor of requiring alcohol content statements on malt beverage labels, as long as the tolerance for such statements was increased to one percentage point, and a three-year implementation period is allowed.

D. Letter From Public Health Advocates (2021 CSPI Letter)

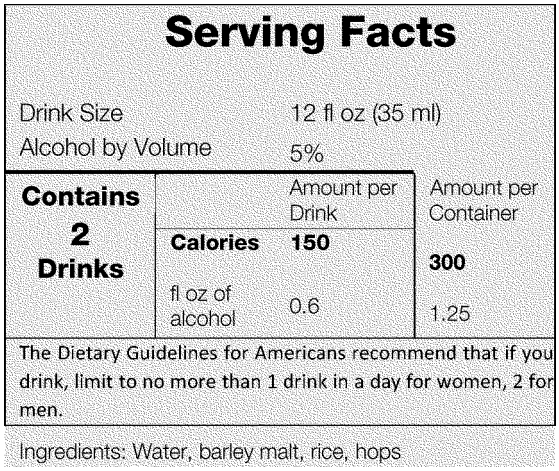
On February 24, 2021, a letter was submitted on behalf of CSPI, Alcohol Justice, the American Institute for Cancer Research, Breast Cancer Prevention Partners, the Consumer Federation of America, the National Consumers League, and the U.S. Alcohol Policy Alliance, urging the Secretary to adopt regulations to mandate alcohol content statements and a standardized Serving Facts label on all wine, distilled spirits, and malt beverage products regulated under the FAA Act. The letter stated that such labeling requirements fell under the Secretary's authority to ensure that labels provide consumers with adequate information on the identity, quality, and alcohol content of alcohol beverages.

The 2021 CSPI letter noted that in response to the 2003 petition on these issues, TTB had requested public comments, issued proposed regulations, and published a ruling on voluntary nutrition and calorie labeling. However, the 2021 CSPI letter stated that ''the draft specifications were never finalized, and most alcoholic beverages still are not labeled with critical information.'' Accordingly, the 2021 CSPI letter urged Treasury and TTB to issue a final rule mandating a standardized label that would include:

- Information about the ''Drink Size'' and alcohol by volume, as well as the number of ''drinks'' per container,
- The calories and fluid ounces of alcohol per drink,
- An ingredient declaration listing each ingredient by its common or usual name and identifying any major food allergens present in the product, and
- The *Dietary Guidelines for Americans'* advice on moderate drinking (to be updated based on any changes in the guidelines over time).

The letter also stated that TTB should include in its rule specific requirements for font, minimum size, and color contrast to ensure the readability of the label. The letter included the following example of a potential format for the standardized Serving Facts label:

[14] Available at *https://www.regulations.gov/comment/TTB-2018-0007-0074*.



Serving Facts

Drink Size	12 fl oz (35 ml)	
Alcohol by Volume	5%	
Contains 2 Drinks	Amount per Drink	Amount per Container
Calories	**150**	**300**
fl oz of alcohol	0.6	1.25

The Dietary Guidelines for Americans recommend that if you drink, limit to no more than 1 drink in a day for women, 2 for men.

Ingredients: Water, barley malt, rice, hops

E. Treasury Report on Competition in the Markets for Beer, Wine, and Spirits

On July 9, 2021, President Biden issued an Executive Order entitled ''Promoting Competition in the American Economy.'' See E.O. 14036 (86 FR 36987, July 14, 2021). Section 5(j) directed the Secretary, in consultation with the Attorney General and the Chair of the Federal Trade Commission (FTC), to submit a report ''assessing the current market structure and conditions of competition [for beer, wine, and spirits], including an assessment of any threats to competition and barriers to new entrants. . . .'' 86 FR at 36994. Among other things, the order provided that the report should address any ''unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling'' that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose. Id.

On July 28, 2021, the Department of the Treasury issued a Request for Information (RFI) soliciting input from the public, consumer groups, public interest groups, industry members, and other interested parties regarding the current market structure and conditions of competition in the American markets for beer, wine, and spirits, including an assessment of any threats to competition and barriers to new entrants. See Notice No. 204 (86 FR 40678, July 28, 2021).

Treasury received 827 public comments in response to this RFI. While the RFI did not specifically solicit comments on calorie or nutritional labeling, Treasury received over 100 comments stating that consumers are ''ill-served'' by the lack of ingredient, calorie, or nutritional labeling on alcohol beverages, and asking that the regulations be amended to require this information on alcohol beverage labels.

As noted above, on February 9, 2022, Treasury, in consultation with the Department of Justice and the FTC, released a report on competition in the markets for alcohol beverages. One of the Competition Report's findings was that ''[r]egulatory proposals that could serve public health and foster competition by providing information to consumers, such as mandatory allergen, nutrition, and ingredient labeling proposals, have not been implemented.'' [15] The Competition Report made some labeling recommendations, including a recommendation that TTB ''should revive or initiate rulemaking proposing ingredient labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes.'' [16]

F. 2024 Virtual Public Listening Sessions

In light of the Competition Report, TTB announced in the Spring 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions that it would publish an NPRM on possible changes to its regulations related to statements of alcohol and nutritional content. Executive Order 14094, ''Modernizing Regulatory Review,'' was subsequently published on April 6, 2023, directing agencies, to the extent practicable and consistent with applicable laws, to provide opportunities for public participation designed to promote equitable and meaningful participation by a range of interested or affected parties, to inform regulatory actions.

On January 31, 2024, TTB issued Notice No. 232, which announced two virtual listening sessions and the opening of a public docket to receive written comment on the labeling of alcohol beverages with per-serving alcohol and nutritional information, major food allergens, and/or ingredients. Consistent with Executive Order 14094, TTB sought input from a wide range of stakeholders, including those who may not usually comment on its proposals, to inform rulemaking, particularly given the broad implications of these issues. TTB posed the following questions in Notice No. 232:

1. Do consumers believe that they are adequately informed by the information currently provided on alcohol beverage labels?

2. Is alcohol content per serving, and nutritional information (such as calories, carbohydrates, protein, and fat) per serving important for consumers in deciding whether to purchase or consume a particular alcohol beverage? Would a full list of ingredients, and/or major food allergens, be important information for consumers in making their purchasing or consumption decisions? In what ways would this information be useful, and in what ways could it be misleading? Is some of this information more important than others?

3. What types of per-serving nutritional information, such as calories, carbohydrates, protein, and fat, should be included?

4. Would requiring this information on labels be expected to increase the cost of the products and, if so, by how much? To what extent are businesses already following voluntary guidelines for this information? Are there alternative ways of providing the information, for example by allowing information to be provided through a website using a quick response code (QR code) or website address on the label?

5. How would any new mandatory labeling requirements particularly affect

[15] See page 3 of the Competition Report, available at *https://home.treasury.gov/system/files/136/Competition-Report.pdf.*

[16] Id. at page 61.

small businesses and new businesses entering the marketplace?

The listening sessions, held on February 28 and 29, 2024, engaged consumers, public health stakeholders, and industry members representing businesses of different sizes. Approximately 700 registrants attended the two virtual sessions, including 47 different speakers. In addition to the oral comments received during the listening sessions, TTB received 5,159 written comments in response to Notice No. 232.

TTB has reviewed the comments that were submitted both orally and in writing on alcohol and nutritional content information disclosures and has used those comments to inform this proposed rule.

VII. New Proposed Rule

A. Reasons for Issuing a New Notice of Proposed Rulemaking

In this proposed rule, TTB is initiating new rulemaking on mandatory alcohol content and nutrient information in alcohol beverage labeling. More than 17 years have elapsed since the publication of Notice No. 73 in the **Federal Register**, and TTB believes that the comments received in response to that proposal may no longer fully and accurately reflect the opinions of consumers, public health advocates, industry members, trade associations, and other interested parties. TTB also received thousands of comments in response to Notice No. 232 that reflect new perspectives and provide updated information on the costs and benefits of mandatory alcohol content and nutrient information disclosure.

TTB thus believes it is appropriate to publish a new proposed rule on these issues, which takes into account interim changes in labeling policy, the comments on Notice No. 232, and the experience TTB and the regulated alcohol-beverage community have gained with optional statements of average analysis, Serving Facts statements, and Alcohol Facts statements, and which solicits current comments on the proposed regulatory changes. As was shown through comments on Notice No. 232, some industry members have new perspectives that reflect their own experience with voluntary labeling disclosures and the consumer reaction to labels that include per-serving nutrient or alcohol content information.

TTB received many comments about potential costs associated with the mandatory proposals set forth in Notice No. 73, particularly the nutrient labeling requirements. Many of those comments were echoed in comments on Notice No. 232, with a large number of commenters discussing the costs associated with testing product samples for nutritional information. In light of those comments, TTB conducted a more thorough cost analysis in this proposed rule (see Section IX, Cost Analysis, below) that addresses concerns that were raised in the comments on Notices No. 73 and 232. As described further below, TTB is seeking comment on this analysis as it considers adopting the mandatory labeling requirements proposed in this document as well as the length of the implementation period.

Furthermore, in response to Notice No. 73, TTB received several comments suggesting that TTB require alcohol content (as both a percentage of alcohol by volume and as fluid ounces of alcohol per serving) to appear in the mandatory labeling statement, and to use the title ''Alcohol Facts'' instead of the title ''Serving Facts.'' TTB has incorporated both of those suggestions into this proposed rule and is soliciting comment on whether this information would assist in ensuring that labels provide adequate information to consumers about the identity, quality, and alcohol content of the product.

On a related issue, as explained in more detail below in Section VII.B.4, TTB is proposing to require alcohol content labeling statements for all malt beverages under its FAA Act authority, and for all beers (whether regulated under the FAA Act or not) under its IRC authority. TTB is also proposing to rely on its authority under the IRC to propose mandatory numerical alcohol content statements for ''table wines'' (wines containing at least 7 percent and not more than 14 percent alcohol by volume), instead of allowing wines the option of being labeled as ''table wine'' without a numerical alcohol content statement on the label. TTB believes that mandatory alcohol content statements on labels for all beer and wines subject to tax under the IRC will assist in ensuring appropriate Federal excise tax payment and collection. TTB is seeking additional comments on these proposals in this notice of proposed rulemaking.

B. Summary and Solicitation of Comments on Proposal

TTB proposes to amend its regulations to require an Alcohol Facts statement on all alcohol beverage labels TTB regulates under the FAA Act. As proposed, the mandatory Alcohol Facts statement would include information about the alcohol content expressed both as a percentage of alcohol by volume and in fluid ounces of pure ethyl alcohol per serving, the number of calories, and the number, in grams, of carbohydrates, fat, and protein, per serving. The serving sizes are based on the amount of the beverage customarily consumed as a single serving, as explained in Section VII.B.9 below. The proposed Alcohol Facts statement may be presented in either a panel or a linear format.

1. Title of the Alcohol Beverage Information Statement

TTB is proposing ''Alcohol Facts'' as the title of the informational statement, instead of ''Serving Facts,'' which was proposed in 2007. While Notice No. 73 did not specifically solicit comments on alternative titles, TTB received comments that supported ''Alcohol Facts'' or titles other than ''Serving Facts'' for the information panel. Some commenters suggested that ''Serving Facts'' could confuse consumers because it is too similar to the ''Nutrition Facts'' title of panels for food products under FDA's labeling jurisdiction. Many commenters suggested alternative titles that they believed would help differentiate alcohol beverage products from other FDA-regulated products. Several commenters, including health professionals and organizations, consumers, and consumer advocacy groups, supported the title ''Alcohol Facts,'' as originally proposed by the petitioners in 2003.[17]

TTB finds merit in the argument that the title ''Alcohol Facts'' provides a better description of the information presented in the statement. This is especially true since TTB is now proposing to require alcohol content information as part of the information statement.

Under its current policy, TTB guidance allows for optional ''Alcohol Facts'' statements that contain only alcohol content information, while ''Serving Facts'' statements contain nutrient information and may contain alcohol content information as an option. In TTB's experience, relatively few industry members have chosen to label their products with an ''Alcohol Facts'' statement; thus, TTB does not believe the proposed change will cause consumer confusion.

Nonetheless, TTB is considering both ''Serving Facts'' and ''Alcohol Facts'' as options for the final rule, and thus seeks comments on both titles, as well as any

[17] TTB did not receive any comments on Notice 232 on what TTB should title the information statement. While a few commenters referred to the information statement as ''Serving Facts'' in their comments, none provided commentary supporting or opposing any particular title.

alternative titles that may be more informative. TTB specifically seeks comments on the following issues:

1. Which title, ''Serving Facts'' or ''Alcohol Facts,'' would be more informative to consumers? Does the title ''Alcohol Facts'' better describe the information provided in the proposed statement, which includes per-serving alcohol content information?

2. Would the use of the title ''Alcohol Facts'' affect compliance costs or regulatory burdens by requiring a title change for products already voluntarily labeled with a ''Serving Facts'' statement?

3. Are consumers accustomed to finding nutrient content information in a Serving Facts statement? Would changing the title to ''Alcohol Facts'' cause confusion?

4. Alternatively, does the title ''Alcohol Facts'' make it easier for consumers to readily distinguish alcohol beverages from other food items?

2. Mandatory Calorie and Nutrient Information

In Notice No. 232, TTB asked consumers if nutritional information (such as calories, carbohydrates, protein, and fat) per serving is important in deciding whether to purchase or consume a particular alcohol beverage, and what types of per-serving nutritional information should be included. TTB received well over 100 individual comments expressing a variety of viewpoints on nutritional labeling, and thousands of substantially identical comments from consumers expressing support for mandatory nutritional labeling, as well as other disclosures for alcohol content, allergens, and ingredients.

Commenters in favor of mandating nutritional labeling stated that this information is necessary for consumers to make informed purchasing and consumption decisions. Several commenters, including CSPI, cited to a March 2024 survey by Big Village, in which 78 percent of over 1,000 surveyed consumers stated that nutritional content was at least somewhat important in helping decide whether to purchase a particular alcoholic beverage.[18] Most commenters in favor of mandatory nutritional disclosures also discussed the health-related reasons why nutrient labeling is important to consumers. These reasons included the ability to monitor caloric intake and manage or prevent diet-related conditions.

The comments opposed to mandatory nutritional labeling largely came from industry members who identified themselves as small businesses. These commenters cited their perception of a lack of interest in nutritional information by their customers and their concern that the cost of nutritional labeling, due to redesigning existing labels and testing product samples, would place small businesses at a competitive disadvantage.

Several commenters stated that, while consumers may find nutritional information on the label to be useful, TTB should not mandate that the information appear on the label, since the government already provides nutritional information about alcohol beverages through USDA's FoodData Central website. As an example, Bozzo Family Vineyards stated that the nutritional information provided by USDA is ''representative of commercially available [alcohol beverages] and should permit consumers, who are interested in such information for purchase or consumption decisions, to make an informed choice of whether to buy or consume.''

Some commenters stated that producers should only be required to list calories, particularly for distilled spirits. The Distilled Spirits Council of the United States (DISCUS) commented that most distilled spirits do not contain any carbohydrates, fat, or proteins, and TTB should allow producers to list only calories, as calories are the only nutritional information pertinent to most distilled spirits consumers. The American Craft Spirits Association commented that nutrition labeling is inappropriate for distilled spirits products, which are non-nutritive, and that requiring nutritional labeling for distilled spirits products could mislead or confuse consumers by implying that distilled spirits have nutritive value. The Mexican Commission for the Wine and Liquor Industry expressed that nutritional information is not appropriate on alcohol beverage labels for the same reason.

After careful consideration of the diverging viewpoints provided by the commenters to Notice No. 232, TTB is proposing to mandate nutritional information on alcohol beverage labels. Comments revealed significant consumer interest in nutritional information on labels. While certain alcohol beverages are unlikely to contain certain nutrients, such as fat or protein, even the absence of these components provides information and may be of interest to consumers. Additionally, the USDA database cited above contains information on only a limited number of specific products, and other listings only represent general information about certain types of alcohol beverages. For these reasons, TTB is proposing nutritional requirements as described below and welcomes both general comments and feedback on each specific proposal.[19] In line with the nutritional elements allowed in current TTB guidance on voluntary label disclosures, TTB is proposing to require per-serving calorie, carbohydrate, fat, and protein content to be included on product labels.

TTB is also proposing to allow sugar content statements as an optional element in the Alcohol Facts statement. Under current policy, sugar content statements may appear on a label provided certain conditions are met, but they are not permitted in statements of average analysis or Serving Facts statements. TTB has received numerous requests from industry members to allow sugar content statements to appear in the optional Serving Facts statements for alcohol beverages in a manner that is consistent with the FDA Nutrition Facts Label. In addition, TTB received comments on Notice No. 232 from consumers and public health organizations stating that sugar content should appear on alcohol labels, including a joint comment from 27 public health groups and public health officials stating that ''[s]ugar-sweetened beverages contribute to weight gain, type 2 diabetes, and heart disease,[*] and sugary ready-to-drink cocktails are increasing in popularity.[*] '' [*Internal footnotes omitted.] Thus, based on industry interest and the support expressed in comments on Notice No. 232, TTB proposes to allow sugar content statements in the Alcohol Facts statement, which is the same place consumers are viewing other nutrient information.

TTB is also seeking comments on whether other elements of the Alcohol Facts statement should be optional rather than mandatory, and whether additional elements should be added to the statement on a mandatory or optional basis. TTB specifically seeks comments on whether TTB should

[18] According to CPSI's comment, CPSI commissioned Big Village to conduct the survey.

[19] TTB received many comments on the potential costs of mandatory calorie and nutrient information disclosure and suggestions for mitigating those costs. TTB addresses those comments, including comments requesting the option to electronically disclose Alcohol Facts information, in sections VII.A.3 and A.8 and in the cost analysis in Section IX. TTB is also soliciting further comments on the costs of this proposed rule, how those costs impact businesses, and how TTB might mitigate those impacts, particularly for small businesses.

harmonize its nutrient labeling requirements with regulations issued by FDA, as updated in 2016. The following graphic shows the current format for the FDA Nutrition Facts label.[20]

TTB is not currently proposing to allow other micronutrients, such as sodium, that appear on the FDA Nutrition Facts label as mandatory or optional elements of the Alcohol Facts statement. Several individual commenters to Notice No. 232, and thousands of substantially identical comments from submitters identifying themselves as consumers of alcohol beverages, stated that sodium should be a mandatory element of the Alcohol Facts statement. A few commenters stated that alcohol beverages should be labeled with all micronutrients required on food labels by the FDA. However, other commenters stated most alcohol beverages do not contain sufficient quantities of micronutrients to merit disclosure on the label, and some, including the Brewers Association, commented that requiring the disclosure of nutrients in line with FDA could confuse consumers into viewing alcohol beverages like any other food component when alcohol beverages are not, and should not, be positioned as dietary staples.

At this time, TTB does not believe most alcohol beverages contain sufficient quantities of sodium or other micronutrients to merit inclusion in the Alcohol Facts statement. However, TTB seeks further comments, and specifically comments with market data, on whether any micronutrients, such as sodium, are present in alcohol beverages in sufficient quantities that their disclosure would affect purchasing or consumption decisions, and if yes, whether TTB should require, or permit optional, inclusion of those nutrients on alcohol beverage labels.

TTB also seeks comments on whether certain nutrients should be listed only if present at specific levels. TTB is proposing to require the listing of calorie, carbohydrate, fat, and protein content on alcohol beverages, even if the product does not contain, or contains only a de minimis amount of, these components. However, TTB specifically seeks comments on whether fat and protein, which are not typically found in certain alcohol beverages, should be listed only if present at specific levels. If so, what levels should trigger these requirements? TTB also seek comments on whether any other nutrients, such as sodium, caffeine, or sugar, should be required to be listed if present at a specific level, even if they do not otherwise have to be disclosed.

In addition to the above, TTB is seeking comment on the following issues related to mandatory calorie and nutrient statements:

1. Should TTB's proposed nutrient content labeling statement be more consistent with the Nutrition Facts Label found on foods that are under FDA's labeling jurisdiction? Alternatively, do the differences between alcohol beverages and other foods make it unnecessary, or even misleading, to adopt the type of nutrient labeling required on food labels that are under FDA's labeling jurisdiction? For example, would information on the percentage of the daily value of the listed nutrients provided by alcohol beverages be useful information for consumers? Alternatively, could such statements mislead consumers by implying that they may rely on alcohol beverage consumption to satisfy part of their daily nutrient requirements?

2. For greater consistency with the FDA Nutrition Facts Label, should Alcohol Facts statements be allowed or required to include other elements (such as sodium and cholesterol) or a further breakdown of fat (to include saturated fat and trans-fat)?

3. Would the inclusion of elements not ordinarily expected to be found in alcohol beverages (such as trans-fat and dietary fiber) be useful or potentially misleading?

4. Should TTB allow numerical statements of the vitamin and mineral content of alcohol beverages, assuming the product contains vitamins or minerals, or could such a statement create an erroneous impression that consumption of the alcohol beverage has nutritional value or other health-related benefits?

5. How many industry members already provide nutrient content information on labels, in advertisements (such as websites), or upon request (for example, to consumers or restaurants)?

6. Do consumers want to see Alcohol Facts labeling on alcohol beverage products? How might consumers benefit from such a label? Do consumers have adequate information about the identity and quality of alcohol beverages if alcohol beverage containers do not

[20] Available at *https://www.fda.gov/food/food-labeling-nutrition/changes-nutrition-facts-label.*

include Alcohol Facts labeling? How do those benefits compare to the costs and regulatory burdens associated with such revisions?

7. How, if at all, would the new mandatory labeling requirements affect competition in the alcohol beverage market?

8. How would the new mandatory labeling requirements affect small businesses and, in particular, new businesses entering into the alcohol beverage marketplace?

9. How, if at all, would the new mandatory labeling requirements affect international trade of alcohol beverages? Is there any information that should, or should not, be included to align the proposed labeling requirements with those of other countries?

3. Calculating Panel Elements and Tolerance Levels

As previously noted in this document, TTB expanded the tolerance levels for calories in 2020, with the issuance of TTB Ruling 2020–1 and TTB Procedure 2020–1. TTB Procedure 2020–1 states that the calorie, carbohydrate, or fat content, as determined by TTB analysis, must be within a reasonable range below the labeled or advertised amount (within good manufacturing practice limitations), and the protein content must be within a reasonable range above the labeled amount (within good manufacturing practice limitations). TTB Ruling 2020–1 also permits industry members to rely on databases or ''typical value'' charts, rather than laboratory analysis, to determine nutrient content values for the labeling and advertising of alcohol beverages provided the values are within the ''reasonable range'' prescribed in Procedure 2020–1.

TTB is proposing to modify the tolerances set out in the 2020 guidance by eliminating references to ''reasonable ranges'' based on ''good manufacturing practice limitations.'' Instead, TTB is proposing an objective standard, which allows a tolerance of 20 percent either above or below the labeled amount for calories, carbohydrates, protein, and fat. TTB believes that this change would promote compliance by eliminating subjective standards. Importantly, the proposed revisions would facilitate the use of ''typical values'' charts and other methodologies to calculate the level of calories, carbohydrates, fat, and protein in alcohol beverage products. Because of variations between batches of the same alcohol beverage product, one purpose of the tolerances is to facilitate reliance on databases, such as the U.S. Department of Agriculture's FoodData Central, and other methodologies to calculate calorie and nutrient levels, without having to change the label for minor variations in those values.

In response to Notice No. 232, small businesses stated that broad tolerances that allow for the use of tables and other means to calculate calories and nutrient levels are important to reducing costs and maintaining their businesses' competitiveness in the market. These commenters were particularly concerned about any regulatory change that would require them to either buy expensive equipment to conduct in-house nutritional analysis testing or, more likely, send their products to third-party laboratories for analysis because they would not be able to afford the equipment to conduct in-house testing. Commenters stated that small producers often create small batches of products, and, as such, costs for testing cannot be easily absorbed over the sale of a large number of units. Other commenters expressed concern about the time third-party testing could add between the production of a product and its release to the market.

TTB seeks comments on whether the proposed tolerances are broad enough to facilitate reliance on databases for standard products, among other methods for calculating calorie and nutrient content, but still specific enough to provide accurate information to consumers. Specifically, TTB seeks comments on whether it should instead propose the same tolerances set forth in TTB Procedure 2020–1 or whether another approach should be considered.

4. Mandatory Listing of Alcohol by Volume on All Alcohol Beverage Products

Consistent with Notice No. 73, TTB is proposing to require an alcohol content statement, expressed as a percentage of alcohol by volume, on the labels of all alcohol beverage products. This would be a new requirement for table wines (wines containing at least 7 percent and no more than 14 percent alcohol by volume) and most malt beverages and beers. TTB believes that uniform labeling of alcohol content on all alcohol beverage products will assist taxpayers in complying with their obligations under the IRC and will assist TTB in identifying alcohol beverage products that pose compliance risks. TTB has authority under the IRC to require alcohol content statements on all wines and beer, pursuant to TTB's authority to classify, collect taxes on, and ensure the appropriate labeling of, such products. As noted in the preamble to Notice No. 73, TTB concluded that the alcohol content of a beverage is one of the most important pieces of information about that product.

Both the FAA Act and the IRC provide the Secretary of the Treasury with broad authority to regulate the labeling of alcohol beverages. The FAA Act and IRC, and their implementing regulations regarding the labeling of alcohol content, differ by commodity. For example, all distilled spirits must be labeled with alcohol content statements under the FAA Act, as well as under the implementing FAA Act and IRC regulations. See 27 U.S.C. 205(e) and 27 CFR 5.63, 5.65, 19.516, and 19.517. However, the FAA Act requires alcohol content for wines only if they contain more than 14 percent alcohol by volume. See 27 U.S.C. 205(e). Pursuant to TTB regulations, wines with an alcohol content of at least 7 percent but no more than 14 percent alcohol by volume may be labeled with the type designation ''table wine'' or ''light wine'' on the brand label in lieu of a percent-by-volume alcohol content declaration. Additionally, all wines may be labeled with a range of alcohol content levels. See 27 CFR 4.36.

The FAA Act, as enacted in 1935, also originally prohibited the placement of alcohol content statements on malt beverage labels, unless required by State law. However, the Supreme Court found this provision was unconstitutional in *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476 (1995). As TTB explained in Notice No. 73, this decision leaves TTB with authority to either allow or require alcohol content statements on malt beverage labels.

With the exception of certain flavored malt beverages that contain alcohol derived from added nonbeverage flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol (see 27 CFR 7.63(a)(3)), malt beverages are not currently required to bear an alcohol content statement. However, many consumers have become used to seeing optional alcohol content statements on many malt beverage labels, which are permitted under TTB regulations at 27 CFR 7.65 and may be required under State law.

a. Proposal To Require Alcohol Content Statements for Malt Beverages

In Notice No. 176, TTB did not propose mandatory alcohol content statements for malt beverages but did propose to increase the alcohol content tolerance for malt beverages from 0.3 percent to 1 percent above or below the labeled alcohol content. TTB made this proposal with the understanding that some brewers, especially small brewers, avoid putting optional alcohol content statements on malt beverage labels

because of the difficulty in maintaining precise alcohol content levels from batch to batch.

In response to Notice No. 176, the Beer Institute opposed the proposed increase of the alcohol content tolerance for malt beverages, stating that the increase could confuse, mislead, and possibly endanger consumers due to higher than labeled alcohol content. On the other hand, the Brewers Association supported mandatory alcohol content statements for malt beverages, if the tolerance was increased to one percentage point above or below the labeled amount, and if a three-year compliance period was provided to allow for label changes.[21] Because the issue of mandatory alcohol content statements for malt beverages was outside of the scope of that proposed rule, TTB did not adopt an increase in the tolerance for alcohol content statements in response to Notice No. 176; instead, TTB stated that it was treating the comment in favor of this amendment as a request for further rulemaking. TTB is now proposing both to require alcohol content statements for all malt beverages under the FAA Act and to increase the labeling tolerance to one percentage point above or below the stated amount. TTB is also proposing conforming amendments to the IRC labeling regulations, in parts 25 and 27, to cover domestic and imported beer.

For beers that are not defined as ''malt beverages'' under the FAA Act, TTB is proposing to mandate an alcohol content statement on the label of the products under TTB's IRC authority. However, these beers would not be subject to the proposed Alcohol Facts labeling requirements, including the requirement for a statement of the number of fluid ounces of pure ethyl alcohol per serving, because the Alcohol Facts labeling requirements are being proposed under TTB's FAA Act authority, which does not apply to these products. Instead, these products are subject to FDA labeling requirements. TTB believes that requiring an alcohol content statement on these products would facilitate revenue protection by, among other things, making it readily apparent that the products are subject to tax under the IRC. TTB seeks comments on this issue.

TTB also seeks comment on the proposal to increase the labeling tolerance to one percentage point above or below the stated amount for all malt beverages and beers. In response to Notice No. 232, brewers commented that the cost of the equipment needed to test for alcohol content to a sufficient degree of certainty to meet the current tolerance standards costs tens of thousands of dollars. Small brewers reported that this cost was unaffordable, would push them out of the market, and would discourage new entrants to market. Increasing the tolerance to one percentage point above or below the stated alcohol content would allow brewers to calculate the alcohol content through a formula based on hydrometer readings, which commenters to Notice No. 232 stated would drastically lower the costs of compliance. TTB seeks comment on whether increasing the tolerance for alcohol content to one percent would lower the cost of compliance for a mandatory alcohol content disclosure and thereby promote competition in the marketplace if such disclosure is required. TTB also seeks comment on whether consumers would receive adequate information about the alcohol content of malt beverages if the tolerance is increased.

Non-alcoholic malt beverages that are the product of alcoholic fermentation are subject to the labeling requirements of the FAA Act but are not subject to the health warning requirements of the Alcoholic Beverage Labeling Act of 1988 because their alcohol content is less than 0.5 percent alcohol by volume.[22] See 27 CFR 7.65(e), 16.10, and 16.21. The IRC regulations in 27 CFR 25.242 require marking such products as a ''cereal beverage,'' ''malt beverage,'' or ''near beer,'' along with a statement that the product is ''Nontaxable under section 5051 I.R.C.'' on bottles, kegs, and barrels.

TTB is proposing to require an Alcohol Facts statement for non-alcoholic malt beverages, but TTB does not see any reason to require a specific statement of the percentage of alcohol by volume, as long as the statement adequately informs the consumer that the product contains less than 0.5 percent alcohol by volume. TTB is thus proposing to allow the alcohol content statement for these products to be expressed either as a percentage of alcohol by volume or with the terms ''non-alcoholic'' or ''alcohol free,'' provided the product meets the current definitions of those terms in 27 CFR 7.65(e)–(f). The term ''non-alcoholic'' means the product contains less than one half of one percent alcohol by volume, while the term ''alcohol free'' is reserved for those products that contain no alcohol. Additionally, if the term ''non-alcoholic'' is used, the phrase ''contains less than 0.5 percent (or .5%) alcohol by volume'' must appear immediately adjacent to it, although it may be abbreviated as provided in proposed § 7.212(e)(1). Similarly, for non-alcoholic malt beverages, there is no need to specify the number of fluid ounces of alcohol per serving, given that, by definition, a serving size would be 12 fl oz, so the fluid ounces of alcohol per serving would be less than 0.06, which is one-tenth of an alcoholic drink equivalent as defined by the *Dietary Guidelines.*

TTB seeks comment on this issue, and specifically invites comments on whether an Alcohol Facts statement should be required for non-alcoholic malt beverages. TTB notes that other non-alcoholic products are not subject to the FAA Act's labeling requirements. For example, a non-alcoholic wine does not fall under the definition of a ''wine'' under the FAA Act because the minimum alcohol content for wine under that definition is 7 percent alcohol by volume. See 27 U.S.C. 211. Similarly, the definition of the term ''distilled spirits'' in 27 CFR 5.1 does not include products containing less than 0.5 percent alcohol by volume.

b. Proposal To Require Alcohol Content Statements for Wine

The current wine regulations under the IRC require alcohol content to be labeled on all containers, either as a percentage of alcohol by volume or in accordance with 27 CFR part 4. Accordingly, wines with less than 7 percent alcohol by volume must be labeled with a numerical statement of alcohol content. However, because the IRC regulations allow wines as defined under the FAA Act to be labeled with an alcohol content statement in accordance with the regulations in part 4, they do not require the listing of a percentage of alcohol by volume for wines with an alcohol content of at least 7 percent and up to 14 percent, which are instead entitled to the exemptions under part 4.[23] As previously noted, the regulations in section 4.36 do not require numerical alcohol content statements for wines labeled with the

[21] The Beer Institute and the Brewers Association made substantially similar comments in response to Notice No. 232.

[22] While this proposed rule would generally allow for a tolerance of one percentage point above or below the labeled alcohol content for malt beverages, for malt beverages containing less than 0.5 percent alcohol by volume, the actual alcohol content may be less than, but may not exceed, the labeled alcohol content.

[23] See 27 CFR 24.257(a)(3). The regulation incorporates the rules under part 4, which results in a somewhat inconsistent effect. The IRC regulations require wines under 7 percent alcohol by volume (which are not ''wines'' under the FAA Act and thus fall under FDA's labeling jurisdiction) to bear a percent-by-volume alcohol content statement; however, they do not require the same statement on wines with an alcohol content of 7 to 14 percent alcohol by volume.

designation ''table wine'' on the brand label.

As explained in Notice No. 73, TTB believes that the listing of alcohol content should be consistent for wines regardless of whether they contain more than 14 percent alcohol by volume. Accordingly, in that document, TTB proposed amending § 24.257(a)(3) to require alcohol content expressed in terms of a percentage of alcohol by volume on all wine labels. TTB stated that this amendment would serve an important revenue purpose, as the alcohol content of a wine is a key factor in determining its tax classification. See 26 U.S.C. 5041(b).

While there were many supportive comments on this issue in response to Notice No. 73, some wine industry members and associations opposed the proposed amendment, urging TTB to retain the provisions in the regulations that permit the use of the designation ''table wine'' or ''light wine'' for wines with alcohol content levels of at least 7 percent and no more than 14 percent alcohol by volume. On the other hand, as previously mentioned, the Wine Institute commented in response to Notice No. 176 in favor of requiring numerical alcohol content statements on the labels of all wines, including table wines. TTB recognizes the views of some industry members may have changed since Notice No. 73 was issued in 2007.

Thus, this proposed rule provides for mandatory alcohol content statements under the IRC regulations for all wines and removes the option for a ''table wine'' or ''light wine'' designation to be used in lieu of a numerical statement of alcohol content. See proposed §§ 4.36(b), 24.257(a)(3), and 27.59(a)(3). ''Table wine,'' ''light wine,'' and related terms may still be included as optional information under the definitions in § 4.21.

Wines subject to the FAA Act (*i.e.,* wines containing at least 7 percent alcohol by volume) would also be subject to the proposed rules in part 4 with regard to the formatting of alcohol content statements, as well as the inclusion of a statement of fluid ounces of alcohol per serving, under TTB's authority under the FAA Act to ensure consistency in the presentation of information on labels. See 27 U.S.C. 205(e).

The proposed rule also removes the option to list the alcohol content for wines in terms of ranges. Instead, TTB is proposing to require the proposed mandatory alcohol content statements to be within the tolerances set forth in current § 4.36 for wines with at least 7 percent alcohol by volume and within a tolerance of plus or minus 0.75 percentage points for wines with less than 7 percent alcohol by volume.

c. Comments Sought

TTB is soliciting comments on the proposed expansion of alcohol content labeling for malt beverages and wines, including on the below topics:

1. What are the potential benefits to consumers and industry members from a requirement for alcohol content statements, expressed as a percentage of alcohol by volume, on the labels of all alcohol beverage products?

2. Will the proposed requirement for alcohol content labeling for all beer and malt beverages result in additional costs and burdens for brewers and importers, particularly small businesses? Will the increase in alcohol content tolerances mitigate or reduce those costs and burdens?

3. Will the proposed increase in alcohol content tolerances for malt beverages mislead consumers? If so, does the same argument apply to wines, which currently have a 1.5 percentage point tolerance for wines up to 14 percent alcohol by volume, and a 1 percentage point tolerance for wines with an alcohol content of over 14 percent alcohol by volume?

4. Do the proposed labeling requirements for non-alcoholic malt beverages adequately advise the consumer that the products contain less than 0.5 percent alcohol by volume? Should non-alcoholic malt beverages be exempted from calorie and nutrient labeling requirements?

5. What, if any, additional costs or burdens would requiring numerical alcohol content statements for table wines impose on wineries and importers, particularly small businesses?

6. Would an alternative that allowed table wines to indicate alcohol content as a range (*e.g.,* 7–14 percent alcohol by volume) place less of a burden on small wineries and importers? Would this approach provide sufficient information to consumers?

5. Placement of Alcohol Content Statements as Part of the Alcohol Facts Statement

TTB is proposing to amend the FAA Act labeling regulations in parts 4, 5, and 7 to require that alcohol content statements that are already required under the FAA Act, or that are proposed in this document to be required under either the FAA Act (for malt beverages) or under the IRC (for table wines), be placed on the label as part of the mandatory Alcohol Facts statement. The alcohol content of an alcohol beverage is one of the most important pieces of information about the product for the consumer and thus should be highlighted and easy to locate on the label. TTB believes that providing this information as part of the panel facilitates consumers' evaluation of the alcohol content in context with the nutritional information.

Over the past 17 years, TTB has amended the regulations to remove the brand label concept for distilled spirits and malt beverages, which had required certain information to appear together, such as the brand name, class and type designation, and if applicable, the alcohol content. For distilled spirits, the mandatory alcohol content statement currently must appear in the same field of vision as the brand name and the class/type designation. See 27 CFR 5.63(a) and 7.63(a), as amended by T.D. TTB–158 and T.D. TTB–176. With regard to wine, it bears noting that the World Wine Trade Group (WWTG) Agreement on Requirements for Wine Labeling provides that wines may be imported bearing certain common mandatory information (CMI), including alcohol content, on any label on the wine container, and that this information may be placed within a single field of vision, meaning any part of the surface of the container, excluding its base and cap, that can be seen without having to turn the container. Under this Agreement, as long as all of the CMI elements are visible at the same time, they will meet the placement requirements (if any) of each member country. Accordingly, in 2013, TTB amended the wine labeling regulations to allow alcohol content to appear on labels other than the brand label. See T.D. TTB–114 (78 FR 34565, June 10, 2013). The 2013 amendment provided greater flexibility in wine labeling and conformed the TTB wine labeling regulations to the WWTG agreement.

Nothing in this proposal prevents an alcohol content statement from also appearing on the single field of vision label(s) with the other elements of CMI, provided that it is also included on the Alcohol Facts statement. Likewise, this proposal does not preclude the placement of the Alcohol Facts statement (as prescribed in this document) together with the other elements of CMI on the single field of vision label. TTB encourages U.S. trading partners, including other WWTG members, and all interested persons, to submit comments in response to this specific issue in the proposal.

Specifically, TTB seeks comments on the following questions:

1. Would it be easier for consumers to locate alcohol content information on a label if it is required to be included in the Alcohol Facts statement and if so, why?

2. Alternatively, should TTB allow alcohol content labeling as an optional element of the Alcohol Facts statement?

3. Does the placement of alcohol content information affect costs of compliance and regulatory burdens? If so, how?

4. Does the proposal to require alcohol content information as part of the Alcohol Facts statement affect competition or issues addressed by international trade agreements or international standards?

6. Mandatory Statement of Alcohol in Fluid Ounces of Pure Alcohol per Serving

TTB is proposing to require a statement of alcohol content in fluid ounces of pure alcohol per serving as part of the mandatory Alcohol Facts statement. TTB received numerous comments in response to Notice Nos. 73 and 232 stating that per-serving alcohol content is critically important information to consumers. Thousands of consumers commented on Notice No. 232 that per-serving alcohol content is important to help people understand how much alcohol they are consuming. The National Center for Health Research, a non-profit think tank focused on health issues, stated that alcohol beverage packaging should ''provide information on the total amount of alcohol in the container (not just alcohol by volume) so that consumers can make informed choices and avoid excessive consumption.'' The American Public Health Association, an advocacy organization for public health, commented that alcohol beverage containers should provide the ''total amount of alcohol in the container (not alcohol by volume)'' along with other information like nutrients and ingredients because ''[m]ost heavy drinkers are not alcohol dependent, and additional information . . . could influence individual decisions about alcohol use.'' Commenters also indicated that many governmental and health agencies provide consumption and moderation advice to consumers that is based on the amount of pure ethyl alcohol in each serving or drink, so information about the quantity of pure ethyl alcohol per serving is needed to allow consumers to follow this advice.

TTB believes that listing alcohol content in fluid ounces per serving on the alcohol beverage container could help consumers understand how much alcohol they are consuming and follow consumption and moderation advice from government and public health organizations, if they wish to do so. TTB further believes that requiring this information on labels would further its mandate to ensure that labels provide consumers with adequate information as to the alcohol content of the product.

Accordingly, TTB proposes to amend the regulations to require the listing of the number of U.S. fluid ounces of pure ethyl alcohol per serving, expressed to the nearest tenth of a fluid ounce, on the mandatory Alcohol Facts statement. In a panel, the information would be required to be indented under the alcohol-by-volume statement.

For wines with an alcohol content of no more than 14 percent alcohol by volume, TTB recognizes that the FAA Act does not require numerical alcohol content statements on labels. As explained earlier, however, TTB is proposing to amend the IRC regulations in parts 24 and 27 to require alcohol content statements on all wine labels. TTB believes its authority under the FAA Act extends to ensuring consistency in the format and presentation of all alcohol content statements appearing on wines subject to part 4, even if such statements are not required by the FAA Act. Accordingly, proposed § 4.36 provides that where an alcohol statement, as a percentage of alcohol by volume, appears on a wine label subject to the requirements of part 4, it must conform to the requirements of § 4.36 and must appear in an Alcohol Facts statement in accordance with the requirements of new subpart L of 27 CFR part 4.

This proposal includes all distilled spirits and includes malt beverages with at least one half of one percent alcohol by volume. However, as explained above in Section VII.B.4, for malt beverages with less than one half of one percent alcohol by volume, TTB believes that the designation ''non-alcoholic'' (along with the required statement that such products contain less than 0.5 percent alcohol by volume) or ''alcohol-free'' (for products containing no alcohol) is sufficient, and that there is no need to specify the percentage of alcohol by volume as part of the Alcohol Facts statement. Similarly, TTB is not proposing to require the disclosure of the number of fluid ounces of alcohol per serving for such products.

The 2003 petition from CSPI and other consumer organizations (discussed in Section III.A) proposed that, in addition to presenting pure ethyl alcohol content in fluid ounces per serving, Alcohol Facts labels should disclose the number of ''standard drinks'' per serving and per container.[24] CSPI proposed that a ''standard drink'' be defined identically to the *Dietary Guidelines for Americans* ''alcoholic drink equivalent'' as containing 14 grams, or .6 fluid ounces, of pure ethyl alcohol. CSPI further proposed that labels should include a statement that ''A standard drink contains .6 fl oz of pure alcohol'' and consumption advice provided by the *Dietary Guidelines for Americans.* In response to Notice No. 232, TTB received a large number of comments from consumers supporting CSPI's proposal to include ''standard drink'' information on alcohol beverage labels. The Centers for Disease Control also provided a comment that cited a study that found including the recommended alcohol guidelines as well as standard drink sizes were more effective than only including percent of alcohol by volume for improving estimates of alcohol consumption.[25]

TTB did not propose to define a ''standard drink'' or to mandate inclusion of the consumption advice provided by the *Dietary Guidelines for Americans* in the 2007 proposed rule, Notice No. 73. The preamble to Notice No. 73 presents, in detail, TTB's explanation for why it was not including those elements, and TTB believes that the rationale set forth in Notice No. 73 on these issues still applies.

Alcohol beverages are rarely packaged as products equaling a ''standard drink'' of exactly 0.6 fluid ounces of pure alcohol. Products will therefore almost always contain less than one standard drink or multiple standard drinks, potentially leading to consumer confusion. TTB believes that consumers would also be confused about the difference between the terms ''standard drink'' and ''serving size.'' Accordingly, TTB is not proposing to adopt CSPI's suggestions about use of the term ''standard drink'' or mandating inclusion of the *Dietary Guidelines for Americans'* advice on moderate drinking (which may be updated based on any changes in the guidelines over time).

TTB is soliciting comments from all interested persons on these issues.

[24] In their comment to Notice No. 232, CSPI stated that they are no longer calling for the pure alcohol content in fluid ounces per serving because they believe this would serve the same purpose as standard drink labeling and thus would be duplicative.

[25] Edmunds, C.E.R., Gold, N., Burton, R. et al., The effectiveness of alcohol label information for increasing knowledge and awareness: a rapid evidence review, BMC Public Health 23, 1458 (2023), available at *https://doi.org/10.1186/s12889-023-16327-x.*

Specifically, TTB solicits comments on the following:

1. Would including information about the fluid ounces of pure ethyl alcohol per serving in the proposed Alcohol Facts statement improve the ability of consumers to follow the consumption and moderation advice provided by governmental and health agencies, if they so choose?

2. Would requiring information about the fluid ounces of pure ethyl alcohol per serving in the proposed Alcohol Facts statement impose additional costs or burdens for alcohol beverage manufacturers and importers, particularly for small businesses?

3. Is there a better way of presenting the volume of alcohol content per serving? Specifically, should the term ''standard drink'' be defined and used in place of or in addition to fluid ounces of pure ethyl alcohol per serving?

4. TTB notes that the *Dietary Guidelines for Americans, 2020–2025,* use the terms ''drink,'' and ''alcoholic drink equivalent,'' and seeks comments on whether any of those terms should be used or defined for use on labels.

5. Should the proposed mandatory Alcohol Facts statement include a summary of the *Dietary Guidelines'* advice on moderate drinking (to be updated based on any changes in the guidelines over time)?

TTB also specifically seeks comments on whether these proposals would provide useful information to consumers or would instead be confusing or misleading, and whether inclusion of these elements would affect the costs of compliance and regulatory burdens.

7. Statements of Average Analysis and Serving Facts Statements

Under this proposed rule, the mandatory Alcohol Facts statement would replace the current voluntary statements of average analysis and Serving Facts statements on alcohol beverage labels. Thus, as of the compliance date, those statements would no longer satisfy the proposed mandatory Alcohol Facts labeling requirements.

8. Linear Display, Type Size, and Electronic Display of Alcohol Facts Information

a. Linear Display

TTB proposes to allow the option of a linear display placed on the container (including a keg), as long as it is set apart from other information and is placed inside a box with the title ''Alcohol Facts'' in bold-faced type. TTB received comments in response to Notice No. 232 expressing concern about label space on certain containers, such as 50 mL bottles, and/or whether new information requirements would require a back label, which would increase the cost of compliance. TTB believes the linear display will allow information to fit on labels of most containers without the need for a back label, while requiring the linear display to be in a box will make it more noticeable to consumers. TTB is also proposing to liberalize the format and size requirements for the panel display, as compared to the Notice No. 73 proposal, to encourage industry members to use the panel format rather than the linear format.

TTB believes that these changes would reduce the burden on industry members and are consistent with TTB's mandate to issue regulations to ensure that labels provide consumers with adequate information about the identity, quality, and alcohol content of alcohol beverages. Examples of Alcohol Facts panels in a linear display appear in the proposed regulations at §§ 4.112(h), 5.212(h) and 7.212(j).

b. Type Size

TTB is proposing that the minimum type size requirements for Alcohol Facts statements mirror existing type size requirements for mandatory information in the wine, distilled spirits, and malt beverage regulations in parts 4, 5, and 7, respectively. See 27 CFR 4.38, 5.53, and 7.53. TTB is also proposing to remove the existing maximum type size requirement for alcohol content statements appearing in the proposed mandatory Alcohol Facts statements for wine and malt beverages subject to the FAA Act. Currently, the maximum type size for alcohol content statements is 3 millimeters for all wine containers. See § 4.38(b)(3). For malt beverages, the limit is 3 millimeters for containers of 40 fluid ounces or less and 4 millimeters for containers of more than 40 fluid ounces. See § 7.53(b). TTB believes that the maximum type size requirement may no longer serve a purpose, and that a maximum type size requirement for any one element of an Alcohol Facts statement is likely to either lead to differences in type sizes among the elements or create a de facto limitation on the size of the overall panel, which might be unnecessarily limiting to industry members in designing their labels.

Regarding malt beverages, TTB is also seeking public comment on whether to remove the maximum type size for optional alcohol content statements. TTB received a comment requesting removal of this limitation in the context of its label modernization rulemaking. See T.D. TTB–176 (87 FR 7526, February 9, 2022). In response, TTB stated that such a regulatory change should not be adopted without providing more specific notice (and an opportunity to comment) to interested parties. TTB is now seeking public comment on this issue.

c. Electronic Display of Alcohol Facts Information

TTB considered, but is not proposing, to allow the proposed Alcohol Facts panel to be distributed by electronic means via a link, code, or other marking on the physical label rather than requiring the full panel to appear on the physical label itself. TTB believes that allowing mandatory information to appear somewhere other than the physical label would decrease consumer accessibility to information that to informs decisions about purchasing and consuming alcohol beverages. As detailed below, TTB seeks comment on this assumption.

TTB's current policy, articulated in Industry Circular 2022–2, ''Use of Social Media in the Advertising of Alcohol Beverages,'' allows the use of links, including QR codes, on labels, and treats the linked website as advertising material if such use falls within the FAA Act's definition of an advertisement. Thus, industry members may currently include QR codes that link to websites with additional information about their products, including optional calorie and nutrient information. However, TTB currently does not allow mandatory labeling requirements to be satisfied solely by including the information on a website with a link or code on the physical label; instead, the mandatory information must appear on the label itself.

In Notice No. 232, TTB asked if there are alternative ways of providing the Alcohol Facts information, for example, by allowing information to be provided through a website that could be accessed by consumers via a quick response code (QR code) or website address on the label. In response to this request, individual commenters and public health and consumer advocacy groups largely opposed the use of QR codes for mandatory label information. On the other hand, the vast majority of trade organizations representing industry members commented that they support disclosure via QR code for at least some of the information disclosures proposed in this rulemaking. However, there were exceptions. The Beer Institute commented that nutritional and alcohol

content information should appear on the physical label. TTB also received comments from small producers and a few consumers supporting the use of QR codes or websites to disclose nutritional information.

The comments supporting the use of disclosure via electronic means cited three primary points. First, web-based disclosure is a cost-efficient means to provide information to consumers that provides producers with flexibility and reduces time to market. Second, commenters cited to the broad implementation of digital labels in Europe and the benefits electronic information disclosure could have for international trade. Multiple commenters also touted the benefits of electronic disclosure for tailoring product information to country-specific regulations and providing information in a language appropriate to the point of sale. Finally, several commenters stated that web-based disclosure is consumer-friendly, particularly for products sold in smaller containers. These commenters argued that QR codes prevent labels from becoming cluttered, which can distract consumers from the most relevant information, make labels difficult to read, and contribute to consumer confusion.

These points were countered by comments from public health and consumer advocacy organizations, academics, and consumers. These commenters argued that disclosing the information electronically would create an unreasonable burden on consumers both because many consumers do not have access to a smart phone, or to the internet, as they shop for alcoholic beverages and because consumers do not want to have to go to a website to access the information.

CSPI commented that the barriers to information created by electronic disclosure would disproportionately affect consumers who are older or have lower incomes, and those living in rural areas and on tribal lands. CSPI cited a 2023 survey conducted by the Pew Research Center that found that 79 percent of adults with annual incomes less than $30,000 owned smartphones compared to 90–98 percent of higher income groups and found similar sized gaps by age, with only 76 percent of adults aged 65 and older owning smartphones compared with 89–97 percent of adults in younger age groups.[26] Data from the Federal Communications Commission also shows a rural-urban gap for access to high speed mobile 4G LTE and lower access to ''fixed terrestrial services'' (*i.e.,* satellite or wireless internet/broadband). The gap in access to high speed fixed terrestrial services is even larger between tribal lands and urban areas.[27]

Regarding consumer preferences on the location of information, several commenters cited a survey that found 76 percent of consumers would prefer to learn about alcohol and nutritional content of alcoholic beverages by reading the information on the label of the container, as opposed to scanning a QR code or visiting a website.[28] And the Consumer Federation of America cited a review of consumer behavior experiments by the European Union's Joint Research Centre that found ''the spontaneous use of QR codes by consumers is very low.'' [29]

TTB also received thousands of nearly identical comments from consumers that oppose QR codes as an alternative to on-container labeling. The commenters stated that ''[f]or nutrition and alcohol content to be accessible to all, it is vital that it be mandated to appear on each container.''

As previously stated, TTB currently requires all mandatory information disclosures to appear on the physical label of an alcohol beverage container. At this time, TTB has decided not to propose allowing this information to be disclosed electronically via a link or code on the physical label (*e.g.,* a QR code) rather than on the physical label itself. TTB is persuaded by the comments from public health and consumer advocacy organizations and consumers that allowing the disclosure of information via electronic means would create barriers for consumer access, particularly for consumers in certain demographics and those living in rural areas. However, TTB recognizes that access to technology and cultural norms surrounding the provision of information via electronic means are rapidly advancing and seeks comment on whether any final rule should allow the proposed Alcohol Facts information to be disclosed via electronic means.

TTB is soliciting comments from all interested persons on these issues, including on the following specific topics:

1. Would consumers have trouble locating Alcohol Facts information if that information is presented in a linear display?

2. Does the proposal to require the linear display to appear in a box with the title ''Alcohol Facts'' in bold-face type allow consumers to better locate the information? Alternatively, should industry members be allowed the flexibility to include a linear display that is not surrounded by a box?

3. Do consumers, industry members, or other interested parties have comments on the type size and general formatting requirements proposed for both linear displays and panels?

4. How would the proposed formatting requirements, including the linear display option, affect the costs and other regulatory burdens? What are the benefits of the proposed formatting requirements?

5. Should TTB remove the maximum type size limitation for mandatory statements of alcohol content for wine and malt beverages that appear in an Alcohol Facts statement? For malt beverages, should TTB remove the maximum type size limitation for alcohol content statements that may appear elsewhere on the label as well?

6. What alternatives exist to convey Alcohol Facts information to consumers? How, if it all, would the alternatives affect competition in the marketplace as compared to displaying the information as proposed on the physical label? What are the costs and benefits of aligning Alcohol Facts information to requirements of other countries?

7. If TTB adopts mandatory Alcohol Facts labeling for alcohol beverages, should it include the option of satisfying the requirement by making the information available electronically, for example by including a QR code or website address on the label to allow consumers to view mandatory Alcohol Facts statements on their mobile devices instead of on the product label? Would this option provide consumers with sufficient access to Alcohol Facts information at the retail store so that they can make informed decisions, given issues such as the need to use a smartphone, potential issues regarding the adequacy of cellular or Wi-Fi coverage at some retail stores, and other potential technological challenges? Would the provision of mandatory information disclosures via electronic

[26] Pew Research Center, Mobile Fact Sheet, available at *https://www.pewresearch.org/internet/fact-sheet/mobile.* (accessed May 9, 2024).

[27] Federal Communications Commission, Fourteenth Broadband Deployment Report, 2021, available at *FCC-21-18A1.pdf.*

[28] Big Village's CARAVAN U.S. Online Omnibus Survey, administered March 15–20, 2024. The survey question asked: ''How would you prefer to learn about the ingredients, alcohol content, allergens, calories, and nutritional content of an alcoholic beverage? [Select one answer] 1. Read this information on the label of the container; 2. Scan a QR code on the label; 3. Visit a website address provided on the label; 4. I do not want to learn this information.''

[29] Werle, C.O.C., et al, *Literature review on means of food information provision other than packaging labels,* JRC Technical Report, 2022, available at *https://publications.jrc.ec.europa.eu/repository/bitstream/JRC128410/JRC128410_01.pdf.*

means create disproportional barriers to access for particular communities?

8. How would the option of disclosing the proposed Alcohol Facts information via electronic means affect the costs and other regulatory burdens? What are the benefits of disclosure via electronic means?

9. If TTB were to allow mandatory information to be disclosed electronically, should TTB allow all of the proposed Alcohol Facts information to be disclosed electronically or should some of the information be required to appear on the physical label?

10. If TTB allowed multiple options to convey Alcohol Facts information to consumers, could the lack of uniformity create consumer confusion?

9. Serving Size Reference Amounts

Consistent with the serving sizes found in TTB Ruling 2013–2, TTB proposes the following reference serving sizes in new §§ 4.111(b), 5.211(b), and 7.211(b), for wines, distilled spirits, and malt beverages, respectively:

Serving size	Alcohol percent by volume		
	Wine	Distilled spirits	Malt beverages
1.5 fl oz (44 mL), or 50 mL for 50 mL containers of distilled spirits.	.....	Above 24%	Above 24%.
2.5 fl oz (74 mL)	Above 16 to 24%	Above 16 to 24%	Above 16 to 24%.
5 fl oz (148 mL)	7 to 16%	Above 7 to 16%	Above 7 to 16%.
12 fl oz (355 mL)	.....	Not more than 7%	Not more than 7%.

TTB recognizes that these serving size reference amounts do not reflect the multiple servings that may be consumed on a single occasion. Serving size reference amounts are not intended as recommended consumption amounts but rather are intended to be used as a reference amount for the consumer to determine alcohol, nutrient, and calorie intake. TTB seeks comments on whether the proposed serving size reference amounts should be adopted, and if not, what other serving sizes should be used.

TTB specifically seeks comments on the following issues:

1. Are the proposed reference amounts a reasonably accurate representation of the amount of the product customarily consumed as a single serving? If not, what data or other information should TTB consider that would give a better estimate of the amount customarily consumed for a specific product category?

2. Are the proposed reference amounts more accurate than the serving sizes set forth in TTB Ruling 2004–1 (1.5 fl oz for distilled spirits, 5 fl oz for wines, and 12 fl oz for malt beverages, regardless of the alcohol content)? Why or why not?

3. Should TTB allow greater flexibility in serving sizes?

4. Should the serving size reference amounts be exactly equal to an alcoholic drink equivalent of 0.6 fluid ounces of alcohol, or would this mislead consumers by not recognizing the way in which alcohol beverages are typically consumed?

10. Dual-Column Alcohol Facts Panel Display

TTB proposes to allow for the optional presentation of Alcohol Facts panels in a dual-column format. The first column would provide the information for the standard reference serving size, while the second column would provide information about the contents of the entire container. TTB is proposing to allow the dual-column format on alcohol beverages sold in containers holding at least 200 percent and less than 500 percent of the serving size reference amount. See proposed §§ 4.112, 5.212, and 7.212 below. CSPI suggested that TTB could model its regulations after FDA's policy, which requires dual column nutrition labeling for products containing more than 2 and up to 3 servings per container. See 21 CFR 101.9(b)(12)(i). TTB, however, is proposing to allow dual-column labeling on containers up to 5 servings because TTB is aware of products in the marketplace that are sold in larger containers for which there may be a valid reason to include a dual-column label.

TTB is also proposing that alcohol beverages packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount must be labeled as containing a single serving, and a single serving size is the net content of the container. This means that, for example, a malt beverage sold in a can that contains 150 percent of a single serving size reference amount would be labeled with the entire net contents being considered as one serving.

TTB seeks comments on the following specific issues, and may consider different rules for dual-column labeling and single-serving containers based on the comments:

1. Does dual-column labeling create the impression that consumption of multiple servings of an alcohol beverage at one time is expected or recommended?

2. Should dual-column displays be limited to containers with three or fewer servings, consistent with the FDA regulations? Or is a limit of less than five servings better suited to the way in which alcohol beverages may be bottled and labeled?

3. Should dual-column displays be allowed on any container, regardless of the number of servings in that container, consistent with TTB Ruling 2013–2?

4. The proposed rule would require containers with a net content of more than 100 percent but less than 200 percent of a single serving size reference amount to be labeled as containing a single serving. TTB solicits comments on whether this is the best way to convey the alcohol and nutrient content of these products to consumers.

11. Implementation Period

TTB is proposing a compliance date of 5 years from the date that a final rule resulting from this document is published in the **Federal Register** to minimize the costs and burdens associated with the proposed new labeling information. TTB solicits comments on whether the proposed compliance date would suffice to limit the impact on small businesses and to reduce overall costs of compliance while ensuring that consumers are adequately informed.

TTB received a number of comments in response to Notice No. 232 requesting a sufficiently long transition period between publication of a final rule and implementation of the rule to allow businesses, and particularly small businesses, ample time to exhaust existing label stocks and to bring labels and websites into compliance with the new regulations. One commenter emphasized that a longer implementation period is needed to allow TTB time to educate regulated industry members on new requirements, create resources for small businesses, and publish clarifying guidance.

While most commenters did not suggest a specific time period, the Brewers Association recommended an implementation period of at least 3 years and the American Distilled Spirits Alliance requested at least 5 years. The Brewers Association said, ''a quicker implementation schedule would risk placing financial burdens on brewers and other producers, particularly small ones.'' CSPI recommended that, to minimize costs, TTB provide an implementation long enough that many producers would make updates to their labels even absent the regulation. CSPI cited to an FDA regulatory impact analysis for a food labeling rule that found food and beverage products tend to be voluntarily relabeled on a 2- to 5-year cycle.[30]

TTB believes that a 5-year period would provide both small and large industry members with sufficient time to phase in the requirements of the proposed mandatory Alcohol Facts labeling in a cost-effective manner. As discussed later in this document, TTB estimates that industry members change their labels at least once every 42 months; therefore, a 5-year compliance period would allow all affected industry members to make the changes required by this proposal at the same time as a regularly scheduled label change. See Section IX, Cost Analysis, below, for additional information on the estimated costs of this proposed rule, which are affected by the length of the implementation period and estimates of the frequency of changes to alcohol beverage labels.

Under this proposal, TTB will not require industry members to submit new COLA applications when the only change being made to a label is the inclusion, or alteration, of a required Alcohol Facts panel or statement containing alcohol content information. Therefore, this proposal would not require the submission of a new application for label approval simply to cover revisions to the calorie, nutrient, and alcohol content labeling of the product in accordance with the new requirements.

Under current guidance, industry members have been allowed to label their products voluntarily with either a statement of average analysis or a Serving Facts statement. See TTB Rulings 2004–1 and 2013–2. TTB has also allowed, via FAQs published on TTB's website, ''Alcohol Facts'' panels that contain information about alcohol content, but not nutrient content. All of these voluntary statements differ in several respects from the mandatory Alcohol Facts statement proposed in this document. During the implementation period, industry members may continue to use approved COLAs that contain these statements, as long as they comply with current guidance.

TTB further believes that consumers will begin to benefit from this rulemaking well in advance of the 5-year implementation date because TTB expects that many industry members will come into early compliance with the rule. As previously discussed, 95 percent of the beer volume sold by Anheuser-Busch, Molson Coors Beverage Company, Constellation Brands Beer Division, HEINEKEN USA, and FIFCO USA already contains nutritional information in the form of a voluntary Serving Facts Statement, and the Distilled Spirits Council of the United States (DISCUS) announced that all spirits products distributed in the United States by DISCUS Director Members will include nutrition information by June 2024.[31] Given rising industry participation in voluntary disclosure of nutrition information, TTB expects that if a final rule on Alcohol Facts is issued, many industry members will move to include Alcohol Facts statements on labels in advance of the 5-year implementation period.

Accordingly, effective after a 5-year implementation period, TTB proposes in amended §§ 4.32, 5.63 and 7.63 to mandate an Alcohol Facts labeling statement on all wines, distilled spirits, and malt beverages that contains both alcohol and nutrient content information, as described above. The implementation period does not appear in the proposed regulatory text but will be incorporated in any final rule resulting from this rulemaking.

TTB seeks comments on whether the length of the implementation period is adequate. In particular, TTB seeks comments on the following issues:

1. How frequently do bottlers and importers of alcohol beverages typically change labels?

2. How long do industry members need to comply with the requirements of the proposed rule?

3. Will 5 years provide enough time for small businesses to coordinate labeling changes required by regulatory changes with labeling changes that are planned in the ordinary course of business?

4. Is 5 years too long a compliance period? Should the compliance period instead be 2 years, 3 years, or another length of time?

5. If a final rule is issued, will industry members begin implementation of the labeling changes in advance of the compliance date?

VIII. Summary of Proposed Regulatory Changes

Based on the above, TTB proposes to amend parts 4, 5, 7, 24, 25, and 27 of the TTB regulations to set forth requirements for the presentation of certain alcohol content, calorie, and nutrient information in a mandatory Alcohol Facts statement. These proposed changes involve the addition of a new subpart L in each of parts 4, 5, and 7, as well as conforming changes elsewhere in parts 4, 5, and 7 of the TTB regulations. TTB also proposes amendments to parts 24, 25, and 27 of the TTB regulations with respect to the labeling of beers and wines under the IRC. The proposed regulatory amendments discussed in more detail earlier in this document are summarized below for ease of reading.

A. Mandatory Alcohol Facts Statement

TTB proposes a mandatory nutrient information statement on labels that must include the following information: the title ''Alcohol Facts''; the serving size; the number of servings per container; alcohol content as a percentage of alcohol by volume, the number of fluid ounces of pure ethyl alcohol per serving, the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein.

1. Serving Size and Servings per Container

TTB proposes to define the term ''serving'' or ''serving size'' as the amount of the alcohol beverage customarily consumed as a single serving, expressed in both U.S. fluid ounces, and, in parentheses, in milliliters, for wines, distilled spirits, and malt beverages. In new §§ 4.111(b), 5.211(b), and 7.211(b), TTB proposes the use of serving size reference amounts, specific to each alcohol beverage category, which in each case most closely approximate the amount of the

[30] U.S. Food and Drug Administration, Regulatory Impact Analysis for Final Rules On: ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels'' and ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments,'' 2016, available at *https://www.fda.gov/media/98712/download*.

[31] See September 28, 2022, statement by Distilled Spirits Council of the United States, available at *https://www.distilledspirits.org/news/distilled-spirits-council-director-members-to-provide-serving-facts-information-for-spirits-products-as-part-of-white-house-conference-on-hunger-nutrition-and-health/*.

product that a consumer customarily drinks as a single serving. This amount is specified as a reference amount, used only as a basis for the consumer to determine alcohol, calorie, and nutrient intake and not as a recommended consumption amount. These rules are intended to ensure as much uniformity as possible in labeling serving sizes within a product category. Consistent with the serving sizes in TTB Ruling 2013–2, TTB proposes the following serving size reference amounts for each category:

- *Wine:* For wines with an alcohol content of at least 7 percent and not more than 16 percent alcohol by volume, the serving size would be 5 fluid ounces (about 148 mL). For wines with an alcohol content of more than 16 percent alcohol by volume and not more than 24 percent alcohol by volume, the serving size would be 2.5 fluid ounces (about 74 mL).
- *Distilled spirits:* For distilled spirits products containing not more than 7 percent alcohol by volume, the serving size would be 12 fluid ounces (about 355 mL). For products containing over 7 percent and not more than 16 percent alcohol by volume, the serving size would be 5 fluid ounces (about 148 mL). For products containing over 16 percent and not more than 24 percent alcohol by volume, the serving size would be 2.5 fluid ounces (about 74 mL). For products containing over 24 percent alcohol by volume, the serving size would be 1.5 fluid ounces (about 44 mL) or 50 mL if bottled in a 50 mL container.
- *Malt beverages:* For malt beverages containing not more than 7 percent alcohol by volume, the serving size would be 12 fluid ounces (about 355 mL). For products containing over 7 percent and not more than 16 percent alcohol by volume, the serving size would be 5 fluid ounces (about 148 mL). For products containing over 16 percent and not more than 24 percent alcohol by volume, the serving size would be 2.5 fluid ounces (about 74 mL). For products containing over 24 percent alcohol by volume, the serving size would be 1.5 fluid ounces (about 44 mL).

Since wines and distilled spirits are subject to metric standards of fill under the TTB regulations, the serving sizes for these categories would be set forth in both fluid ounces and milliliters. TTB recognizes that consumers may use fluid ounces rather than milliliters when pouring a glass of wine or a shot glass of distilled spirits. For consistency purposes, TTB proposes to require serving sizes for malt beverages also to be set forth in both fluid ounces and milliliters.

2. Percentage of Alcohol by Volume

In new §§ 4.111(c), 5.211(c), and 7.211(c) for wines, distilled spirits, and malt beverages, respectively, TTB proposes to require alcohol content as a percentage of alcohol by volume to appear as part of the Alcohol Facts statement. TTB is also proposing to amend §§ 4.32, 5.63, and 7.63 to provide that alcohol content must appear as part of the mandatory Alcohol Facts statement, which may appear on any label affixed to the container. New § 5.211(c) also provides that an Alcohol Facts statement for distilled spirits may also bear an optional statement of alcohol content in degrees of proof. TTB is also proposing to make conforming changes to the alcohol content regulations in §§ 4.36, 5.65, and 7.65. TTB is not proposing to change any requirements related to additional statements of alcohol by volume that may appear outside of an Alcohol Facts statement.

TTB proposes to amend §§ 24.257(a)(3) and 27.59 to provide that alcohol content, expressed as a percentage of alcohol by volume, is required on labels for all wines subject to tax under the IRC. Additionally, TTB proposes to amend §§ 25.141(a), 25.142(a), and 27.60 to require an alcohol content statement on labels of all beer subject to tax under the IRC. TTB is also proposing to make conforming amendments to §§ 27.59 and 27.60 to require that imported wines and beers must be labeled with the same basic information applicable to domestic wines and beers under 27 CFR parts 24 and 25. Finally, the proposed rule also reorganizes §§ 27.59 and 27.60 for purposes of clarity.

3. Alcohol Expressed in Fluid Ounces

In new §§ 4.111(d), 5.211(d), and 7.211(d), TTB proposes to require the display of the number of U.S. fluid ounces of pure ethyl alcohol per serving on the mandatory Alcohol Facts statement.

4. Calories

In new §§ 4.111(e), 5.211(e), and 7.211(e), TTB proposes standards for expressing a statement of the calorie content per serving for wines, distilled spirits, and malt beverages, respectively.

5. Carbohydrates

In new §§ 4.111(f), 5.211(f), and 7.211(f), TTB proposes standards for expressing carbohydrate content per serving for wines, distilled spirits, and malt beverages, respectively. TTB also proposes to allow an optional statement of sugar content to appear in the Alcohol Facts statement.

6. Fat

In new §§ 4.111(g), 5.211(g), and 7.211(g), TTB proposes standards for expressing fat content per serving for wines, distilled spirits, and malt beverages, respectively.

7. Protein

In new §§ 4.111(h), 5.211(h), and 7.211(h), TTB proposes standards for expressing protein content per serving for wines, distilled spirits, and malt beverages, respectively.

B. Format and Placement of the Alcohol Facts Statement

New §§ 4.112, 5.212, and 7.212 set forth proposed formatting specifications for the Alcohol Facts Statement. TTB proposes to permit listing Alcohol Facts information in a linear fashion for all products. See these proposed sections for examples of linear displays. In addition, new §§ 4.113, 5.213, and 7.213 would permit the Alcohol Facts statement to appear in either a vertical or horizontal presentation.

C. Tolerance Levels

New §§ 4.114, 5.214, and 7.214 set forth proposed tolerance levels for all of the elements required to appear in the Alcohol Facts statement.

IX. Cost Analysis

A. Summary

Executive Order 12866 requires TTB to design regulations in the most cost-effective manner that will achieve the regulatory objective. Accordingly, TTB seeks to tailor its regulations to impose the least burden on individuals, businesses of differing sizes, and other entities, consistent with the regulatory objective.

In Notice No. 73, TTB solicited comments on the expected economic impact of the proposed rule on Serving Facts labeling, especially on small businesses. TTB asked commenters to provide specific cost data and asked the following question: How many small businesses would be impacted by the proposed rule, and what would be the economic impact of the proposal on these small businesses?

No final rule was issued in response to Notice No. 73. TTB has concluded that many of the larger issues raised by the comments in response to Notice No. 73 about costs and effects on small businesses are still valid concerns today. However, many of the comments, as well as the data that TTB previously relied upon for analyzing cost issues, are out-of-date.

TTB solicited new comments on the costs of requiring per-serving alcohol

and nutritional information on alcohol beverage labels in Notice No. 232. TTB asked if requiring this information on labels would be expected to increase the cost of products, and if so, by how much; to what extent businesses are already following voluntary guidelines for this information; and how any new mandatory labeling requirements would particularly affect small business and new businesses entering the marketplace.

TTB is now undertaking a new effort to estimate the costs of complying with the current proposed rule. This cost estimate takes into consideration the costs and concerns raised by commenters to Notice No. 73 along with the more recent comments and data received in response to Notice No. 232. TTB invites comments on this estimate.

To estimate the costs associated with this proposal, TTB utilized the 2014 FDA Labeling Cost Model,[32] adding its own data inputs, making various assumptions about the alcohol beverage industry, and adjusting costs to reflect inflation through January 2023. While FDA provided TTB with access to its model, TTB would like to emphasize that FDA is not responsible for the assumptions that TTB used in applying that model to the alcohol beverage market; nor is FDA responsible for the estimates set out in this analysis.

As set forth in more detail below, based on the available data, TTB estimates the one-time total labeling costs associated with this proposed rule under a 2-year compliance period to have a present discounted value (PDV) [33] of approximately $323.4 million (or approximately $161.7 million per year). If the compliance date is extended to 3 years, the total PDV would be approximately $258.5 million (or $86.5 million per year); for 42 months, the total PDV would be approximately $204.3 million (or $58.4 million per year). Finally, if the compliance period is extended to 5 years, the total PDV would be approximately $201.2 million (or $40.2 million per year).[34]

As detailed below, TTB also invites comments on whether analytical testing of product samples should be included as a recurring cost after the initial compliance period, and if so, whether industry members would in fact send product samples to independent laboratories for testing on an annual basis. Assuming that each industry member sends two samples of each unique product formulation to be tested by an independent laboratory each year, TTB estimates the recurring costs of the proposed rule to be $64 million. However, as explained later in this document, TTB believes that once initial testing of a product is completed, industry members may choose not to (and are not required to) send that same product formulation for testing every year. For some products, initial testing may not even be necessary.

TTB seeks comments on all aspects of its cost estimates. Given that the proposed changes would affect the labeling of virtually all alcohol beverages that fall under the definition of a wine, malt beverage, or distilled spirit under the FAA Act, and are for sale in interstate commerce, TTB believes that a compliance period of 5 years would minimize the regulatory burdens and economic costs associated with the proposal, while still ensuring that consumers receive adequate information about the alcohol beverages they are purchasing within a reasonable period of time. TTB also believes that many industry members, particularly large companies, are likely to start voluntary compliance with any final rule in advance of the compliance date, given that many industry members already include calorie and nutrient statements on their labels.

Finally, as noted elsewhere in this document, TTB also plans to seek comments in separate rulemaking projects on other labeling changes that would affect the industry, including mandatory ingredient and major food allergen labeling. TTB seeks comments on whether a single compliance date should be established for any changes resulting from these rulemaking projects.

B. Purpose of Proposed Amendments

As noted earlier in this document, the labeling provisions of the FAA Act, codified at 27 U.S.C. 205(e), provide the Secretary of the Treasury with authority to issue regulations to prevent deception of the consumer, to provide the consumer with ''adequate information'' as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product. Consistent with this authority, the proposed rule is intended to provide consumers with more information about the alcohol content, identity, and quality of alcohol beverages, including per-serving information about alcohol content, calories, and nutrient content. This information will in turn enable consumers to follow advice about moderate alcohol consumption, if they so choose, and will provide them with additional information about the calorie and nutrient content of the alcohol beverages they purchase and consume.

Current regulations do not require the labeling of alcohol beverages with calorie, carbohydrate, fat, and protein content, and some alcohol beverages are not even required to be labeled with alcohol content. Offering this basic information to consumers at the point of purchase, on the labels, will provide them with information to make more informed alcohol beverage choices. Providing this information in a consistent format on alcohol beverage containers will also help consumers understand the information and prevent inconsistent presentations that might be confusing.

Furthermore, the proposal to utilize TTB's authority under the IRC to issue regulations requiring alcohol content statements on all wines and beer would serve an important revenue protection purpose. TTB provided a more detailed discussion of the benefits associated with mandatory alcohol content labeling in the preamble of Notice No. 73 (72 FR 41860), and TTB notes that the new requirement would primarily affect malt beverage and table wine labels that do not already include numerical statements of alcohol content.

C. Costs

In the comments to Notice Nos. 73 and 232, manufacturers, importers, and bottlers were primarily concerned with the costs associated with three main categories: (1) New labeling equipment costs; (2) costs associated with label redesign, printing, and administrative costs; and (3) laboratory analysis/testing costs. As explained below, TTB does not believe that the proposed rule, if adopted, would impose new labeling equipment costs. The second category (label redesign, printing, and administrative costs) is estimated on a per-UPC (Universal Product Code) basis and is dependent on the length of the compliance period. The third category, laboratory analysis costs, could impact both initial costs and recurring annual costs. According to the FDA Labeling Cost Model, the initial laboratory analysis costs are affected by the percentage of labeling changes that

[32] FDA has periodically contracted with RTI International to provide a model to estimate the costs of various product labeling changes required by regulation. The most recent version is the ''2014 FDA Labeling Cost Model, Final Report, August 2015,'' available at *https://downloads.regulations.gov/FDA-2016-N-2527-2681/content.pdf.*

[33] Throughout this section, the present discounted value of monetary values is calculated using a 2 percent discount rate in accordance with OMB *Circular A–4 Chapter 12,* available at *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf.*

[34] All costs in this proposal are provided in 2023 dollars.

cannot be coordinated with previously scheduled label changes. Separate and apart from the costs set forth in the model, TTB is also providing an estimate of laboratory analysis costs that may recur on an annual basis after the end of the compliance period.

1. New Labeling Equipment Costs

In Notice No. 73, TTB proposed a mandatory ''Serving Facts'' panel, with a linear display option for small containers. TTB solicited comments on whether a linear display option should be allowed for all containers irrespective of size. TTB also sought comments on whether allowing the linear display on all containers would reduce costs associated with compliance while providing consumers with adequate information about the products.

TTB received many comments from industry members and associations in favor of the linear display option. These commenters supported the use of this option for all containers, regardless of size. Some commenters assumed that a panel requirement would force industry members to use a back label and noted that not all bottlers have the necessary equipment to add a back label to their products. These commenters suggested that compliance with a panel requirement could mean that the bottler would have to purchase a new labeling machine, which would impose a significant burden on small producers and bottlers. The commenters indicated that if TTB were to permit a linear display, rather than require a panel display, the need for additional labeling equipment would be eliminated.

This proposed rule allows the mandatory Alcohol Facts information to appear either in a panel or in a linear display, regardless of the size of the container. Therefore, TTB has no reason to believe that the proposed rule would require industry members to purchase new labeling equipment to comply with its labeling requirements. TTB is inviting comments on this conclusion.

2. Costs Associated With Label Redesign, Printing, and Administrative Costs

To estimate the costs associated with label redesign, printing, and administrative costs, TTB utilized the 2014 FDA Labeling Cost Model, adding its own data inputs and in some cases making assumptions about the alcohol beverage industry.

a. FDA Labeling Cost Model

The FDA Labeling Cost Model estimates labeling costs for a broad range of FDA-regulated consumer products using current data. To utilize the model, the user specifies:

- the categories of products affected;
- the nature of the labeling change;
- the length of the compliance period; and
- additional inputs as specified.

Based on the user specifications, additional collected data, and FDA-provided data, the model generates an estimate of costs per UPC for the labeling change, total costs per product type, and an aggregate cost across all affected products. The model quantifies uncertainty or variability with high and low estimates constructed in a way that facilitates interpretation as bounds on 90 percent probability ranges. Because it is anticipated that labeling regulations would affect numerous products at the same time, the model estimates assume that manufacturers are implementing changes simultaneously across multiple products.[35]

i. Factors That Affect the Results of the FDA Labeling Cost Model

The following three factors affect the results of the FDA Labeling Cost Model:

- Whether the type of contemplated labeling change is ''minor,'' ''major,'' or ''extensive;''
- Data on the number of UPCs and total units that would be affected by the labeling change, including whether the products are ''branded'' or ''private label''; and
- The length of time the regulated industry will have to comply with the change.

aa. Types of labeling changes: The model allows for the three different types of labeling changes. Section 2.3 (page 2–9) of the model explains ''[t]he part of the label that is affected determines the number of plates (colors) that must be changed and thus the complexity of making a change.'' The three types of labeling changes are:

- *Minor change*—only one color is affected and the label does not need to be redesigned. Examples of this type of change include changing an ingredient list or adding a toll-free number.
- *Major change*—requires multiple color changes and label redesign. An example of a major change is adding a facts panel or modifying the front of a package.
- *Extensive change*—a major format change requiring a change to the product packaging to accommodate labeling information. An example of an extensive change is adding a peel-back label or otherwise increasing the package surface area.

For purposes of this analysis, TTB is assuming that the proposed rule will require a ''major change'' for all alcohol beverage containers currently in the marketplace that are subject to the labeling requirements of the FAA Act, *i.e.,* that fall under the definition of a wine, distilled spirit, or malt beverage under 27 U.S.C. 211 and that are sold or otherwise introduced into interstate commerce.[36] TTB invites comments on whether these assumptions are valid.

Finally, TTB notes that many alcohol beverages are already labeled with a ''Serving Facts'' statement or a statement of average analysis. As discussed in section VI.A, this category includes a significant number of malt beverage products.[37] For those products already labeled with a Serving Facts statement or statement of average analysis, it is arguable that any changes required by the proposed rule (changing the title of the statement, complying with the proposed formatting rules, and in some cases changing the appropriate serving size of the product) would be minor.[38] However, as noted above, TTB is assuming, for purposes of this analysis, that all covered labels will be required to undergo a major change. Under the proposed rule, many labels with Serving Facts statements would also have to be changed to place the alcohol content statement (as a percentage of alcohol by volume) and the statement of fluid ounces of pure ethyl alcohol per serving in the new statement.[39] TTB invites comments on this issue, and welcomes any available

[35] As previously noted, if TTB implements other new labeling requirements at the same time as the Alcohol Facts labeling requirements, these changes could be coordinated with use of a single compliance date.

[36] Because TTB does not have data to quantify the number of beer products reflected in the Nielsen data that would not fall under the FAA Act's definition of a ''malt beverage,'' TTB is not excluding any beer from this estimate. TTB is excluding wines under 7 percent by alcohol, to the extent such data is available.

[37] See, *e.g.,* statement by the Beer Institute that more than 95 percent of the beer volume sold by Anheuser-Busch, Molson Coors Beverage Company, Constellation Brands Beer Division, HEINEKEN USA, and FIFCO USA now voluntarily provides nutritional information. Available at *https://www.beerinstitute.org/press-releases/new-report-shows-beer-leads-all-alcohol-categories-in-providing-nutritional-information-to-consumers/.*

[38] As previously noted, there is a difference between the serving sizes authorized for statements of average analysis under TTB Ruling 2004–1 and the serving sizes authorized for Serving Facts statements under TTB Ruling 2013–2. This proposed rule would adopt the serving sizes set forth in TTB Ruling 2013–2.

[39] TTB Ruling 2013–2 permits alcohol content as a percentage of alcohol by volume, as well as alcohol content on a per-serving basis, to appear as part of a Serving Facts statement. However, many industry members choose to include the alcohol content, as a percentage of alcohol by volume, elsewhere on the label rather than including it as part of an optional Serving Facts statement.

data on how many industry members are currently including calorie and nutrient content statements on alcohol beverage labels.

bb. Data on the number of UPCs and total units that would be affected by the labeling change: Based on the FDA Labeling Cost Model, the administrative, redesign, and printing costs associated with making a labeling change are on a per-UPC basis rather than a formulation basis. Each individual product may have several UPCs associated with different sizes or types of packaging. For example, a malt beverage product with the same formulation may have several UPCs associated with that one product because it is sold in a multitude of package combinations (such as individual 12 fl oz and 24 fl oz bottles; or a 6-pack and a 12-pack of 12 fl oz cans), each of which has a separate UPC.

To determine the number of alcohol beverage UPCs in the marketplace, TTB contracted with NielsenIQ[40] to obtain a report, which consists of data for the period from September 9, 2021, through September 10, 2022,[41] for the following markets: Total U.S. all outlets combined,[42] liquor, and convenience stores.[43] At TTB's request, Nielsen reported the following data:

- Overall number of UPCs for beer, wine, and spirits;
- Overall number of brand extensions for beer, wine, and spirits;
- Number of private labels for beer, wine, and spirits;
- Number of units sold for beer, wine, and spirits for cans, bottles, and other packaging;
- Total dollars sold for beer, wine, and spirits;
- Overall number of UPCs for wine with less than 7 percent ABV; and
- Overall number of UPCs for malt beverage/beer in the flavored malt beverage category (broken down, as appropriate, by subcategories such as hard seltzer).

TTB made some changes to the NielsenIQ categorization of wine,[44] and beer/malt beverages[45] based on whether the products fall within the definitions of those terms set forth in the FAA Act, 27 U.S.C. 211.

Based on the data that Nielsen provided (including the changes to the data noted above), TTB estimates that industry members would have to modify labels for approximately 130,410 different alcohol beverage product UPCs to comply with the proposed Alcohol Facts disclosure. In Table 1, TTB has broken down this estimate into the total UPCs, brand extensions,[46] and total units for wines, distilled spirits, and malt beverages/beer. TTB invites comments on whether these estimates are valid.

TABLE 1—NUMBER OF UPCS, BRAND EXTENSIONS, AND TOTAL UNITS

	UPCs	Brand extensions	Total units
Wines	64,509	20,963	1,690,698,919
Distilled Spirits	32,775	16,447	1,741,901,217
Malt Beverages/Beer	33,126	22,364	5,823,640,369
Total	130,410	59,774	9,256,240,505

[40] Based in part on data reported by NielsenIQ through its MarketTrack Service for the Alcohol Beverage Category for the period from September 9, 2021, through September 10, 2022, for the Total US all outlets combined, liquor, and convenience stores market. Copyright © 2022 Nielsen Consumer LLC.

[41] TTB emphasizes that the analyses, calculations and conclusions in this document may have been informed in part by the NielsenIQ RMS data through NielsenIQ's Retail Measurement Service (RMS) for the beverage alcohol product categories for the reported time period for Total US expanded all outlets combined, liquor, and convenience stores. However, any such analyses, calculations and conclusions are those of TTB and do not reflect the views of NielsenIQ. NielsenIQ is not responsible for, had no role in, and was not involved in analyzing and preparing the results reported herein, or in developing, reviewing or confirming the research approaches used in connection with this document.

[42] NielsenIQ's xAOC market includes retailers in its Food, Drug, Mass, Walmart, Club, Dollar, and Military channels. Nielsen defines those channels as follows:

—Food is inclusive of all grocery stores with greater than $2MM in annual ACV, including smaller chains and independents, and large players such as Whole Foods.

—Drug is inclusive of all chains and independents with greater than $1MM in annual ACV.

—Select Mass includes Target, K-Mart, and ShopKo.

—Walmart includes Walmart Division 1 + Supercenter's + Neighborhood Markets.

—Select Club is inclusive of Sam's Club and BJ's. Costco does not participate in market measurement with any data provider.

—Select Dollar is inclusive of Dollar General, Family Dollar, and Fred's Dollar.

—Military is inclusive of military commissary stores.

[43] Nielsen states that its Convenience channel includes ''major chains as census cooperators, and is projected to represent all chains and independents.''

[44] While the Nielsen data separated out ''wine'' based on whether the alcohol content was at least 7 percent, it separated out ''cider'' products based on whether the alcohol content was over 6 percent alcohol by volume or 6 percent and under. As previously noted, the definition of wine under the FAA Act (but not the IRC) covers only wine that contains at least 7 percent alcohol by volume. Thus, TTB excluded wines with an alcohol content of under 7 percent and excluded ciders with an alcohol content of 6 percent and under. This meant that ciders were included if they contained over 6 percent alcohol by volume. TTB recognizes that this number is overly inclusive, because it includes some wines with an alcohol content of over 6 but under 7 percent alcohol by volume, even though those wines are not subject to the labeling requirements of the FAA Act.

[45] As previously noted, the FAA Act's definition of ''malt beverages'' does not include beer made without both malted barley and hops. Thus, for example, while Nielsen included ''cider'' products in ''Total Beer/FMB/Cider'' category, TTB moved the cider products to the ''wine'' category instead, as cider products (*i.e.,* products predominantly derived from the fermentation of apples) would be classified as wines under TTB regulations implementing both the IRC and the FAA Act. While it is possible that some of these products are in fact beer or malt beverages, TTB regulations do not provide for the labeling of malt beverages as ''cider.'' Similarly, NielsenIQ also has a subcategory of beer entitled ''hard seltzer.'' While some of these products may not be malt beverages under the FAA Act, some hard seltzer products are in fact made with both malted barley and hops, and are thus classified as malt beverages within the meaning of the FAA Act. Because TTB did not have a basis to distinguish those hard seltzers that are ''malt beverages'' under the FAA Act from those that are not, the entire hard seltzer subcategory is included in the overall category of malt beverages. TTB notes that this approach may overstate the number of malt beverages (within the meaning of the FAA Act) in the marketplace.

[46] For purposes of this analysis, TTB used the Nielsen ''brand extensions'' as a proxy for formulas.

cc. Private label products: Private-label alcohol beverages are traditionally brands created for a company (often a retailer or restaurant), which sell exclusively via one sales channel. At TTB's request, NielsenIQ provided data on the number of private labels in the marketplace, but noted that its methodology meant that individual UPCs for private labels would be masked and displayed as a ''pseudo UPC.'' Nielsen's data reflected that private label UPCs made up less than one percent of each category (wine, distilled spirits, and malt beverages). However, based on Nielsen's explanation of its methodology, as well as the publicly available data on the number of private labels in the alcohol beverage market, TTB views the number of private labels reported in the data as being underinclusive.[47]

The FDA Labeling Cost Model treats ''private labels'' differently from branded labels and assumes that labeling changes for private labels require additional time for coordination with regulatory changes. TTB believes that the model's treatment of private labels makes the private label category a useful proxy for the percentage of UPCs that might require additional time for coordinating regulatory labeling changes with regularly scheduled labeling changes, due to the size of the company.

After reviewing the available data on private labels, as well as the available data on the size of businesses in the wine, distilled spirits, and malt beverage industries, TTB is estimating that 10 percent of the alcohol beverage products requiring labeling changes as a result of this proposed rule may require additional time to coordinate regulatory labeling changes with labeling changes made in the ordinary course of business, in the same way that ''private label'' products require additional time under the FDA Labeling Cost Model. For the sole purpose of estimating costs under different compliance periods, TTB is treating those products as affecting the costs in a manner that is functionally equivalent to the role that private labels play in the FDA Labeling Cost Model.[48] Accordingly, TTB estimates that approximately 13,041 UPCs (10 percent of the total 130,410 UPCs) fall into the private label category for the purposes of the model.

dd. Length of compliance period: The FDA Labeling Cost Model assumes that the costs of a new labeling requirement fall significantly as the time allowed for compliance increases because affected industry members can better coordinate new labeling requirements with scheduled labeling changes. Section 3 of the model explains that product manufacturers ''often update their labeling information for marketing purposes, because of a change in packaging, or for other reasons,'' and that ''when manufacturers update labels for nonregulatory reasons, they can often incorporate a change required by a regulation at minimal additional costs.'' Thus, the model accounts for these nonregulatory labeling changes when estimating the costs of regulatory labeling changes to avoid overstating the costs of compliance.

The model further explains that ''[i]t is likely that a regulation affecting labeling will cause affected firms to incur some level of costs, regardless of how well coordinated the regulatory labeling change is with nonregulatory labeling changes.'' See FDA Labeling Cost Model Section 3.1. The model, therefore, assumes that a regulation affecting labeling will cause affected entities to incur some costs even when a regulatory labeling change is coordinated with nonregulatory labeling changes, and it accounts for the incremental costs associated with the regulation, ''such as staff time for reviewing the regulatory requirements, determining options for complying with the regulatory requirements, and coordinating the required change with a scheduled change.'' Id.

The FDA Labeling Cost Model explains that most food manufacturers that provided estimates to FDA indicated that some 20–50 percent of products are relabeled in any given year, indicating a 2–5 year cycle for relabeling all products. Furthermore, interview respondents for the FDA Labeling Cost Model noted that private label products were less likely to be relabeled in any given year. (See Section 3.2.1, page 3–7).

TTB does not have specific data on the frequency of scheduled label changes for the alcohol beverage industry but believes it would be similar in many respects to the FDA-regulated food industry. Table 3–1 of the FDA Labeling Cost Model presents the FDA's assumptions about the proportion of UPCs that could be changed together with a scheduled label change, based on the length of the compliance period. The model assumes that 100 percent of brand name products can coordinate a regulatory label change with a regularly scheduled label change within two years.[49]

Private label products, however, do not change their labels as often. Accordingly, a longer compliance period is necessary to coordinate a regulatory change with a regularly scheduled change for all private label products. For private label products, the percentage of changes that can be coordinated with a regularly scheduled change is only 26 percent at 2 years (as compared to 100 percent for branded products), and 57 percent at 3 years. A 42-month compliance period is required to coordinate 100 percent of changes to private label products with regularly scheduled label changes.[50]

TTB applied the FDA's assumptions about the proportion of UPCs that could be changed together with a scheduled label change, based on the length of the compliance period, to the approximately 130,410 different alcohol beverage product UPCs. Table 2 shows the number of coordinated changes and uncoordinated changes to the alcohol beverage UPCs for a compliance period of 2, 3, 3.5, and 5 years, broken down by wines, distilled spirits, and malt beverages/beer. Because the FDA model assumes that 100 percent of branded product label changes can be coordinated within a 2-year compliance period, the number of uncoordinated changes is solely driven by private labels. With a 3.5-year compliance period or longer, the model assumes that all label changes, whether branded or private label, can be coordinated with a regularly-scheduled change, and that, therefore, there are no uncoordinated changes.

[47] See, *e.g.,* Catherine Douglas Moran, ''Untapped: How grocers are growing their private label alcohol assortment,'' Grocery Dive, available at *www.grocerydive.com/news/untapped-how-grocers-are-growing-their-private-label-alcohol-assortment/592081/;* and Hannah Wallace, ''*Private Label Wines: A Peek Behind the Label,*'' SevenFifty Daily, available at *https://daily.sevenfifty.com/private-label-wines-a-peek-behind-the-label/.*

[48] For example, TTB notes that under data from the North American Industry Classification System (NAICS), as adjusted for inflation, the category of brewers, wineries, and distillers that have fewer than 20 employees account for just under 10 percent of the annual revenues of those businesses. See Section XI.E.2. For wineries, businesses with fewer than 20 employees account for 11.7 percent of the annual revenues; for brewers, the figure is 9.2 percent, and for distillers, the figure is 7.3 percent.

[49] This data point is limited to the products that TTB selected from the FDA Labeling Cost Model to use as analogs for the relevant alcohol products and does not necessarily apply to all food and drink products.

[50] TTB notes that even if the alcohol beverage industry differs from the food industry with regard to the frequency with which label changes are made for private labels, as discussed previously, the private label category is a useful proxy for the percentage of labels that may not be changed as frequently as other labels are.

TABLE 2—NUMBER OF UNCOORDINATED/COORDINATED CHANGES BY UPC

	Wines	Distilled spirits	Malt beverages
24 months:			
Uncoordinated	4,774	2,425	2,451
Coordinated	59,735	30,350	30,675
36 months:			
Uncoordinated	2,774	1,409	1,424
Coordinated	61,735	31,366	31,702
42 months:			
Uncoordinated	0	0	0
Coordinated	64,509	32,775	33,126
60 months:			
Uncoordinated	0	0	0
Coordinated	64,509	32,775	33,126

ii. Qualifications to TTB's Application of Model to Alcohol Beverages

As previously noted, the data available to TTB did not always match up with the categories reflected in the FDA Labeling Cost Model. Accordingly, TTB had to make some assumptions in applying the model to its data. TTB invites comments on the validity of those assumptions and welcomes data on any of these issues.

- The FDA Labeling Cost Model does not include alcohol beverage product categories. TTB, therefore, had to use proxy categories for wine, spirits, and malt beverages. The categories in the model reflect different packaging types, material costs, and inventory costs that apply to that category. The variability in costs between different food categories in the model is primarily driven by the print labeling costs (material) and inventory-related costs (discarding of labels or packages) for different packaging and label types. Accordingly, TTB chose food categories as proxies for the three alcohol beverage categories based on similar packaging types and labels. Nielsen provided estimates of the ratio of packaging types (*e.g.,* cans, bottles) for each alcohol beverage commodity. TTB chose the model category ''non-alcoholic wine'' as a proxy for all wine and spirits because the costs for the ''non-alcoholic wine'' category are associated with ''paper labels,'' such as those attached to glass bottles, and the Nielsen data showed that the vast majority of wine and spirits are packaged in bottles. The Nielsen data showed that approximately 70 percent of malt beverages are packaged in aluminum cans and the remaining 30 percent are primarily in glass bottles. TTB, therefore, chose the food category of ''coffee- liquid,'' which reflects costs associated with packaging in aluminum cans, as a proxy for 70 percent of the malt beverages and used the ''non-alcoholic wine'' category as a proxy for malt beverages in glass bottles.[51]
- TTB applied FDA Labeling Cost Model input costs for labor, materials, analytical costs, marketing, inventory, and recordkeeping, based on its conclusion that this model is a reasonable proxy given the similarities in packaging foods and alcohol beverages.
- The FDA Labeling Cost Model was developed based on 2014 wage rates and allows for adjustments for inflation. Accordingly, TTB used Bureau of Labor Statistics data to apply an inflation adjustment of 25.5 percent, based on the estimated aggregate Consumer Price Index inflation rate between the start of 2014 and January 2023.[52]
- TTB input data that is specific to alcohol beverages. However, the data also reflects some working assumptions:
  - For the reasons explained earlier in this section, TTB assumed that the share of labels where changes could not easily be coordinated with regulatory changes was 10 percent. In the FDA Labeling Cost Model, these calculations are based on the number of ''private labels.'' However, for the alcohol beverage category, TTB estimated that whether an alcohol beverage product is a ''private label'' product or not, the 10 percent figure is a reasonable proxy for those businesses that make regularly scheduled labeling changes on a less frequent basis.[53] TTB invites comments on this assumption. TTB also notes that with a proposed 5-year compliance period, the exact percentage of private label products, or private label equivalents, is not as important, because the model estimates that 100 percent of private label changes will be ''coordinated'' labeling changes as of 42 months.
  - For purposes of calculating the costs of analytical testing *(i.e.,* laboratory analysis), TTB used Nielsen-provided data on the number of ''brand extensions'' as a proxy for the number of formulations.
  - The data in question does not cover the entire market; however, TTB has tentatively concluded that the data likely included unique products that represent close to 100 percent of all the UPCs that are available throughout the United States. TTB seeks comments on the validity of this conclusion.

b. Costs of Proposed Labeling Changes

i. Cost per UPC

Using the model with the described data inputs and qualifications, the mean labeling cost per UPC for coordinated labeling changes (changes that can be coordinated with scheduled changes) is unaffected by length of the compliance period. Regardless of whether the compliance period is 2 years, 5 years, or somewhere in between, the costs per UPC for a coordinated labeling change is $1,636.52 for wines, distilled spirits, and malt beverages.

For changes that cannot be coordinated, the mean labeling cost per UPC varies based on the compliance period, as is illustrated in Table 3. The cost per UPC for uncoordinated changes (changes that cannot be coordinated with scheduled changes) is driven upward by both greater-per-unit labor, material, and recordkeeping costs, and the presence of inventory and analytical costs, which are not applicable to coordinated labeling changes.

[51] These costs may not be a perfect proxy for those that would be incurred in the printing of alcohol beverage labels, but it was the best proxy available to TTB.

[52] Consumer Price Index (January 2023), U.S. Bureau of Labor Statistics, available at *https://www.bls.gov/cpi/.*

[53] See discussion in Section IX.C.2.a.i.cc.

TABLE 3—MEAN COST PER UPC FOR UNCOORDINATED CHANGE [54]

	Wines	Distilled spirits	Malt beverages
24 months	$11,856.67	$12,992.46	$19,352.27
36 months	11,264.61	11,791.86	12,572.01
42 months	10,427.36	10,427.36	9,445.05
60 months	10,427.36	10,427.36	9,445.05

ii. Initial Cost of Compliance

Table 4 sets out the overall initial cost of compliance with the proposed regulation based on four different compliance periods (2 years, 3 years, 42 months and 5 years), applying a 25.5 percent inflation rate as of January 2023.[55] TTB estimates the one-time total relabeling costs associated with this proposed rule to be approximately $333 million assuming a compliance date of 2 years (or approximately $167 million per year). If the compliance date is extended to 3 years, the total costs would be approximately $270 million (or $90 million per year); for 3.5 years, the total costs would be approximately $214 million (or $61 million per year), and if the compliance date is extended to 5 years, the total costs would be approximately $214 million (or $43 million per year).

TABLE 4—TOTAL COST BASED ON LABELING COMPLIANCE PERIOD

	Wine (million)	Distilled spirits (million)	Malt beverages (million)	Total (million)	Average annual cost (million)
24 months	$154	$81	$98	$333	$167
36 months	132	68	70	270	90
42 months	106	54	54	214	61
60 months	106	54	54	214	43

Table 5 sets out the same overall estimated cost of compliance based on the four different compliance periods but with a 2 percent discount rate. TTB estimates the one-time total relabeling costs associated with this proposed rule at a 2 percent discount rate to be approximately $323.4 million assuming a compliance date of 2 years (or approximately $161.7 million per year). If the compliance date is extended to 3 years, the estimated total costs with a 2 percent discount rate would be approximately $259.5 million (or $86.5 million per year); for 3.5 years, the estimated total costs with a 2 percent discount rate would be approximately $204.3 million (or $58.4 million per year), and if the compliance date is extended to 5 years, the estimated total costs with a 2 percent discount rate would be approximately $201.2 million (or $40.2 million per year).

TABLE 5—TOTAL COSTS WITH 2 PERCENT DISCOUNT RATE

	Undiscounted (million)	2% Discount rate (million)	Undiscounted average annual cost (million)	2% Discount average annual cost (million)
24 months	$333	$323.4	$167	$161.7
36 months	270	259.5	90	86.5
42 months	214	204.3	61	58.4
60 months	214	201.2	43	40.2

The overall cost of compliance goes down as the compliance period gets longer due to the higher number of coordinated changes in the longer compliance periods.[56] Costs for shorter compliance periods are far greater due to the greater number of uncoordinated changes, which drive up per-unit labor and recordkeeping costs and create inventory and analytical costs that do not apply to coordinated labeling changes.

As previously noted, TTB estimates that approximately 13,041 UPCs (10 percent of the total 130,410 UPCs) fall into the category of products for which the label is less likely to be modified on a regular basis, thus making them roughly equivalent to FDA's private label category. While the model assumes that 100 percent of brand labels will be able to coordinate regulatory changes with regularly scheduled labeling changes with a compliance period of at least 2 years, this is not true of private labels until the compliance period reaches 42 months. Thus, the difference in the total labeling costs under the FDA Labeling Cost Model between a 2-year, a 3-year, a 42-month, and a 5-year compliance period is driven by assumptions about private labels.

c. Proposed Compliance Period

Based on its analysis of the cost data described in this section, TTB proposes to adopt a 5-year implementation

[54] It should be noted that under the model, there are no uncoordinated labeling changes for compliance periods of at least 42 months. See Table 2.

[55] The figures in Table 4 were calculated using the FDA Labeling Cost Model, which only includes initial costs. The model does not calculate any recurring costs that may accrue following the initial compliance period.

[56] The overall cost is the same for the 42-month and 60-month compliance periods because the FDA Model assumes that at 42 months all labeling changes will be coordinated.

period. TTB believes that the proposed compliance period will reduce the costs and burdens associated with the proposed new labeling requirements. According to the FDA Labeling Cost Model, 100 percent of industry members will be able to coordinate their labeling changes as a result of the proposed regulatory requirements with their scheduled labeling changes within the proposed 5-year implementation period. This will allow affected industry members to use up existing label stocks and coordinate the redesign of their labels with an already planned label redesign.[57]

TTB is further proposing to reduce the costs associated with new labeling information by permitting linear displays and not requiring industry members to submit new applications for label approval when the only change being made to the label is the inclusion of a new Alcohol Facts statement, or the replacement of an already approved Serving Facts statement or statement of average analysis, with a new Alcohol Facts statement.

TTB invites comments on this data, the proposed compliance period, and any other options available to reduce regulatory burdens and economic costs while still providing the consumer with adequate information about the products in question.

3. Recurring Analytical Testing Costs

In response to Notice No. 73, many commenters raised the issue of the cost of conducting analytical testing of their products. Comments on Notice No. 232 demonstrate that the costs of conducting analytical testing of products continue to be a concern for small producers. But the comments also showed that in the time since Notice No. 73 was published, many industry members have begun testing their products for purposes of listing calorie and nutrient information on labels and websites, or in some cases, so that restaurants may comply with the menu labeling regulations administered by FDA.[58] The Beer Institute commented that, as of 2021, 95 percent of the malt beverages produced by Anheuser-Busch, Molson Coors, Constellation Brands, HEINEKEN USA, and FIFCO USA already include nutrient information,[59] and DISCUS commented that by June 2024, all DISCUS Director Members[60] will provide per-serving alcohol and nutritional information on the labels of all spirits products they sell in the United States.

The FDA Labeling Cost Model estimates a cost of $1,060 per product formulation for a laboratory analysis of non-alcoholic wines that includes two samples, as well as the cost of preparing and submitting samples to a laboratory.[61] However, the model applies the cost for laboratory analysis only with regard to changes that cannot be coordinated with regularly scheduled labeling changes.

TTB compared the FDA figures with quotations for calorie and nutrient testing for alcohol beverages on the publicly available websites of three randomly selected laboratories, and determined that the estimates, per sample, ranged from a low of $160 to a high of $435. Some testing laboratories charged different amounts depending on the type of alcohol beverage.[62]

TTB also received comments in response to Notice No. 232 that included data on testing costs. Commenters quoted testing costs ranging from $170-$800 per product. The range in testing costs seemed to be related to the number of nutrients the commenter assumed would need to be included in the test. One commenter stated that the testing necessary for all nutrients that appear in the FDA's Nutrition Facts Label would cost $500, but that the test for calories, carbohydrates, protein, and fat (the nutrients proposed for Alcohol Facts panels) would cost only $170.

For purposes of this analysis, TTB is including an estimate of the recurring costs of analytical testing for calorie and nutrient content for alcohol beverages. Using an estimate of approximately 60,000 brand extensions, or different formulations, per year, with a cost of $1,060 for testing two samples of each formulation, the ongoing annualized cost of the proposed rule would be approximately $64 million. TTB invites comments on whether industry members would in fact plan to conduct analytical testing of their products if the proposed rule is adopted, and if so, how frequently such testing would occur. In particular, TTB seeks comments on whether the reasons outlined below might result in a lower cost for, and frequency of, testing:

- *Differences between TTB's proposed rule and FDA's nutrient labeling regulations.* The FDA Nutrition Facts label includes many more nutrients than the proposed TTB Alcohol Facts label, which may impact the cost of testing.[63]
- *The proposed rule allows industry members to rely on databases rather than analytical testing.* The proposed rule would not require industry members to send each batch of a product to a laboratory for analysis prior to labeling the product; nor would it require any testing at all. Industry members may choose to rely on analytical testing, published databases, mathematical calculations based on alcohol content (for certain products), or an appropriate blend of these methods to accurately label their products. The frequency with which producers will conduct analytical testing on products will vary from product to product. It is up to the bottler or importer to accurately label the product; however, the proposed regulations do not prescribe a particular methodology.
- *Proposed tolerances facilitate the use of typical values charts and other methodologies to determine calorie and nutrient content.* As previously noted, in 2020, TTB issued public guidance to broaden the tolerance levels for calorie statements on labels and in advertisements. See TTB Ruling 2020–1 and TTB Procedure 2020–1. In this proposed rule, TTB has included this expanded tolerance level for calories, and is adopting an objective standard for the three nutrients required to be disclosed, allowing a tolerance of 20 percent above or below the labeled amount. TTB believes that these proposed changes will facilitate the use of ''typical values'' charts and other methodologies to calculate the calories, carbohydrates, fat, and protein content of an alcohol beverage product. TTB is also proposing to expand the alcohol content tolerance for malt beverage

[57] While this proposal will allow all industry members five years to implement required changes, TTB believes that many industry members, particularly large companies, are likely to start voluntary compliance with any final rule in advance of the compliance date given that many industry members already include calorie and nutrient statements on their labels.

[58] See FDA final rule, ''Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments,'' which includes alcohol beverages, available at *https://www.federalregister.gov/documents/2014/12/01/2014-27833/food-labeling-nutrition-labeling-of-standard-menu-items-in-restaurants-and-similar-retail-food.*

[59] Beer Institute statement, supra note 8.

[60] As of May 9, 2024, DISCUS Director Members included Bacardi, Brown-Forman, Constellation Brands, and Remy Cointreau among others. DISCUS lists the Director Members on its website at *https://www.distilledspirits.org/director-members/.*

[61] This estimated laboratory analysis cost includes the adjustments for inflation discussed above.

[62] These estimates usually covered testing that would provide results for alcohol content, calories, carbohydrates, and protein. The laboratories generally advised that fat was not expected to be found in alcohol beverages, and that analytical testing for fat content would be an extra cost.

[63] TTB notes that while the proposed rule would require disclosure of the calorie content and three macronutrients (carbohydrates, fat, and protein), FDA Nutrition Facts labels also require the disclosure of sodium, fiber, and certain vitamins and minerals.

labeling statements. This means bottlers would be less likely to have to change labels due to minor variations in alcohol content among different batches.

• *Availability of calculations based on alcohol content.* For many products, there will be no need to test at all. For example, a company producing an 80-proof vodka will know from standard databases what the calorie content of the product is. The product will not have any carbohydrate, fat, or protein content. Furthermore, the tolerances adopted by the proposed rule facilitate the use of non-analytical methods to determine calories and carbohydrates for many alcohol beverages after the alcohol content of the product is determined.

• *Industry members are already testing their products in the absence of a regulatory requirement.* TTB seeks comments on the extent to which industry members are already conducting analytical testing in the absence of regulations that mandate this type of disclosure on labels.

TTB tentatively concludes it is likely that a significant number of products will either not need to be tested on an annual basis or are already being tested. TTB is nonetheless including these products in the estimates, and believes it is reasonable to estimate costs based on the assumption that, on average, each company will conduct one analytical test per year, consisting of two samples, of each formulation.[64] If a 5-year compliance period is adopted, TTB has estimated that the initial compliance costs of the proposed rule would amount to approximately $201.2 million in 2023 dollars (or $40.2 million per year). If TTB assumes that industry members will continue to send each product formulation for analytical testing each year, the ongoing annualized cost of the proposed rule would be approximately $64 million.[65]

TTB invites comments from the public and the industry with regard to this estimate. In particular, we are interested in receiving comments on how many industry members, particularly small businesses, would send their products for analytical testing on an annual basis as a result of the proposed rule, as well as the number that would have no need to do this because:

• They already know the calorie and nutrient values of their products;

• They would conduct analytical testing even in the absence of a regulatory requirement;

• They feel comfortable relying upon databases for this information, or

• The nature of their product is such that the relevant information can be accurately calculated based simply on the alcohol content of the product.

X. Public Participation

A. Comments Sought

TTB requests comments from the public and all interested parties on the regulatory proposals contained in this document. TTB requests general comments from anyone interested in the regulatory proposals outlined in this document. TTB seeks comments on the proposed rule as well as other approaches also discussed in this document. TTB has posed specific questions on various issues throughout this preamble, and it seeks comments in response to those questions. In developing the final rule, TTB will carefully evaluate the proposed regulations in light of all comments and suggested alternative approaches, and it will adopt the most appropriate approach. Where TTB has specifically solicited comments on alternatives to proposed amendments, it may consider adopting such alternatives in lieu of the proposed amendments based on its review of the comments.

TTB is particularly interested in comments that address whether the proposed revisions to the labeling regulations will provide the consumer with adequate information about the identity, quality, and alcohol content of the product. Where TTB proposes substantive changes, TTB seeks comments on the proposals for further appropriate changes.

TTB also seeks comments on the impact that the proposed changes will have on industry members and any suggestions as to how to minimize any costs or regulatory burdens associated with the proposed regulations, including the following issues:

1. Does the proposed compliance date suffice to limit the negative impact on small businesses and reduce overall costs of compliance while ensuring that consumers receive adequate information about the identity, quality, and alcohol content of the alcohol beverage products they are purchasing and consuming?

2. Is there a shorter compliance period that would provide more benefits to consumers while still limiting costs and potential negative impacts on small businesses? Specifically, would a 2-, 3-, or 3.5-year compliance period suffice?

3. How many small businesses would be impacted by the proposed rule, and what would be the economic impact of the proposal on these small businesses? How, if at all, does the length of the compliance period affect the impact on small businesses? Please explain in detail and provide specific cost data.

4. Are the tolerances for nutrient labeling sufficiently broad to facilitate reliance on typical value charts and databases but still specific enough to provide accurate information to consumers? How, if at all, would the use of typical value charts and databases reduce the costs of the proposed rule, particularly for small businesses? Please explain in detail and provide specific cost data.

We welcome comments on all other issues presented in this notice of proposed rulemaking.

B. Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 237 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing. If TTB schedules a public hearing, it will publish a notice of the date, time, and place for the hearing in the **Federal Register**.

C. Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking

[64] See FDA Labeling Cost Model, Section 3.1.2 ''Analytical Testing.'' (''To conduct analytical testing, a manufacturer will usually prepare a composite sample made up of several samples of the product. Based on information provided by the manufacturers we contacted, they usually test one composite sample but may test up to three samples. Many manufacturers already have some idea of the levels of the particular substance in their product from their routine quality control checks. In particular, some manufacturers told us they test products approximately every 2 years to verify initial test results. However, even if the manufacturer has data on a particular substance, if a regulation involves that substance, the manufacturer would generally retest to confirm their data.'')

[65] The FDA Model assumes that there are no analytical testing costs for coordinated labeling changes; therefore, the initial compliance cost of $201.2 million in 2023 dollars (or $40.2 million per year) does not include analytical testing because the model assumes there will be no need for analytical testing for coordinated labeling changes. If, instead, the initial compliance cost included the recurring cost of analytical testing, an additional $64 million would be added to those implementation costs, which, if prorated over 5 years, would amount to an additional $13 million per year during the implementation period, for a total cost of $53.2 million per year.

record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

XI. Regulatory Analyses and Notices

The impacts of this proposed rule have been examined in accordance with Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094, and the Regulatory Flexibility Act (5 U.S.C. 601–612).

A. Purpose of the Rule

The overall purpose of the proposed rule is to provide consumers with more information about the identity, quality, and alcohol content of alcohol beverages. Since the effective date of the Nutrition Labeling and Education Act of 1990, nutrition labeling has been required for foods subject to the labeling regulations of the FDA (subject to certain exceptions), and the Department of Agriculture has similarly adopted regulations for foods subject to its labeling regulations. This leaves alcohol beverages subject to the labeling regulations of the FAA Act as the only type of packaged beverage category without any requirement for calorie or nutrient labeling.

Current TTB policy is that claims about reduced calorie and carbohydrate levels are misleading in the absence of a more complete statement regarding the per-serving levels of calories, carbohydrates, protein, and fat. These statements may be presented in the form of a Serving Facts statement or a statement of average analysis, each of which has different serving sizes. TTB is inviting comments on whether the current lack of uniformity with regard to calorie and nutrient labeling is confusing to consumers, and whether consumers would benefit from readily accessible information in the form of an easily understood labeling statement in a consistent format on alcohol beverage containers.

Accordingly, TTB proposes to require the disclosure of alcohol content expressed as a percentage of alcohol by volume on all alcohol beverage labels and to require the disclosure of calories, certain nutrients, and fluid ounces of pure ethyl alcohol per serving in an Alcohol Facts statement on all alcohol beverage labels subject to the FAA Act.[66] TTB believes this proposal would provide consumers with the information they need to follow advice from the U.S. Government, public health organizations, and their own doctors about alcohol consumption, if they so choose.

Additionally, TTB has determined that mandatory alcohol content statements on labels for all beer and wines subject to tax under the IRC will assist in protection of the revenue.

B. Benefits

TTB does not have data to quantify the monetary benefits of the proposed rule, but as stated previously, the overall purpose of the proposed rule is to provide consumers with more information about the identity, quality, and alcohol content of alcohol beverages. This information will in turn enable consumers to follow advice about moderate alcohol consumption and will provide them with additional information about the calorie and macronutrient content of alcohol beverages. Currently, alcohol beverage products are the only beverage products on the market that are not required to provide labeling information concerning calorie, carbohydrate, fat, and protein content. Additionally, most malt beverage products and some wines are not required to disclose the alcohol content on their labels. TTB believes offering this information to consumers on product labels at the point of purchase will provide consumers with adequate information to make more informed alcohol beverage choices.

The health risks associated with alcohol consumption and alcohol abuse remain clear. According to *Alcohol Facts and Statistics,* a publication of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), an estimated 178,000 people in the United States died from alcohol-related causes from 2020–2021.[67] The Centers for Disease Control estimates that excessive alcohol consumption costs $249 billion annually in the United States, approximately $807 per person annually, or $2.05 per drink sold. These costs are based on lost workplace productivity, healthcare expenses, law enforcement and criminal justice expenses, and losses from motor vehicle crashes.[68]

The *2023 National Survey on Drug Use and Health,* conducted annually by the Substance Abuse and Mental Health Services Administration, states that 28.1 million adults ages 18 and older had Alcohol Use Disorder (AUD).[69] According to NIAAA, ''[AUD] is a medical condition that doctors diagnose when a patient's drinking causes distress or harm'' and includes both alcohol abuse and alcohol dependence.[70] Furthermore, ''NIAAA defines binge drinking as a pattern of drinking that brings blood alcohol concentration (BAC) levels to 0.08g/dl. This typically occurs after 4 drinks for women and 5 drinks for men—in about 2 hours.'' [71]

The *Scientific Report of the 2020 Dietary Guidelines Advisory Committee* states that ''[b]inge drinking itself has increased, including among middle- and older-aged adults, as has mortality from fully alcohol-attributable causes of death, including alcoholic liver disease.'' [72] The Scientific Report notes that excessive drinking accounted for 1 in 10 deaths among working age adults, with each death representing an average of 30 years of potential life lost. The report states that approximately 20 percent of people who begin drinking will develop AUD at some point during their lives. However, only a minority of people who drink excessively or who binge drink have an alcohol use disorder. As such, excessive drinking and alcohol-related problems are prevalent, and are not restricted to those with an alcohol use disorder. At all

[66] Further information on the specifics of TTB's proposal and its authority to implement the proposal are in Section VII.

[67] See *Alcohol Facts and Statistics,* available at *http://pubs.niaaa.nih.gov/publications/AlcoholFacts&Stats/AlcoholFacts&Stats.htm.*

[68] See *Data on Excessive Alcohol Use,* available at *https://www.cdc.gov/alcohol/excessive-drinking-data/index.html.*

[69] *Alcohol Facts and Statistics,* supra note 67.

[70] *Treatment for Alcohol Problems: Finding and Getting Help,* available at *https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/treatment-alcohol-problems-finding-and-getting-help.*

[71] *NIAAA Spectrum: NIAAA Scientists Provide More Evidence that Binge Drinking May Indicate Vulnerability to Alcohol Use Disorder,* available at *https://www.niaaa.nih.gov/research/niaaa-research-highlights/niaaa-spectrum-niaaa-scientists-provide-more-evidence-binge-drinking-may-indicate-vulnerability.*

[72] Chapter 11, Part D, *Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services,* Department of Agriculture, Agricultural Research Service, Washington, DC, available at *https://www.dietaryguidelines.gov/2020-advisory-committee-report.*

levels, and particularly for high per occasion alcohol consumption and resulting blood alcohol concentrations, alcohol is associated with an increase in intentional injuries, such as suicide and homicide, and unintentional injuries, such as motor vehicle accidents and drownings.[73]

With regard to health effects, the *Dietary Guidelines for Americans* note that ''among those who drink, higher average alcohol consumption is associated with an increased risk of death from all causes compared with lower average alcohol consumption.'' [74] NIAAA and other authorities state that alcohol is also associated with increased risk of certain types of cancer (head and neck, esophageal, liver, colorectal, and breast cancer in women).[75] The Scientific Report states that high average alcohol consumption and binge drinking are associated with an increased risk of coronary heart disease, stroke, congestive heart failure, atrial fibrillation, and hypertension.[76] The report also identifies alcohol as a risk factor for several gastrointestinal health outcomes, including chronic liver disease.

The Scientific Report also notes that alcohol is an important risk factor or contributor to many social and mental health problems, including depression, child abuse and neglect, fetal alcohol spectrum disorder, domestic violence, and sexual assault.[77] Additionally, according to the Centers for Disease Control (CDC), nearly 4,000 alcohol-attributable deaths occur annually among persons under 21 years of age, either due to underage drinking or to effects from others' drinking.[78] Finally, the *Dietary Guidelines for Americans* note that alcohol beverages provide calories but few nutrients.[79] The guidelines state that among U.S. adults who drink, alcohol accounts for approximately 9 percent of energy intake, making it more difficult to meet dietary recommendations.[80] For those who consume excessively, the number of calories from alcohol may be considerably higher, and binge drinking is associated with obesity.[81]

Given these risks, it is clearly important that alcohol beverage consumers can easily access information about the most important factors associated with these products. Consumers cannot follow governmental and medical advice about moderate consumption without knowing, at a minimum, the alcohol content of the product. Labels that provide basic information about the calories of the product, on a per-serving basis, provide consumers with the knowledge needed to understand how many discretionary calories may come from alcohol consumption. Finally, information about carbohydrate, fat, and protein content provides a basic overview of the macronutrients in an alcohol beverage.

In response to Notice No. 232, the CDC commented that per-serving alcohol and nutritional information would provide consumers with ''the necessary information to manage their caloric intake and to make better informed decisions about alcoholic beverages consumption.'' The CDC said that ''[p]roviding nutrition labels that include carbohydrate, fat, and protein per serving is especially crucial for certain groups of people, such as people who have diabetes, who need to closely monitor their carbohydrate intake.'' The CDC further stated that calorie content was important to consumers because it ''could remind consumers that alcoholic drinks contain calories, and potentially influence their decisions to not purchase or consume as much alcohol to meet existing goals or intentions (*i.e.,* weight loss, diabetes management).''

Thus, this proposed regulation could, if implemented, result in a range of benefits stemming from providing additional information to consumers. Being able to view the alcohol content and amount of alcohol per serving in an easily understood labeling statement will help consumers better understand the amount of alcohol they are consuming. This information, along with the macronutrient disclosures in an Alcohol Facts statement, will help consumers follow advice from the U.S. Government, public health organizations, and their own doctors regarding calorie and alcohol consumption levels. While TTB is unable to quantify these potential benefits, we welcome public comments with relevant information on this issue.

C. Costs of Compliance

As set forth in Section IX of this preamble, based on its use of the FDA Labeling Cost Model, and assuming a 5-year compliance period, TTB estimates initial implementation costs of approximately $201.2 million in 2023 dollars (or $40.2 million per year). Assuming that laboratory analysis is conducted for two samples of each brand extension per year (which may be an overestimate), and using the FDA estimates for the cost of such a laboratory analysis, the recurring annual costs would be approximately $64 million.

D. Executive Orders 12866, 13563, and 14094

This proposed rule is a ''significant regulatory action'' for purposes of Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094, and has been reviewed by the Office of Management and Budget.

E. Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), TTB has analyzed the potential economic effects of this action on small entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

TTB certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of the proposed regulations on small businesses.

The following analysis provides the factual basis for TTB's certification under section 605.

[73] Id.

[74] *Dietary Guidelines for Americans, 2020–2025,* 9th Edition, published December 2020, available at *https://www.DietaryGuidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.*

[75] See NIAAA, *Alcohol's Effects on Health,* available at *https://www.niaaa.nih.gov/alcohols-effects-health/alcohols-effects-body.*

[76] *Scientific Report of the 2020 Dietary Guidelines Advisory Committee,* supra note 72.

[77] Id.

[78] See Centers for Disease Control and Prevention, Facts About U.S. Deaths from Excessive Alcohol Use, available at *https://www.cdc.gov/alcohol/facts-stats/index.html.*

[79] *Dietary Guidelines for Americans,* supra note 74.

[80] Id.

[81] *Scientific Report of the 2020 Dietary Guidelines Advisory Committee,* supra note 72.

1. Overview of the Alcohol Beverage Industry

In FY 2022, TTB collected $8.3 billion in taxes from the alcohol industry.[82] With regard to the total number of authorized producers of alcohol beverages, there are 17,649 wineries and bonded wine cellars; 14,185 brewers; and 4,494 distillers.[83]

However, the number of authorized producers and importers who obtain certificates of label approval (COLAs) in any given year is much lower. In FY 2022, TTB received 192,954 label applications and 26,922 formula applications for alcohol beverages.[84] Internal data from TTB's COLAs Online system shows that fewer than 12,000 permittees or brewers applied for label approval in each of Fiscal Years 2020–2022, and that for that overall 3-year time period, fewer than 18,000 permittees or brewers applied for label approval.

The value of the U.S. import trade in alcohol beverages in 2021 totaled $23.9 billion.[85] According to data published on the website of the Distilled Spirits Council of the United States,[86] the total economic contribution of the alcohol beverage industry to the U.S. economy in 2019 included 2,514,000 ''direct'' jobs and 5,630,000 ''total'' jobs; $67.9 billion in direct wages and $160.3 billion in total wages; and $242.6 billion in direct economic activity and $572.3 billion in total economic activity.

2. Small Businesses in the Alcohol Beverage Industry

TTB recognizes that the vast majority of producers, bottlers, and importers of alcohol beverages are small entities. The SBA sets out size standards based on the North American Industry Classification System (NAICS), under which an entity can be considered small for the purposes of Regulatory Flexibility Act analysis.[87] Breweries are considered small if they have fewer than 1,250 employees; wineries are considered small if they have fewer than 1,000 employees; and distilleries are considered small if they have fewer than 1,100 employees.[88]

The U.S. Census Bureau's Statistics of U.S. Businesses (SUSB) data include information on employment among establishments within NAICS codes. The most recent data are from 2019.[89] The SUSB data did not include employment at the 1,000, 1,100, or 1,250 employee threshold; however, it does include the number of firms within each NAICS code that have at least 500 employees. Based on those numbers, approximately 99 percent of the firms in these three NAICS codes are small entities. The percentage may be greater, depending on how many firms have at least 500 employees and fewer than 1,000 employees (for wineries), 1,100 employees (for distilleries), or 1,250 employees (for breweries). There is no NAICS code for importers of alcohol beverages.

TABLE 6—NUMBER OF FIRMS WITH AT LEAST 500 EMPLOYEES

Small-entity size standards for potentially affected industries and number of firms with at least 500 employees

Industry (NAICS code)	Small-entity size standard	Total number of firms	Number of firms with at least 500 employees	Total employment
Breweries (NAICS 312120)	Fewer than 1,250 employees	4,217	23 (approximately 0.5 percent)	84,503
Wineries (NAICS 312130)	Fewer than 1,000 employees	3,944	19 (approximately 0.48 percent)	59,587
Distilleries (NAICS 312140) ...	Fewer than 1,100 employees	1,004	10 (approximately 1%)	16,828

Data on revenues by firm size and industry are also available in the SUSB but are published less frequently. The most recent data available is from 2017.[90] Based on this data, with the revenues adjusted for inflation, 2,609 of the total number of firms (3,214) listed as breweries under NAICS Code 312120 have fewer than 20 employees.[91] This category accounts for $3,314,362,000 of the total inflation-adjusted receipts of $36,032,713,000, or roughly 9.2 percent of the total receipts. With regard to wineries, 2,975 of the 3,576 firms under NAICS Code 31230 have fewer than 20 employees. This category accounts for $2,907,606,000 of the total inflation-adjusted receipts of $24,891,833,000, or roughly 12 percent of the total receipts. With regard to distilleries, 659 of the 760 firms under NAICS Code 31240 have fewer than 20 employees. This category accounts for $1,060,898,000 of the total inflation-adjusted receipts of $14,590,615,000 or roughly 7 percent of the total receipts.

3. Effect of the Proposed Rule

The vast majority of businesses subject to the proposed rule are small businesses, but the changes proposed in this document will not have a significant impact on those small

[82] Alcohol and Tobacco Tax and Trade Bureau Annual Report Fiscal Year 2022 (FY 2022 TTB Annual Report), available at *https://www.ttb.gov/images/pdfs/ttbar2022.pdf,* page 5.

[83] Id. at page 10.

[84] Id. at page 16. It should be noted that the number of label applications does not necessarily correlate to the number of brands and UPCs in the marketplace, for several reasons. TTB cannot determine whether approved labels actually appear in the marketplace, or how long those labels may remain in use. For example, there may be malt beverage labels authorized for a particular sporting event that are no longer found in the marketplace a few months after the event has taken place. On the other hand, some labels may be revised to reflect different net contents or alcohol content statements without submission of a new label to TTB. Industry members may decide not to use labels for which they have obtained approval. Thus, TTB does not use the number of COLA applications as an estimate of how many brands or UPCs are in the marketplace at any given time.

[85] Id. at page 30.

[86] Economic Contributions of Alcohol Beverage Industry 2019, Distilled Spirits Council of the United States, available at *https://www.distilledspirits.org/wp-content/uploads/2021/10/Economic-Contributions-2019.pdf.* See Annual Economic Briefing (February 9, 2023), Distilled Spirits Council of the United States, available at *https://www.distilledspirits.org/wp-content/uploads/2023/02/FINAL-2022-AEB-Slide-Deck-2.9.23-941am.pdf.*

[87] See Size Standards, U.S. Small Business Administration, available at *http://www.sba.gov/content/small-business-size-standards.*

[88] 13 CFR 121.201.

[89] 2019 SUSB Annual Data Tables by Establishment Industry, U.S. Census Bureau, available at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html.*

[90] This data is only available from Economic Census years (years ending in 2 and 7). See 2017 SUSB Annual Data Tables by Establishment Industry, U.S. Census Bureau, available at *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

[91] A recent study estimates that 28.3 percent of brewing facilities are brewpubs, with 66.7 percent of brewing facilities categorized as ''micro'' breweries. The study explains that brewpubs and small micro-brewers ''produce beer for a limited market—sometimes only for their own restaurant or retail establishment.'' See Beer Serves America—A Study of the U.S. Beer Industry's Economic Contribution in 2022,'' prepared for the Beer Institute and National Beer Wholesalers Association, which is available *at https://beerservesamerica.org/wp-content/uploads/2023/05/2022-Beer-Serves-America-Report.pdf.*

entities. The production, bottling, importation, and distribution of alcohol beverages is an industry subject to extensive Federal, State, and local regulation. The labeling and advertising regulations under the FAA Act have been in place since 1936. Adding more elements of mandatory information to the label will not have a significant impact on the regulated industry.

TTB cannot estimate the exact cost per small entity because we do not know how many product brands (covered by different UPCs) on average are owned by small entities as defined by the SBA. However, TTB estimates that the initial costs of complying with a final rule resulting from this proposal would be roughly $1,636 per UPC. Therefore, a small entity owning one to ten UPCs would incur a cost of between roughly $1,636 to $16,636 over the proposed 5-year implementation period.

In response to its 2007 proposed rule on mandatory Serving Facts information, TTB received many comments from small businesses who were concerned that the new labeling requirements would negatively affect their market share, and who pointed out that larger competitors could more easily absorb the costs associated with the new labeling requirements. Many of the small businesses assumed that they would be required to run laboratory analyses for every batch they produced. These concerns were repeated in comments on Notice No. 232. Small businesses commented that laboratory analysis would be costly, extend the time to bring a product to market, and affect small producers' ability to compete in the marketplace.

As described in the next section, TTB has tailored this proposal to avoid many costs associated with labeling changes, including providing for an extended compliance period, allowing smaller linear displays, increasing tolerances to avoid the need for analytical testing in many cases, and not requiring new COLA submissions.

4. Alternative Options Considered by TTB

TTB has considered several options to reduce the regulatory burdens and economic costs imposed by the proposed rule on small businesses, as described below:

a. Exemption for Small Businesses

TTB received over a dozen comments proposing a small business exemption to any new labeling requirements, mostly from small producers or their trade associations. Many commenters specifically proposed that TTB provide an exemption similar to the small business exemptions to FDA's nutrition labeling requirements provided for in section 403(q) of the Federal Food, Drug, and Cosmetic Act. Not all commenters, however, favored a small business exemption. The American Beverage Licensees and the Beer Institute commented against exemptions for small producers.

TTB considered the comments requesting a small business exemption from the requirements of the proposed rule; however, this proposal does not include this option. One of the primary purposes of this proposed rule is to provide additional information to consumers. This purpose would be weakened by a permanent exemption for small businesses. There is no reason to believe that consumers of alcohol beverages produced by small producers are less interested in obtaining information about the alcohol, calorie, and nutrient content of the beverages they consume. Moreover, TTB questions whether a permanent exemption from mandatory labeling requirements would be consistent with the FAA Act mandate to ensure that labels provide consumers with adequate information about the identity, quality, and alcohol content of the product. TTB notes that there is no specific statutory authority for exempting small businesses from the requirements of the FAA Act as there is under the Federal Food, Drug, and Cosmetic Act for nutritional labeling regulated by the FDA.

b. Extended Compliance Period for Small Businesses

TTB considered the option of proposing an extended compliance period only for small businesses. However, this would present significant logistical difficulties for TTB and impose a new information reporting burden on industry members. When reviewing applications for label approval, TTB employees do not have access to the number of people employed by each company, and thus it would not be practical to base compliance status on the SBA standards for small businesses. Additionally, reporting such information to TTB with each label application would impose a new burden on all industry members that would be subject to this proposed rule. Instead, TTB is proposing a compliance period of 5 years for all industry members, and is assuming that many industry members, particularly large businesses who are already likely to be using this information in their labeling and marketing, will start using Alcohol Facts labels after publication of a final rule, in advance of the compliance date.

As previously noted, the label redesign, printing, and administrative costs associated with making a labeling change are on a per-UPC basis. Under the FDA Labeling Cost Model, the longer the compliance period, the more likely it is that affected industry members can coordinate new labeling requirements with scheduled labeling changes, so cost estimates fall significantly as the time allowed for the new labeling requirements increases. In other words, the longer the period of time industry is given to comply with the new labeling requirements, the lower the costs. According to the FDA Labeling Cost Model, with a compliance period of 5 years, 100 percent of the labeling changes resulting from a regulatory change can be coordinated with a regularly scheduled labeling change, thus significantly reducing the estimated costs and burdens for small businesses that are subject to the proposed rule. Five years is also the longest implementation date recommended by a commenter to Notice No. 232.

c. Linear Display

In response to Notice No. 73, many small businesses objected to TTB's proposal to require a Serving Facts panel with a linear format option available only for small containers. Many commenters suggested that small businesses would have no choice but to place the panel on a back label, and noted that some small businesses lacked the equipment necessary to place a back label on their container.

Taking into account the points made by those commenters, the current proposed rule will allow the option of a linear display for all products, regardless of the size of the container. TTB believes that this will significantly reduce the costs of compliance with the new regulations, while still providing consumers with a clear statement of alcohol content and calorie and nutrient content. TTB believes that the potential benefits of having a larger and more readily noticeable display would not outweigh the costs of compliance with such a requirement. The linear display will provide additional flexibility to small businesses, while still ensuring that labels provide consumers with the required information. Industry members may still opt to use the panel display.

d. Electronic Disclosure

TTB considered, but is not proposing, the option to allow disclosure of the proposed Alcohol Facts information via electronic means. Several commenters to Notice No. 232 stated that this option would reduce the burden of this

proposed rulemaking because small businesses would not need to change label designs as frequently as they would if the Alcohol Facts information appeared on the physical label. For the reasons previously discussed in Section VII.B.8.c, TTB believes electronic disclosure would create undue barriers to access the information by consumers so is not proposing it in this rulemaking.

e. Broadened Tolerance Levels

As previously noted in Section VII.B.3, TTB is proposing broader tolerance levels to facilitate the use of ''typical values'' charts, formulas, and other methodologies to calculate the alcohol, calories, carbohydrate, fat, and protein content of an alcohol beverage product without the need to conduct laboratory analyses for each batch. In response to Notice No. 232, many commenters expressed concern that laboratory analysis would place undue burden on small businesses and affect their competitiveness in the market. The commenters stated, and TTB agrees, that the ability to use charts and methodologies that do not require third-party testing should reduce costs and regulatory burdens on small businesses.

f. Allowing Labeling Changes Without a New COLA

TTB is proposing to further reduce the costs associated with the label redesign by not requiring industry members to submit new applications for label approval when the only change being made to the label is the inclusion of a new Alcohol Facts statement, or the replacement of an already approved Serving Facts statement or statement of average analysis with a new Alcohol Facts statement.

g. Solicitation of Comments

TTB solicits comments on all of the options discussed in this section, on any costs, burdens, and benefits associated with the proposed rule, and on any impact on small businesses. TTB welcomes data on all of these issues.

F. Paperwork Reduction Act

Fourteen of the regulatory sections addressed in this notice of proposed rulemaking contain collections of information that have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Those regulatory sections are 27 CFR 4.32, 4.36, 4.38, 5.52, 5.63, 5.65, 7.52, 7.63, 7.65, 24.257, 25.141, 25.142, 27.59, and 27.60, and they contain existing information collections assigned OMB control numbers 1513–0086, 1513–0087, and 1513–0092. OMB No. 1513–0086 concerns marks and labels on beer containers required under the authority of the Internal Revenue Code (IRC), OMB No. 1513–0087 concerns alcohol beverage labeling requirements under the Federal Alcohol Administration Act (FAA Act), and 1513–0092 concerns marks and labels on wine containers required under the authority of the IRC.

In this proposed rule, under its IRC authorities, TTB is revising the information collections approved under OMB Nos. 1513–0086 and 1513–0092 by requiring alcohol content statements on all domestic and imported consumer containers of beer and wine. In addition, under its FAA authority, TTB is revising the information collection currently approved under OMB No. 1513–0087 to add a new information collection that generally requires an Alcohol Facts statement to appear on alcohol beverage labels for domestic and imported products subject to the jurisdictional requirements of the FAA Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The regulatory sections in this proposed rule that contain new information collection requirements for an Alcohol Facts statement are in proposed regulatory sections §§ 4.111–4.114 for wine labels, §§ 5.211–5.214 for distilled spirits labels, and §§ 7.211–7.214 for malt beverage labels. In addition, references to the new requirements for an Alcohol Facts statement will appear in §§ 4.32, 4.36, 4.38, 5.52, 5.63, 5.65, 7.52, 7.63, and 7.65. This new collection of information will be mandatory, and the likely respondents are for-profit businesses, including corporations, partnerships, and small businesses.

Specifically, the new information collection would require alcohol beverage bottlers and importers to disclose per-serving alcohol, calorie, and nutrient content information in an Alcohol Facts statement as the proposed regulations will require that statement on all domestic and imported alcohol beverage labels subject to the FAA Act. The Alcohol Facts statement would include information about the alcohol content of the product expressed as a percentage of alcohol by volume and in fluid ounces of pure ethyl alcohol per serving, as well as information about the number of calories and the amount, in grams, of carbohydrates, fat, and protein per serving. Bottlers and importers could present the Alcohol Facts statement in either a panel or a linear format.

The FDA Labeling Cost Model projects a ''mean'' internal recordkeeping burden of 1 hour per UPC for labeling changes that are coordinated, and 2 hours per UPC for labeling changes that are not coordinated. TTB is proposing a 5-year compliance date, which means that 100 percent of the labeling changes will be ''coordinated.'' Furthermore, TTB does not propose to require industry members to submit new COLA applications for the sole purpose of adding, or revising, an Alcohol Facts label statement. Thus, the proposed rule would not increase recordkeeping requirements under the COLA requirement, which is covered by OMB Control Number 1513–0020.

TTB believes that a significant proportion of the alcohol beverage industry already collects and maintains information regarding the nutrient content of their products, and that they do so in the usual course of business. Furthermore, domestic producers of wines, distilled spirits, and malt beverages are already required to determine and keep records of the alcohol content of their products pursuant to existing regulations under the IRC.

Accordingly, TTB is estimating an annual burden of one hour per respondent for the new Alcohol Facts proposal under the FAA Act labeling regulations. TTB estimates its annual burden as follows:

- *Number of Respondents:* 13,000.
- *Number of Responses:* 13,000 (1 response per respondent).
- *Average per-response Burden:* 1 hour per respondent.
- *Total Annual Burden:* 13,000 hours.

In addition, under its IRC authorities in 26 U.S.C. Chapter 51, TTB is proposing to expand existing requirements for alcohol content statements as a percentage of alcohol by volume to beers and wines that were not subject to mandatory alcohol content labeling under the FAA Act. TTB has determined that mandatory alcohol content statements on labels for all beer and wines subject to tax under the IRC will assist in protection of the revenue. TTB will account for these new IRC-based information collection requirements under the existing information collections approved under OMB No. 1513–0086 for beer labels and OMB No. 1513–0092 for wine labels. The specific proposed regulatory sections that include those expanded IRC-based alcohol content labeling requirements are §§ 24.257(a)(3), 25.141, 25.142, 27.59, and 27.60.

Currently, TTB considers the IRC-based labeling requirements for beer and

wine, approved under OMB Nos. 1513–0086 and 1513–0092, respectively, to require only the display of usual and customary label information, which, under OMB regulations, imposes no additional burden on respondents under the Paperwork Reduction Act. TTB believes that responses to the expanded requirements to display alcohol content on labels of beer and wine that were not previously subject to such a requirement will not require more than 1 hour annually per respondent. TTB believes that the great majority of beer and wine bottlers and importers either already label their products with an alcohol content statement or have ready access to such information for quality control purposes (or under IRC regulations, for domestic products) even if they do not display that information on their product labels. In addition, given the proposed compliance period of 5 years, TTB believes that all alcohol beverage bottlers and importers will be able to coordinate any required labeling changes with their usual and customary scheduled labeling changes.

For the revised IRC-based beer labeling information collection, approved under OMB No. 1513–0086, TTB estimates the revised annual burden for that collection as follows:

- *Number of Respondents:* 10,000.
- *Number of Responses:* 10,000 (1 per respondent).
- *Average per-response Burden:* 1 hour.
- *Total Annual Burden:* 10,000 hours.

For the revised IRC-based wine labeling information collection, approved under OMB No. 1513–0092, TTB estimates the revised annual burden for that collection as follows:

- *Number of Respondents:* 14,300.
- *Number of Responses:* 14,300 (1 per respondent).
- *Average per-response Burden:* 1 hour.
- *Total Annual Burden:* 14,300 hours.

TTB has submitted the new Alcohol Facts statement information collection requirements and the revised collection requirements under the FAA Act and the IRC to the OMB for review. Please send any comments on these new and revised collection requirements to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by email to *OIRA_submissions@omb.eop.gov.* Please also send a copy of any such comments to TTB by any of the comment submission methods described in the **ADDRESSES** section of this document. Comments should be submitted no later than April 17, 2025.

TTB specifically requests comments concerning:

- The accuracy of the estimated burden associated with the proposed collections of information (see below);
- Whether a unified compliance date for labeling changes that may arise from this rulemaking, along with separate rulemakings on ingredient labeling and allergen labeling, would result in lowering the combined burden hours for the three rulemakings;
- Whether the proposed labeling requirements are necessary in order to provide consumers with adequate information as to the identity, quality, and alcohol content of alcohol beverage products, including whether the information will have practical utility;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the collections of information; and;
- Estimates of capital and start-up costs and costs of operation, maintenance, and purchase of services to maintain records and substantiate label claim.

XII. Severability

For the reasons described in Section II, *TTB's Authority to Regulate Alcohol Beverage Labeling,* TTB believes that its authority to implement all provisions of the proposed regulation is well-supported in law and should be upheld in any legal challenge. TTB also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the proposed rule is declared invalid, TTB intends that the labeling provisions proposed under TTB's FAA Act authority be severable from those proposed under TTB's IRC authority. For example, if a provision of the rule promulgated under TTB's FAA Act authority is invalidated, the provisions of this rule promulgated under TTB's IRC authority should remain valid. TTB intends these provisions to be severable because TTB is of the view that the set of provisions proposed under the FAA Act and the set of provisions proposed under the IRC would each still function sensibly even if the other, as finalized, was found unlawful.

List of Subjects

27 CFR Part 4

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Trade practices, Treaties, Wine.

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Distilled spirits, Food additives, Grains, Imports, International agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Malt Beverages, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Freight, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Wine.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB is proposing to amend 27 CFR parts 4, 5, 7, 24, 25, and 27, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. In § 4.32, revise paragraph (b)(3) and add paragraph (b)(4) to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 4.36 and subpart L of this part.

(4) An Alcohol Facts statement, in accordance with subpart L of this part.

* * * * *

■ 3. Revise § 4.36 to read as follows:

§ 4.36 Alcohol content.

(a) *Wines containing more than 14 percent alcohol by volume.* An alcohol content statement, expressed in terms of a percentage of alcohol by volume, is required under this section for any wine containing more than 14 percent of alcohol by volume. Such a statement must appear in an Alcohol Facts statement in accordance with the requirements of subpart L of this part.

(b) *Wines containing not more than 14 percent alcohol by volume.* Part 24 of this chapter (setting forth the requirements under the Internal Revenue Code for domestic wines) and part 27 of this chapter (setting forth the requirements under the Internal Revenue Code for imported wines) require alcohol content statements, expressed in terms of a percentage of alcohol by volume, for all wines, including wines not exceeding 14 percent of alcohol by volume, if those wines are subject to the tax imposed by 26 U.S.C. 5041. Where such a statement appears on a wine label subject to the requirements of this part, it must conform to the requirements of this section, and it must appear in an Alcohol Facts statement in accordance with the requirements of subpart L of this part.

(c) *Additional alcohol content statements elsewhere on the label*—(1) *General.* Any additional statement of alcohol content must be expressed in terms of a percentage of alcohol by volume, and may appear on any label affixed to the container, in one of the following formats:

(i) ''Alcohol ____ percent by volume'';

(ii) ''____ percent alcohol by volume''; or

(iii) ''Alcohol by volume: ____ percent''.

(2) *Formatting rules.* Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(3) *Optional abbreviations.* The statements listed in paragraph (c)(1) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(d) *Tolerance levels for optional or mandatory alcohol content statements.* Except as otherwise provided in paragraph (e) of this section, a tolerance of 1 percentage point in the case of wines containing more than 14 percent of alcohol by volume, and of 1.5 percentage points in the case of wines containing not more than 14 percent alcohol by volume, will be permitted either above or below the stated percentage.

(e) *Exceptions to the tolerance provisions.* Regardless of the tolerances specified in paragraph (d) of this section, any optional or mandatory alcohol content statement shall definitively and correctly indicate the class, type, and taxable grade of the wine so labeled, and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcohol content statement that indicates that the alcohol content of the wine is within the prescribed limitation on the alcohol content of any class, type, or taxable grade of wine, when in fact it is not.

■ 4. In § 4.38, revise paragraph (b)(3) and add paragraph (i) to read as follows:

§ 4.38 General requirements.

* * * * *

(b) * * *

(3) Alcohol content statements (other than those appearing in an Alcohol Facts statement required by subpart L of this part) may not appear in script, type, or printing larger or more conspicuous than 3 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not be set off with a border or otherwise accentuated.

* * * * *

(i) *Alcohol Facts statements.* See subpart L of this part for more specific requirements that apply to Alcohol Facts statements.

■ 5. Add subpart L to read as follows:

Subpart L—Alcohol Facts Statement

Sec.

4.111 Alcohol Facts statement.
4.112 Format for the Alcohol Facts statement.
4.113 Placement of the Alcohol Facts statement.
4.114 Tolerance levels.

Subpart L—Alcohol Facts statement

§ 4.111 Alcohol Facts statement.

(a) *General.* The Alcohol Facts statement required under § 4.32(b)(4) must include the following information, and may not include additional information, except as provided in this section:

(1) The single serving size, as defined in paragraph (b) of this section;

(2) The number of servings per container;

(3) Alcohol content as a percentage of alcohol by volume;

(4) The number of fluid ounces of pure ethyl alcohol per serving;

(5) The number of calories per serving; and

(6) The number, in grams per serving, of carbohydrates, fat, and protein.

(b) *Single serving size and servings per container*—(1) *Definition.* The term ''single serving size'' or ''serving size'' means an amount of the wine customarily consumed as a single serving, expressed in U.S. fluid ounces and, in parentheses, in milliliters (mL) to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help consumers determine nutrient, alcohol, and calorie intake. The single serving size reference amounts for wines are:

TABLE 1 TO PARAGRAPH (b)(1)

For products containing:	a single serving size is:
At least 7% and not more than 16% alc/vol.	5 fluid ounces (148 mL).
Over 16% and not more than 24% alc/vol.	2.5 fluid ounces (74 mL).

(2) *Single-serving containers.* Wines packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount described in this section must be labeled as containing a single serving, and a single serving size is the net content of the container.

(3) *Multi-serving containers.* Products packaged and sold in containers with a net content of 200 percent or more of the applicable single serving size reference amount described in this section will be considered to be in multi-serving containers, and the number of servings per container must be labeled to the nearest one-quarter serving.

(c) *Percentage of alcohol by volume.* The Alcohol Facts statement must express the alcohol content as a percentage of alcohol by volume to the nearest tenth of a percent, subject to the tolerances set forth in § 4.36.

(d) *Alcohol expressed in fluid ounces.* The Alcohol Facts statement must express the number of U.S. fluid ounces of pure ethyl alcohol per serving to the nearest tenth of an ounce. The declaration of alcohol in fluid ounces per serving is calculated from the

percent-by-volume alcohol content declaration. For example, 5 fl oz of a beverage with 12 percent alcohol by volume would have 0.6 fl oz of pure ethyl alcohol, while 5 fl oz of a beverage with 14 percent alcohol by volume would have 0.7 fl oz of pure ethyl alcohol.

(e) *Calories.* Calorie statements may be expressed to the nearest calorie, or may be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-calorie increment (for per-serving amounts up to 50 calories), subject to the tolerances set forth in § 4.114. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrate.* (1) The Alcohol Facts statement must express the number of grams of total carbohydrates in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(2) The Alcohol Facts statement may optionally express the number of grams of total sugars in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 g of sugar, the content may be expressed as zero.

(g) *Fat.* The Alcohol Facts statement must express the number of grams of total fat in a serving (with total fat defined as total lipid fatty acids and expressed as triglycerides) to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment at or above 5 grams. If the serving contains less than 0.5 gram, the content may be expressed as zero.

(h) *Protein.* The Alcohol Facts statement must express protein content in grams per serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 4.112 Format for the Alcohol Facts statement.

The Alcohol Facts statement must be presented in either a panel or a linear format, and the presentation must conform to the formatting specifications in this section. For wine containers with a net content of at least 200 percent and less than 500 percent of the applicable single serving size reference amount described in § 4.111, as an option, the Alcohol Facts statement may be presented in a dual-column panel format, which sets forth the required information per serving and per container, as illustrated by paragraph (j) of this section.

(a) The panel or linear display must be set off within a box by use of hairlines with all black or one color type, printed on a contrasting background.

(b) All information within the box must appear in a single, easy-to-read type style using both upper case and lower case letters. The box must be separate and apart from any additional information and the information must be readily legible to potential consumers under ordinary conditions. The type or printing must be at least 1 millimeter in height for containers of 187 mL or less and at least 2 millimeters in height for containers of more than 187 mL.

(c) Bold face is required for the title ''Alcohol Facts'' and for the heading ''Amount Per Serving'' and is optional for the headings ''Alcohol by volume,'' ''Calories,'' ''Carbohydrate,'' ''Sugar'' (if used), ''Fat,'' and ''Protein.''

(d) The Alcohol Facts statement must appear in the panel or linear format in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume;

(4) U.S. fluid ounces of pure ethyl alcohol per serving. If a panel format is used, the U.S. fluid ounces of pure ethyl alcohol per serving must be indented directly under the percent-by-volume alcohol content declaration (see the example in paragraph (g) of this section);

(5) Calories;

(6) Carbohydrate;

(7) Sugar (if used);

(7) Fat; and

(8) Protein.

(e) The following abbreviations or shortened expressions may be used, with or without a period:

(1) For percentage of alcohol by volume, the percent symbol ''%'', ''Alcohol by volume'', ''Alc/vol'' or ''Alc by vol'';

(2) For U.S. fluid ounces, ''fl oz'';

(3) For grams, ''g'';

(4) For carbohydrate, ''Carb'';

(5) For serving, ''Serv.'';

(6) For milliliter, ''mL''; and

(7) For amount, ''Amt.''.

(f) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(g) The following Alcohol Facts statement illustrates an acceptable panel display for a 750 mL bottle of wine containing 14 percent alcohol by volume.

Figure 1 to Paragraph (g)

Alcohol Facts

Serving Size	5 fl oz (148 mL)
Servings Per Container	5
	Amount Per Serving
Alcohol by volume	14%
fl oz of alcohol	0.7
Calories	120
Carbohydrate	3g
Fat	0g
Protein	0g

(h) The following Alcohol Facts statement illustrates an acceptable linear display for a 750 mL bottle of wine containing 14 percent alcohol by volume.

Figure 2 to Paragraph (h)

Alcohol Facts: Serving size: 5 fl oz (148 mL); Servings per container: 5; **Amount Per Serving:** Alcohol by volume: 14%; fl oz of alcohol: 0.7; Calories: 120; Carbohydrate: 3g; Fat: 0g; Protein: 0g

(i) The following Alcohol Facts statement illustrates an acceptable panel display for a 100 mL bottle of wine containing 17 percent alcohol by volume. The container has a net content of less than 200 percent of a single serving size reference amount and thus is labeled as containing a single serving.

Figure 3 to Paragraph (i)

Alcohol Facts	
Serving Size	3.4 fl oz (100 mL)
Servings Per Container	1
	Amount Per Serving
Alcohol by volume	17%
fl oz of alcohol	0.6
Calories	100
Carbohydrate	2g
Fat	0g
Protein	0g

(j) The following Alcohol Facts statement illustrates an acceptable dual-column panel display for a 375 mL bottle of wine containing 14 percentalcohol by volume.

Figure 4 to Paragraph (j)

Alcohol Facts		
Serving Size	5 fl oz (148 mL)	
Servings Per Container	2 ½	
	Amt Per Serv.	Amt Per Bottle
Alcohol by volume	14%	14%
fl oz of alcohol	0.7	1.8
Calories	120	300
Carbohydrate	3g	8g
Fat	0g	0g
Protein	0g	0g

§ 4.113 Placement of the Alcohol Facts statement.

The Alcohol Facts statement may be presented in either a horizontal or vertical orientation.

§ 4.114 Tolerance levels.

(a) *General.* The following tolerance levels apply to labeling statements of calorie, carbohydrate (including sugar), protein, fat, and alcohol content for wines:

(1) *Calorie content.* A tolerance of 20 percent either above or below the stated calorie content is permitted. For example, a label showing 100 calories per serving is acceptable if the product has a calorie content of between 80 and 120 calories per serving.

(2) *Carbohydrate (including sugar) and protein content.* A tolerance of 20 percent either above or below the stated carbohydrate, sugar, and protein content is permitted. For example, a label showing 7 grams of carbohydrates per serving is acceptable if the product has a carbohydrate content of between 5.6 and 8.4 grams per serving.

(3) *Fat content.* A tolerance of 20 percent either above or below the stated fat content is permitted. For example, a label showing 7 grams of fat per serving is acceptable if the product has a fat content of between 5.6 and 8.4 grams per serving.

(4) *Alcohol content.* The tolerances for alcohol content specified in § 4.36 apply. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration.

(b) *Publication of analytical methods.* TTB will maintain on its website (*https://www.ttb.gov*) information regarding the methods it uses to validate calorie, carbohydrate, protein, fat, and alcohol content statements.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

■ 7. In § 5.52, add paragraph (e) to read as follows:

§ 5.52 Legibility and other requirements for mandatory information on labels.

* * * * *

(e) *Alcohol Facts statements.* See subpart L of this part for more specific requirements that apply to Alcohol Facts statements.

■ 8. In § 5.63, revise paragraphs (a)(1) and (2), remove paragraph (a)(3), revise paragraphs (b)(1) and (2), and add paragraphs (b)(3) and (4) to read as follows:

§ 5.63 Mandatory label information.

(a) * * *

(1) Brand name, in accordance with § 5.64; and

(2) Class, type, or other designation, in accordance with subpart I of this part.

(b) * * *

(1) Name and address of the bottler or distiller, in accordance with § 5.66, or the importer, in accordance with § 5.67 or § 5.68, as applicable;

(2) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 5.70;

(3) Alcohol content, in accordance with § 5.65 and subpart L of this part; and

(4) An Alcohol Facts statement, in accordance with subpart L of this part.

* * * * *

■ 9. In § 5.65, revise paragraph (a) and paragraph (b) introductory text to read as follows:

§ 5.65 Alcohol content

(a) *General.* The alcohol content for distilled spirits must be stated as a percentage of alcohol by volume and must appear in an Alcohol Facts statement in accordance with the requirements of subpart L of this part. Products that contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: ''Bottled at ____percent alcohol by volume.'' An additional statement of alcohol content as a percentage of alcohol by volume may appear on any label affixed to the container.

(b) *How the alcohol content must be expressed.* The following rules apply to additional statements of alcohol content that appear on the label, other than the required statement in an Alcohol Facts statement:

* * * * *

■ 10. Add subpart L to read as follows:

Subpart L—Alcohol Facts Statement

Sec.

5.211 Alcohol Facts statement.
5.212 Format for the Alcohol Facts statement.
5.213 Placement of the Alcohol Facts statement.
5.214 Tolerance levels.

Subpart L—Alcohol Facts Statement

§ 5.211 Alcohol Facts statement.

(a) *General.* The Alcohol Facts statement required under § 5.63(b)(4) must include the following information, and may not include additional information, except as provided in this section:

(1) The single serving size, as defined in paragraph (b) of this section;

(2) The number of servings per container;

(3) Alcohol content as a percentage of alcohol by volume;

(4) The number of fluid ounces of pure ethyl alcohol per serving;

(5) The number of calories per serving; and

(6) The number, in grams per serving, of carbohydrates, fat, and protein.

(b) *Single serving size and servings per container*—(1) *Definition.* The term ''single serving size'' or ''serving size'' means an amount of the distilled spirits customarily consumed as a single serving, expressed in U.S. fluid ounces and, in parentheses, in milliliters (mL), to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help consumers determine nutrient, alcohol, and calorie intake. The single serving size reference amounts for distilled spirits are:

TABLE 1 TO PARAGRAPH (b)(1)

For products containing:	a single serving size is:
Not more than 7% alc/vol.	12 fluid ounces (355 mL).
Over 7% and not more than 16% alc/vol.	5 fluid ounces (148 mL).
Over 16% and not more than 24% alc/vol.	2.5 fluid ounces (74 mL).
Over 24% alc/vol	1.5 fluid ounces (44 mL) or 50 mL for a 50 mL container.

(2) *Single-serving containers.* Distilled spirits packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount described in this section must be labeled as containing a single serving, and a single serving size is the net content of the container.

(3) *Multi-serving containers.* Products packaged and sold in containers with a net content of 200 percent or more of the applicable single serving size reference amount described in this section will be considered to be in multi-serving containers, and the number of servings per container must be labeled to the nearest one-quarter serving.

(c) *Percentage of alcohol by volume.* The Alcohol Facts statement must express the alcohol content as a percentage of alcohol by volume to the nearest tenth of a percent, subject to the tolerances set forth in § 5.65(c). Products that contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: ''Bottled at ____percent alcohol by volume.'' An optional statement of proof may also be included, as set forth in § 5.212(d)(4), but only if it is immediately adjacent to the percent-by-volume alcohol content declaration.

(d) *Alcohol expressed in fluid ounces.* The Alcohol Facts statement must express the number of U.S. fluid ounces of pure ethyl alcohol per serving to the nearest tenth of an ounce. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration. For example, 5 fl oz of a beverage with 12 percent alcohol by volume would have 0.6 fl oz of pure ethyl alcohol, while 5 fl oz of a beverage with 14 percent alcohol by volume would have 0.7 fl oz of pure ethyl alcohol.

(e) *Calories.* Calorie statements may be expressed to the nearest calorie, or may be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-calorie increment (for per-serving amounts up to 50 calories), subject to the tolerances set forth in § 5.214. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrate.* (1) The Alcohol Facts statement must express the number of grams of total carbohydrates in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(2) The Alcohol Facts statement may optionally express the number of grams of total sugars in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 g of sugar, the content may be expressed as zero.

(g) *Fat.* The Alcohol Facts statement must express the number of grams of total fat in a serving (with total fat defined as total lipid fatty acids and expressed as triglycerides) to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment at or above 5 grams. If the serving contains less than 0.5 gram, the content may be expressed as zero.

(h) *Protein.* The Alcohol Facts statement must express protein content in grams per serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 5.212 Format for the Alcohol Facts statement.

The Alcohol Facts statement must be presented in either a panel or a linear format, and the presentation must conform to the formatting specifications in this section. For distilled spirits containers with a net content of at least 200 percent and less than 500 percent of the applicable single serving size reference amount described in § 5.211, as an option, the Alcohol Facts statement may be presented in a dual-column panel which sets forth the required information per serving and per container, as illustrated by paragraph (i) of this section.

(a) The panel or linear display must be set off within a box by use of hairlines with all black or one color type, printed on a contrasting background.

(b) All information within the box must appear in a single, easy-to-read type style using both upper case and lower case letters. The type or printing must be at least 1 millimeter in height for containers of 200 mL or less and at least 2 millimeters in height for containers of more than 200 mL.

(c) Bold face is required for the title ''Alcohol Facts'' and for the heading ''Amount Per Serving,'' and is optional for the headings ''Alcohol by volume,'' ''Calories,'' ''Carbohydrate,'' ''Sugar'' (if used), ''Fat,'' and ''Protein.''

(d) The Alcohol Facts statement must appear in the panel or linear format in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume;

(4) Optional statement of alcohol content in degrees of proof, which may only be presented in parentheses following the percentage of alcohol by volume declaration in the Alcohol Facts statement when displayed in a linear format. If a panel format is used, the statement of proof must be indented directly under the percent-by-volume alcohol content declaration (see the example in paragraph (g) of this section);

(5) U.S. fluid ounces of pure ethyl alcohol per serving. If a panel format is used, the U.S. fluid ounces of pure ethyl alcohol per serving must be indented directly under the percent-by-volume alcohol content declaration, or under the optional proof statement if that is used (see the example in paragraph (g) of this section);

(6) Calories;

(7) Carbohydrate;

(8) Sugar (if used);

(9) Fat; and

(10) Protein.

(e) The following abbreviations or shortened expressions may be used, with or without a period:

(1) For percentage of alcohol by volume, the percent symbol ''%'', ''Alcohol by volume'', ''Alc/vol'' or ''Alc by vol'';

(2) For U.S. fluid ounces, ''fl oz'';

(3) For grams, ''g'';

(4) For carbohydrate, ''Carb'';

(5) For serving, ''Serv.'';

(6) For milliliter, ''mL''; and

(7) For amount, ''Amt.''.

(f) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(g) The following Alcohol Facts statement illustrates an acceptable panel display for a 750 mL bottle of distilled spirits containing 40 percent alcohol by volume, and includes the optional statement of proof.

Figure 1 to Paragraph (g)

Alcohol Facts

Serving Size	1.5 fl oz (44 mL)
Servings Per Container	17
	Amount Per Serving
Alcohol by volume	40%
Proof	80
fl oz of alcohol	0.6
Calories	116
Carbohydrate	0g
Fat	0g
Protein	0g

(h) The following Alcohol Facts statement illustrates an acceptable linear display for a 50 mL bottle of distilled spirits containing 40 percent alcohol by volume and includes the optional statement of proof.

Figure 2 to Paragraph (h)

Alcohol Facts: Serving size: 1.7 fl oz (50 mL); Servings per container: 1; **Amount Per Serving:** Alcohol by volume: 40%; (80 proof); Fl oz of alcohol: 0.7; Calories: 131; Carbohydrate: 0g; Fat: 0g; Protein: 0g

(i) The following Alcohol Facts statement illustrates an acceptable dual-column panel display for a 100 mL bottle of distilled spirits containing 40 percent alcohol by volume.

Figure 3 to Paragraph (i)

Alcohol Facts		
Serving Size	1.5 fl oz (44 mL)	
Servings Per Container	2 1/4	
	Amt Per Serv.	Amt Per Bottle
Alcohol by volume	40%	40%
fl oz of alcohol	0.6	1.4
Calories	116	261
Carbohydrate	0g	0g
Fat	0g	0g
Protein	0g	0g

§ 5.213 Placement of the Alcohol Facts statement.

The Alcohol Facts statement may be presented in either a horizontal or vertical orientation.

§ 5.214 Tolerance levels.

(a) *General.* The following tolerance levels apply to labeling statements of calorie, carbohydrate (including sugar), protein, fat, and alcohol content for distilled spirits:

(1) *Calorie content.* A tolerance of 20 percent either above or below the stated calorie content is permitted. For example, a label showing 100 calories per serving is acceptable if the product has a calorie content of between 80 and 120 calories per serving.

(2) *Carbohydrate (including sugar) and protein content.* A tolerance of 20 percent either above or below the stated carbohydrate, sugar, and protein content is permitted. For example, a label showing 7 grams of carbohydrates per serving is acceptable if the product has a carbohydrate content of between 5.6 and 8.4 grams per serving.

(3) *Fat content.* A tolerance of 20 percent either above or below the stated fat content is permitted. For example, a label showing 7 grams of fat per serving is acceptable if the product has a fat content of between 5.6 and 8.4 grams per serving.

(4) *Alcohol content.* The tolerances for alcohol content specified in § 5.65(c) apply. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration.

(b) *Publication of analytical methods.* TTB will maintain on its website (*https://www.ttb.gov*) information regarding the methods it uses to validate calorie, carbohydrate, protein, fat, and alcohol content statements.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 11. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205 and 207.

■ 12. In § 7.52, add paragraph (e) to read as follows:

§ 7.52 Legibility and other requirements for mandatory information on labels.

* * * * *

(e) *Alcohol Facts statements.* See subpart L of this part for more specific requirements that apply to Alcohol Facts statements.

■ 13. In § 7.53, revise paragraph (b) to read as follows:

§ 7.53 Type size of mandatory information and alcohol content statements.

* * * * *

(b) *Maximum type size optional alcohol content statements.* (1) Containers of more than 40 fluid ounces. An alcohol content statement (other than one required to appear in an Alcohol Facts statement under subpart L of this part) may not appear in script, type, or printing that is more than four millimeters in height on containers of malt beverages of more than 40 fluid ounces.

(2) Containers of 40 fluid ounces or less. An alcohol content statement (other than one required to appear in an Alcohol Facts statement under subpart L of this part) may not appear in script, type, or printing that is more than three millimeters in height on containers of malt beverages of 40 fluid ounces or less.

■ 14. In § 7.63, revise paragraphs (a)(3) through (5) and add paragraph (a)(6) to read as follows:

§ 7.63 Mandatory label information.

(a) * * *

(3) Alcohol content, in accordance with § 7.65 and subpart L of this part;

(4) Name and address of the bottler or importer (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.66, § 7.67, or § 7.68, as applicable;

(5) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.70; and

(6) An Alcohol Facts statement, in accordance with subpart L of this part.

* * * * *

■ 15. Revise § 7.65 to read as follows:

§ 7.65 Alcohol content

(a) *Alcohol content in Alcohol Facts statement.* An alcohol content statement must appear in an Alcohol Facts statement in accordance with the requirements of subpart L of this part, unless prohibited by State law.

(b) *Additional alcohol content statements elsewhere on the label.* The following rules apply to additional statements of alcohol content that appear on the label, other than the required statement in an Alcohol Facts statement.

(1) *General.* An additional statement of alcohol content must be expressed as a percentage of alcohol by volume and may appear on any label affixed to the container. Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may also be made, as long as they appear together with, and as part of, a statement of alcohol content as a percentage of alcohol by volume.

(i) The alcohol content statement must be expressed in one of the following formats:

(A) ''Alcohol ____percent by volume'';

(B) ''____percent alcohol by volume''; or

(C) ''Alcohol by volume: ____percent.''

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(2) *Optional abbreviations.* The statements listed in paragraph (b)(1) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(3) *Examples.* The following are examples of alcohol content statements that comply with the requirements of paragraph (b) of this part:

(i) ''4.2% alc/vol'';

(ii) ''Alc. 4.0 percent by vol.'';

(iii) ''Alc 4% by vol''; and

(iv) ''5.9% Alcohol by Volume.''

(c) *Tolerance levels.* A tolerance of one percentage point is permitted, either above or below the stated alcohol content, for malt beverages containing 0.5 percent or more alcohol by volume. However, any malt beverage that is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance. The tolerance provided by this paragraph does not apply in determining compliance with the provisions of § 7.5 regarding the percentage of alcohol derived from added nonbeverage flavors and other nonbeverage ingredients containing alcohol. For malt beverages containing less than 0.5 percent alcohol by volume, the actual alcohol content may be less than, but may not exceed, the labeled alcohol content.

(d) *Low alcohol and reduced alcohol.* The terms ''low alcohol'' and ''reduced alcohol'' may be used only on malt beverages containing less than 2.5 percent alcohol by volume.

(e) *Non-alcoholic.* The term ''non-alcoholic'' may be used on malt beverages, provided the statement ''contains less than 0.5 percent (or .5%) alcohol by volume'' appears immediately adjacent to it, in readily legible printing and on a completely contrasting background.

(f) *Alcohol free.* A malt beverage may not be labeled with an alcohol content of 0.0 percent alcohol by volume, unless it is also labeled as ''alcohol free'' and contains no alcohol. The term ''alcohol free'' may be used only on malt beverages containing no alcohol. No tolerances are permitted for ''alcohol free'' malt beverages.

■ 16. Add subpart L to read as follows:

Subpart L—Alcohol Facts Statement

Sec.

7.211 Alcohol Facts statement.
7.212 Format for the Alcohol Facts statement.
7.213 Placement of the Alcohol Facts statement.
7.214 Tolerance levels.

Subpart L—Alcohol Facts Statement

§ 7.211 Alcohol Facts statement.

(a) *General.* The Alcohol Facts statement required under § 7.63(b)(6) must include the following information, and may not include additional information, except as provided in this section:

(1) The single serving size, as defined in paragraph (b) of this section;

(2) The number of servings per container;

(3) The alcohol content, under the conditions of paragraph (c) of this section;

(4) The number of fluid ounces of pure ethyl alcohol per serving, when required by paragraph (d) of this section;

(5) The number of calories per serving; and

(6) The number, in grams per serving, of carbohydrates, fat, and protein.

(b) *Single serving size and servings per container*—(1) *Definition.* The term ''single serving size'' or ''serving size'' means an amount of the malt beverage customarily consumed as a single serving, expressed in U.S. fluid ounces and, in parentheses, in milliliters (mL), to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help consumers determine nutrient, alcohol, and calorie intake. The single serving size reference amounts for malt beverages are:

TABLE 1 TO PARAGRAPH(b)(1)

For products containing:	a single serving size is:
Not more than 7% alc/vol.	12 fluid ounces (355 mL).
Over 7% and not more than 16% alc/vol.	5 fluid ounces (148 mL).
Over 16% and not more than 24% alc/vol.	2.5 fluid ounces (74 mL).
Over 24% alc/vol	1.5 fluid ounces (44 mL).

(2) *Single-serving containers.* Malt beverages packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount described in this section must be labeled as containing a single serving, and a single serving size is the net content of the container.

(3) *Multi-serving containers.* Products packaged and sold in containers with a net content of 200 percent or more of the applicable single serving size reference amount described in this section will be considered to be in multi-serving containers, and the number of servings per container must be labeled to the nearest one-quarter serving.

(c) *Alcohol content.* For malt beverages with an alcohol content of at least 0.5 percent alcohol by volume, the Alcohol Facts statement must include the alcohol content as a percentage of alcohol by volume rounded to the nearest tenth of a percent, subject to the tolerances set forth in § 7.65(c). For malt beverages containing less than 0.5 percent alcohol by volume, alcohol content may be expressed in the Alcohol Facts statement either as a percentage of alcohol by volume, or by use of the designation ''non-alcoholic'' or ''alcohol free'' in accordance with the tolerances and other conditions set forth in § 7.65(c), (e), and (f).

(d) *Alcohol expressed in fluid ounces.* For malt beverages with an alcohol content of at least 0.5 percent alcohol by volume, the Alcohol Facts statement must express the number of U.S. fluid ounces of pure ethyl alcohol per serving to the nearest tenth of an ounce. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration. For example, 5 fl oz of a beverage with 12 percent alcohol by volume would have 0.6 fl oz of pure ethyl alcohol, while 5 fl oz of a beverage with 14 percent alcohol by volume would have 0.7 fl oz of pure ethyl alcohol.

(e) *Calories.* Calorie statements may be expressed to the nearest calorie, or may be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-calorie increment (for per-serving amounts up to 50 calories), subject to the tolerances set forth in § 7.214. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrate.* (1) The Alcohol Facts statement must express the number of grams of total carbohydrates in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(2) The Alcohol Facts statement may optionally express the number of grams of total sugars in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 g of sugar, the content may be expressed as zero.

(g) *Fat.* The Alcohol Facts statement must express the number of grams of total fat in a serving (with total fat defined as total lipid fatty acids and expressed as triglycerides) to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment at or above 5 grams. If the serving contains less than 0.5 gram, the content may be expressed as zero.

(h) *Protein.* The Alcohol Facts statement must express protein content in grams per serving to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 7.212 Format for the Alcohol Facts statement.

The Alcohol Facts statement must be presented in either a panel or a linear format, and the presentation must conform to the formatting specifications in this section. For malt beverage containers with a net content of at least 200 percent and less than 500 percent of the applicable single serving size reference amount described in § 7.211, as an option, the Alcohol Facts statement may be presented in a dual-column panel which sets forth the required information per serving and per container, as illustrated by paragraph (k) of this section.

(a) The panel or linear display must be set off within a box by use of hairlines with all black or one color type, printed on a contrasting background.

(b) All information within the box must appear in a single, easy-to-read type style using both upper case and lower case letters. The type or printing must be at least 1 millimeter in height for containers of ½ pint (8 U.S. fluid ounces or 237 mL) or less and no smaller than 2 millimeters in height for containers of more than ½ pint (8 U.S. fluid ounces or 237 mL).

(c) Bold face is required for the title ''Alcohol Facts'' and for the heading ''Amount Per Serving'' and is optional for the headings ''Alcohol by volume,'' ''Calories,'' ''Carbohydrate,'' ''Sugar'' (if used), ''Fat,'' and ''Protein.''

(d) The Alcohol Facts statement must appear in the panel or linear format in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume;

(4) U.S. fluid ounces of pure ethyl alcohol per serving. If a panel format is used, the U.S. fluid ounces of pure ethyl alcohol per serving must be indented directly under the percent-by-volume alcohol content declaration (see the example in paragraph (g) of this section);

(5) Calories;

(6) Carbohydrate;

(7) Sugar (if used);

(8) Fat; and

(9) Protein.

(e) The following abbreviations or shortened expressions may be used, with or without a period:

(1) For percentage of alcohol by volume, the percent symbol ''%'', ''Alcohol by volume'', ''Alc/vol'' or ''Alc by vol'';

(2) For U.S. fluid ounces, ''fl oz'';

(3) For grams, ''g'';

(4) For carbohydrate, ''Carb'';

(5) For serving, ''Serv.'';

(6) For milliliter, ''mL''; and

(7) For amount, ''Amt.''.

(f) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(g) The following Alcohol Facts statement illustrates an acceptable panel display for a 24 fluid ounce bottle of a malt beverage containing 5 percent alcohol by volume.

Figure 1 to Paragraph (g)

Alcohol Facts	
Serving Size	12 fl oz (355 mL)
Servings Per Container	2
	Amount Per Serving
Alcohol by volume	5%
fl oz of alcohol	0.6
Calories	90
Carbohydrate	2g
Fat	0g
Protein	1g

(h) The following Alcohol Facts statement illustrates an acceptable panel display for a 12 fluid ounce bottle of a non-alcoholic malt beverage containing less than 0.5 percent alcohol by volume.

Figure 2 to Paragraph (h)

Alcohol Facts	
Serving Size	12 fl oz (355 mL)
Servings Per Container	1
	Amount Per Serving
Alcohol by volume	Non-alcoholic (contains less than 0.5% alc/vol)
Calories	90
Carbohydrate	2g
Fat	0g
Protein	1g

(i) The following Alcohol Facts statement illustrates an acceptable panel display for an 18 fluid ounce bottle of a malt beverage containing 5 percent alcohol by volume. The container has a net content of less than 200 percent of a single serving size reference amount and thus is labeled as containing a single serving.

Figure 3 to Paragraph (i)

Alcohol Facts	
Serving Size	18 fl oz (532mL)
Servings Per Container	1
	Amount Per Serving
Alcohol by volume	5%
fl oz of alcohol	0.9
Calories	135
Carbohydrate	3g
Fat	0g
Protein	1g

(j) The following Alcohol Facts statement illustrates an acceptable linear display for a 12 fluid ounce can of a malt beverage containing 4 percent alcohol by volume.

Figure 4 to Paragraph (j)

Alcohol Facts: Serving size: 12 fl oz (355 mL); Servings per container: 1; **Amount Per Serving:** Alcohol by volume: 4%; Fl oz of alcohol: 0.5; Calories: 90; Carbohydrate: 2g; Fat: 0g; Protein: 1g

(k) The following Alcohol Facts statement illustrates an acceptable dual-column panel display for a 24 fluid ounce can of a malt beverage containing 12 percent alcohol by volume.

Figure 5 to Paragraph (k)

Alcohol Facts		
Serving Size	5 fl oz (355 mL)	
Servings Per Container	4 ¾	
	Amt Per Serv.	Amt Per Bottle
Alcohol by volume	12%	12%
fl oz of alcohol	0.6	2.9
Calories	139	660
Carbohydrate	14g	67g
Fat	0g	0g
Protein	0g	0g

§ 7.213 Placement of the Alcohol Facts statement.

The Alcohol Facts statement may be presented in either a horizontal or vertical orientation.

§ 7.214 Tolerance levels.

(a) *General.* The following tolerance levels apply to labeling statements of calorie, carbohydrate (including sugar), protein, fat, and alcohol content for malt beverages:

(1) *Calorie content.* A tolerance of 20 percent either above or below the stated calorie content is permitted. For example, a label showing 100 calories per serving is acceptable if the product has a calorie content of between 80 and 120 calories per serving.

(2) *Carbohydrate (including sugar) and protein content.* A tolerance of 20 percent either above or below the stated carbohydrate, sugar, and protein content is permitted. For example, a label showing 7 grams of carbohydrates per serving is acceptable if the product has a carbohydrate content of between 5.6 and 8.4 grams per serving.

(3) *Fat content.* A tolerance of 20 percent either above or below the stated fat content is permitted. For example, a label showing 7 grams of fat per serving is acceptable if the product has a fat content of between 5.6 and 8.4 grams per serving.

(4) *Alcohol content.* The tolerances for alcohol content specified in § 7.65 apply. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration.

(b) *Publication of analytical methods.* TTB will maintain on its website (*https://www.ttb.gov*) information regarding the methods it uses to validate calorie, carbohydrate, protein, fat, and alcohol content statements.

PART 24—WINE

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

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 18. In § 24.257, revise paragraph (a)(3) to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(3) The alcohol content as a percentage of alcohol by volume. For wines with 7 percent or more alcohol by volume, the tolerance levels set forth in § 4.36 of this chapter apply. For wines with less than 7 percent alcohol by volume stated on the label, an alcohol content tolerance of plus or minus 0.75 percentage points is allowed; and

* * * * *

PART 25—BEER

■ 19. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 20. In § 25.141, amend paragraph (a) by adding two sentences prior to the last sentence to read as follows:

§ 25.141 Barrels and kegs.

(a) * * * The barrel or keg must also show by label the alcohol content expressed as a percentage of alcohol by volume, rounded to the nearest tenth of a percentage point. A tolerance of one percentage point is permitted, either above or below the stated percentage of alcohol by volume, except that neither the labeled or actual alcohol content may be less than 0.5 percent alcohol by volume, regardless of any tolerance. * * *

* * * * *

■ 21. In § 25.142, amend paragraph (a) by adding two sentences prior to the last sentence to read as follows:

§ 25.142 Bottles.

(a) * * * The bottle must also show by label the alcohol content expressed as a percentage of alcohol by volume, rounded to the nearest tenth of a percentage point. A tolerance of one percentage point is permitted, either above or below the stated percentage of alcohol by volume; except that neither the labeled or actual alcohol content may be less than 0.5 percent alcohol by volume, regardless of any tolerance. * * *

* * * * *

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 22. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6038E, 6065, 6109, 6302, 7805.

■ 23. In § 27.59, remove paragraph (a), redesignate paragraph (b) as paragraph (d), add new paragraphs (a) and (b), and add paragraph (c) to read as follows:

§ 27.59 Wines.

(a) *Label requirements.* Each container of imported wine shall be marked or labeled with the following information:

(1) The name and address of the importer;

(2) The brand name, if different from above;

(3) The alcohol content expressed as a percentage of alcohol by volume. For wines with 7 percent or more alcohol by volume, the tolerance levels set forth in § 4.36 of this chapter apply. For imported wines with less than 7 percent alcohol by volume, an alcohol content tolerance of plus or minus 0.75 percentage points is allowed;

(4) The kind of wine, in accordance with the standards set forth in § 24.257 of this chapter; and

(5) The net contents of the container, unless the net content is permanently marked on the container as provided in 27 CFR part 4.

(b) *Federal Alcohol Administration Act requirements.* All imported wines containing not less than 7 percent and not more than 24 percent of alcohol by volume are required to be packaged, marked, branded, and labeled in conformity with the Federal Alcohol Administration Act (FAA Act) and regulations promulgated thereunder (27 CFR part 4), prior to their removal from customs custody. Containers of imported wine bottled or packaged after tax payment and withdrawal from customs custody are required to be covered by a certificate of label approval or a certificate of exemption from label approval on TTB Form 5100.31 issued pursuant to the FAA Act and regulations promulgated thereunder (27 CFR part 4).

(c) *Customs requirements.* Imported containers of wine are required also to be marked, branded and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

* * * * *

■ 24. Revise § 27.60 to read as follows:

§ 27.60 Beer.

(a) *Label requirements.* Each container of beer shall be marked or labeled with the following information: the name and address of the importer, the net contents of the container, the nature of the product (such as beer, ale, porter, or stout), and the alcohol content, expressed as a percentage of alcohol by volume.

(b) *Federal Alcohol Administration Act requirements.* All imported malt beverages are required to be released from customs custody in conformity with the Federal Alcohol Administration Act (FAA Act) and regulations thereunder. The regulations under the FAA Act on the labeling and advertising of malt beverages may be found in 27 CFR part 7.

(c) *Customs requirements.* Imported containers of beer are required to be marked and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

Signed: January 10, 2025.

Mary G. Ryan,

Administrator.

Approved: January 10, 2025.

Aviva Aron-Dine,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2025–00957 Filed 1–16–25; 8:45 am]

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FEDERAL REGISTER

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Part IX

The President

Executive Order 14142—Taking Additional Steps With Respect to the Situation in Syria
Notice of January 15, 2025—Continuation of the National Emergency With Respect to the Widespread Humanitarian Crisis in Afghanistan and the Potential for a Deepening Economic Collapse in Afghanistan

Federal Register
Vol. 90, No. 11
Friday, January 17, 2025

Presidential Documents

Title 3—

The President

Executive Order 14142 of January 15, 2025

Taking Additional Steps With Respect to the Situation in Syria

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, in view of changing circumstances on the ground in Syria and in order to take additional steps with respect to the national emergency declared in Executive Order 13894 of October 14, 2019 (Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria), hereby order:

Section 1. *Amendments to Executive Order 13894.* Executive Order 13894 is hereby amended by:

(a) striking from the second paragraph the phrase ‘‘, and in particular the recent actions by the Government of Turkey to conduct a military offensive into northeast Syria,’’;

(b) striking subsections (1)(a)(i)(B)–(F) and inserting, in lieu thereof, the following:

‘‘(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.’’; and

(c) striking subsection 8(f).

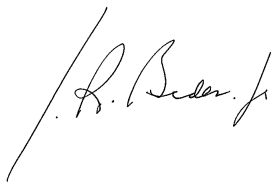
Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other persons.



THE WHITE HOUSE,
January 15, 2025.

[FR Doc. 2025–01437
Filed 1–16–25; 11:15 am]
Billing code 3395–F4–P

Presidential Documents

Notice of January 15, 2025

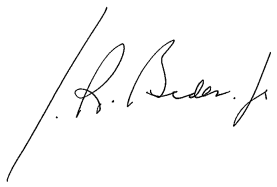
Continuation of the National Emergency With Respect to the Widespread Humanitarian Crisis in Afghanistan and the Potential for a Deepening Economic Collapse in Afghanistan

On February 11, 2022, by Executive Order 14064, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the widespread humanitarian crisis in Afghanistan and the potential for a deepening economic collapse in Afghanistan.

The widespread humanitarian crisis in Afghanistan—including the urgent needs of the people of Afghanistan for food security, livelihoods support, water, sanitation, health, hygiene, and shelter and settlement assistance, among other basic human needs—and the potential for a deepening economic collapse in Afghanistan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. In addition, the preservation of certain property of Da Afghanistan Bank (DAB) held in the United States by United States financial institutions is of the utmost importance to addressing this national emergency and the welfare of the people of Afghanistan. Various parties, including representatives of victims of terrorism, have asserted legal claims against certain property of DAB or indicated in public court filings an intent to make such claims. This property is blocked under Executive Order 14064.

For these reasons, the national emergency declared in Executive Order 14064 of February 11, 2022, must continue in effect beyond February 11, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14064 with respect to the widespread humanitarian crisis in Afghanistan and the potential for a deepening economic collapse in Afghanistan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
January 15, 2025.

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The President

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Presidential Documents

Title 3—

The President

Proclamation 10881 of January 14, 2025

Establishment of the Chuckwalla National Monument

By the President of the United States of America

A Proclamation

In southeastern California, where the Mojave and Colorado Deserts intersect, ancient trails weave through a land of canyon-carved mountain ranges bound together by radiating alluvial bajadas and dark tendrils of dry wash woodlands. Sharing a name with the wide-bodied lizard that is commonly found here and derived from the Cahuilla word ''čáxwal,'' the Chuckwalla region is a place of wonder that lies within the traditional homelands of the Iviatim (Cahuilla), Nüwü (Chemehuevi), Pipa Aha Macav (Mojave), Kwatsáan (Quechan), Maara'yam and Marringayam (Serrano), and other Indigenous peoples. It is imbued with religious, spiritual, historic, and cultural significance for Tribal Nations that trace their origins to these lands. The area contains an abundance of artifacts attesting to its connection to diverse human communities over thousands of years. The region's mosaic of habitats is also home to a remarkable array of plant and animal species. The dramatic contortions of its mountain ranges embody a fundamental story about the shaping of our world that scientists are still learning to decipher. The cultural, geologic, and ecological resources on Federal lands in the Chuckwalla region will continue to inspire and fascinate people and provide a scientific research trove for generations to come.

The Chuckwalla region comprises five geographically discrete areas located between Joshua Tree National Park and the Palen/McCoy Wilderness to the north, California State Route 78 to the east, the Chocolate Mountain Aerial Gunnery Range to the south, and the western boundary of the Mecca Hills Wilderness to the west. Woven together by the physical threads of Indigenous trails that radiate outward connecting peoples and places throughout the Southwest, the region carries significant cultural and sacred meaning for many Tribal Nations. The southern area is a vast and intact expanse of austere, beautiful mountain ranges and desert valleys stretching from the Mecca Hills and Orocopia Mountains in the northwest, to the Mule and Palo Verde Mountains in the northeast, and to the mesquite-studded draws of the Milpitas Wash in the southeast. The other four areas, which lie in the transition zone between the Mojave and Colorado deserts, are located at the base of the Cottonwood, Eagle, Coxcomb, and Palen Mountains.

The imprints of generations of Indigenous peoples are found throughout the region in the trails, tools, habitation sites, and spectacular petroglyphs and pictographs they left behind. The Chuckwalla region has also been marked by the passage of people on the major prehistoric and historic travel corridors that connected the region to the Pacific coast and the interior southwest. While only a small fraction of the region has been formally inventoried, myriad cultural resources have been documented, and there are likely similar historic sites and objects yet to be discovered. A few sites are well-known and easily accessible to the public; many others are concealed in labyrinths of rugged canyons and have not yet been formally studied.

Trails within the area helped to link important resources and people across the Indigenous homelands of the Chuckwalla region. For centuries, they facilitated trade and cultural exchange between peoples throughout the

Southwest. Weaving through canyons, the trails connected indispensable water and other resources throughout the area. They were, and are, essential to the people who trace their origins to these lands, and provide a sense of connection between generations and between the physical and spiritual worlds.

In some places, the footfalls of past generations have etched these trails into the region's surface, wearing a clear path into desert pavement. Ceramics and lithic scatter are also commonly found along trail routes within the Chuckwalla region. The endless shifting of sand and alluvium have likely obscured artifacts in some locations. A prehistoric travel route ran through the core of the northern area between the Eagle and Coxcomb Mountains, connecting the Pinto Basin, where some of California's oldest artifacts have been found, and the Chuckwalla Valley. The relatively narrow gap between the Eagle and Coxcomb Mountains traversed by the corridor also creates the conditions for flash floods; as a result, artifacts are likely to be found below the surface of the wash rather than on its surface.

At least two trails that traverse the Chuckwalla region are sacred to Tribal Nations and bind their members to the land and to generations past. These trails, of which physical traces remain, are both ancient and modern, tangible places and passages that Tribes and Indigenous peoples evoke and visit through songs and dreams. Two versions of the Salt Song Trail pass through the region, connecting it to Tribal communities and sacred sites throughout the Southwest physically and through songs describing corridors, viewsheds, and the related geography and resources. While the Salt Song Trail can be traveled by foot, traditional singers also travel this trail by voice through songs passed down across generations and that Tribes and Indigenous peoples believe assist the transport of the spirits of the recently deceased.

The Xam Kwatchan Trail, which parallels the Colorado River in the vicinity of the Mule and Palo Verde Mountains along the eastern edge of the southern area, is maintained by the Quechan people and recognized by many other Tribes of the Lower Colorado River. Portions of the Xam Kwatchan Trail are still visible and may be traveled physically as the trail weaves through the area and links together three sacred peaks of the Southwest: Avi Kwa Ame to the north of the Chuckwalla region near Lake Mead, Palo Verde Peak within the southern Chuckwalla region and overlooking the Colorado River, and Pilot Knob to the south of the Chuckwalla region near Yuma, Arizona. It is a belief of the Quechan people that they also travel this trail through dreams to transport the living and deceased, and to tie them to these lands and to their origin at Avi Kwa Ame. The Palo Verde and Mule Mountains encompass sites of particular significance along this trail. The eastern side of the Palo Verde Mountains is particularly dense with evidence of human habitation, including trails, camp spots, and ceremonial fire hearths.

The Chuckwalla region has no perennial streams or lakes, but hidden within the southern area's mountain ranges are springs and natural seasonal water catchments (often referred to as tanks). Knowledge of these water sources has allowed Indigenous people to survive within this arid environment for thousands of years. The locations surrounding these springs and tanks are replete with artifacts, including stone tools, ceramics, remnants of habitations, and a dazzling array of petroglyphs and pictographs. In some places, the patina of naturally created desert pavement has been scraped away to form circles and images known as geoglyphs.

In a wide canyon at the heart of the Chuckwalla Mountains lies Corn Springs, a well-known cultural site. Amid the mountain range's rugged peaks and dry washes, the oasis at Corn Springs, which supports a stand of more than 60 California fan palms, has long been a beacon to the area's human occupants. Corn Springs contains extensive petroglyphs encompassing a diverse array of elements and representing contributions by many people over thousands of years. These petroglyphs, which are listed on the National

Register of Historic Places, are carved into flat planes on the golden rocks found near Corn Springs.

Jutting from the desert floor north of Corn Springs, in an area just south of the community of Desert Center, sits Alligator Rock. A salient ridge containing dikes of aplite, Alligator Rock was both a milestone on the major Indigenous travel and trade route that passed through Chuckwalla Valley and an important prehistoric source of lithic materials. Flakes and tools crafted from the area's distinctive speckled stone have been documented in sites throughout Chuckwalla Valley.

In the eastern area, northeast of Alligator Rock and Corn Springs and north of the Little Chuckwalla Mountain Wilderness, Ford Dry Lake is now a sparsely vegetated playa in the Chuckwalla Valley at the base of the Palen and McCoy Mountains. Dense cultural sites have been documented along the lake's ancient shorelines, attesting to its use by generations of Indigenous peoples. Artifacts uncovered here include a variety of stone tools, ceramics, and other evidence of Indigenous habitation sites.

While seemingly inhospitable to humans, the Chuckwalla region has provided sustenance and material resources to the Indigenous peoples who have inhabited and traversed it for generations. Many of the region's native plants were gathered for food, including mesquite and ironwood seeds, wild grasses, and cacti. Mesquite, which thrives in the dry washes of the southern area between the Chocolate and Palo Verde Mountains, was a particularly important source of sustenance. Large quantities of the beans were collected in the summer and stored for use throughout the year. In 1972, a large ceramic olla (an earthenware vessel) containing mesquite beans was discovered in a rock shelter in the canyon-striated Mecca Hills of the far western corner of the southern area.

By the mid-1800s, the Chuckwalla region had caught the attention of non-Indigenous Americans seeking wealth in the underbelly of its mountains. In the 1860s, the Mule Mountains—near the California-Arizona border—were the site of one of the first discoveries of gold in Riverside County. Two decades later, the largest gold rush in Riverside County's history occurred when gold and silver were discovered in the Chuckwalla Mountains. Relics of historic mines, including shafts, trenches, equipment, and remnants of buildings, are present throughout the region's mountain ranges. A mining shaft, conveyor, and loading dock associated with the Model Mine, which operated around the turn of the last century, are located in the western foothills of the Chuckwalla Mountains.

In 1862, as gold seekers spread throughout the region, a miner named William Bradshaw sought to develop a route to connect the Coachella Valley with expanding mines on the east side of the Colorado River. A Cahuilla leader and another Indigenous trail runner provided Bradshaw with a map of existing Indigenous routes linking springs and tanks along the southern edge of the Orocopia, Chuckwalla, and Little Chuckwalla Mountains. He used the knowledge shared with him of these existing Indigenous trails to identify what became known as the ''Bradshaw Trail,'' an overland route that traverses the Chuckwalla Bench through the heart of the southern area. Some of the springs and tanks, which had long been used by Indigenous peoples, became stagecoach stations associated with the Bradshaw Trail. Intrepid visitors can still drive the unpaved Bradshaw Trail, which the Bureau of Land Management (BLM) designated as a National Backcountry Byway in 1992.

In 1942, shortly after the United States entered World War II, the Department of the Army established a presence in the Chuckwalla region, reminders of which can still be seen across the terrain. In March of 1942, Major General George Patton selected a large swath of desert in California and Nevada, including a substantial amount of land in the Chuckwalla Valley, for a Desert Training Center to prepare United States Army units for desert combat. By the end of World War II, over a million soldiers had been trained at the facility. Small unit training exercises were held in Chuckwalla

Valley, which the Army believed provided the best approximation of terrain they might face in parts of North Africa. The scars of tank tracks across the southern area's desert pavement can still be seen today, along with berms, trenches, and foxholes.

The Chuckwalla region includes the footprint of Camp Young, the Desert Training Center's first camp and its administrative core. Camp Young was primarily located south of present-day Joshua Tree National Park and north of Interstate 10 in the western area. While none remain standing, Camp Young boasted almost 100 administrative buildings, two hospitals, 50 warehouses, a theater, an officers' club, and a post office. Traces of the soldiers' lives at Camp Young can still be seen here, including rock-lined walkways and remnants of concrete foundations.

During his tenure at the Desert Training Center, General Patton lived at Camp Young but was in the field on a daily basis, including to review small unit training exercises in the Chuckwalla Valley. He would often shout orders into a radio while observing tank maneuvers from a hill overlooking the valley between the Orocopia and Chuckwalla Mountains, in the center of the Chuckwalla region's southern area. The road bulldozed for Patton's use to the top of this hill, known as ''The King's Throne,'' remains clearly visible.

Against this backdrop of human history, the Chuckwalla region's many and varied plant and animal inhabitants have continued to persevere in the harsh desert environment. The region provides a refuge for more than 50 rare plants and animals, as well as 21 vulnerable vegetation communities. The diversity of biota has attracted numerous scientists over many decades who have conducted research into topics as varied as testing translocation methods for bighorn sheep, studying ant colony forming behavior, and documenting the demographic patterns of the Orocopia sage, a shrub with delicate lavender flowers that is only known to grow in the Mecca Hills and Orocopia and Chocolate Mountains.

The broad bajadas of the southern area radiate out from a series of small mountain ranges, whose sinuous canyons and ragged peaks provide habitat to a variety of species. The washes and sandy slopes of the Orocopia Mountains are home to Orocopia sage. The Mecca aster is endemic to only a small area, with more than half of its known occurrences located in the Mecca Hills. Mountain areas in the Chuckwalla region are also the only known locations of the recently described Chuckwalla cholla, a relatively low-lying cactus with reddish flowers.

Desert bighorn sheep, a sensitive species with declining numbers, live year-round on the craggy slopes of the Orocopia and Chuckwalla Mountains and are occasionally glimpsed in the Palo Verde and Little Chuckwalla Mountains. The broad, sandy washes that connect the mountains—unbroken by paved roads or large developments—provide the habitat connectivity necessary to preserve genetic diversity among bighorn sheep populations.

The region's expanse of gently sloping shrubby terrain is also vital to the survival of the threatened Agassiz's desert tortoise, encompassing key components of an essential corridor connecting the tortoise's Chuckwalla and Chemehuevi populations. Much of the region is critical habitat for this charismatic desert dweller.

Located in the southern area of the Chuckwalla region, the Chuckwalla Bench is an elevated area of alluvial fans that provided a setting for extensive study and monitoring of desert tortoises for decades. It is also home to over 150 native plant species. The specific species present change with elevation as the bench's slopes climb to an 80,000-acre expanse that rises to approximately 2,000 feet in elevation, resulting in an environment that is notably cooler and wetter than is typical for the Sonoran Desert. At the higher elevations, Mojave yucca and cholla become increasingly common. The Munz's cholla, a species endemic to the Chuckwalla Bench whose spiny, branching arms often reach a height of six feet, grows here.

In part because of the relative availability of forage and water, the Chuckwalla Bench is included in the United States Fish and Wildlife Service's primary area of interest for Sonoran Desert pronghorn reintroduction in California. In 1941, around the time that the United States Army began desert training in the area, the endangered Sonoran Desert pronghorn was last observed in the Colorado Desert in the vicinity of Salt Creek Wash, which runs between the Orocopia and Chocolate Mountains.

Dry washes in the Chuckwalla region are threaded with populations of desert trees including ironwood, blue palo verde, smoketree, and mesquite. These are known as microphyll woodlands, and they provide migration corridors for desert wildlife, as well as crucial habitat for migratory birds. Milpitas Wash, located south of the Palo Verde Mountains in the southern area near the Arizona border, is one of the largest remaining microphyll woodlands in the Colorado Desert. It is identified as a component of the National Audubon Society's Colorado Desert Microphyll Woodlands Important Bird Area. Old-growth blue palo verde trees in Milpitas Wash provide nesting cavities for an important population of Gila woodpeckers, which are listed as endangered under the California Endangered Species Act. Rare long-eared owls, Crissal thrashers, and black-tailed gnatcatchers also nest in Milpitas Wash.

Dense pockets of palo verde microphyll woodland occur in the northeast portion of the southern Chuckwalla region and are reported to have the highest winter bird densities in the California Desert. Sand dunes have dammed several small washes in the area, creating relatively wet conditions that are conducive to dense vegetative growth. These sand dunes in Chuckwalla Valley are fed by aeolian (windblown) sand transport corridors. In addition to the rich cultural sites associated with Ford Dry Lake, the portion of the Chuckwalla Valley in the eastern Chuckwalla region protects part of these sand transport corridors. The dunes in this area also provide habitat for the rare Mojave fringe-toed lizard.

Nightfall reveals another dimension of the Chuckwalla region. Kit foxes and sensitive species such as burrowing owls and elf owls emerge from dens, while a variety of rare bats including the California leaf-nosed bat, the western mastiff bat, and the western yellow bat dart through the desert sky. Mountain lions are also known to prowl the Chuckwalla region at night. A population of mountain lions in southern California and the central coast of California, which includes those in the Chuckwalla region, is currently a candidate species under consideration for listing under the California Endangered Species Act.

The Chuckwalla region encompasses striking geologic diversity, which both underpins the rich ecological and cultural values and is itself the focus of extensive research. In the far western reach of the southern area of this region, the Mecca Hills, shaped by the unquiet presence of the San Andreas Fault, attract not only hikers eager to explore their intricate canyons but a long line of geologists seeking to better understand fault dynamics. There is an exposure of Pliocene-Pleistocene terrestrial sedimentary rocks along the fault, and recent uplift and erosion have allowed the opportunity for its detailed analysis. Researchers have analyzed the Painted Canyon Fault, which lies within the San Andreas strike-slip fault zone in the Mecca Hills, to better understand tectonic processes along faults as far away as Denmark.

Just to the east of the Mecca Hills, the Orocopia Mountains have been the site of extensive study of the geologic mechanisms that shape the earth, including deposition, metamorphism, uplift, and exposure. In the late 1960s and early 1970s, the Orocopia Mountains were the site of field training for the Apollo 13 and 15 crews, preparing them to observe and document lunar geology.

In 1986, scientists documented five new species of mollusks from the Eocene epoch that were found in samples taken from the Orocopia Mountains, which helped clarify scientists' understanding of the timing of the westward

migration of Eurasian mollusk species during the early Eocene and late Paleocene epochs. In the Palo Verde Mountains, at the southeastern edge of the Chuckwalla region, outcroppings of the Bouse Formation are helping scientists unlock mysteries around the formation of the Colorado River.

Protecting the Chuckwalla region will preserve an important spiritual, cultural, prehistoric, and historic legacy and protect places inscribed with history for future generations; maintain a diverse array of natural and scientific resources; and help ensure that the prehistoric, historic, and scientific resources and values of the region endure for the benefit of all Americans. As described above, the region contains numerous objects of historic and scientific interest, and it provides exceptional outdoor recreational opportunities, including hiking, camping, backpacking, rockhounding, sightseeing, nature study, birding, horseback riding, hunting, climbing, mountain biking, and motorized recreation, all of which are important to the travel- and tourism-based economy of the region.

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

WHEREAS, the Chuckwalla region has been profoundly sacred to Tribal Nations and Indigenous peoples with ties to the Colorado and Mojave Deserts since time immemorial; and

WHEREAS, it is in the public interest both to ensure the preservation, restoration, and protection of the objects of scientific and historic interest identified above and to advance renewable energy in Development Focus Areas (DFAs) that were identified by the Desert Renewable Energy Conservation Plan (DRECP) as of the date of this proclamation; and

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

WHEREAS, I find that there are threats to the objects identified in this proclamation, and, in the absence of a reservation under the Antiquities Act, the objects identified in this proclamation are not adequately protected by applicable law or administrative designations, thus making a national monument designation and reservation necessary to protect the objects of historic and scientific interest identified above for current and future generations; and

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

WHEREAS, it is in the public interest to ensure the preservation, restoration, and protection of the objects of historic and scientific interest identified above;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Chuckwalla National Monument (monument) and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands that are owned or controlled by the Federal

Government within the boundaries described on the accompanying map, which is attached hereto and forms a part of this proclamation. These reserved Federal lands and interests in lands encompass approximately 624,270 acres. As a result of the distribution of the objects across the Chuckwalla region, the boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects of historic or scientific interest identified above.

All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws, other than by exchange that furthers the protective purposes of the monument or that facilitates the remediation, monitoring, or reclamation of historic mining operations on public or private land within the monument boundary; from location, entry, and patent under the mining laws; and from disposition under all laws relating to mineral and geothermal leasing.

The establishment of the monument is subject to valid existing rights. If the Federal Government subsequently acquires any lands or interests in lands not currently owned or controlled by the Federal Government within the boundaries described on the accompanying map, such lands and interests in lands shall be reserved as a part of the monument, and objects of the type identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

Nothing in this proclamation shall be construed to alter the valid existing water rights of any party, including the United States, or to alter or affect agreements governing the management and administration of the Colorado River, including any existing interstate water compact. This proclamation does not reserve water as a matter of Federal law.

The Secretary of the Interior (Secretary), through the BLM, shall manage the monument pursuant to applicable legal authorities, as a unit of the National Landscape Conservation System, and in accordance with the terms, conditions, and management direction provided by this proclamation.

For purposes of protecting and restoring the objects identified above, the Secretary shall within 3 years from the date of this proclamation prepare a management plan for the monument and shall promulgate such rules and regulations for the management of the monument as deemed appropriate. The Secretary, through the BLM, shall consult with other Federal land management agencies or agency components in the local area, including the Bureau of Reclamation, Department of Defense, and National Park Service, in developing the management plan.

The Secretary shall provide for maximum public involvement in the development of the management plan, as well as consultation with Tribal Nations affiliated culturally or historically with the Chuckwalla Region and conferral with State and local governments. In preparing the management plan, the Secretary shall take into account, to the maximum extent practicable, maintaining the undeveloped character of the lands within the monument; minimizing impacts from surface-disturbing activities; providing appropriate and, where consistent with the proper care and management of the objects of historic or scientific interest identified above, improving access for recreation, hunting, dispersed camping, wildlife management, scientific research, and the permissible casual collection of rocks; and emphasizing the retention of natural quiet, dark night skies, and scenic attributes of the region.

The Secretary shall consider appropriate mechanisms to provide for temporary closures to the general public of specific portions of the monument to protect the privacy of cultural, religious, and gathering activities of members of Tribal Nations.

The Secretary, through the BLM, shall establish an advisory committee under chapter 10 of title 5, United States Code (commonly known as the Federal Advisory Committee Act), to provide advice or recommendations regarding

the development of the management plan and, as appropriate, management of the monument. The advisory committee shall consist of a fair and balanced representation of interested stakeholders, including State agencies and local governments; Tribal Nations; recreational users; conservation organizations; the scientific community; the renewable energy and electric utility industry; and the general public in the region.

In recognition of the value of collaboration with Tribal Nations for the proper care and management of the objects identified above and to ensure that management of the monument is informed by, integrates, and reflects Tribal expertise and Indigenous Knowledge, as appropriate, the Secretary shall meaningfully engage with Tribal Nations with cultural or historical affiliation to the Chuckwalla region, including by seeking opportunities for co-stewardship of the monument.

If Tribal Nations with cultural or historical affiliation to the Chuckwalla region independently establish a commission or other similar entity (commission) comprised of elected officers or official designees from each participating Tribal Nation to engage in co-stewardship of the monument with the Federal Government through shared responsibilities or administration, then the Secretary shall meaningfully engage the commission in the development, revision, or amendment of the management plan and the management of the monument, including by considering and, as appropriate, integrating the Indigenous Knowledge and special expertise of the members of the commission in the planning and management of the monument. The management plan for the monument shall also set forth parameters for continued meaningful engagement with the commission, if established, in the implementation of the management plan and, as appropriate, incorporate public education on and interpretation of traditional place names and the cultural significance of land within the monument. The Secretary shall explore opportunities to provide support to the commission, if established, to enable participation in the planning and management of the monument.

The Secretary shall also explore entering into cooperative agreements or contracts, pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5301 *et seq.* or other applicable authorities, with Tribes or Tribal organizations to perform administrative or management functions within the monument and providing technical and financial assistance to improve the capacity of Tribal Nations to develop, enter into, and carry out activities under such cooperative agreements or contracts. The Secretary also shall explore opportunities for funding agreements with Tribal Nations relating to the management and protection of traditional cultural properties and other culturally significant programming associated with the monument.

Nothing in this proclamation shall be deemed to alter, modify, abrogate, enlarge, or diminish the rights or jurisdiction of any Tribal Nation, including off-reservation reserved rights. The Secretary shall, to the maximum extent permitted by law and in consultation with Tribal Nations, ensure the protection of sacred sites and cultural properties and sites in the monument and shall provide access to Tribal members for traditional cultural, spiritual, and customary uses, consistent with the American Indian Religious Freedom Act (42 U.S.C. 1996), the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), Executive Order 13007 of May 24, 1996 (Indian Sacred Sites), and the November 10, 2021, Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites. Such uses shall include, but are not limited to, the collection of medicines, berries, plants, and other vegetation for cradle boards and other purposes, and firewood for ceremonial practices and personal noncommercial use, so long as each use is carried out consistent with applicable law and in a manner consistent with the proper care and management of the objects identified above. The Secretary shall endeavor to prepare an ethnographic study and cultural resources survey of the monument to assess the importance of the land to Tribal Nations affiliated culturally

or historically with the Chuckwalla Region and the religious, spiritual, and cultural practices of culturally affiliated Tribal Nations.

The Secretary shall explore mechanisms, consistent with applicable law, to enable the protection of Indigenous Knowledge or other information relating to the nature and specific location of cultural resources within the monument and, to the extent practicable, shall explain to the holders of such knowledge or information any limitations on the ability to protect such information from disclosure before it is shared with the BLM.

Nothing in this proclamation shall be construed to preclude the renewal or assignment of, or interfere with the operation, maintenance, replacement, modification, upgrade, or access to, existing or previously approved flood control, utility, pipeline, and telecommunications sites or facilities; roads or highway corridors; seismic monitoring facilities; wildlife management structures installed by the BLM or the State of California; or water infrastructure, including wildlife water developments or water district facilities, within the boundaries of existing or previously approved authorizations within the monument. Existing or previously approved flood control, utility (including electric transmission and distribution), pipeline, telecommunications, and seismic monitoring facilities; roads or highway corridors; wildlife management structures installed by the BLM or the State of California; and water infrastructure, including wildlife water developments or water district facilities, may be expanded, and new facilities of such kind may be constructed, to the extent consistent with the proper care and management of the objects identified above and subject to the Secretary's authorities, other applicable law, and the provisions of this proclamation related to roads and trails.

For purposes of protecting and restoring the objects identified above, the Secretary shall prepare a transportation plan that designates the roads and trails on which motorized and non-motorized mechanized vehicle use will be allowed. The transportation plan shall include management decisions necessary to protect the objects identified in this proclamation. Except for emergency purposes and authorized administrative purposes, including management activities by appropriate California State agencies to maintain, enhance, or restore fish and wildlife populations and habitats, which are otherwise consistent with applicable law, motorized vehicle use in the monument may be permitted only on roads and trails documented as existing in BLM route inventories that exist as of the date of this proclamation. Any additional roads or trails designated for motorized vehicle use by the general public must be designated only for public safety needs or if necessary for the protection of the objects identified above.

Livestock grazing has not been permitted in the monument area since 2002, and the Secretary shall not issue any new grazing permits or leases on such lands.

Nothing in this proclamation shall affect the BLM's ability to authorize access to and remediation or monitoring of contaminated lands within the monument, including for remediation of unexploded ordnance and mine, mill, or tailing sites or for the restoration of natural resources.

Nothing in this proclamation shall preclude low-level overflights of military aircraft, the landing of military aircraft in accordance with aviation safety regulations in landing zones that have been or are designated in the future, military flight testing or evaluation, the designation of new units of special use airspace, the use of existing or the establishment of new military flight training routes, or low-level overflights and landings of aircraft by the BLM or its contractors for scientific or resource management purposes. Nothing in this proclamation shall preclude the use of land within the monument for military training, or preclude air or ground access to existing or new electronic tracking or communications sites associated with special use airspace and military flight training routes, after appropriate coordination between the Department of Defense and the Department of the Interior.

As this monument is located near DFAs identified by the DRECP and is consistent with the goals of that plan, nothing in this proclamation shall be interpreted to require denial of proposals for renewable energy projects that are in DFAs identified by the DRECP and that comply with all applicable legal requirements.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction or authority of the State of California with respect to fish and wildlife management, including hunting and fishing, on the lands reserved by this proclamation. The Secretary shall seek to develop and implement science-based habitat and ecological restoration projects within the monument and shall seek to collaborate with the State of California on wildlife management within the monument, including through the development of new, or the continuation of existing, agreements with the California Department of Fish and Wildlife.

The Secretary shall evaluate opportunities to enter into one or more agreements with governments, including State, local, and Tribal, regarding the protection of the objects identified above during wildland fire prevention and response efforts. Nothing in this proclamation shall be construed to alter the authority or responsibility of any party with respect to emergency response activities within the monument, including wildland fire response.

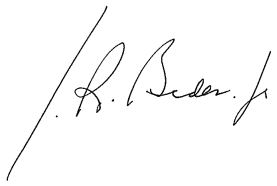
Nothing in this proclamation shall be deemed to limit the authority of the Secretary, consistent with applicable law, to undertake or authorize activities for the purpose of ensuring safe and continued recreational access to canyons in the Mecca Hills Wilderness.

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

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

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

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



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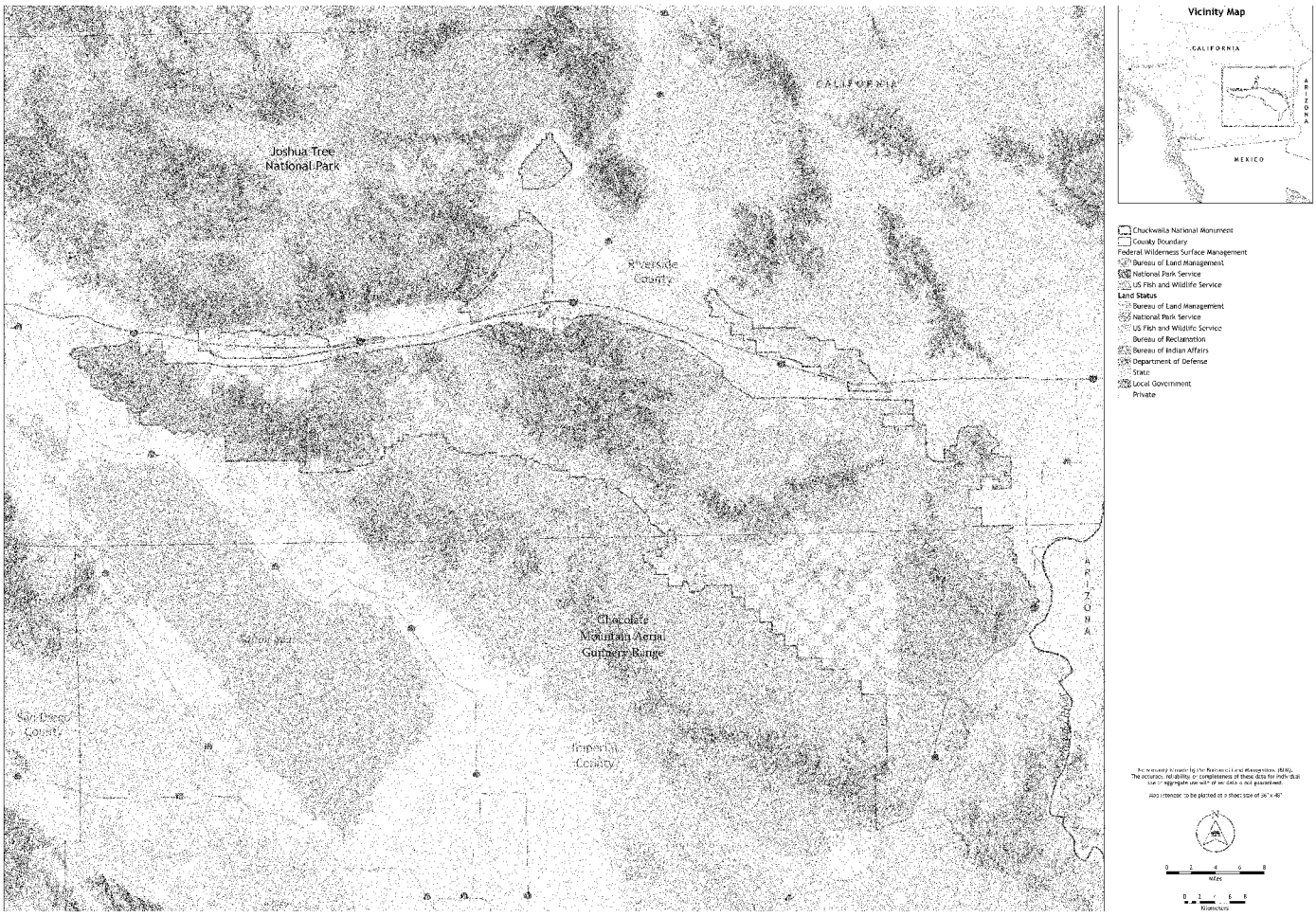
Chuckwalla National Monument

January 2025



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Presidential Documents

Proclamation 10882 of January 14, 2025

Establishment of the Sáttítla Highlands National Monument

By the President of the United States of America

A Proclamation

In northern California, the awe-inspiring geological wonders collectively described here as the Sáttítla Highlands have framed the homelands of Indigenous communities and cultures for millennia, and today this area continues to cradle historic and scientific treasures of our Nation. At this area's core rests a sleeping giant: the Medicine Lake Volcano. This massive volcano—one of the two largest volcanos in the Cascades Volcanic Arc—covers an expanse roughly 10 times that of Mount St. Helens, Washington. ''Medicine Lake,'' as labeled in English on some maps since approximately 1890, is found within the summit caldera of the volcano for which it is named. Far earlier and through the present day, however, these stunning and unusual lands have been known as ''Sáttítla'' in the Ajumawi language, which translates to ''obsidian place.'' Sáttítla's obsidian deposits formed by the volcano have long been important to Indigenous peoples, as shown by obsidian tools and sites they left here from their lives and travels. The Sáttítla Highlands area as described here includes parts of the Modoc, Shasta-Trinity, and Klamath National Forests, and stretches from Sharp Mountain, Wild Horse Mountain, and Little Horse Peak in the west, to Cougar Butte, Glass Mountain, and Border Mountain in the east, and to encompass the cinder cones known as Porcupine Butte, Timber Hill, Snag Hill, and Powder Hill in the south.

Sáttítla includes portions of the ancestral homelands of the Pit River (Ajumawi—Atsugewi) and Modoc Peoples (Mo Wat Knii—Mo Docknii). For them and many other Indigenous peoples—including the Karuk, Klamath, Shasta, Siletz, Wintu, and Yana and individual Tribes that are members of these groups—the volcanic landscape holds and reflects exceptional power and is central to their spiritual beliefs and cultural practices. The Modoc believe Medicine Lake is a place of healing and have referred to the lake and its banks as ''Lani'shwi.'' Plants and animals found within Sáttítla's habitats include many that are rare or vulnerable and have long been important to the Indigenous peoples of the area for food, medicine, and ceremonies. Sáttítla's remarkable geologic formations and the ecosystems cultivated within and around them have shaped the history and cultures of generations of Indigenous peoples.

This area contains evidence of human occupancy dating back at least 5,000 years. For members of the Pit River Tribe, Sáttítla, as part of the broader landscape within which it sits, is central to their creation stories and core to their physical, mental, spiritual, and cultural health. Their cultural and spiritual connections to Sáttítla reach across time and space, linking a web of heritage sites near and far and underscoring the importance of this land to the Indigenous people who have lived here throughout history. They believe that the people and the land are one in the same, not only that one cannot be separated from the other, but that one cannot exist without the other. Sáttítla's deep silence, local plants and animals, unobstructed views across the landscape, and pure water sources are necessary to carry out customs, traditions, and ceremonies of the Indigenous peoples connected to this area. This area has long provided a place for vision quests, gathering of medicinal plants, spiritual training and purification ceremonies, obsidian

gathering, and religious activities that demand privacy, solitude, and unobscured access to both day and night skies. The night skies of Sáttítla, where distant galaxies and stars are visible, are renowned for being among the darkest in the United States.

Located at the southern reaches of the Modoc Peoples' ancestral homelands, Sáttítla could be seen from across Modoc territory. The volcano and surrounding highlands were central to ceremonial life of the Modoc, and the area is an enduring place of historic and cultural significance. The area continues to serve as a place of gathering, healing, and spiritual importance for surrounding Indigenous peoples—including the Karuk, Klamath, Shasta, Siletz, Wintu, and Yana. Tribal Nations collaborate in some of these activities, including ceremonies in and around Medicine Lake.

At least 85 plant species found in Sáttítla are used by Indigenous peoples for healing, medicine, food, tools, building materials, and as ceremonial objects and are considered to have powerful medicinal and ceremonial uses. For example, Indigenous people used lichen from this area to dye materials used to adorn clothes and ornaments.

Evidence of Indigenous peoples can be found throughout Sáttítla. Sites in various parts of the area exhibit evidence of obsidian quarrying and use by Indigenous peoples, with some containing unique assemblages of flaked stone and obsidian tools, waste materials from tool manufacture, and blades and cutting implements. Larger obsidian blades, including those quarried and found in Sáttítla, were highly prized as items of wealth and prestige in Indigenous cultures throughout the region. Obsidian quarried within Sáttítla was an important resource in a broad Indigenous trade network throughout northern California and the California Coast, and within southern Oregon. The Indigenous peoples of the region believe that distinct sources of Sáttítla obsidian—such as obsidian deposits in the central part of this area—retain special roles and significance in different uses. In various locations, evidence of precontact hunting blinds and groundstone implements also highlight that Indigenous peoples have lived and hunted across Sáttítla.

In view of the importance of these lands to Indigenous peoples and the rich cultural resources found here, in 1999, the National Register of Historic Places determined approximately 33,000 acres of the Sáttítla area centered on Medicine Lake to be eligible as a Traditional Cultural Property District. Further, in 2007, the U.S. Forest Service and the Bureau of Land Management developed the Medicine Lake Highlands Historic Property Management Program, which extended this district to encompass approximately 73,000 acres.

Indigenous peoples would likely have witnessed some of the more recent eruptions of the Medicine Lake Volcano—which have occurred multiple times in the past 12,500 years and as recently as 950 years ago—reshaping their sacred lands as they watched, and creating geologic formations and other objects still visible today. Future volcanic activity will likely continue to shape these highlands. As a result of its dynamic geology and millennia of human occupation, Sáttítla contains numerous objects of historic and scientific interest—some formed by the volcano and surrounding ecosystems and others, like obsidian tools and ceremonial sites, created by Indigenous peoples—and is integrally connected to the Indigenous Knowledge amassed by the Tribal Nations and Indigenous peoples in the area over countless generations. Some of the objects in this area are sacred to Tribal Nations, are sensitive, rare, or vulnerable to vandalism and theft, or are unsafe to visit. Therefore, revealing their specific names or locations could pose a danger to the objects or to the public.

The lava flows emanating off the flanks of Medicine Lake Volcano extend in every direction for more than 30 miles, through and, in some places, even beyond Sáttítla. Eons of historic geological activity provide visitors with vast panoramas of stark, unvegetated lava fields exemplified by the Burnt Lava Flow Geologic Special Interest Area in the southeast and the Callahan Flow in the north, and extending into Lava Beds National Monument along the northeast corner. The area's concentration of lava flows

that are fewer than 13,000 years old makes Sáttítla one of the premier places to view geologically young lava flows in California—and in the United States.

In addition to volcanologists who have come to Sáttítla to study and understand the depths of the earth's core, astronauts have also learned from the area. Between 1965 and 1967, the area's Pumice Crater—located in the central portion of Sáttítla—was used by the National Aeronautics and Space Administration for Apollo program astronauts who trained in the collection and identification of lunar-like geologic features to be prepared for observation and sampling on the moon. Multiple groups of astronauts traveled to the Pumice Crater area, and four of those astronauts flew Apollo missions, making this crater an important piece of space exploration history.

Many of the lava flows within Sáttítla created islands of remnant forests that were elevated enough to escape the deluge of lava. In the north central area of Sáttítla, one such island is Black Lava Butte, which is dominated by shrubs, grasses, and old-growth ponderosa pine. Isolated from historical logging and development, these islands of forest provide valuable laboratories for future study of enduring and unaltered ecosystems.

The southern portion of Sáttítla is home to miniature volcanoes known as spatter cones, a well-preserved and accessible handful of which appear adjacent to the Giant Crater Lava Flow located in the south-central portion of the area. Sáttítla's more than 100 cinder cones—which are formed when lava cools mid-air and falls as fragments creating mounds, including Pumice Stone Mountain, Paint Pot Crater, and Porcupine Butte—are intact, making them of particular scientific interest.

The Fourmile Hill Tree Molds Geologic Area, situated on the north flank of the Medicine Lake volcano, contains dozens of molds formed over 12,000 years ago when molten lava flowed through a conifer forest leaving behind casts of the ancient tree trunks. These trace fossils can help improve scientists' understanding of the complex geologic history of the region.

Sáttítla also contains hundreds of cave-like lava tubes, which were formed over time when molten basaltic lava flows cooled. Many of these formations are relatively unexplored, with more likely yet to be discovered through future scientific inquiry. The Giant Crater lava tube originates just south of Medicine Lake, extends southward within Sáttítla, and ultimately forms the longest known lava tube system in the world.

Sáttítla is nearly devoid of surface water drainages, but its surface waters only hint at what is stored underground, as most of the precipitation that falls in this area filters down through the porous volcanic rock filling underground aquifers. These aquifers supply water to spring systems in northern California—and ultimately to the Sacramento River to the south and the Lower Klamath and Tule Lake National Wildlife Refuges to the north.

The first known Euro-American reports of Sáttítla emerged in 1826–27, with settler-driven development appearing in the region in the 1870s. The Tickner Road, constructed in 1871, served as one of the earliest routes across Siskiyou County, and remnants of two tracks are still visible in isolated sections in the northeast portion of the area.

As Euro-Americans settled in the traditional homelands of the area's Indigenous peoples, many Tribal Nations suffered dispossession and, often, forced removal. The brutalities against them by Euro-Americans were systemic, as evidenced by California's first Governor declaring a ''war of extermination'' against the Indigenous peoples, and the California State Legislature appropriating a half-million dollars to pay for militia campaigns to kill them. By 1872, hostilities between the U.S. Army and the Modoc Peoples exploded into the Modoc War. Tickner Road was used by the U.S. military during the Modoc War as a supply route, and its remnants serve as a physical marker of this war. While battles took place in lava fields outside and to the north of the area, some Modoc people sought refuge in Sáttítla, where they successfully avoided relocation after the war and ultimately

integrated with the Klamath Tribes. For these members of the Modoc, their connection to and knowledge of the Sáttítla area proved life-saving. Other members were less fortunate; following the war several Modoc leaders were captured and hanged, and the remaining approximately 150 survivors were forcibly relocated to Oklahoma. In view of these atrocities and the resulting loss of homelands, Sáttítla and the objects it contains remain particularly significant both to the Modoc and to our Nation's history.

The area's verdant forests and exceptional geology together have supported and still illustrate important parts of the region's history. For example, Sáttítla's high quality and accessible stands of ponderosa pine attracted the development of railroad logging operations, which came to this area at the end of the 19th century. Today, within the western and northern part of this area, visitors can see the remains of hundreds of miles of railroad grades, relics of logging camps, maintenance stations, loading and switchyards, and other traces from the railroad logging era.

Near the center of Sáttítla, Little Mt. Hoffman Lookout Tower provides panoramic views across and outside of the area to distant Mt. Shasta, Mt. Lassen, and the Tule Lake Basin. Constructed in the 1920s, and eligible for listing on the National Register of Historic Places, the tower was actively used as a wildfire lookout until 1978 and today it provides a chance to see much of the Sáttítla Highlands from the edge of the volcano's caldera.

Sáttítla's exceptionally varied habitats also support high levels of biodiversity, including a variety of sensitive and endemic species. For example, the Federally listed northern spotted owl relies on mature forest habitat, which is scattered throughout the southern and western portions of Sáttítla. The area also partially overlaps the historic range of the Federally listed Franklin's bumblebee, which has one of the most limited geographic distributions of any bumblebee in the world. The Townsend's big-eared bat, a State of California Species of Concern, uses the region's lava tube caves for roosting. The Swainson's hawk returns from South America in the spring to breed in the low-elevation juniper forests, sagebrush, and bitterbrush habitats found along the northwestern edge of area. In the northern portion of Sáttítla, the Three Sisters Bald Eagle Winter Roost Area provides habitat for bald eagles, endangered in California. Scattered aquatic and riparian habitats in the western portion of the area support two State of California Species of Special Concern, the Cascades frog and long-toed salamander. Other species known to be north and south of Sáttítla, such as the Federally listed gray wolf, likely migrate through this area, with Sáttítla providing transitory habitat.

Sáttítla supports the survival of at least 16 plants considered threatened, endangered, or rare in California, including the Federally listed whitebark pine growing near Garner Mountain in the western portion of the area, as well as a diverse community of fungi, with 20 species considered rare or sparsely distributed. Amongst host trees is the Pacific fuzzwort, a rare liverwort that is at the southern end of its habitat in northern California, and the sugarstick, a parasitic plant associated with the roots of old-growth conifers. As the climate continues to warm, high-elevation habitats within Sáttítla will remain critical refugia for species including the gray-headed pika and the Sierra Nevada red fox, a State of California threatened species.

Sáttítla continues to provide traditional cultural resources used by Tribal and Indigenous communities, including food staples like sugar pine seeds and berries from gooseberry, currant, and manzanita, as well as plants collected for their medicinal properties, such as bitter cherry and Prince's pine. Various plants found in Sáttítla were historically used by Indigenous peoples for hunting, such as the blue elderberry whose pithy stem-wood was fashioned into elk whistles and is still collected today.

Sáttítla's soils, formed from lava over time, are home to several sensitive plants, including the sensitive talus collomia, the snow fleabane daisy, little hulsea, and pyrola-leaved buckwheat, all of which are restricted to fewer than four counties in Northern California.

At the lower elevations along the northwestern portion of Sáttítla, western juniper and ponderosa pine occur above a collection of Great Basin-type shrubs, including curl-leaf mountain-mahogany, bitterbrush, rubber rabbitbrush, and big sage. The leaves, bark, flowers, and seeds from these shrubs were used by Indigenous peoples to make dye and medicines, and the dense wood of mountain-mahogany was used to make digging sticks, fire drills, bows, arrow shafts, and throwing sticks. Two species uncommon in California are found in the dry, volcanic soils near the northern boundary of Sáttítla: the tiny annual doublet and the cushion-like squarestem phlox.

Wet meadows and fens are infrequent within the landscape, but where they occur, they provide habitat for wetland plant species such as the California-endangered Boggs Lake hedge-hyssop and the three-ranked hump moss. Traditional cultural plants found in these wetter habitats, including clover, yarrow, mountain strawberry, Baltic rush, and several grasses, were historically gathered for food, basket materials, and for their medicinal properties. Further, sensitive vernal pools are situated southeast of Medicine Lake, supporting species including Oregon sedge.

Protection of Sáttítla will conserve the diverse array of cultural, precontact, historic, natural, and scientific resources—that the volcano at its core has shaped—for the benefit of all Americans. It is vital to preserve this unique geologic landscape that holds sites and objects of historical, traditional, cultural, and spiritual significance for Tribal Nations and Indigenous peoples who have gathered Indigenous Knowledge and practiced and shaped their cultures linked integrally to this area over countless generations. In addition to containing numerous objects of historic and scientific interest as described above, this area also provides exceptional outdoor recreational opportunities, including hiking, biking, snowmobiling, camping, hunting, scenic driving, and canoeing.

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

WHEREAS, Sáttítla has long been profoundly sacred to Tribal Nations and Indigenous peoples with ties to these highlands; and

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

WHEREAS, I find that there are threats to the objects identified in this proclamation, and in the absence of a reservation under the Antiquities Act, these objects are not adequately protected by applicable law or administrative designations, thus making a national monument designation and reservation necessary to protect the objects of historic and scientific interest identified above for current and future generations; and

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

WHEREAS, it is in the public interest to ensure the preservation, restoration, and protection of the objects of scientific and historic interest identified above;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54,

United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Sáttítla Highlands National Monument (monument) and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands that are owned or controlled by the Federal Government within the boundaries described on the accompanying map, which is attached hereto and forms a part of this proclamation. These reserved Federal lands and interests in lands encompass approximately 224,676 acres. As a result of the distribution of the objects across the Sáttítla Highlands, the boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects of historic or scientific interest identified above.

All Federal lands and interests in lands within the boundaries described of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws or laws applicable to the Forest Service other than by exchange that furthers the protective purposes of the monument; from location, entry, and patent under the mining laws; and from disposition under all laws relating to mineral and geothermal leasing.

The establishment of the monument is subject to valid existing rights. If the Federal Government subsequently acquires any lands or interests in lands not currently owned or controlled by the Federal Government within the boundaries described on the accompanying map, such lands and interests in lands shall be reserved as a part of the monument, and objects of the type identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

Nothing in this proclamation shall be construed to alter the valid existing water rights of any party, including the United States. This proclamation does not reserve water as a matter of Federal law.

The Secretary of Agriculture (Secretary), through the Forest Service, shall manage the monument pursuant to applicable legal authorities, as part of the Modoc, Shasta-Trinity, and Klamath National Forests, and in accordance with the terms, conditions, and management direction provided by this proclamation.

For purposes of protecting and restoring the objects identified above, the Secretary shall prepare, in consultation with the Secretary of the Interior, within 3 years from the date of this proclamation, a management plan for the monument, which shall include provisions for continuing outdoor recreational opportunities consistent with the proper care and management of the objects identified above, and shall promulgate such rules and regulations for the management of the monument as the Secretary shall deem appropriate. The Secretary, through the Forest Service, shall consult with other Federal land management agencies or agency components in the local area, including the Bureau of Land Management, the Fish and Wildlife Service, the Department of Defense, and the National Park Service, in developing the management plan.

The Secretary shall provide for maximum public involvement in the development of the management plan, as well as consultation with federally recognized Tribal Nations with cultural or historical connections to the monument, and conferral with State and local governments. In preparing the management plan, the Secretary shall take into account, to the maximum extent practicable, maintaining the undeveloped character of the lands within the monument; minimizing impacts from surface-disturbing activities; providing appropriate and, where consistent with the proper care and management of the objects of historic or scientific interest identified above, improving access for recreation, hunting, fishing, wildfire risk reduction, wildlife management, and scientific research; and emphasizing the retention of natural quiet, dark night skies, and scenic values. In the development and implementation

of the management plan, the Secretary shall maximize opportunities, pursuant to applicable legal authorities, for shared resources, operational efficiency, and cooperation, and shall, to the maximum extent practicable, provide for the careful and full incorporation of the Indigenous Knowledge and special expertise of Tribal Nations.

The Secretary shall consider appropriate mechanisms to provide for temporary closures to the general public of specific portions of the monument to protect the privacy of cultural, religious, and gathering activities by members of Tribal Nations.

The Secretary, through the Forest Service, shall establish an advisory committee under chapter 10 of title 5, United States Code (commonly known as the Federal Advisory Committee Act), to provide advice or recommendations regarding the development of the management plan and, as appropriate, management of the monument. The advisory committee shall consist of a fair and balanced representation of interested stakeholders, including State agencies and local governments; Tribal Nations; recreational users; conservation organizations; wildlife, hunting and fishing organizations; the scientific community; business owners; the forestry community; and the general public in the region.

In recognition of the value of collaboration with Tribal Nations for the proper care and management of the objects identified above, and to ensure that management of the monument is informed by, integrates, and reflects Tribal expertise and Indigenous Knowledge (including in regard to the practice of cultural burning), as appropriate, the Secretary shall meaningfully engage with Tribal Nations with cultural or historic affiliation to the Sáttítla region including by seeking opportunities for co-stewardship of the monument.

If Tribal Nations with cultural or historic affiliation to the Sáttítla region independently establish a commission or other similar entity (commission) comprised of elected officers or official designees from each participating Tribal Nation to engage in co-stewardship of the monument with the Federal Government through shared responsibilities or administration, then the Secretary shall meaningfully engage the commission in the development, revision, or amendment of the management plan and the management of the monument, including by considering and, as appropriate, integrating the Indigenous Knowledge and special expertise of the members of the commission in the planning and management of the monument. The management plan for the monument shall also set forth parameters for continued meaningful engagement with the commission, if established, in the implementation of the management plan and, as appropriate, incorporate public education on and interpretation of traditional place names and the cultural significance of land within the monument into the management plan. The Secretary shall explore opportunities to provide support to the commission, if established, to enable participation in the planning and management of the monument.

The Secretary shall also explore entering into cooperative agreements or contracts, pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5301 *et seq.,* or other applicable authorities, with Tribes or Tribal organizations to perform administrative or management functions within the monument and providing technical and financial assistance to improve the capacity of Tribal Nations to develop, enter into, and carry out activities under such cooperative agreements or contracts. The Secretary also shall explore opportunities for funding agreements with Tribal Nations relating to the management and protection of traditional cultural properties and other culturally significant programming associated with the monument.

Nothing in this proclamation shall be deemed to alter, modify, abrogate, enlarge, or diminish the rights or jurisdiction of any Tribal Nation, including off-reservation reserved rights. The Secretary shall, to the maximum extent permitted by law and in consultation with Tribal Nations, ensure the protection of sacred sites and cultural properties and sites in the monument

and shall provide access to Tribal members for traditional cultural, spiritual, and customary uses, consistent with the American Indian Religious Freedom Act (42 U.S.C. 1996), the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), Executive Order 13007 of May 24, 1996 (Indian Sacred Sites), and the November 10, 2021, Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites. Such uses shall include but are not limited to, traditional hunting activities and the traditional collection of waters, medicines, berries and other vegetation, obsidian and other mineral products, forest products, and firewood for ceremonial practices, so long as each use is carried out consistent with applicable law and in a manner consistent with the proper care and management of the objects identified above.

The Secretary shall explore mechanisms, consistent with applicable law, to enable the protection of Indigenous Knowledge or other information relating to the nature and specific location of cultural resources within the monument and, to the extent practicable, shall explain to the holders of such knowledge or information any limitations on the ability to protect such information from disclosure before it is shared with the Department.

Consistent with the care and management of the objects identified above, the Secretary shall manage livestock grazing as authorized under existing permits and allotments, and subject to appropriate terms and conditions in accordance with existing laws and regulations. The Secretary shall not issue new grazing permits and shall not designate new allotments on Federal lands within the monument where livestock grazing is not currently allowed.

Nothing in this proclamation shall be construed to preclude the renewal or assignment of, or interfere with the operation, maintenance, replacement, modification, upgrade, or access to, existing or previously approved flood control, utility, pipeline, and telecommunications sites or facilities; roads or highway corridors; seismic monitoring facilities; or water infrastructure, including wildlife water developments or water district facilities, within the boundaries of existing or previously approved authorizations within the monument. Existing or previously approved flood control, utility, pipeline, telecommunications, and seismic monitoring facilities, roads or highway corridors, and water infrastructure, including wildlife water developments or water district facilities, may be expanded, and new facilities of such kind may be constructed, to the extent consistent with the proper care and management of the objects identified above and subject to the Secretary's authorities and other applicable law.

For purposes of protecting and restoring the objects identified above, the Secretary shall prepare a transportation plan that designates the roads and trails on which motorized and non-motorized mechanized vehicle use will be allowed. The transportation plan shall include management decisions, including road closures and travel restrictions, necessary to protect the objects identified in this proclamation. Except for emergency purposes and authorized administrative purposes, motorized vehicle use in the monument may be permitted only on roads and trails documented as existing in USDA Forest Service route inventories that exist as of the date of this proclamation. Any additional roads or trails designated for motorized vehicle use by the general public must be designated only for the purposes of public safety needs or if necessary for the protection of the objects identified above.

Nothing in this proclamation shall affect the ability of the Forest Service or the Bureau of Land Management, after consultation with the Forest Service, to provide access to or to remediate or monitor contaminated lands within the monument, including to provide ancillary road and utility access or water control developments, or access for remediation of geothermal, mine, mill, or tailing sites, for the restoration of natural resources, or for the plugging and abandonment of wells.

Nothing in this proclamation shall preclude low-level overflights of military aircraft, military flight testing or evaluation, the designation of new units of special use airspace, or the use or establishment of military flight training

routes after appropriate coordination between the Department of Defense and the Department of Agriculture.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of California with respect to fish and wildlife management, including hunting and fishing, on the lands reserved by this proclamation.

The Secretary may carry out vegetative management treatments within the monument to the extent consistent with the proper care and management of the objects identified above, including addressing ecological restoration, wildlife connectivity or the risk of wildfire, insect infestation, or disease that would endanger the objects identified in this proclamation or imperil public safety. Nothing in this proclamation shall be deemed to affect the use of prescribed fire within the monument. The Secretary shall evaluate opportunities to enter into one or more agreements with governments, including State, local, and Tribal, regarding the protection of the objects identified above during wildland fire prevention and response efforts.

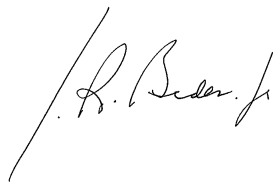
Nothing in this proclamation shall be construed to alter the authority or responsibility of any party with respect to emergency response activities within the monument, including wildland fire response and search and rescue.

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

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

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

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



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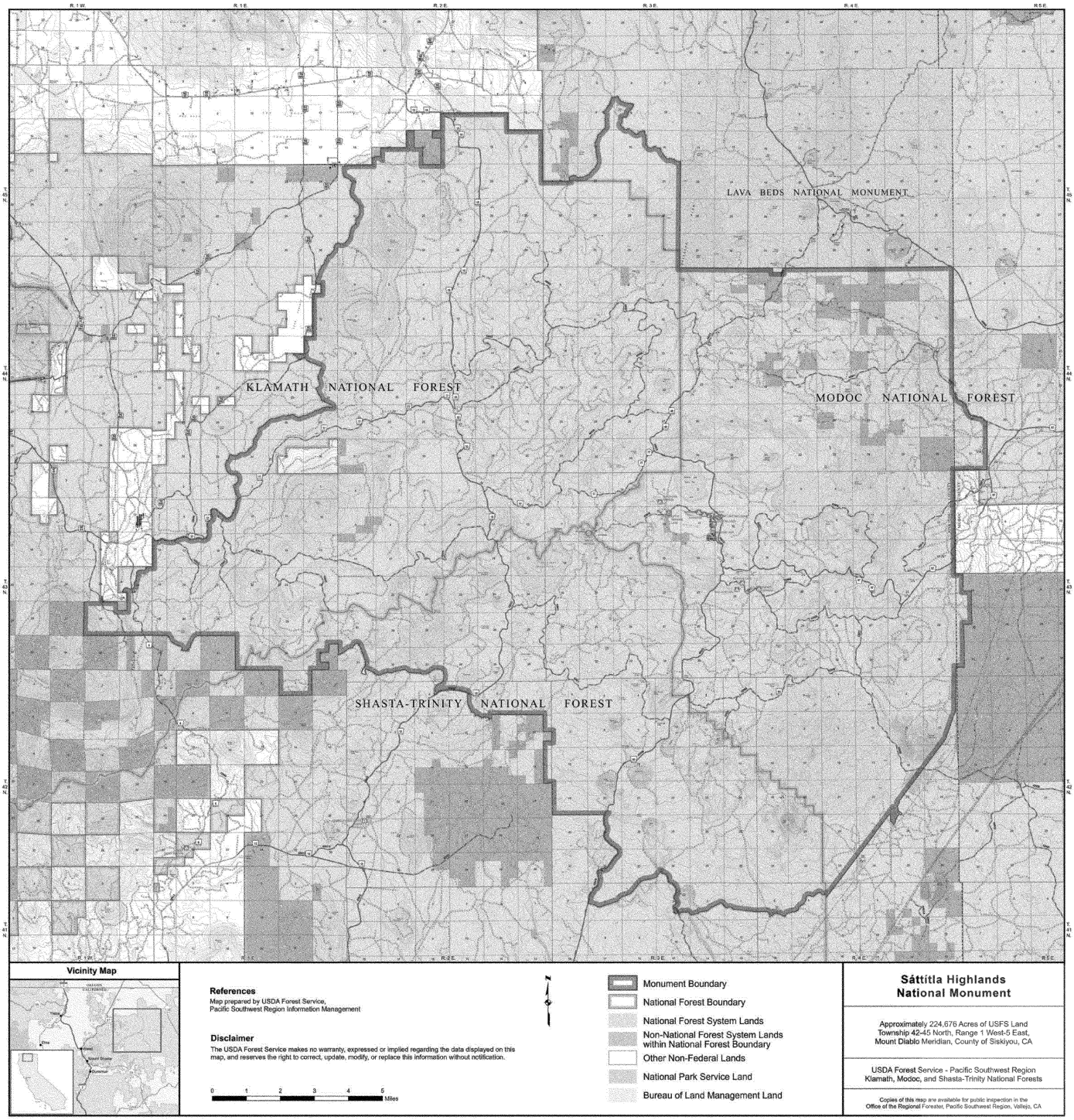

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FEDERAL REGISTER

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Part XI

The President

Memorandum of January 6, 2025—Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil or Natural Gas Leasing
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Friday, January 17, 2025

Presidential Documents

Title 3—

The President

Memorandum of January 6, 2025

Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil or Natural Gas Leasing

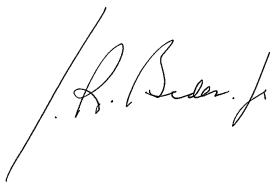
Memorandum for the Secretary of the Interior

Consistent with principles of responsible public stewardship, and with due consideration of the irreplaceable marine and coastal environments, including wildlife and wildlife habitat, of the Bering Sea; and independently with due consideration of the vulnerability of these ecosystems and coastal communities, where limited or no oil and natural gas development has yet occurred, to oil spills; and independently with due consideration of the national need to curtail, mitigate, build resilience against, and adapt to the devastating and irreversible consequences of climate change for the human environment and for the marine and coastal environments, I hereby direct as follows:

Under the authority granted to me in section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), I hereby withdraw from disposition by oil or natural gas leasing for a time period without specific expiration the remaining areas that are part of the Northern Bering Sea Climate Resilience Area, designated in Executive Order 13754 of December 9, 2016 (Northern Bering Sea Climate Resilience), and that are not currently withdrawn from disposition by leasing. The Northern Bering Sea Climate Resilience Area includes waters within the United States Exclusive Economic Zone bounded to the north by the seaward boundary of the Bering Straits Native Corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); to the south by the southern boundaries of the Northern Bering Sea Research Area, the St. Matthew Habitat Conservation Area, and the Nunivak-Kuskokwim Habitat Conservation Area; and to the west by the maritime boundary delimited by the Agreement Between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed at Washington, June 1, 1990. This withdrawal does not affect the prior withdrawal made in the Norton Basin Planning Area by Executive Order 13754, or the withdrawal of the North Aleutian Planning Area by the Presidential Memorandum of December 16, 2014 (Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition).

The boundaries of the withdrawn areas are more specifically delineated in the attached map. The map forms a part of this memorandum. The withdrawal directed by this memorandum prevents consideration of the withdrawn areas for any future oil or natural gas leasing for purposes of exploration, development, or production.

Nothing in this withdrawal affects rights under existing leases in the withdrawn areas.



THE WHITE HOUSE,
Washington, January 6, 2025

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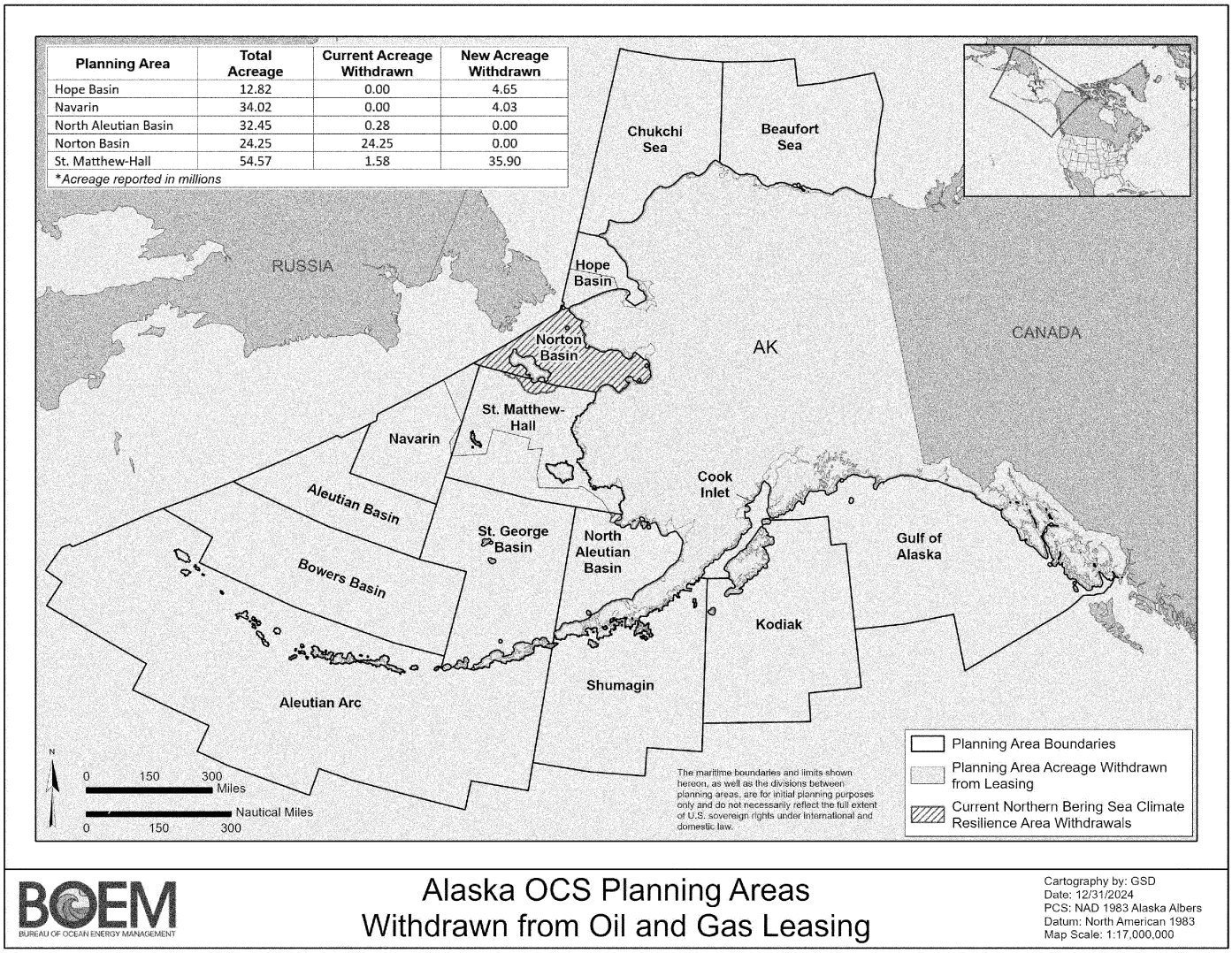

[FR Doc. 2025–01463
Filed 1–16–25; 2:00 pm]
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Presidential Documents

Memorandum of January 6, 2025

Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil and Natural Gas Leasing

Memorandum for the Secretary of the Interior

Consistent with principles of responsible public stewardship, and with due consideration of the irreplaceable marine and coastal environments, including wildlife and wildlife habitat, of the Gulf of Mexico, Atlantic, and Pacific areas of the Outer Continental Shelf; and independently with due consideration of the vulnerability of these ecosystems and coastal communities, where limited or no oil and natural gas development has yet occurred, to oil spills; and independently with due consideration of the benefits of expeditious and orderly development of the vital renewable energy resources of the Gulf of Mexico, Atlantic, and Pacific areas of the Outer Continental Shelf; and independently with due consideration of the national need to curtail, mitigate, build resilience against, and adapt to the devastating and irreversible consequences of climate change for the human environment and for the marine and coastal environments, I hereby direct as follows:

Under the authority granted to me in section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), I hereby withdraw from disposition by oil or natural gas leasing for a time period without specific expiration:

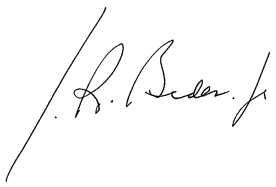
(a) the areas designated by the Bureau of Ocean Energy Management as the North Atlantic, Mid-Atlantic, South Atlantic, and Straits of Florida Planning Areas of the Outer Continental Shelf;

(b) the areas of the Outer Continental Shelf designated by section 104(a) of the Gulf of Mexico Energy Security Act of 2006 (Public Law 109–432); and

(c) the areas designated by the Bureau of Ocean Energy Management as the Washington/Oregon, Northern California, Central California, and Southern California Planning Areas of the Outer Continental Shelf.

The boundaries of the withdrawn areas are more specifically delineated in the attached map. The map forms a part of this memorandum. The withdrawal directed by this memorandum prevents consideration of withdrawn areas for any future oil or natural gas leasing for purposes of exploration, development, or production.

Nothing in this withdrawal affects rights under existing leases in the withdrawn areas.



THE WHITE HOUSE,
Washington, January 6, 2025

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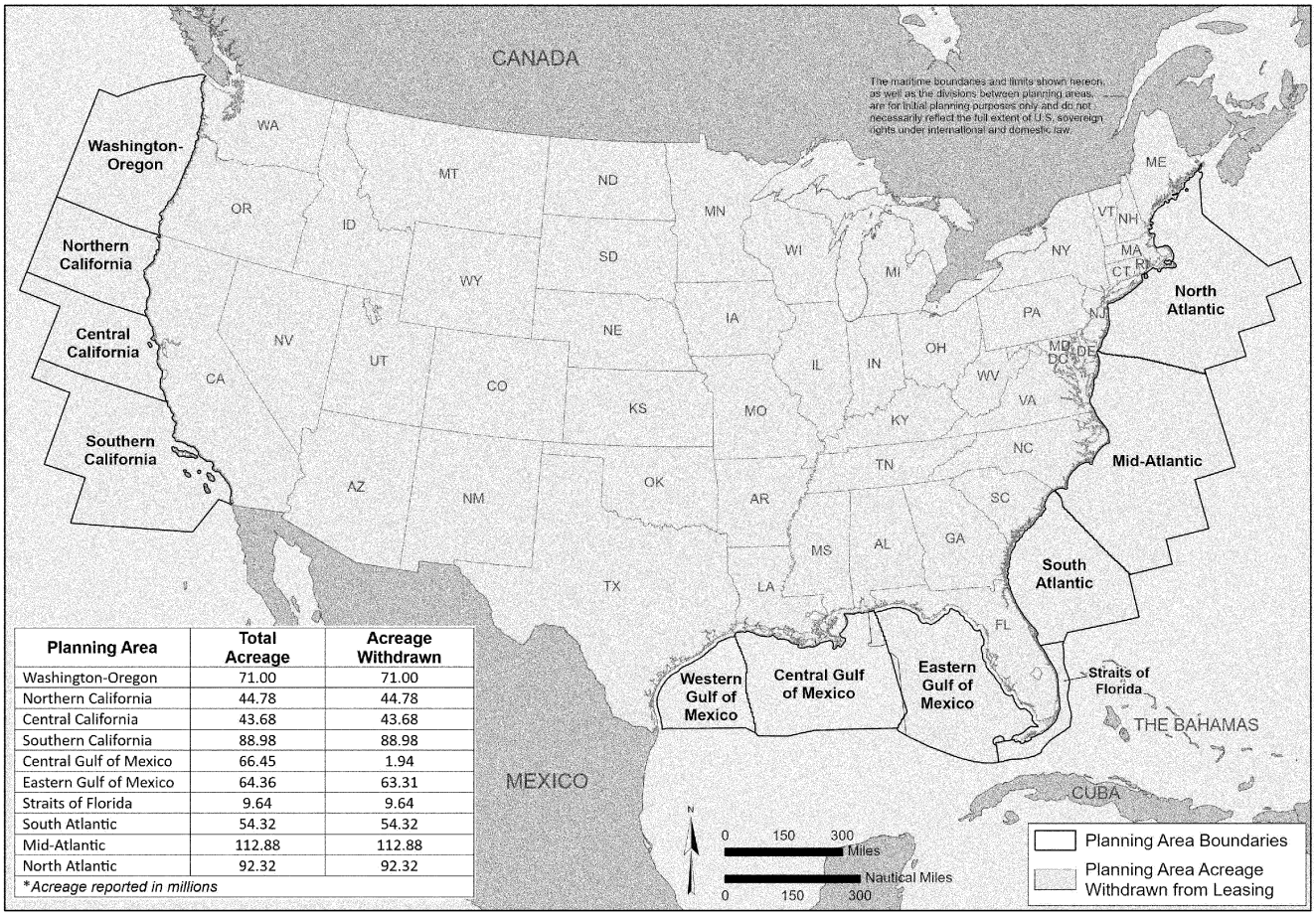

Planning Area	Total Acreage	Acreage Withdrawn
Washington-Oregon	71.00	71.00
Northern California	44.78	44.78
Central California	43.68	43.68
Southern California	88.98	88.98
Central Gulf of Mexico	66.45	1.94
Eastern Gulf of Mexico	64.36	63.31
Straits of Florida	9.64	9.64
South Atlantic	54.32	54.32
Mid-Atlantic	112.88	112.88
North Atlantic	92.32	92.32

*Acreage reported in millions

BOEM BUREAU OF OCEAN ENERGY MANAGEMENT

Pacific, Gulf of Mexico, and Atlantic OCS Planning Areas Withdrawn from Oil and Gas Leasing

Cartography by: GSD
Date: 12/4/2024
PCS: NA Lambert Conformal Conic
Datum: North American 1983
Map Scale: 1:20,500,000

[FR Doc. 2025–01464
Filed 1–16–25; 2:00 pm]
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Presidential Documents

Proclamation 10883 of January 15, 2025

Religious Freedom Day, 2025

By the President of the United States of America

A Proclamation

Faith sustains many of us across our Nation, sharpening our sense of purpose, uniting us in shared belief, and reminding us of our obligations to each other. Whether you worship in a church, synagogue, temple, or mosque, the Constitution of the United States protects every American's right to practice their faith freely or to practice no faith at all. Today, we celebrate our constitutional right to religious freedom which makes us a beacon of liberty and recommit to protecting that right, both here at home and around the world.

We are all blessed to live in a Nation that is home to people of many faiths. However, even in our land of liberty, too many people are afraid that practicing their faith will bring fear, violence, and intimidation. Over the past year, we have seen a shocking rise in antisemitism in the wake of Hamas's terrorist attack against Israel and a disturbing rise in Islamophobia. Hate has no safe harbor here in America. And around the world, minority communities continue to live in fear of violence and are denied equal protections under the law, including Christians in some countries.

My Administration is committed to ensuring that people of every faith and belief can live out their deepest conviction freely, peacefully, and safely. Working with the Congress, my Administration secured the largest ever increase in funding for the physical security of non-profit organizations, including places of worship. Through that program and many related efforts, we continue to work across government to ensure that all religious communities are able to practice their faith without fear. Additionally, I created the inter-agency group to counter Antisemitism, Islamophobia, and Related Forms of Bias and Discrimination within the United States. We released the first-ever United States National Strategy to Counter Antisemitism, which works to counter antisemitism and protect Jewish communities. We also released the first-ever National Strategy to Counter Islamophobia and Anti-Arab Hate, which works to combat these forms of hate and safeguard Muslim and Arab Americans. Both strategies seek to strengthen coalitions across religious communities to bring an end to hate.

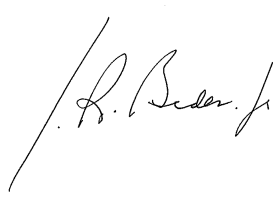
We are also working to promote and protect religious freedom worldwide, because it is not only an American constitutional right—it is a human right, enshrined in the Universal Declaration of Human Rights. And so, around the globe, we are working with governments and organizations to end discrimination against religious groups. My Administration has provided $100 million to promote religious freedom worldwide. We have also provided hundreds of millions more to support victims fleeing religious repression. And we have been cracking down on forced labor, which is often connected to the targeting of religious minorities. My Administration sanctioned more than 240 individuals and entities for serious human rights abuses under the Global Magnitsky Sanctions Program. The Office of the Special Envoy to Monitor and Combat Antisemitism at the Department of State promoted the United States–led ''Global Guidelines for Countering Antisemitism,'' a set of international best practices for effective public policy against antisemitism, which more than 40 countries and entities have endorsed. My

Administration also ended the discriminatory travel ban that prevented individuals from several Muslim-majority and African countries from entering the United States. And the Department of State conducted a review of visa applications and took various corrective actions to process applications that were impacted by that ban, including reconsidering previously denied applications.

Today, we recognize how religious freedom is at the core of who we are as a Nation. It is central to the freedom we offer all Americans. And it is threaded throughout all our work to advance human freedom and dignity in the world. The task for all of us is to defend and protect religious liberty for everyone, to build a world where no one is endangered for what they believe, and to see one another as neighbors.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 2025, as Religious Freedom Day.

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



[FR Doc. 2025–01465
Filed 1–16–25; 2:00 pm]
Billing code 3395–F4–P

Presidential Documents

Memorandum of January 15, 2025

Extending and Expanding Eligibility for Deferred Enforced Departure for Certain Hong Kong Residents

Memorandum for the Secretary of State [and] the Secretary of Homeland Security

The United States supports the human rights and fundamental freedoms of the residents of Hong Kong. The People's Republic of China (PRC) has continued to significantly erode those rights and freedoms. I am therefore directing an extension and expansion of the deferral of removal of certain Hong Kong residents, regardless of country of birth, who are present in the United States.

By unilaterally imposing on Hong Kong the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL) in June 2020, the PRC has undermined the enjoyment of rights and freedoms in Hong Kong, including those protected under the Basic Law and the Sino-British Joint Declaration. Following the NSL's enactment, the PRC has continued its assault on Hong Kong's autonomy, undermining its remaining democratic processes and institutions, imposing limits on academic freedom, and cracking down on freedom of the press. Since June 2020, at least 200 opposition politicians, activists, and protesters have been taken into custody on politically motivated NSL-related charges including secession, subversion, terrorist activities, and collusion with a foreign country or external elements. On November 19, 2024, Hong Kong authorities also sentenced 45 pro-democracy advocates to prison for their peaceful participation in political activities protected under the Basic Law of Hong Kong.

There are compelling foreign policy reasons to extend Deferred Enforced Departure (DED) for an additional period for those residents of Hong Kong presently residing in the United States who were under a grant of DED until February 5, 2025, as well as to defer enforced departure for other Hong Kong residents who arrived in the United States subsequent to the initial grant of DED. The United States is committed to a foreign policy that unites our democratic values with our foreign policy goals, which is centered on the defense of democracy and the promotion of human rights around the world. Offering safe haven for Hong Kong residents who have been deprived of their guaranteed freedoms in Hong Kong furthers United States interests in the region. The United States will continue to stand firm in our support of the people in Hong Kong.

Pursuant to my constitutional authority to conduct the foreign relations of the United States, I have determined that it is in the foreign policy interest of the United States to defer for 24 months the removal of any Hong Kong resident, regardless of country of birth, who is present in the United States on the date of this memorandum, except for those:

(1) who have voluntarily returned to Hong Kong or the PRC after the date of this memorandum;

(2) who have not continuously resided in the United States since the date of this memorandum;

(3) who are inadmissible under section 212(a)(3) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(3)) or deportable under section 237(a)(4) of the INA (8 U.S.C. 1227(a)(4));

(4) who have been convicted of any felony or two or more misdemeanors committed in the United States, or who meet any of the criteria set forth in section 208(b)(2)(A) of the INA (8 U.S.C. 1158(b)(2)(A));

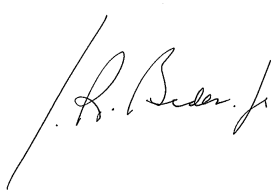
(5) who are subject to extradition;

(6) whose presence in the United States the Secretary of Homeland Security has determined is not in the interest of the United States or presents a danger to public safety; or

(7) whose presence in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States.

I further direct the Secretary of Homeland Security to take appropriate measures to authorize employment for noncitizens whose removal has been deferred, as provided by this memorandum, for the duration of such deferral, including by extending through February 5, 2027, employment authorization for individuals with current employment authorization under prior grants of DED for certain Hong Kong residents, and to consider suspending regulatory requirements with respect to F–1 nonimmigrant students who are Hong Kong residents as the Secretary of Homeland Security determines to be appropriate. The Secretary of Homeland Security shall also provide for the prompt issuance of new or replacement documents in appropriate cases.

The Secretary of Homeland Security is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 15, 2025

[FR Doc. 2025–01466
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Billing code 4410–10–P

Presidential Documents

Executive Order 14143 of January 16, 2025

Providing for the Appointment of Alumni of AmeriCorps to the Competitive Service

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* The Federal Government benefits from a workforce that can be recruited from the broadest and deepest pools of qualified candidates for merit-based positions. The issuance of an order granting Non-Competitive Eligibility to certain alumni of programs administered by the Corporation for National and Community Service (operating as AmeriCorps) would be in the best interest of the Federal Government. AmeriCorps alumni have demonstrated a sustained commitment to public service, have received extensive training and hands-on experience, and have developed leadership, communication, and technical skills that are aligned with the missions of many federal agencies and departments. It is in the interest of the Federal Government to retain the services of these highly skilled individuals, particularly given that the Federal Government aided them in the acquisition of their skills.

Accordingly, pursuant to my authority under 5 U.S.C. 3302(1), and in order to achieve a workforce that is drawn from all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good administration make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service.

Sec. 2. *Establishment.* The head of any executive department or agency may appoint noncompetitively any individual who is certified under section 3 of this order to a position in the competitive service for which the individual is qualified.

Sec. 3. *Certifications.* (a) The Chief Executive Officer (CEO) of AmeriCorps, or the CEO's designee, shall issue certificates to persons whom the CEO or designee deems to have satisfactorily completed:

(i) a full-time term of national service of at least 1,700 hours as a Team Leader or Member, as specified in section 155(b)(1) or 155(b)(4) of the National and Community Service Act of 1990 (42 U.S.C. 12615(b)(1), 12615(b)(4)), or in the AmeriCorps National Civilian Community Corps program component specified in section 153 of that Act (42 U.S.C. 12613); or

(ii) one or more terms of service that total at least 1,700 hours under section 139(b)(1) of that Act (42 U.S.C. 12593(b)(1)) as an AmeriCorps State and National participant under section 137 of that Act (42 U.S.C. 12591).

(b) This order does not alter or otherwise affect the Non-Competitive Eligibility status for AmeriCorps Volunteers in Service to America participants, commonly known as VISTA members, who successfully complete their service, as described in section 415(d) of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 5055(d)).

(c) In making any certification under this section, the CEO, or the CEO's designee, may rely on a confirmation made by the entity that selected the individual for, and supervised the individual in, the approved national

service position in which such individual successfully completed a term of service, as specified in this section. If AmeriCorps determines that the certification is incorrect, the Corporation shall, after considering the full facts and circumstances surrounding the incorrect certification, take appropriate action.

(d) Any appointment under this order shall be effected within 1 year after completion of the appointee's most recent term of service in the programs described in subsections (a)(i)–(ii) of this section. Such period may be extended to not more than 3 years for persons who, following participation in the programs described in subsections (a)(i)–(ii) of this section, are engaged in an additional term of AmeriCorps service, in military service, in the pursuit of studies at an institution of higher learning, or in other activities that, in the view of the appointing authority, warrant an extension of such period. Such period may also be extended to permit the adjudication of a background investigation.

(e) Any law, Executive Order, or regulation that would disqualify an applicant for appointment in the competitive service shall also disqualify an applicant for appointment under this order. Examples of disqualifying criteria include restrictions on employing persons who are not United States citizens or nationals; who have violated 5 U.S.C. 2302(b)(7) and 3310 (the anti-nepotism provisions of the Civil Service Reform Act of 1978); who have knowingly and willfully failed to register for Selective Service when required to do so, 5 U.S.C. 3328(a)(2); who do not meet occupational qualifying standards prescribed by the Office of Personnel Management (OPM); or who do not meet suitability factors prescribed by OPM.

Sec. 4. *Regulations.* The Director of OPM is authorized to issue such additional regulations as may be necessary to implement this order. Any individual who meets the terms of this order, however, is eligible for noncompetitive hiring with or without additional regulations.

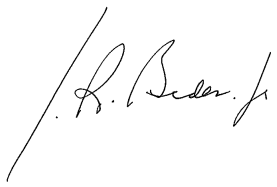
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 16, 2025.

[FR Doc. 2025–01467
Filed 1–16–25; 2:00 pm]
Billing code 3395–F4–P

Presidential Documents

Executive Order 14144 of January 16, 2025

Strengthening and Promoting Innovation in the Nation's Cybersecurity

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* Adversarial countries and criminals continue to conduct cyber campaigns targeting the United States and Americans, with the People's Republic of China presenting the most active and persistent cyber threat to United States Government, private sector, and critical infrastructure networks. These campaigns disrupt the delivery of critical services across the Nation, cost billions of dollars, and undermine Americans' security and privacy. More must be done to improve the Nation's cybersecurity against these threats.

Building on the foundational steps I directed in Executive Order 14028 of May 12, 2021 (Improving the Nation's Cybersecurity), and the initiatives detailed in the National Cybersecurity Strategy, I am ordering additional actions to improve our Nation's cybersecurity, focusing on defending our digital infrastructure, securing the services and capabilities most vital to the digital domain, and building our capability to address key threats, including those from the People's Republic of China. Improving accountability for software and cloud service providers, strengthening the security of Federal communications and identity management systems, and promoting innovative developments and the use of emerging technologies for cybersecurity across executive departments and agencies (agencies) and with the private sector are especially critical to improvement of the Nation's cybersecurity.

Sec. 2. *Operationalizing Transparency and Security in Third-Party Software Supply Chains.* (a) The Federal Government and our Nation's critical infrastructure rely on software providers. Yet insecure software remains a challenge for both providers and users and makes Federal Government and critical infrastructure systems vulnerable to malicious cyber incidents. The Federal Government must continue to adopt secure software acquisition practices and take steps so that software providers use secure software development practices to reduce the number and severity of vulnerabilities in software they produce.

(b) Executive Order 14028 directed actions to improve the security and integrity of software critical to the Federal Government's ability to function. Executive Order 14028 directed the development of guidance on secure software development practices and on generating and providing evidence in the form of artifacts—computer records or data that are generated manually or by automated means—that demonstrate compliance with those practices. Additionally, it directed the Director of the Office of Management and Budget (OMB) to require agencies to use only software from providers that attest to using those secure software development practices. In some instances, providers of software to the Federal Government commit to following cybersecurity practices, yet do not fix well-known exploitable vulnerabilities in their software, which puts the Government at risk of compromise. The

Federal Government needs to adopt more rigorous third-party risk management practices and greater assurance that software providers that support critical Government services are following the practices to which they attest.

(i) Within 30 days of the date of this order, the Director of OMB, in consultation with the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), and the Secretary of Homeland Security, acting through the Director of the Cybersecurity and Infrastructure Security Agency (CISA), shall recommend to the Federal Acquisition Regulatory Council (FAR Council) contract language requiring software providers to submit to CISA through CISA's Repository for Software Attestation and Artifacts (RSAA):

(A) machine-readable secure software development attestations;

(B) high-level artifacts to validate those attestations; and

(C) a list of the providers' Federal Civilian Executive Branch (FCEB) agency software customers.

(ii) Within 120 days of the receipt of the recommendations described in subsection (b)(i) of this section, the FAR Council shall review the recommendations and, as appropriate and consistent with applicable law, the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration (the agency members of the FAR Council) shall jointly take steps to amend the Federal Acquisition Regulation (FAR) to implement those recommendations. The agency members of the FAR Council are strongly encouraged to consider issuing an interim final rule, as appropriate and consistent with applicable law.

(iii) Within 60 days of the date of the issuance of the recommendations described in subsection (b)(i) of this section, the Secretary of Homeland Security, acting through the Director of CISA, shall evaluate emerging methods of generating, receiving, and verifying machine-readable secure software development attestations and artifacts and, as appropriate, shall provide guidance for software providers on submitting them to CISA's RSAA website, including a common data schema and format.

(iv) Within 30 days of the date of any amendments to the FAR described in subsection (b)(ii) of this section, the Secretary of Homeland Security, acting through the Director of CISA, shall develop a program to centrally verify the completeness of all attestation forms. CISA shall continuously validate a sample of the complete attestations using high-level artifacts in the RSAA.

(v) If CISA finds that attestations are incomplete or artifacts are insufficient for validating the attestations, the Director of CISA shall notify the software provider and the contracting agency. The Director of CISA shall provide a process for the software provider to respond to CISA's initial determination and shall duly consider the response.

(vi) For attestations that undergo validation, the Director of CISA shall inform the National Cyber Director, who shall publicly post the results, identifying the software providers and software version. The National Cyber Director is encouraged to refer attestations that fail validation to the Attorney General for action as appropriate.

(c) Secure software development practices are not sufficient to address the potential for cyber incidents from resourced and determined nation-state actors. To mitigate the risk of such incidents occurring, software providers must also address how software is delivered and the security of the software itself. The Federal Government must identify a coordinated set of practical and effective security practices to require when it procures software.

(i) Within 60 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, shall establish a consortium with industry at the National Cybersecurity Center of Excellence to develop

guidance, informed by the consortium as appropriate, that demonstrates the implementation of secure software development, security, and operations practices based on NIST Special Publication 800–218 (*Secure Software Development Framework* (SSDF)).

(ii) Within 90 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, shall update NIST Special Publication 800–53 (*Security and Privacy Controls for Information Systems and Organizations*) to provide guidance on how to securely and reliably deploy patches and updates.

(iii) Within 180 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, in consultation with the heads of such agencies as the Director of NIST deems appropriate, shall develop and publish a preliminary update to the SSDF. This update shall include practices, procedures, controls, and implementation examples regarding the secure and reliable development and delivery of software as well as the security of the software itself. Within 120 days of publishing the preliminary update, the Secretary of Commerce, acting through the Director of NIST, shall publish a final version of the updated SSDF.

(iv) Within 120 days of the final update to the SSDF described in subsection (c)(iii) of this section, the Director of OMB shall incorporate select practices for the secure development and delivery of software contained in NIST's updated SSDF into the requirements of OMB Memorandum M–22–18 (*Enhancing the Security of the Software Supply Chain through Secure Software Development Practices*) or related requirements.

(v) Within 30 days of the issuance of OMB's updated requirements described in subsection (c)(iv) of this section, the Director of CISA shall prepare any revisions to CISA's common form for Secure Software Development Attestation to conform to OMB's requirements and shall initiate any process required to obtain clearance of the revised form under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

(d) As agencies have improved their cyber defenses, adversaries have targeted the weak links in agency supply chains and the products and services upon which the Federal Government relies. Agencies need to integrate cybersecurity supply chain risk management programs into enterprise-wide risk management activities. Within 90 days of the date of this order, the Director of OMB, in coordination with the Secretary of Commerce, acting through the Director of NIST, the Administrator of General Services, and the Federal Acquisition Security Council (FASC), shall take steps to require, as the Director deems appropriate, that agencies comply with the guidance in NIST Special Publication 800–161 (*Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations* (SP 800–161 Revision 1)). OMB shall require agencies to provide annual updates to OMB as they complete implementation. Consistent with SP 800–161 Revision 1, OMB's requirements shall address the integration of cybersecurity into the acquisition lifecycle through acquisition planning, source selection, responsibility determination, security compliance evaluation, contract administration, and performance evaluation.

(e) Open source software plays a critical role in Federal information systems. To help the Federal Government continue to reap the innovation and cost benefits of open source software and contribute to the cybersecurity of the open source software ecosystem, agencies must better manage their use of open source software. Within 120 days of the date of this order, the Secretary of Homeland Security, acting through the Director of CISA, and the Director of OMB, in consultation with the Administrator of General Services and the heads of other agencies as appropriate, shall jointly issue recommendations to agencies on the use of security assessments and patching of open source software and best practices for contributing to open source software projects.

Sec. 3. *Improving the Cybersecurity of Federal Systems.* (a) The Federal Government must adopt proven security practices from industry—to include

in identity and access management—in order to improve visibility of security threats across networks and strengthen cloud security.

(b) To prioritize investments in the innovative identity technologies and processes of the future and phishing-resistant authentication options, FCEB agencies shall begin using, in pilot deployments or in larger deployments as appropriate, commercial phishing-resistant standards such as WebAuthn, building on the deployments that OMB and CISA have developed and established since the issuance of Executive Order 14028. These pilot deployments shall be used to inform future directions for Federal identity, credentialing, and access management strategies.

(c) The Federal Government must maintain the ability to rapidly and effectively identify threats across the Federal enterprise. In Executive Order 14028, I directed the Secretary of Defense and the Secretary of Homeland Security to establish procedures to immediately share threat information to strengthen the collective defense of Department of Defense and civilian networks. To enable identification of threat activity, CISA's capability to hunt for and identify threats across FCEB agencies under 44 U.S.C. 3553(b)(7) must be strengthened.

(i) The Secretary of Homeland Security, acting through the Director of CISA, in coordination with the Federal Chief Information Officer (CIO) Council and Federal Chief Information Security Officer (CISO) Council, shall develop the technical capability to gain timely access to required data from FCEB agency endpoint detection and response (EDR) solutions and from FCEB agency security operation centers to enable:

(A) timely hunting and identification of novel cyber threats and vulnerabilities across the Federal civilian enterprise;

(B) identification of coordinated cyber campaigns that simultaneously target multiple agencies and move laterally across the Federal enterprise; and

(C) coordination of Government-wide efforts on information security policies and practices, including compilation and analysis of information about incidents that threaten information security.

(ii) Within 180 days of the date of this order, the Secretary of Homeland Security, acting through the Director of CISA, in coordination with the Federal CIO and CISO Councils, shall develop and release a concept of operations that enables CISA to gain timely access to required data to achieve the objectives described in subsection (c)(i) of this section. The Director of OMB shall oversee the development of this concept of operations to account for agency perspectives and the objectives outlined in this section and shall approve the final concept of operations. This concept of operations shall include:

(A) requirements for FCEB agencies to provide CISA with data of sufficient completeness and on the timeline required to enable CISA to achieve the objectives described in subsection (c)(i) of this section;

(B) requirements for CISA to provide FCEB agencies with advanced notification when CISA directly accesses agency EDR solutions to obtain required telemetry;

(C) specific use cases for which agencies may provide telemetry data subject to the requirements in subsection (c)(ii)(A) of this section as opposed to direct access to EDR solutions by CISA;

(D) high-level technical and policy control requirements to govern CISA access to agency EDR solutions that conform with widely accepted cybersecurity principles, including role-based access controls, ''least privilege,'' and separation of duties;

(E) specific protections for highly sensitive agency data that is subject to statutory, regulatory, or judicial restrictions to protect confidentiality or integrity; and

(F) an appendix to the concept of operations that identifies and addresses certain types of specific use cases under subsection (c)(ii)(C) of this section that apply to the Department of Justice, including certain categories of information described in subsections (c)(vi) and (c)(vii) of this section, and requires the Department of Justice's concurrence on the terms of the appendix prior to implementation of the concept of operations on the Department of Justice's or its subcomponents' networks.

(iii) In undertaking the activities described in subsection (c) of this section, the Secretary of Homeland Security, acting through the Director of CISA, shall only make a change to an agency network, system, or data when such change is required for threat hunting by CISA, including access to the EDR tools described in subsection (c)(ii) of this section, or in furtherance of its authority to conduct threat hunting as authorized under 44 U.S.C. 3553(b)(7), unless otherwise authorized by the agency.

(iv) Within 30 days of the release of the concept of operations described in subsection (c)(ii) of this section, the Secretary of Homeland Security, acting through the Director of CISA, shall establish working groups, open to all agencies, to develop and release specific technical controls that achieve the objectives set forth in subsection (c)(ii) of this section and to work with EDR solution providers to implement those controls in FCEB agency deployments of EDR solutions. The Secretary of Homeland Security, acting through the Director of CISA, shall, at a minimum, establish a working group for each EDR solution authorized by CISA for use in the CISA Continuous Diagnostic and Mitigation Program. Each working group shall be open to all agencies and include at least one representative from an FCEB agency employing the designated EDR solution.

(v) Within 180 days of the release of the technical controls described in subsection (c)(iv) of this section, the heads of FCEB agencies shall enroll endpoints using an EDR solution covered by those controls in the CISA Persistent Access Capability program.

(vi) Within 90 days of the date of this order, and periodically thereafter as needed, the heads of FCEB agencies shall provide to CISA a list of systems, endpoints, and data sets that require additional controls or periods of non-disruption to ensure that CISA's threat-hunting activities do not disrupt mission-critical operations, along with an explanation of those operations.

(vii) In cases in which agency data is subject to statutory, regulatory, or judicial access restrictions, the Director of CISA shall comply with agency processes and procedures required to access such data or work with the agency to develop an appropriate administrative accommodation consistent with any such restrictions so that the data is not subject to unauthorized access or use.

(viii) Nothing in this order requires an agency to provide access to information that is protected from non-disclosure by court order or otherwise required to be kept confidential in connection with a judicial proceeding.

(d) The security of Federal information systems relies on the security of the Government's cloud services. Within 90 days of the date of this order, the Administrator of General Services, acting through the Director of the Federal Risk and Authorization Management Program (FedRAMP), in coordination with the Secretary of Commerce, acting through the Director of NIST, and the Secretary of Homeland Security, acting through the Director of CISA, shall develop FedRAMP policies and practices to incentivize or require cloud service providers in the FedRAMP Marketplace to produce baselines with specifications and recommendations for agency configuration of agency cloud-based systems in order to secure Federal data based on agency requirements.

(e) As cybersecurity threats to space systems increase, these systems and their supporting digital infrastructure must be designed to adapt to evolving cybersecurity threats and operate in contested environments. In light of

the pivotal role space systems play in global critical infrastructure and communications resilience, and to further protect space systems and the supporting digital infrastructure vital to our national security, including our economic security, agencies shall take steps to continually verify that Federal space systems have the requisite cybersecurity capabilities through actions including continuous assessments, testing, exercises, and modeling and simulation.

(i) Within 180 days of the date of this order, the Secretary of the Interior, acting through the Director of the United States Geological Survey; the Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere and the Administrator of the National Oceanic and Atmospheric Administration; and the Administrator of the National Aeronautics and Space Administration shall each review the civil space contract requirements in the FAR and recommend to the FAR Council and other appropriate agencies updates to civil space cybersecurity requirements and relevant contract language. The recommended cybersecurity requirements and contract language shall use a risk-based, tiered approach for all new civil space systems. Such requirements shall be designed to apply at minimum to the civil space systems' on-orbit segments and link segments. The requirements shall address the following elements for the highest-risk tier and, as appropriate, other tiers:

(A) protection of command and control of the civil space system, including backup or failover systems, by:

(1) encrypting commands to protect the confidentiality of communications;

(2) ensuring commands are not modified in transit;

(3) ensuring an authorized party is the source of commands; and

(4) rejecting unauthorized command and control attempts;

(B) establishment of methods to detect, report, and recover from anomalous network or system activity; and

(C) use of secure software and hardware development practices, consistent with the NIST SSDF or any successor documents.

(ii) Within 180 days of receiving the recommended contract language described in subsection (e)(i) of this section, the FAR Council shall review the proposal and, as appropriate and consistent with applicable law, the agency members of the FAR Council shall jointly take steps to amend the FAR.

(iii) Within 120 days of the date of this order, the National Cyber Director shall submit to OMB a study of space ground systems owned, managed, or operated by FCEB agencies. This study shall include:

(A) an inventory of space ground systems;

(B) whether each space ground system is classified as a major information system under 44 U.S.C. 3505(c), labeled ''Inventory of major information systems''; and

(C) recommendations to improve the cyber defenses and oversight of such space ground systems.

(iv) Within 90 days of the submission of the study described in subsection (e)(iii) of this section, the Director of OMB shall take appropriate steps to help ensure that space ground systems owned, managed, or operated by FCEB agencies comply with relevant cybersecurity requirements issued by OMB.

Sec. 4. *Securing Federal Communications.* (a) To improve the security of Federal Government communications against adversarial nations and criminals, the Federal Government must implement, to the extent practicable and consistent with mission needs, strong identity authentication and encryption using modern, standardized, and commercially available algorithms and protocols.

(b) The security of internet traffic depends on data being correctly routed and delivered to the intended recipient network. Routing information originated and propagated across the internet, utilizing the Border Gateway Protocol (BGP), is vulnerable to attack and misconfiguration.

(i) Within 90 days of the date of this order, FCEB agencies shall take steps to ensure that all of their assigned internet number resources (internet Protocol (IP) address blocks and Autonomous System Numbers) are covered by a Registration Services Agreement with the American Registry for internet Numbers or another appropriate regional internet registry. Thereafter, FCEB agencies shall annually review and update in their regional internet registry accounts organizational identifiers related to assigned number resources such as organization names, points of contact, and associated email addresses.

(ii) Within 120 days of the date of this order, all FCEB agencies that hold IP address blocks shall create and publish Route Origin Authorizations in the public Resource Public Key Infrastructure repository hosted or delegated by the American Registry for internet Numbers or the appropriate regional internet registry for the IP address blocks they hold.

(iii) Within 120 days of the date of this order, the National Cyber Director, in coordination with the heads of other agencies as appropriate, shall recommend contract language to the FAR Council to require contracted providers of internet services to agencies to adopt and deploy internet routing security technologies, including publishing Route Origin Authorizations and performing Route Origin Validation filtering. The recommended language shall include requirements or exceptions, as appropriate, for agency contracts regarding overseas operations and overseas local service providers. Within 270 days of receiving these recommendations, the FAR Council shall review the recommended contract language and, as appropriate and consistent with applicable law, the agency members of the FAR Council shall jointly take steps to amend the FAR. Pending any such amendments to the FAR, individual agencies are encouraged to include such requirements in future contracts, consistent with applicable law.

(iv) Within 180 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, shall publish updated guidance to agencies on deployment of current, operationally viable BGP security methods for Federal Government networks and service providers. The Secretary of Commerce, acting through the Director of NIST, shall also provide updated guidance on other emerging technologies to improve internet routing security and resilience, such as route leak mitigation and source address validation.

(c) Encrypting Domain Name System (DNS) traffic in transit is a critical step to protecting both the confidentiality of the information being transmitted to, and the integrity of the communication with, the DNS resolver.

(i) Within 90 days of the date of this order, the Secretary of Homeland Security, acting through the Director of CISA, shall publish template contract language requiring that any product that acts as a DNS resolver (whether client or server) for the Federal Government support encrypted DNS and shall recommend that language to the FAR Council. Within 120 days of receiving the recommended language, the FAR Council shall review it, and, as appropriate and consistent with applicable law, the agency members of the FAR Council shall jointly take steps to amend the FAR.

(ii) Within 180 days of the date of this order, FCEB agencies shall enable encrypted DNS protocols wherever their existing clients and servers support those protocols. FCEB agencies shall also enable such protocols within 180 days of any additional clients and servers supporting such protocols.

(d) The Federal Government must encrypt email messages in transport and, where practical, use end-to-end encryption in order to protect messages from compromise.

(i) Within 120 days of the date of this order, each FCEB agency shall technically enforce encrypted and authenticated transport for all connections between the agency's email clients and their associated email servers.

(ii) Within 180 days of the date of this order, the Director of OMB shall establish a requirement for expanded use of authenticated transport-layer encryption between email servers used by FCEB agencies to send and receive email.

(iii) Within 90 days of the establishment of the requirement described in subsection (d)(ii) of this section, the Secretary of Homeland Security, acting through the Director of CISA, shall take appropriate steps to assist agencies in meeting that requirement, including by issuing implementing directives, as well as technical guidance to address any identified capability gaps.

(e) Modern communications such as voice and video conferencing and instant messaging are usually encrypted at the link level but often are not encrypted end-to-end. Within 180 days of the date of this order, to advance the security of internet-based voice and video conferencing and instant messaging, the Director of OMB, in coordination with the Secretary of Homeland Security, acting through the Director of CISA; the Secretary of Defense, acting through the Director of the National Security Agency (NSA); the Secretary of Commerce, acting through the Director of NIST; the Archivist of the United States, acting through the Chief Records Officer for the United States Government; and the Administrator of General Services shall take appropriate steps to require agencies to:

(i) enable transport encryption by default; and

(ii) where technically supported, use end-to-end encryption by default while maintaining logging and archival capabilities that allow agencies to fulfill records management and accountability requirements.

(f) Alongside their benefits, quantum computers pose significant risk to the national security, including the economic security, of the United States. Most notably, a quantum computer of sufficient size and sophistication—also known as a cryptanalytically relevant quantum computer (CRQC)—will be capable of breaking much of the public-key cryptography used on digital systems across the United States and around the world. In National Security Memorandum 10 of May 4, 2022 (Promoting United States Leadership in Quantum Computing While Mitigating Risks to Vulnerable Cryptographic Systems), I directed the Federal Government to prepare for a transition to cryptographic algorithms that would not be vulnerable to a CRQC.

(i) Within 180 days of the date of this order, the Secretary of Homeland Security, acting through the Director of CISA, shall release and thereafter regularly update a list of product categories in which products that support post-quantum cryptography (PQC) are widely available.

(ii) Within 90 days of a product category being placed on the list described in subsection (f)(i) of this section, agencies shall take steps to include in any solicitations for products in that category a requirement that products support PQC.

(iii) Agencies shall implement PQC key establishment or hybrid key establishment including a PQC algorithm as soon as practicable upon support being provided by network security products and services already deployed in their network architectures.

(iv) Within 90 days of the date of this order, the Secretary of State and the Secretary of Commerce, acting through the Director of NIST and the Under Secretary for International Trade, shall identify and engage foreign governments and industry groups in key countries to encourage their transition to PQC algorithms standardized by NIST.

(v) Within 180 days of the date of this order, to prepare for transition to PQC, the Secretary of Defense with respect to National Security Systems (NSS), and the Director of OMB with respect to non-NSS, shall each

issue requirements for agencies to support, as soon as practicable, but not later than January 2, 2030, Transport Layer Security protocol version 1.3 or a successor version.

(g) The Federal Government should take advantage of commercial security technologies and architectures, such as hardware security modules, trusted execution environments, and other isolation technologies, to protect and audit access to cryptographic keys with extended lifecycles.

(i) Within 270 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, in consultation with the Secretary of Homeland Security, acting through the Director of CISA, and the Administrator of General Services shall develop guidelines for the secure management of access tokens and cryptographic keys used by cloud service providers.

(ii) Within 60 days of the publication of the guidelines described in subsection (g)(i) of this section, the Administrator of General Services, acting through the FedRAMP Director, in consultation with the Secretary of Commerce, acting through the Director of NIST, and the Secretary of Homeland Security, acting through the Director of CISA, shall develop updated FedRAMP requirements, incorporating the guidelines described in subsection (g)(i) of this section, as appropriate and consistent with guidance issued by the Director of OMB, concerning cryptographic key management security practices.

(iii) Within 60 days of the publication of the guidelines described in subsection (g)(i) of this section, the Director of OMB, in consultation with the Secretary of Commerce, acting through the Director of NIST; the Secretary of Homeland Security, acting through the Director of CISA; and the Administrator of General Services shall take appropriate steps to require FCEB agencies to follow best practices concerning the protection and management of hardware security modules, trusted execution environments, or other isolation technologies for access tokens and cryptographic keys used by cloud service providers in the provision of services to agencies.

Sec. 5. *Solutions to Combat Cybercrime and Fraud.* (a) The use of stolen and synthetic identities by criminal syndicates to systemically defraud public benefits programs costs taxpayers and wastes Federal Government funds. To help address these crimes it is the policy of the executive branch to strongly encourage the acceptance of digital identity documents to access public benefits programs that require identity verification, so long as it is done in a manner that preserves broad program access for vulnerable populations and supports the principles of privacy, data minimization, and interoperability.

(i) Within 90 days of the date of this order, agencies with grantmaking authority are encouraged to consider, in coordination with OMB and the National Security Council staff, whether Federal grant funding is available to assist States in developing and issuing mobile driver's licenses that achieve the policies and principles described in this section.

(ii) Within 270 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, shall issue practical implementation guidance, in collaboration with relevant agencies and other stakeholders through the National Cybersecurity Center of Excellence, to support remote digital identity verification using digital identity documents that will help issuers and verifiers of digital identity documents advance the policies and principles described in this section.

(iii) Agencies should consider accepting digital identity documents as digital identity verification evidence to access public benefits programs, but only if the use of these documents is consistent with the policies and principles described in this section.

(iv) Agencies should, consistent with applicable law, seek to ensure that digital identity documents accepted as digital identity verification evidence to access public benefits programs:

(A) are interoperable with relevant standards and trust frameworks, so that the public can use any standards-compliant hardware or software containing an official Government-issued digital identity document, regardless of manufacturer or developer;

(B) do not enable authorities that issue digital identity documents, device manufacturers, or any other third party to surveil or track presentation of the digital identity document, including user device location at the time of presentation; and

(C) support user privacy and data minimization by ensuring only the minimum information required for a transaction—often a ''yes'' or ''no'' response to a question, such as whether an individual is older than a specific age—is requested from the holder of the digital identity document.

(b) The use of ''Yes/No'' validation services, also referred to as attribute validation services, can enable more privacy-preserving means to reduce identity fraud. These services allow programs to confirm, via a privacy-preserving ''yes'' or ''no'' response, that applicant-provided identity information is consistent with information already contained in official records, without needing to share the contents of those official records. To support the use of such services, the Commissioner of Social Security, and the head of any other agency designated by the Director of OMB, shall, as appropriate and consistent with applicable law, consider taking steps to develop or modify services—including through, as appropriate, the initiation of a proposed rulemaking or the publication of a notice of a new or significantly modified routine use of records—related to Government-operated identity verification systems and public benefits programs, with consideration given to having such systems and programs submit applicant-provided identity information to the agency providing the service and receive a ''yes'' or ''no'' response as to whether the applicant-provided identity information is consistent with the information on file with the agency providing the service. In doing so, the heads of these agencies shall specifically consider seeking to ensure, consistent with applicable law, that:

(i) any applicant-provided identity information submitted to the services and any ''yes'' or ''no'' response provided by the services are used only to assist with identity verification, program administration, anti-fraud operations, or investigation and prosecution of fraud related to the public benefits program for which the identity information was submitted;

(ii) the services are made available, to the maximum extent permissible and as appropriate, to public benefits programs; Government-operated identity verification systems, including shared-service providers; payment integrity programs; and United States-regulated financial institutions; and

(iii) the agencies, public benefits programs, or institutions using the services provide reimbursement to appropriately cover costs and support the ongoing maintenance, improvement, and broad accessibility of the services.

(c) The Secretary of the Treasury, in consultation with the Administrator of General Services, shall research, develop, and conduct a pilot program for technology that notifies individuals and entities when their identity information is used to request a payment from a public benefits program, gives individuals and entities the option to stop potentially fraudulent transactions before they occur, and reports fraudulent transactions to law enforcement entities.

Sec. 6. *Promoting Security with and in Artificial Intelligence.* Artificial intelligence (AI) has the potential to transform cyber defense by rapidly identifying new vulnerabilities, increasing the scale of threat detection techniques, and automating cyber defense. The Federal Government must accelerate the development and deployment of AI, explore ways to improve the cybersecurity of critical infrastructure using AI, and accelerate research at the intersection of AI and cybersecurity.

(a) Within 180 days of the date of the completion of the Defense Advanced Research Projects Agency's 2025 Artificial Intelligence Cyber Challenge, the Secretary of Energy, in coordination with the Secretary of Defense, acting

through the Director of the Defense Advanced Research Projects Agency, and the Secretary of Homeland Security, shall launch a pilot program, involving collaboration with private sector critical infrastructure entities as appropriate and consistent with applicable law, on the use of AI to enhance cyber defense of critical infrastructure in the energy sector, and conduct an assessment of the pilot program upon its completion. This pilot program, and accompanying assessment, may include vulnerability detection, automatic patch management, and the identification and categorization of anomalous and malicious activity across information technology (IT) or operational technology systems.

(b) Within 270 days of the date of this order, the Secretary of Defense shall establish a program to use advanced AI models for cyber defense.

(c) Within 150 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST; the Secretary of Energy; the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology; and the Director of the National Science Foundation (NSF) shall each prioritize funding for their respective programs that encourage the development of large-scale, labeled datasets needed to make progress on cyber defense research, and ensure that existing datasets for cyber defense research have been made accessible to the broader academic research community (either securely or publicly) to the maximum extent feasible, in consideration of business confidentiality and national security.

(d) Within 150 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST; the Secretary of Energy; the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology; and the Director of the NSF shall prioritize research on the following topics:

(i) human-AI interaction methods to assist defensive cyber analysis;

(ii) security of AI coding assistance, including security of AI-generated code;

(iii) methods for designing secure AI systems; and

(iv) methods for prevention, response, remediation, and recovery of cyber incidents involving AI systems.

(e) Within 150 days of the date of this order, the Secretary of Defense, the Secretary of Homeland Security, and the Director of National Intelligence, in coordination with the Director of OMB, shall incorporate management of AI software vulnerabilities and compromises into their respective agencies' existing processes and interagency coordination mechanisms for vulnerability management, including through incident tracking, response, and reporting, and by sharing indicators of compromise for AI systems.

Sec. 7. *Aligning Policy to Practice.* (a) IT infrastructure and networks that support agencies' critical missions need to be modernized. Agencies' policies must align investments and priorities to improve network visibility and security controls to reduce cyber risks.

(i) Within 3 years of the date of this order, the Director of OMB shall issue guidance, including any necessary revision to OMB Circular A–130, to address critical risks and adapt modern practices and architectures across Federal information systems and networks. This guidance shall, at a minimum:

(A) outline expectations for agency cybersecurity information sharing and exchange, enterprise visibility, and accountability for enterprise-wide cybersecurity programs by agency CISOs;

(B) revise OMB Circular A–130 to be less technically prescriptive in key areas, where appropriate, to more clearly promote the adoption of evolving cybersecurity best practices across Federal systems, and to include migration to zero trust architectures and implementation of critical elements such as EDR capabilities, encryption, network segmentation, and phishing-resistant multi-factor authentication; and

(C) address how agencies should identify, assess, respond to, and mitigate risks to mission essential functions presented by concentration of IT vendors and services.

(ii) The Secretary of Commerce, acting through the Director of NIST; the Secretary of Homeland Security, acting through the Director of CISA; and the Director of OMB shall establish a pilot program of a rules-as-code approach for machine-readable versions of policy and guidance that OMB, NIST, and CISA publish and manage regarding cybersecurity.

(b) Managing cybersecurity risks is now a part of everyday industry practice and should be expected for all types of businesses. Minimum cybersecurity requirements can make it costlier and harder for threat actors to compromise networks. Within 240 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, shall evaluate common cybersecurity practices and security control outcomes that are commonly used or recommended across industry sectors, international standards bodies, and other risk management programs, and based on that evaluation issue guidance identifying minimum cybersecurity practices. In developing this guidance, the Secretary of Commerce, acting through the Director of NIST, shall solicit input from the Federal Government, the private sector, academia, and other appropriate actors.

(c) Agencies face multiple cybersecurity risks when purchasing products and services. While agencies have already made significant advances to improve their supply chain risk management, additional actions are needed to keep pace with the evolving threat landscape. Within 180 days of the issuance of the guidance described in subsection (b) of this section, the FAR Council shall review the guidance and, as appropriate and consistent with applicable law, the agency members of the FAR Council shall jointly take steps to amend the FAR to:

(i) require that contractors with the Federal Government follow applicable minimum cybersecurity practices identified in NIST's guidance pursuant to subsection (b) of this section with respect to work performed under agency contracts or when developing, maintaining, or supporting IT services or products that are provided to the Federal Government; and

(ii) adopt requirements for agencies to, by January 4, 2027, require vendors to the Federal Government of consumer internet-of-Things products, as defined by 47 CFR 8.203(b), to carry United States Cyber Trust Mark labeling for those products.

Sec. 8. *National Security Systems and Debilitating Impact Systems.* (a) Except as specifically provided for in section 4(f)(v) of this order, sections 1 through 7 of this order shall not apply to Federal information systems that are NSS or are otherwise identified by the Department of Defense or the Intelligence Community as debilitating impact systems.

(b) Within 90 days of the date of this order, to help ensure that NSS and debilitating impact systems are protected with the most advanced security measures, the Secretary of Defense, acting through the Director of NSA as the National Manager for National Security Systems (National Manager), in coordination with the Director of National Intelligence and the Committee on National Security Systems (CNSS), and in consultation with the Director of OMB and the Assistant to the President for National Security Affairs (APNSA), shall develop requirements for NSS and debilitating impact systems that are consistent with the requirements set forth in this order, as appropriate and consistent with applicable law. The Secretary of Defense may grant exceptions to such requirements in circumstances necessitated by unique mission needs. Such requirements shall be incorporated into a proposed National Security Memorandum, to be submitted to the President through the APNSA.

(c) To help protect space NSS with cybersecurity measures that keep pace with emerging threats, within 210 days of the date of this order, the CNSS shall review and update, as appropriate, relevant policies and guidance regarding space system cybersecurity. In addition to appropriate

updates, the CNSS shall identify and address appropriate requirements to implement cyber defenses on Federal Government-procured space NSS in the areas of intrusion detection, use of hardware roots of trust for secure booting, and development and deployment of security patches.

(d) To enhance the effective governance and oversight of Federal information systems, within 90 days of the date of this order, the Director of OMB shall issue guidance as appropriate requiring agencies to inventory all major information systems and provide the inventory to CISA, the Department of Defense, or the National Manager, as applicable, which shall each maintain a registry of agency inventories within their purview. CISA, the Department of Defense CIO, and the National Manager will share their inventories as appropriate to identify gaps or overlaps in oversight coverage. This guidance shall not apply to elements of the Intelligence Community.

(e) Nothing in this order alters the authorities and responsibilities granted in law or policy to the Director of National Intelligence, the Secretary of Defense, and the National Manager over applicable systems pursuant to the National Security Act of 1947 (Public Law 80–253), the Federal Information Security Modernization Act of 2014 (Public Law 113–283), National Security Directive 42 of July 5, 1990 (National Policy for the Security of National Security Telecommunications and Information Systems), or National Security Memorandum 8 of January 19, 2022 (Improving the Cybersecurity of National Security, Department of Defense, and Intelligence Community Systems).

Sec. 9. *Additional Steps to Combat Significant Malicious Cyber-Enabled Activities.* Because I find that additional steps must be taken to deal with the national emergency with respect to significant malicious cyber-enabled activities declared in Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities), as amended by Executive Order 13757 of December 28, 2016 (Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities), and further amended by Executive Order 13984 of January 19, 2021 (Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities), to protect against the growing and evolving threat of malicious cyber-enabled activities against the United States and United States allies and partners, including the increasing threats by foreign actors of unauthorized access to critical infrastructure, ransomware, and cyber-enabled intrusions and sanctions evasion, I hereby order that section 1(a) of Executive Order 13694 is further amended to read as follows:

''**Section 1**. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order;

(ii) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a threat to the national security, foreign policy, or economic health or financial stability of the United States, and that have the purpose of or involve:

(A) harming, or otherwise compromising the provision of services by, a computer or network of computers that support one or more entities in a critical infrastructure sector;

(B) compromising the provision of services by one or more entities in a critical infrastructure sector;

(C) causing a disruption to the availability of a computer or network of computers or compromising the integrity of the information stored on a computer or network of computers;

(D) causing a misappropriation of funds or economic resources, intellectual property, proprietary or business confidential information, personal identifiers, or financial information for commercial or competitive advantage or private financial gain;

(E) tampering with, altering, or causing a misappropriation of information with the purpose of or that involves interfering with or undermining election processes or institutions; or

(F) engaging in a ransomware attack, such as extortion through malicious use of code, encryption, or other activity to affect the confidentiality, integrity, or availability of data or a computer or network of computers, against a United States person, the United States, a United States ally or partner or a citizen, national, or entity organized under the laws thereof; or

(iii) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State:

(A) to be responsible for or complicit in, or to have engaged in, directly or indirectly, the receipt or use for commercial or competitive advantage or private financial gain, or by a commercial entity, outside the United States of funds or economic resources, intellectual property, proprietary or business confidential information, personal identifiers, or financial information misappropriated through cyber-enabled means, knowing they have been misappropriated, where the misappropriation of such funds or economic resources, intellectual property, proprietary or business confidential information, personal identifiers, or financial information is reasonably likely to result in, or has materially contributed to, a threat to the national security, foreign policy, or economic health or financial stability of the United States;

(B) to be responsible for or complicit in, or to have engaged in, directly or indirectly, activities related to gaining or attempting to gain unauthorized access to a computer or network of computers of a United States person, the United States, a United States ally or partner or a citizen, national, or entity organized under the laws thereof, where such efforts originate from or are directed by persons located, in whole or substantial part, outside the United States and are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States;

(C) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in subsections (a)(ii) or (a)(iii)(A) or (B) of this section or any person whose property and interests in property are blocked pursuant to this order;

(D) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order or that has engaged in any activity described in subsections (a)(ii) or (a)(iii)(A)–(C) of this section;

(E) to have attempted to engage in any of the activities described in subsections (a)(ii) and (a)(iii)(A)–(D) of this section; or

(F) to be or have been a leader, official, senior executive officer, or member of the board of directors of any person whose property and interests in property are blocked pursuant to this order or that has engaged in any activity described in subsections (a)(ii) or (a)(iii)(A) – (E) of this section.''

Sec. 10. *Definitions.* For purposes of this order:

(a) The term ''agency'' has the meaning ascribed to it under 44 U.S.C. 3502(1), except for the independent regulatory agencies described in 44 U.S.C. 3502(5).

(b) The term ''artifact'' means a record or data that is generated manually or by automated means and may be used to demonstrate compliance with defined practices, including for secure software development.

(c) The term ''artificial intelligence'' or ''AI'' has the meaning set forth in 15 U.S.C. 9401(3).

(d) The term ''AI system'' means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

(e) The term ''authentication'' means the process of determining the validity of one or more authenticators, such as a password, used to claim a digital identity.

(f) The term ''Border Gateway Protocol'' or ''BGP'' means the control protocol used to distribute and compute paths between the tens of thousands of autonomous networks that constitute the internet.

(g) The term ''consumer internet-of-Things products'' means internet-of-Things products intended primarily for consumer use, rather than enterprise or industrial use. Consumer internet-of-Things products do not include medical devices regulated by the United States Food and Drug Administration or motor vehicles and motor vehicle equipment regulated by the National Highway Traffic Safety Administration.

(h) The term ''cyber incident'' has the meaning given to the term ''incident'' under 44 U.S.C. 3552(b)(2).

(i) The term ''debilitating impact systems'' means systems as described by 44 U.S.C. 3553(e)(2) and 3553(e)(3) for Department of Defense and Intelligence Community purposes, respectively.

(j) The term ''digital identity document'' means an electronic, reusable, cryptographically verifiable identity credential issued by a Government source, such as a State-issued mobile driver's license or an electronic passport.

(k) The term ''digital identity verification'' means identity verification that a user performs online.

(l) The term ''endpoint'' means any device that can be connected to a computer network creating an entry or exit point for data communications. Examples of endpoints include desktop and laptop computers, smartphones, tablets, servers, workstations, virtual machines, and consumer internet-of-Things products.

(m) The term ''endpoint detection and response'' means cybersecurity tools and capabilities that combine real-time continuous monitoring and collection of endpoint data (for example, networked computing device such as workstations, mobile phones, servers) with rules-based automated response and analysis capabilities.

(n) The term ''Federal Civilian Executive Branch agencies'' or ''FCEB agencies'' includes all agencies except for the agencies and other components in the Department of Defense and agencies in the Intelligence Community.

(o) The term ''Federal information system'' means an information system used or operated by an agency, a contractor of an agency, or another organization on behalf of an agency.

(p) The term ''Government-operated identity verification system'' means a system owned and operated by a Federal, State, local, Tribal, or territorial Government entity that performs identity verification, including single-agency systems and shared services that provide service to multiple agencies.

(q) The term ''hardware root of trust'' means an inherently trusted combination of hardware and firmware that helps to maintain the integrity of information.

(r) The term ''hybrid key establishment'' means a key establishment scheme that is a combination of two or more components that are themselves cryptographic key-establishment schemes.

(s) The term ''identity verification'' means the process of collecting identity information or evidence, validating its legitimacy, and confirming that it is associated with the real person providing it.

(t) The term ''Intelligence Community'' has the meaning given to it under 50 U.S.C. 3003(4).

(u) The term ''key establishment'' means the process by which a cryptographic key is securely shared between two or more entities.

(v) The term ''least privilege'' means the principle that a security architecture is designed so that each entity is granted the minimum system resources and authorizations that the entity needs to perform its function.

(w) The term ''machine-readable'' means that the product output is in a structured format that can be consumed by another program using consistent processing logic.

(x) The term ''national security systems'' or ''NSS'' has the meaning given to it under 44 U.S.C. 3552(b)(6).

(y) The term ''patch'' means a software component that, when installed, directly modifies files or device settings related to a different software component without changing the version number or release details for the related software component.

(z) The term ''rules-as-code approach'' means a coded version of rules (for example, those contained in legislation, regulation, or policy) that can be understood and used by a computer.

(aa) The term ''secure booting'' means a security feature that prevents malicious software from running when a computer system starts up. The security feature performs a series of checks during the boot sequence that helps ensure only trusted software is loaded.

(bb) The term ''security control outcome'' means the results of the performance or non-performance of safeguards or countermeasures prescribed for an information system or an organization to protect the confidentiality, integrity, and availability of the system and its information.

(cc) The term ''zero trust architecture'' has the meaning given to it in Executive Order 14028.

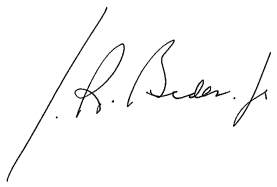
Sec. 11. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 16, 2025.

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Filed 1–16–25; 2:00 pm]
Billing code 3395–F4–P

Presidential Documents

Memorandum of January 16, 2025

Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers

Memorandum for the Administrator of the Environmental Protection Agency and the Secretary of Health and Human Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The strengthened and updated Clean Air Act standards for ethylene oxide (EtO) emitted into the air from commercial sterilizing facilities issued by the Environmental Protection Agency (EPA) on April 5, 2024, *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, Final Rule,* 89 FR 24,090 (Apr. 5, 2024) (''EtO Rule''), achieved a new milestone in my Administration's efforts to protect public health for all Americans and to advance the objective of my Administration's Cancer Moonshot initiative to prevent cancer before it starts. EtO has been associated with elevated cancer risks in communities around the United States and can be particularly harmful to children. The loss of loved ones from environmentally related cancer is a tragedy that the Nation can and must work together to end, once and for all.

The EtO Rule was issued after careful consideration of public comments and public hearings. In this rule, EPA set standards under section 112 of the Clean Air Act, as amended (the ''Act'') (42 U.S.C. 7401 *et seq.*), to control emissions from commercial sterilizers through the use of demonstrated and achievable pollution control technologies and practices. These standards will significantly reduce emissions of the toxic air pollutant EtO.

The EtO Rule applies to facilities that sterilize medical products, including medical devices and pharmaceuticals. Sterilization is critical to maintaining a safe supply of medical devices for patients and hospitals and providing health care to millions of Americans to help them stay healthy and fight diseases, including cancer. Consequently, EPA worked closely with the Department of Health and Human Services, including the Food and Drug Administration, to develop a final rule that protects communities exposed to pollution from sterilization facilities while also mitigating and managing the potential risk of any medical device supply disruptions.

EPA concluded that sterilization facilities will be able to install the appropriate technology to meet the standards of the EtO Rule before the compliance deadlines mandated by the Act. The EtO Rule also recognized that the President's authority under section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4), to exempt individual facilities from compliance for a set period of time may provide an important mechanism to address the possibility that a facility may be unable to install all appropriate technology before the compliance deadline. 89 FR at 24,103. It is of vital national importance to ensure the reduction of EtO emissions to the level that EPA determined is required to protect public health pursuant to the Clean Air Act, while also avoiding the national security and public health effects that could result from a significant disruption to the medical device supply chain.

It is the policy of my Administration to safeguard the reliability of our Nation's supply of safe medical products. To advance orderly implementation of the EtO Rule, I am therefore establishing a process, provided below,

for considering requests for Presidential exemptions, the duration of which shall be as short as possible and no longer than two years. This process will ensure consideration of such requests in the exceptional circumstances in which a commercial sterilizer can demonstrate that, notwithstanding due diligence and best efforts, it will be unable to meet a covered standard or limitation required by the EtO Rule before the compliance deadline due to the unavailability of control technology for the facility, leading to likely shutdown of the facility, and the best available information demonstrates that the shutdown of the facility will likely lead to a serious disruption to the supply of medical products, such as medical devices and pharmaceuticals, necessary for America's national security and public health.

To achieve the EtO Rule's critical health protections as soon as practicable, while safeguarding the supply of safe medical products from disruption that would compromise the health and welfare of the American people, I direct you to take the following actions:

Sec. 2. *Implementation of a Process for Considering Presidential Exemptions.* The Administrator of the EPA (Administrator) shall receive requests for a Presidential exemption from a standard or limitation in the EtO Rule under section 112(i)(4) of the Act (42 U.S.C. 7412(i)(4)), review them, and advise the President regarding whether to grant them through the following process:

(a) Any commercial sterilizer seeking such an exemption shall submit a request to the Administrator no earlier than 12 months and no later than 4 months before the compliance deadline for which an exemption is sought. The request shall include:

(i) specific information of sufficient detail to enable verification of the reason or reasons that the technology to implement the applicable standard or limitation is unavailable for installation and that, notwithstanding its due diligence and best efforts, the facility cannot be brought into compliance before the compliance deadline for the covered standard or limitation (e.g., contracts, documentation of communication with vendors or suppliers);

(ii) a plan for procuring, installing, and operating the technology as soon as feasible in order to achieve compliance with the EtO Rule, and an assurance as described in subsection (h)(ii) of this section;

(iii) a list of all available practicable measures (i.e., technological and operational) that have already been taken or that are planned to advance compliance and additional measures, if any, that will be implemented to reduce the emissions of EtO and resulting risks during the exemption period;

(iv) a list of any alternative steps available, in progress, or already taken to try to avoid the need for additional time for compliance;

(v) the type or types of products sterilized at the facility, the volume of products sterilized at the facility, and the facility's annual sterilization capacity; and

(vi) the name, title, and signature of the responsible official who is certifying the accuracy of the request.

(b) In reviewing an exemption request, and the information provided pursuant to this section, the Administrator, in consultation with the Secretary of Health and Human Services (Secretary), shall consider:

(i) whether the technology to implement a covered standard or limitation will be unavailable in time for installation and operation of the technology at a specific facility before the compliance deadline for such standard or limitation, due, for example, to shortages of labor, parts, control technology supply, supply-chain disruption, or other factors out of the facility's control;

(ii) the amount of time needed for installation and operation to occur in order to achieve compliance with the EtO Rule;

(iii) the risk of a serious disruption to the supply of medical products (including pharmaceuticals and medical devices) should the facility be required to temporarily pause sterilization activities or reduce capacity until installation and operation can occur (including any potential alternatives to assure a sufficient supply of sterilization and sterilized medical products);

(iv) the potential effect of any such disruption on public health and welfare, and any other information that may be relevant to an evaluation of whether granting an exemption is in the national security interests of the United States; and

(vi) any other information that the Administrator, in consultation with the Secretary, deems relevant.

(c) No later than 30 days after receiving a request pursuant to subsection (a) of this section, the Administrator shall confirm receipt of the request, notify the requester of any additional information needed to evaluate the request, set a deadline of no later than 15 days for the requester to provide the requested information, and provide public notification that the request was submitted (including the name of, the location of, and any other information regarding the facility requesting the exemption that the Administrator, in consultation with the Secretary, deems relevant and appropriate to publish).

(d) As soon as practicable and no later than 30 days after receiving all necessary information to evaluate a request pursuant to this section, the Administrator, in consultation with the Secretary, shall provide the Chairman of the Council on Environmental Quality (CEQ) with the request and accompanying information from the requester, any additional information that the Administrator deems relevant, and a recommendation regarding whether an exemption is warranted, including the basis for the recommendation, and if recommending that the President grant an exemption: the recommended duration, and any other accompanying terms or conditions (such as a schedule for status reports regarding planned steps and progress to achieve compliance with the EtO Rule).

(e) As soon as practicable and generally within 45 days after receiving a recommendation from the Administrator pursuant to subsection (d) of this section, the Chairman of CEQ, in consultation with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Pandemic Preparedness and Response Policy, and the Director of the Office of Science and Technology Policy, shall advise the President concerning the request for an exemption.

(f) As expeditiously as practicable after the grant or denial of any exemption by the President under this process, and no later than 10 days after such a grant or denial, the Administrator shall notify the applicant.

(g) Within 60 days of the grant of any exemption by the President under this process, the Administrator shall make publicly available online the name of, location of, and any other appropriate and relevant information regarding the facility receiving the exemption and the duration of any exemption, and shall submit to Congress the report required by section 112(i)(4) of the Act (42 U.S.C. 7412(i)(4)) on behalf of the President.

(h) The Administrator shall, as appropriate:

(i) provide technical assistance to any facility that receives an exemption to promote compliance with the EtO Rule;

(ii) seek information and assurance from any facility that requests an exemption that the facility will use its best efforts and will take reasonable and appropriate steps to demonstrate diligent action to install and operate necessary technology as expeditiously as practicable (including to fulfill any accompanying terms or conditions) to achieve compliance with the EtO Rule; and

(iii) inform the Chairman of CEQ when installation of such technology is complete.

Sec. 3. *Federal Coordination.* The Secretary, in consultation with the Administrator, shall consider taking additional steps, as appropriate, to further advance the goal of protecting the public from cancer and other harms from EtO exposure, including spurring innovation to reduce exposure to EtO and other carcinogenic air pollutants and to expand access to safe, effective, and reliable alternative methods for sterilization of medical equipment and pharmaceuticals that do not depend on EtO, and continuing to strengthen the resilience of our Nation's medical supply chain. Within 2 years of the date of this memorandum, the Secretary shall provide a report to the Chairman of CEQ regarding progress toward this directive and any steps taken or planned.

Sec. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

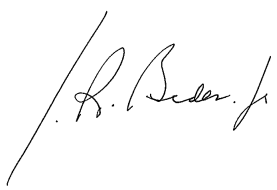
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Administrator is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 16, 2025

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